



Experience Rating Information and Consultation Document

*Find out about the proposal to introduce experience rating into the
Work Account and how you can have your say*

Deadline for submissions: 5.00 pm, Friday 29 October 2010



Accident Compensation Corporation Experience Rating Information and Consultation Document

**Deadline for feedback
5.00pm, 29 October 2010**

Contents

- 1.0 Experience Rating Consultation 3
 - 1.1 Why introduce experience rating into the Work Account?..... 4
 - 1.2 What does this consultation cover? 4
 - 1.3 How does this consultation fit with the 2011/12 levy consultation? 5
- 2.0 Experience Rating in the Work Account..... 8
 - 2.1 Overview 8
 - 2.2 The proposed framework..... 10
 - 2.3 Changes to industry-based risk groups 13
 - 2.4 Incentive programmes 13
- 3.0 No Claims Discount Programme – for Small Employers..... 16
 - 3.1 Proposed structure 16
- 4.0 The Experience Rating Programme – for Large Employers 18
 - 4.1 The proposed structure..... 18
 - 4.2 Industry size modification 21
 - 4.3 Experience rating modification..... 24
 - 4.4 Calculating the experience rating modification: an example 29
- 5.0 Business groupings and transfers 32
 - 5.1 Overview 32
 - 5.2 The grouping rules 32
 - 5.3 Business transfer rules 38
- 6.0 Administration..... 40
 - 6.1 Notification processes..... 40
 - 6.2 Levy assessments 40
 - 6.3 Review processes..... 41
 - 6.4 Managing the risk of perverse behaviours..... 41
 - 6.5 Monitoring and review..... 41
- 7.0 Supporting Material 43
 - 7.1 Injury management/injury prevention..... 43
 - 7.2 Supporting material..... 43
 - 7.3 Glossary of terms..... 43
- APPENDIX I – Relevant sections of subpart YB of the Income Tax Act
(associated person rules) 44

1.0 Experience Rating Consultation

ACC is seeking feedback on a proposal to introduce experience rating into the ACC Work Account as from 1 April 2011.

Under an experience rating system, the ACC levies that employers pay would be based on their claims experience. So employers who have better-than-average injury and return-to-work rates would receive a discount on the 'current portion' of their work levy, while those with worse-than-average claims experience would receive a loading on the current portion of their work levy. Note that the proposals outlined in this consultation document don't apply to the residual portion of the Work Account levy.

Experience rating for the Work Account is possible under section 331 of the Accident Compensation Act 2001, as long as ACC consults levy payers before recommending any new regulations to the Minister for ACC. This document is all about that consultation – and it also contains our proposals for collecting information from employers to enable ACC to apply new business grouping rules. ACC is consulting on the information collection proposals, on behalf of the Minister, under section 332 of the Accident Compensation Act.

Need explanations of our terms? You can find definitions of the ACC-specific terms in this document in the glossary on page 43.

Let us know what you think

Please read this document, then let us know what you think – whether you agree or disagree with our proposals and if you have any ideas or suggestions for improvement.

Simply complete the form on pages 6 and 7. If you need more room, you're welcome to include additional pages; just state the section on which you're providing feedback. Then send the form:

By email to: ERconsultation@acc.co.nz

By post to: Consultation on Experience Rating Proposals
ACC
PO Box 242
Wellington 6140

By fax to: 04 918 4395

You can also provide feedback by online survey through: www.surveymonkey.com/s/experincerating.

Your feedback must be received by **5.00pm on Friday, 29 October 2010**.

A few notes

Supplementary information is available from www.acc.co.nz/ERconsultation.

Please note that:

- All amounts in this document exclude GST unless it says otherwise
- We've rounded some of the numbers (up or down), so if you do your own calculations they might not match ours
- All amounts in this document are preliminary estimates
- ACC is subject to the Official Information Act 1982, so your submission may be available to people seeking information under that Act.

1.1 Why introduce experience rating into the Work Account?

ACC levies are the main way in which the Government provides a financial incentive to businesses to improve their workplace safety. Currently the levy-setting system recognises and rewards (or penalises) safety records at an industry level. Unfortunately this means that, within each industry, businesses with good workplace safety records are carrying the costs of businesses that are less safe, which detracts from the incentives for improving safety.

New Zealand is dominated by small businesses, with 97% of businesses employing fewer than 20 people and the remainder of businesses employing 69% of New Zealanders. So any proposals to improve workplace safety must recognise and respond to the differing needs of small and large businesses.

Our proposal to introduce experience rating into the ACC Work Account aims to reduce the number and costs of workplace injuries and deaths by:

- Providing employers with financial incentives to prevent injuries
- Encouraging appropriate return-to-work programmes
- Making levies fairer for businesses, so that 'low-risk' employers don't subsidise 'high-risk' employers.

1.2 What does this consultation cover?

This consultation document outlines three main proposals:

- Using an 'experience rating framework' to implement experience rating
- Introducing new 'business grouping' and 'business transfer' rules as part of implementing experience rating
- Reviewing ACC's levy discounts to ensure the Work Account has the funding it needs while still providing employers with incentives to improve their workplace safety and return-to-work performance.

1.2.1 Key components of the experience rating framework

The experience rating framework in the Work Account means that levies will reflect the industry-related risks and performances of individual businesses.

The framework recognises that small employers have a higher claim rate than larger employers, and that large employers have a higher probability of claims each year owing to their relative size. It applies a different approach depending on employer size, as the smaller the employer the less statistically credible the individual risk experience.

The proposed experience rating framework has three components:

- Industry risk groups
- Two new performance pricing programmes:
 - The No-Claims Discount Programme for small employers (a no-claims discount or a high-claims loading)
 - The Experience Rating Programme for large employers, which recognises and rewards effective workplace safety practices and return-to-work programmes.

The No-Claims Discount and Experience Rating Programmes will be mandatory for employers and self-employed people who meet the eligibility criteria, except businesses in the ACC Partnership Programme, as they are individually responsible for the actual costs of their injuries and administration.

1.2.2 Business grouping and transfers

ACC will need to group businesses for the purposes of experience rating – and that means introducing new grouping rules.

The proposed rules will group ‘commonly owned’ or controlled employers/businesses. The rationale for this approach is that those who have ownership/control of workplaces are responsible for, and have the ability to influence, the safety practices in their workplaces.

Experience rating will also require business transfer rules, which will apply when business units transfer to new businesses (other than through the sale of a legal entity). These rules will aim to ensure that any experience rating remains associated with the workplace, despite transfers of ownership or structural changes.

1.2.3 Incentive programmes

We currently offer employers two incentive programmes (the Workplace Safety Discounts programme and Workplace Safety Management Practices, which are optional) and Workplace Safety Evaluation (our mandatory programme for addressing poor workplace safety performance).

These programmes provide businesses with incentives to establish workplace safety systems in the absence of any form of individual employer experience rating. If we introduce experience rating, we’ll need to reassess the levy discounts that employers receive through participating in these programmes, to ensure that the experience rating framework works to fund the Work Account and provide financial incentives for workplace safety and return-to-work outcomes.

1.3 How does this consultation fit with the 2011/12 levy consultation?

The consultation requirements around levy setting are set out in sections 330 and 331 of the Accident Compensation Act. Under these provisions, ACC is required to consult levy payers regarding proposed changes to levy rates before recommending changes to the Minister for ACC.

ACC undertakes an annual consultation on proposed changes to levy setting in the Work Account, Motor Vehicle Account and Earners’ Account. The 2011/12 levy consultation process will run concurrently with this consultation.

In relation to the Work Account, the key differences between the two consultations are:

- The levy consultation focuses on the proposed levy rates for employers and self-employed people, and how they have been calculated
- This consultation focuses on our proposal to modify the levies paid by individual employers and self-employed people.

If you’d like more information about the 2011/12 levy consultation, visit www.acc.co.nz/levyconsultation, call us on 0800 222 728 or send an email with your request to levyconsultation@acc.co.nz.

Consultation on regulations relating to experience rating

YOUR DETAILS:

Name:

Position:

Address:

Email (optional):

I am responding:

as an individual

on behalf of an organisation

Organisation:

Please tick the box that indicates the type of organisation that best describes you:

Self-employed

Small business (up to 10 staff)

Medium business (11 to 50 staff)

Large business (more than 50 staff)

Business representative organisation/industry group

Trade union

Training organisation

Employee

Consultant

Other (please describe)

2.0 Experience Rating in the Work Account

2.1 Overview

Our proposed experience rating framework will enable the modification of an employer's work levy rate to reflect their own claims experience and/or risks. It aims to:

- Encourage employers to reduce the incidence of work-related injuries, and the severity and cost of injuries if they do occur
- Ensure that levies employers pay better reflect their risk profiles and the cost of injuries that happen in their workplaces.

Under the framework, employers with lower-than-average claims and higher-than-average return-to-work rates would receive a discount on the current portion of the work levy, while employers with worse-than-average claims experience would receive a loading on the current portion of the work levy.

Objectives

The objectives of the experience rating framework are to:

- Provide a financial incentive to prevent injuries
- Encourage appropriate return-to-work programmes
- Make levies fairer for businesses by ensuring that low-risk employers do not subsidise high-risk employers.

Current situation

ACC contributes to the Government's overarching outcome of improving New Zealand's economic performance by working to:

- Reduce the incidence and severity of injury
- Rehabilitate injured people in New Zealand more efficiently
- Ensure the ACC Scheme is financially sustainable and represents value for money.

The levies we charge are our main mechanism for signalling the costs and impacts of injuries. We use them not only to meet the costs associated with injuries but also to send a 'pricing signal' that drives improved safety practices, reduces the number of injuries and supports effective injury management (rehabilitation). Any improvements in these areas will therefore reduce the Scheme's costs and improve its financial sustainability.

In setting levies for the Work Account, we use 'classification units' (CUs) to group business activities, and then group CUs with a similar activity and risk of work-related injury into 'levy risk groups' (LRGs). The claims experience of these LRGs is used to estimate the cost and frequency of future injury claims, and determine the levies that businesses in the respective LRGs will pay. Industry-based levies reflect the weighted average cost of all activities (or occupations) within each industry.

Our current approach to levy setting in the Work Account means that many employers have limited financial incentive to improve their workplace safety or injury management practices, because any such changes don't directly affect the levies they pay. In addition, averaged levy rates mask the true costs of accidents in an individual employer's workplace(s), and the connection between those costs and the levy it pays.

International experience

ACC is unusual in relation to other workers' compensation schemes in that it does not apply an experience rating adjustment for individual employers. As part of developing the proposals outlined in

this consultation document, ACC has examined experience rating systems used in other workers' compensation schemes, particularly in Australia, Canada and the United States of America.

Our research into the experience rating systems operating in other jurisdictions has focused on the effectiveness of financial incentives, such as experience rating, in improving workplace safety and reducing the number and nature of work-related injuries, as well as any perverse or unintended behaviour that may result from having financial incentives in place.

An analysis of the available research on experience rating indicates that such systems can motivate employers to improve their safety practices and result in lower claim numbers¹. The exact size of any such reduction can vary, for example from around 8% in British Columbia² to 15% in the Netherlands³. Some studies are cautious about the level of improvement in relation to workplace health and safety and reduced injury statistics that can be credited to experience rating.

Other key findings in relation to experience rating systems are:

- Any financial incentive needs to have strong links with injury prevention and injury management programmes
- Most experience rating systems vary according to employer size, given that small employers' claims experience differs from that of large employers
- Employers will take action to reduce claim costs when they consider that the financial impacts on them are high and that they can influence the financial impacts, and where any discount is received within one to three years
- There are risks around adverse behaviours with experience rating systems. Particular issues include underreporting of injuries, reporting work injuries as non-work injuries, employees returning to work before they are sufficiently recovered, and employers not hiring workers who have previously been injured.

Developing the proposals in this consultation document

In developing the proposed experience rating framework, consideration has been given to the experience rating regime that operated in the ACC Work Account in the 1990s, international practice and research, and the objectives of the new programme.

Considerable attention has been given to the demographics of New Zealand businesses and how claims experience is distributed across different industries.

An analysis of claim numbers and frequency was used in determining each of the proposed thresholds for participation in the different experience rating programmes, and the different experience measures that are proposed.

The proposed measures (the number of weekly compensation claims and days paid, and the number of claims with a medical spend over a proposed threshold) were selected in recognition of employers' ability to influence behaviour and outcomes.

¹ A study of experience rating in Wisconsin (Barth, Klein and Krohm, 'Workers' Compensation Insurance Experience Rating and Subsequent Employer Claims: The Wisconsin Experience', *Journal of Insurance Issues*, 2008) provided support for the theory that experience rating motivates employers to improve worker safety and lower the number of their workers' compensation claims.

² Research on the experience rating system applied in British Columbia (Campolieti, Hyatt and Thomason, 'Experience Rating, Work Injuries and Benefit Costs: Some new evidence', *Industrial Relations*, 2006, Volume 61, Number 1) found that the introduction of experience rating resulted in a reduction in the frequency of claims. However, the study was not able to attribute the reduction in claims directly to investment in health and safety or claims management behaviour. The study results indicated that experience rating may have the greatest impact on reducing medical treatment and short-term disability claims, and there was no evidence from this study that experience rating reduced the frequency of fatal injury claims, or the duration of absences from work.

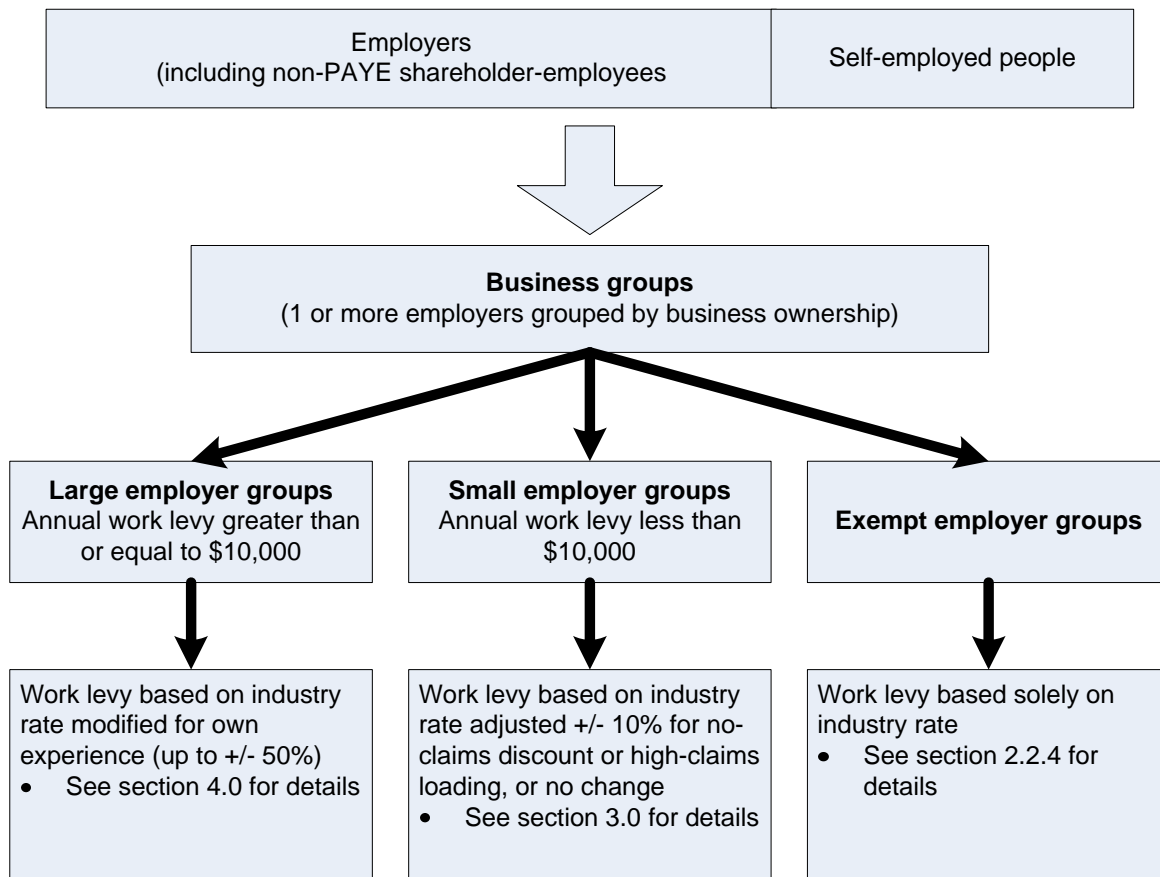
³ A study of experience rating in the Netherlands (Koning, *Estimating the Impact of Experience Rating on the Inflow into Disability Insurance in the Netherlands*, Utrecht School of Economics, 2005) suggested that employers were influenced to increase preventative activities once they had experienced substantial increases in their levy rates.

2.2 The proposed framework

The proposed experience rating framework will result in employers paying levies that better reflect their individual risk profiles. It has three components:

- **Industry risk groups:** We will expand the number of LRGs from 117 to 143 to allow for greater differentiation in the work levy and more efficiently pool businesses with similar risk profiles. For more information, refer to www.acc.co.nz/levyconsultation
- **A No-Claims Discount Programme for small employers⁴:** Employers (including non-PAYE shareholder-employees and self-employed people) whose current portion of their annual work levy is less than \$10,000 in any of the last three levy years, will receive a 10% no-claims discount or 10% high-claims loading on the current portion of their work levy, or no change (see section 3.0 for more on this)
- **An Experience Rating Programme for large employers⁵:** An experience rating modification will be applied to the current portion of the work levy for employers whose current portion of their annual work levy is equal to, or more than, \$10,000 in each of the three previous levy years (see section 4.0 for more on this).

Graph 1: Outline of the experience rating framework



⁴ In this document a 'small employer' means a qualifying business group with an annual work levy below the minimum annual levy threshold of \$10,000.

⁵ In this document 'large employer' means a qualifying business group that pays a minimum work levy equal to or greater than \$10,000 each year, which is known as the minimum annual levy threshold.

2.2.1 Which employers are included in the experience rating framework?

The No-Claims Discount and Experience Rating Programmes will be mandatory for employers and self-employed people who meet the eligibility criteria, except businesses in the ACC Partnership Programme as they are individually responsible for the actual costs of their injuries and administration.

The self-insurance options available through the Partnership Programme are a greater form of individual experience rating than those that will be offered to all other employers.

If Accredited Employers leave the Partnership Programme they will be eligible for the experience rating programme using their claims experience during the 'experience period' (refer section 2.2.5).

2.2.2 Programme distribution

The table below provides a breakdown of the expected spread of employers between the two new programmes (the No-Claims Discount Programme and the Experience Rating Programme), including those in the ACC Partnership Programme:

Table 1: Expected spread between programmes

Type of employer	Proposed incentive programme	Number of employers	Percentage of employers	Percentage of liable earnings
ACC Partnership Programme	Accredited Employer Programme ^a	136 ^b	0.02%	20%
Employers	Experience Rating Programme ^c	5,050	1%	31%
		Large	110,500	20%
	Small			
Non-PAYE shareholder-employees and self-employed	No-Claims Discount Programme ^d	126,000	23%	8%
Exempt group	No incentive programme ^e	315,500	56%	10%
Total		557,186	100%	100%

Notes

- ^a Current Accredited Employer programme discounts available to employers through specified claim management periods
- ^b Partnership Programme participants are counted by the number of contracts
- ^c For large employer groups (including non-PAYE shareholder-employees)
- ^d No-claims discount/high-claims loading programme
- ^e These employers, self-employed people and shareholder-employees are exempt as their earnings are below the minimum liable earnings or they haven't been in business consecutively for the previous three years

2.2.3 Determining eligibility for the Experience Rating and No Claims Discount Programmes

Determining the programme in which an employer will participate is decided at a business group level (see section 5.0). Under the business grouping rules businesses will be grouped based on commonly owned or controlled employers/businesses. The rationale for this approach is that those who have ownership/control of workplaces are responsible for, and therefore have the ability to influence, the safety and other practices in these workplaces.

The Experience Rating Programme will apply to businesses (or business groups) whose current portion of the industry-based work levy in each year of the experience period (see below) is greater than or equal to \$10,000. Business groups that qualify for the Programme will be experience rated as if they were a single business. The entities within these groups will continue to be invoiced individually.

The No-Claims Discount Programme will apply to individual employers whose total group industry-based work levy in any one year of the experience period is less than \$10,000.

2.2.4 Exempt employers

Employers must have liable earnings greater than the minimum amount and been invoiced an ACC levy for each year of the experience period (except if they are part of a business group that qualifies for either of the Programmes).

The minimum amount will be set annually based on the minimum liable earnings amount set for self-employed people (which was \$26,000 per annum for the 2010/11 levy year).

Those employers that have liable earnings equal to, or lower than, the minimum are generally part-time or new businesses and, as such, their claims experience is limited and provides an insufficiently 'credible' basis for the application of experience rating.

NOTE: Employers who are exempt from the Programmes will continue to have the current portion of their work levies calculated, and invoiced, based on the industry-based work levy rate.

2.2.5 Time periods to be used

Three key time periods are relevant to the application of the Programmes:

- **The experience period:** The three-year period (from 1 April to 31 March) in which work-related injuries happen and are counted for the experience rating programmes
- **The claim activity period:** The 3½ year period in which payments are made on claims incurred in the experience period. Payments on all injuries incurred during the experience period will be included as at 30 September after the end of the experience period
- **The levy application year:** The levy year (ending 31 March) in which any modification (either a discount or a loading) will be applied to the industry-based work levy.

The table below illustrates the relevant periods for the programmes in the 2011/12 levy year:

Table 2: Relevant time periods

Levy years				
1/4/07 – 31/3/08	1/4/08 – 31/3/09	1/4/09 – 31/3/10	1/4/10 – 31/3/11	1/4/11 – 31/3/12
Experience period				2011/12 levy application year
Claims activity period (to 30/9/10)				

Questions:

1. *Is the proposed coverage workable – should other groups of businesses be included or excluded? If so, why?*
2. *Do you think the overall pricing framework will deliver the expected benefits in reducing injuries? If not, what needs to change?*
3. *Do you think the proposed time periods in which claims will be counted for experience rating purposes are appropriate?*

2.3 Changes to industry-based risk groups

Businesses and self-employed people are classified, for levy purposes, according to the type of industry in which they work.

ACC uses an industrial classification system based on the Australian and New Zealand Standard Industrial Classification (ANZSIC). The classifications are modified for ACC's use, and related businesses are placed together at the CU level, then CUs are grouped into LRGs on the basis of activity, risk and credibility.

We need to update the allocation of CUs to LRGs to ensure that the individual risk profiles of CUs appropriately match the LRGs to which they are allocated. We also propose increasing the number of LRGs for the industry-based work levy from 117 to 143, and updating their relativities based on the latest claims experience. These changes are designed mainly to improve experience-based pricing and support the introduction of experience rating.

These changes will:

- Allow for more differentiation in the industry-based work levy
- Provide an opportunity to pool businesses with similar risk profiles more efficiently
- Result in levy rates that better reflect levy payers' risks
- Improve price signals for injury prevention and injury management.

For some employers this will result in a change to their LRGs, which may result in an increase or decrease in their industry-based levy rate. Their total work levy will be determined by their liable earnings and whether or not they are included in the Experience Rating or No-Claims Discount Programme.

In addition, the exercise will be at no cost for ACC, because any levy increases for some CUs will be offset by decreases for other CUs, meaning the net effect of the changes to the risk group structure will be zero. It will also reduce the cross-subsidisation within the Work Account, helping to ensure that levy rates are fair and equitable.

ACC is consulting on these changes as part of the 2011/12 levy consultation process (see www.acc.co.nz/levyconsultation).

2.4 Incentive programmes

2.4.1 Overview

ACC offers three workplace health and safety incentive programmes:

- ACC Workplace Safety Discounts (this programme is optional)
- ACC Workplace Safety Management Practices (also optional)
- ACC Workplace Safety Evaluation (compulsory).

ACC Workplace Safety Discounts (WSD)

WSD offers small businesses an effective way to assess workplace hazards and reduce the workplace levies they pay.

It aims to reduce accidents and injuries in sectors with the greatest risks of injury and is available to small businesses (those with 10 or fewer full-time staff) and self-employed people in the agriculture, forestry, construction, motor trades, road transport, fishing, and waste management sectors.

WSD offers a 10% discount on the current portion of the industry-based work levy if a business can demonstrate that it meets specific workplace health and safety standards. The discount is valid for three years and can be renewed.

ACC Workplace Safety Management Practices (WSMP)

WSMP encourages medium-sized businesses to create and maintain safe workplaces, and so reduce injuries.

In exchange for establishing systems and processes that promote injury prevention, the programme gives businesses discounts on the current portion of their industry-based work levy. The discount level for which an employer qualifies – Primary (10% discount), Secondary (15% discount) or Tertiary (20% discount) – depends on the standards that the business meets. We base the discount on an independent audit of a workplace’s safety systems and procedures. Discounts apply for 24 months, and can be renewed.

ACC Workplace Safety Evaluation (WSE)

WSE helps businesses with poor injury statistics to improve the safety of their workplaces.

Each year we identify businesses with a higher number and cost of claims than their industry average and require them to enter the WSE programme. By taking part they work with ACC to learn what they need to do to meet the required health and safety standards.

Businesses that fail to participate or complete the agreed actions within an agreed timeframe may be penalised with a 50% increase in their industry-based work levies.

2.4.2 Proposed changes to incentive programmes

We propose reducing the work levy discounts available in both the WSMP and WSD from 1 April 2011. This will better align them with the new No-Claims Discount and Experience Rating Programmes:

Programme	Current 2010/11	Proposed 2011/12
Workplace Safety Discounts programme	10%	5%
Workplace Safety Management Practices – Primary level	10%	5%
Workplace Safety Management Practices – Secondary level	15%	7.5%
Workplace Safety Management Practices – Tertiary level	20%	10%

The changes to the discount amounts will take effect from 1 April 2011.

Given that these discounts apply for specified time periods (e.g. two years for WSMP and three years for WSD), transitional arrangements will be required for those participants in the programmes whose discount periods expire after 1 April 2011. There are several options, including:

- Existing participants would continue to receive the current level of discount and be exempt from the Experience Rating and No-Claims Discount Programmes until their renewal
- Existing participants would continue to receive the current level of discount and be included in the programmes. This option would require a higher loading on the average work levy rate (refer section 2.4.3)
- A ‘best of’ calculation would be applied to calculate the levy modification (i.e. the current level of discount or the levy modification from the Experience Rating and No-Claims Discount Programmes would be applied).

ACC is not proposing to make any changes to the WSE programme.

2.4.3 Adjustment to average work levy rate (current portion)

The Accident Compensation Act requires us to fund the costs of these programmes through a loading on the average work levy rate (for WSMP) or the CU where the discounts are available (for WSD).

As covered in sections 3.1.5 and 4.2.4, we'll need to increase the loading to fund the new No-Claims Discount Programme for small employers and the Industry Size Modification of the Experience Rating Programme for large employers.

The reduction in the discounts will effectively reduce the loading applied to fund the Programmes. For the 2011/12 levy year, the WSMP loading is expected to be reduced to \$0.02 for every \$100 liable earnings (from \$0.04 in 2010/11). The loading on the eligible WSD CUs will also be reduced. For more information, refer to www.acc.co.nz/levyconsultation.

Questions:

4. *Do you think the existing incentive programmes continue to fit within the proposed experience rating framework? If not, why not?*
5. *Does anything need to change with the existing incentive programmes to make them work alongside the experience rating framework?*
6. *Do you think the proposed reduced discounts for WSD and WSMP will continue to provide an adequate incentive for businesses to participate in the workplace incentive programmes?*
7. *Do you think that there is a need for additional incentive programmes (i.e. those that focus on injury management)?*
8. *What transitional arrangements do you think should be applied to existing participants in the incentive programmes?*

3.0 No Claims Discount Programme – for Small Employers

To ensure that any experience rating programme is credible, it should reflect the size of an employer's exposure to risk and be based on a reliable volume of claims activity.

The No-Claims Discount Programme has been developed to reflect the fact that so many businesses in New Zealand are small enterprises. It also recognises that employers who pay less than \$10,000 per year in the three-year experience period will generally have less exposure to risk, and therefore fewer claims, than larger employers.

3.1 Proposed structure

3.1.1 Participation criteria

The eligibility criteria for the programme are based on business size and minimum liable earnings. Participants can be employers, self-employed people or non-PAYE shareholder-employees.

Participants must have:

- An industry-based work levy less than \$10,000 within a qualifying business group, in any of the prior three levy years (the experience period)
- Earnings greater than the annual minimum liable earnings⁶ in each year of the experience period.

3.1.2 What claim types will apply?

The No-Claims Discount Programme will be based on the number of weekly compensation claims reported on injuries that happen during the experience period, which will be evaluated at the end of the claims activity period.

We've chosen to use claims with weekly compensation payments because weekly compensation is the most significant cost component of a work-related injury, which provides an indication of other injury-related costs.

3.1.3 Proposed discounts and loadings

Small employers that have no weekly compensation claims in the experience period will receive a 10% discount on the current portion of their industry-based work levies.

Small employers that have had a total of four or more new weekly compensation claims in the experience period will receive a 10% loading on the current portion of their industry-based work levies.

Levies will not be adjusted for employers that have between one and three new claims during the experience period.

Number of weekly compensation claims	Levy adjustment
0	10% discount
1-3	No adjustment
4+	10% loading

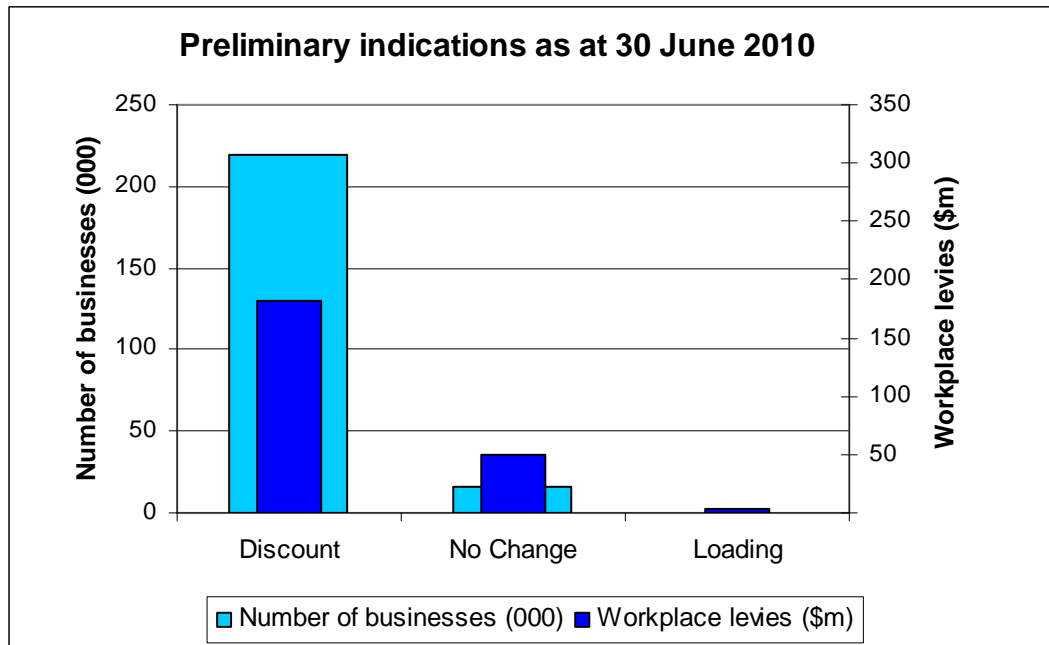
The claim thresholds have been chosen following a review of the discounts/loadings applied in small employer programmes in other jurisdictions.

⁶ The annual minimum liable earnings amount will be set annually based on the minimum liable earnings amount set for self-employed people.

3.1.4 Expected distribution of discounts and loadings

Graph 2 shows our preliminary indications of the distribution of the discounts and loadings among small employers. It's based on data and information available as at 30 June 2010.

Graph 2: Distribution of employers in the No-Claims Discount Programme



3.1.5 Adjustment to average levy

As you can see, the distribution is heavily weighted towards a discount, which means the current portion of the average work levy will need to increase. For the 2011/12 levy year this is expected to be approximately \$0.03 for every \$100 of liable earnings. For more information, refer to www.acc.co.nz/levyconsultation

Questions:

9. *Is the number of claims with weekly compensation paid the best experience measure for small employers? If not, why not?*
10. *Will the proposed 10% discount/loading provide an appropriate incentive for small employers to change behaviour?*

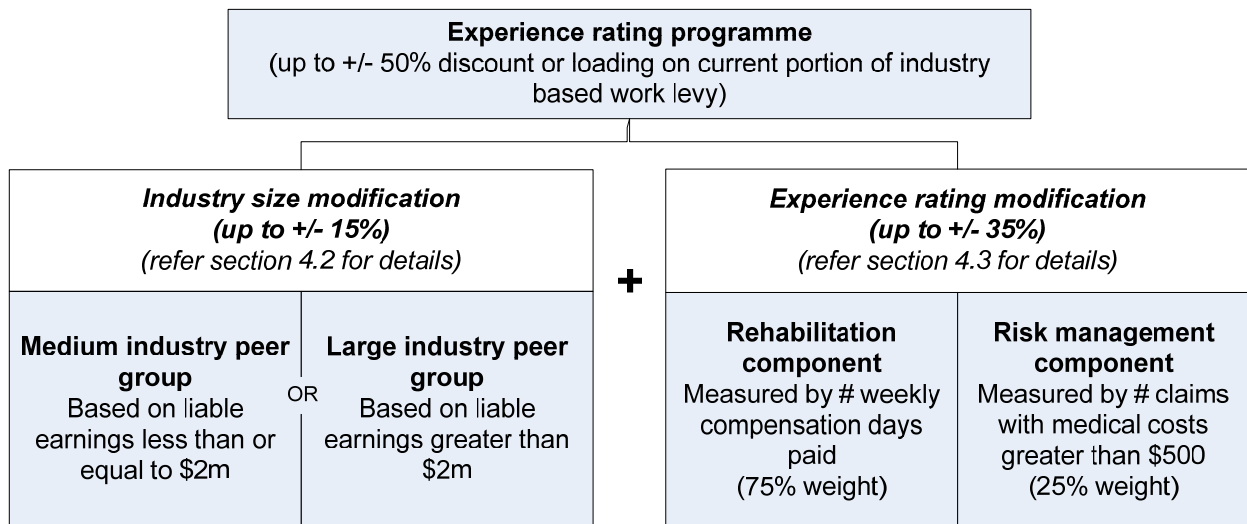
4.0 The Experience Rating Programme – for Large Employers

The Experience Rating Programme distributes the cost of ACC cover among businesses by modifying the industry levy based on a business’s actual claims experience. It aims to recognise and reward effective workplace safety practices and return-to-work performance.

- If an employer has a lower-than-average claims experience, its business group could earn a discount of up to 50% of the current portion of its industry-based work levy.
- If a business group has a higher-than-average claims experience, it could receive a loading of up to 50% of the current portion of its industry-based work levy.

4.1 The proposed structure

The chart below shows an outline of the structure of the Experience Rating Programme:



4.1.1 Participation criteria

The eligibility criteria for the Programme are based on business size. Participants can only be employers and non-PAYE shareholder-employees (the Programme isn’t available for self-employed people).

Business groups must also have an industry-based work levy (current portion) equal to, or more than, \$10,000 for each of the prior three levy years (the experience period).

4.1.2 The programme formula

In order to compare business groups, we need a modification rate. This is calculated according to the difference between a business’s claims experience and the average claims experience of the LRG to which the business is classed.

We plan to use two components to calculate the experience-rated discount or loading applied to an employer’s industry-based work levy:

- The industry size modification
- The experience rating modification.

These are discussed in sections 4.2 and 4.3.

4.1.3 What claim types will apply?

The experience measures selected for the Experience Rating Programme focus on two main incentives:

1. Return-to-work performance (the rehabilitation component)

We can best measure how effectively an employer manages its employees' rehabilitation by how quickly those employees return to work and independent living.

For this reason, we propose measuring employers' rehabilitation management effectiveness according to the **number of weekly compensation days paid by ACC** during the claim activity period on injuries incurred during the experience period. The first week of compensation paid by the employer is not included.

In order to mitigate the impact a serious injury would have on a business's modification, each claim would be measured for a maximum of 365 days.

2. Injury prevention (the risk management component)

Because all claims involve some form of medical treatment, we can use the number of claims with a medical spend to assess the effectiveness of a business's risk-management programme, as well as its culture of risk awareness.

Our aim is to establish a threshold that captures a significant amount of medical spend. This would then give us a benchmark level of injury that a sound risk-management programme should aim to prevent occurring. In determining the threshold, medical spend includes the costs of both medical treatment and elective surgery.

We propose measuring the effectiveness of a business's risk-management programme and culture of risk awareness according to the **number of claims** incurred during the experience period with cumulative medical and elective surgery costs greater than \$500 as at the end of the claim activity period.

We've chosen these measures based on their transparency and direct connection to the businesses' ability to manage them.

4.1.4 What claim types are excluded?

Our calculations of any experience rating levy modification exclude:

- Asbestosis and hearing loss work-related gradual process disease and infection claims⁷ – exposure may have occurred outside the claim activity period, and it is likely to be difficult to attribute to a single employer.
- Sensitive claims⁸, owing to their confidential nature and the relatively small number of work-related claims.

⁷ Work-related gradual process disease and infections claims: Changes that result in a personal injury that develops slowly and progressively over time, such as the effects of exposure to noise or fumes at a workplace or an activity you carry out in the course of your work.

⁸ Sensitive claims include mental injury caused by criminal acts as listed in Schedule 3 of the Accident Compensation Act (such as sexual violation).

4.1.5 Experience period for 2011/12

We propose an experience period of 1 April 2007 to 31 March 2010 for the 2011/12 levy year.

Claim payments made up to 30 September 2010 will be considered for claims with injury dates within the experience period. This will enable us to use the most up-to-date information in calculating the levy modification.

Questions:

11. *Is the minimum of \$10,000 annual levy for each of the three levy years the right threshold for participation in this programme?*
12. *Do you agree that specified work-related gradual process disease and infection and sensitive claims should be excluded from any experience rating levy modification calculations?*

4.2 Industry size modification

4.2.1 Industry peer groups

Industry size modification compares the performance of participants in the Experience Rating Programme with that of all other businesses with similar business activities and injury risk.

Recognising that large and small businesses within an LRG have different claims experiences, it compares the performance of a peer group (medium or large) of Programme participants with the performance of all businesses in the LRG.

We propose establishing two industry peer groups to reflect the significant variations in risk profile between medium-sized and large businesses:

Industry peer group based at business group level	Average annual liable earnings
Medium	Up to and including \$2 million
Large	More than \$2 million

We'd calculate an industry size modification factor for each industry peer group within an LRG. The same factor would apply to all businesses in the industry peer group by LRG.

4.2.2 Industry size modification formula

The basic formula used to calculate the industry size modification is the credibility weighted average of the peer group experience (medium or large) compared with that of all businesses within the LRG. The basic formula to calculate this modification is:

$$((A - E) / E) \times W$$

Where:

- A = Industry peer group experience rate
- E = Experience rate of all employers in LRG
- W = Credibility weight applied to industry peer group experience

The industry size modification will be capped at +/-15%. This threshold was selected because there are very few businesses with modifications beyond 15%.

1. Experience rate (calculating variables A and E in the above formula)

The experience measure used in calculating the industry size modification is the number of weekly compensation days paid during the claim activity period for injuries occurring during the experience period.

The experience rate used to determine the industry size modification is the ratio of:

- **Experience measure** – the number of weekly compensation days paid in the claim activity period for injuries occurring during the experience period
- to the
- **Exposure measure** – the sum of liable earnings during the experience period.

2. Credibility weight (calculating variable W in the above formula)

We've assumed that every LRG is fully credible over a three-year experience period. The weight applied between industry peer groups and the total for all employers within the LRG is the ratio of:

- Industry peer group LRG liable earnings during the experience period
- to the
- Total LRG liable earnings during the experience period.

Industry size modification example

LRG 14	Total liable earnings in experience period	Total number of weekly compensation days in experience period	Weight	Experience rate ⁹
Industry peer group – large	\$118,460,882	2,962	[W] 18.3%	[A] 25.01
Total LRG	\$649,010,122	27,409		[E] 42.23

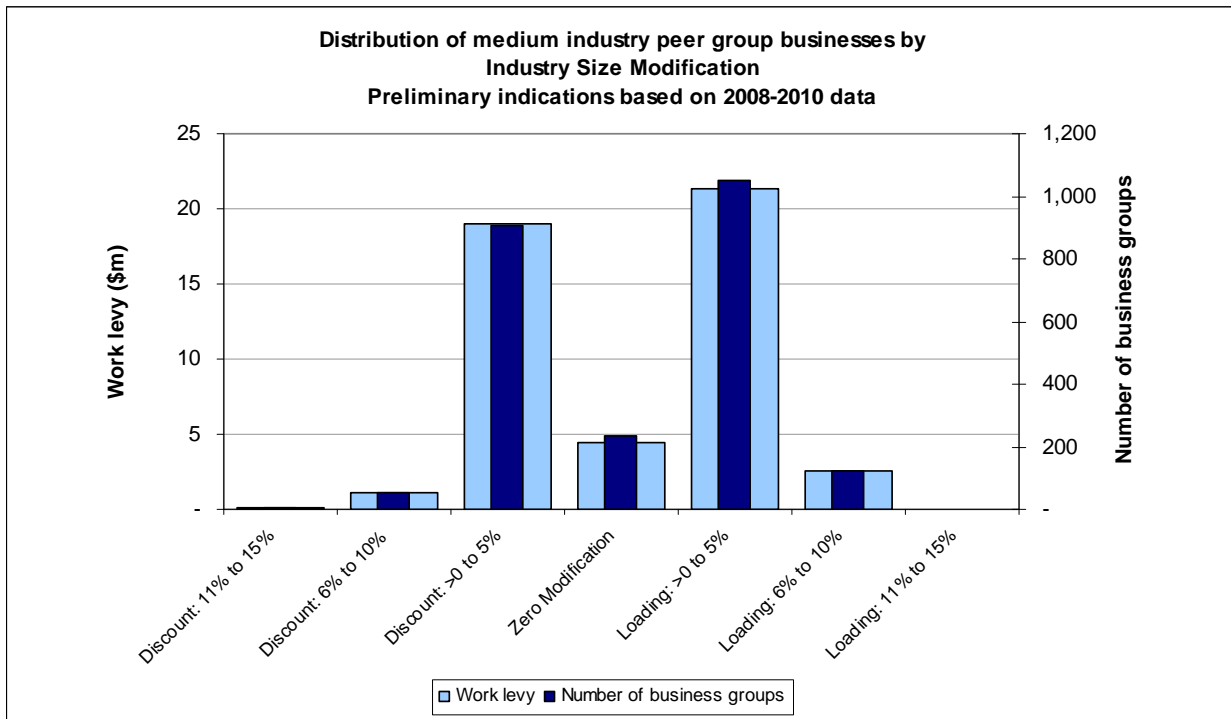
$$((25.01 - 42.23) / 42.23) \times 18.3\%$$

= discount of 7.5% (industry size modification for large industry peer group in LRG 14)

4.2.3 Expected distribution

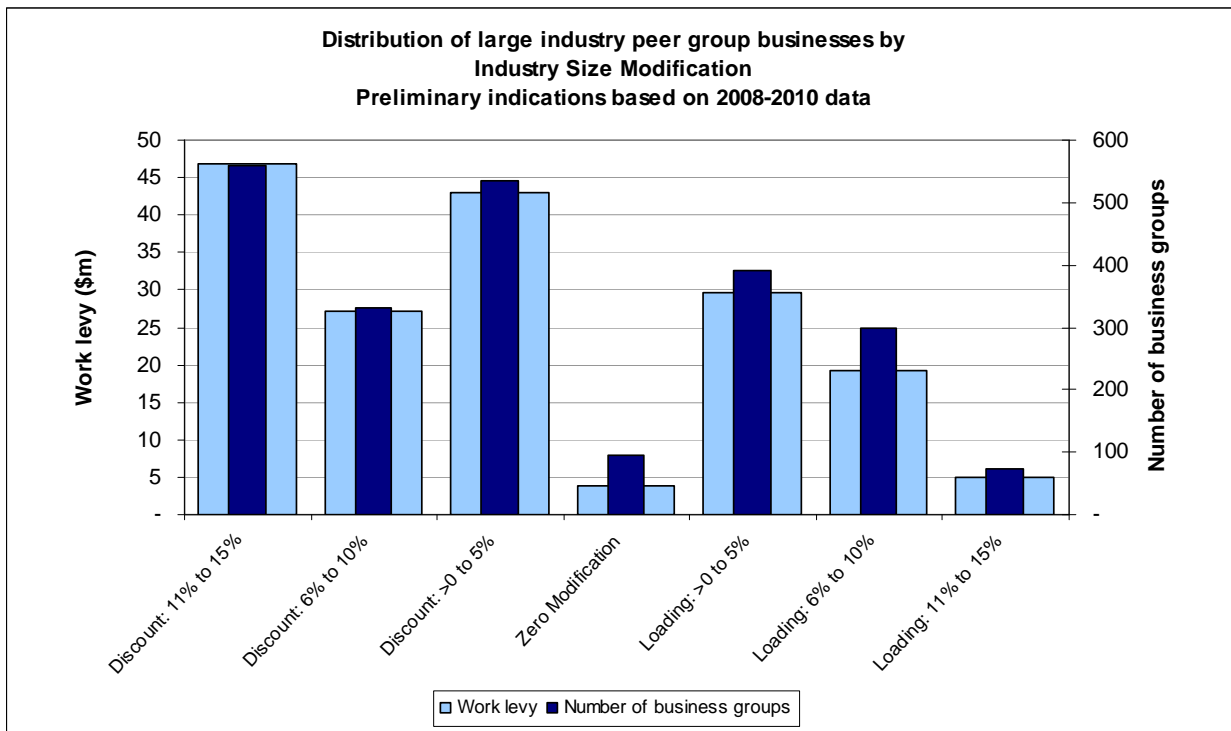
Graphs 3 and 4 show our preliminary indications of the distribution of the discounts and loadings among business groups by industry size modification. They are based on data and information available as at 30 June 2010:

Graph 3: Distribution of medium industry peer group businesses



⁹ The experience rate is achieved by multiplying the formula outcome by one million.

Graph 4: Distribution of large industry peer group businesses



4.2.4 Adjustment to average levy

Overall, the industry size modifications are biased toward a discount, which may mean a slight increase in the average levy. For the 2011/12 levy year this is expected to be approximately \$0.02 for every \$100 liable earnings.

For more information, refer to www.acc.co.nz/levyconsultation

Question:

13. Do you have any comments or suggestions on the proposed approach to calculating the industry size modification?

4.3 Experience rating modification

Experience rating aims to enhance fairness and distribute the costs of work-related injuries more equitably among employers.

An experience rating modification will provide a direct signal to businesses about how their contributions to risk management, risk awareness and employee rehabilitation affect the economic and social costs of workplace injuries in their communities.

4.3.1 Key principles

In addition to the objectives referred to in section 2.1, the key principles underlying an experience rating programme include:

1. **Fairness and equity:** The experience rating system should minimise the subsidisation between employers within the same levy risk group and improve equity among employers.
2. **Homogeneity:** Employers should be compared with peers exposed to similar risks. Peer groupings are typically classified by industry/risk group, and sometimes by employer size.
3. **Credibility:** The weight given to an employer's own experience should reflect its exposure to risk (so that the experience of large employers is typically given more weight than that of small employers). The experience period should also be long enough to demonstrate a statistically credible volume of claim activities from which to differentiate employers.
4. **Responsiveness:** The experience period should reflect an employer's most recent credible experience, so that they are held accountable for injury experiences from 'current' risk management and rehabilitation strategies, not historical practices.
5. **Objective:** The experience rating system should be applied objectively and distinguish among risks on the basis of relevant cost-related work injury factors.
6. **Transparency:** The measurement used to reflect experience should be transparent so that employers can clearly understand how their contributions to risk management and employee rehabilitation affect the costs of work-related injuries.
7. **Limit the impact of catastrophes:** The experience rating system should limit the impacts of catastrophic claims on an employer's levy modification, because once a serious injury has occurred the employer might have limited control over managing the cost of the claim. It's also not desirable to have drastic fluctuations in an employer's modifications as catastrophic claims enter and exit the experience period.
8. **Revenue neutral:** Comparing employers with the average of their industry peers means that some employers will receive discounts for better experience, while others will receive loadings for worse experience. However, the discounts should generally offset the loadings, so that the experience rating system has no impact on the overall aggregate rate.
9. **Minimise perverse behaviours:** The ideal experience rating system would optimise the financial incentives for positive employer behaviour (such as implementing rehabilitation and injury prevention strategies), and minimise negative behaviour (such as encouraging employees to report work-related injuries as non-work related).

4.3.2 Context

The experience rating modification is a weighted average of two modification components: the rehabilitation component and the risk management component.

The formula to calculate the modification is:

Experience rating modification = 75% rehabilitation component + 25% risk management component

The rehabilitation component is given more weight owing to the fact that weekly compensation costs are the largest component of costs associated with work-related injuries that an employer can manage and influence.

The experience rating modification will be capped at +/-35% based on the fact that there would be few employers with modifications beyond 35% and a cap of this magnitude is common in other countries that use experience rating.

4.3.3 Basic formula at the industry (LRG) level for each component

The basic formula used to calculate both the rehabilitation component and the risk management component at the LRG level is the credibility weighted average of the business group's experience compared with that of the industry peer group (see section 4.2). The basic formula is:

$$((A - E) / E) \times W$$

Where:

A = Business group's experience rate

E = Industry peer group experience rate (size and LRG peers)

W = Credibility weight applied to business group's experience

The experience rate is the ratio of the experience measure to the exposure measure.

1. Experience rate of the rehabilitation component at the LRG level (calculating variables A and E for return to work)

The experience rate used to determine the rehabilitation component is the ratio of:

- Experience measure – the number of weekly compensation days paid by ACC in the claim activity period for injuries occurring during the experience period
- to the
- Exposure measure – the sum of liable earnings in the experience period.

2. Experience rate of the risk management component at the LRG level (calculating variables A and E for number of injuries)

The experience rate used to determine the risk management component is the ratio of:

- Experience measure – the number of claims incurred during the experience period with cumulative paid medical and elective surgery costs above \$500 valued at the end of the claim activity period
- to the
- Exposure measure – the sum of liable earnings in the experience period.

3. Credibility weight to business experience at the LRG level (calculating variable W in the formula above)

The weight given to a business group's own experience is based on the business group's exposure to risk during the experience period, as measured by the sum of the three years of liable earnings during the experience period.

The proposed credibility bands allow for more responsiveness to changes in the employer group's experience. An employer receives more credibility as the amount of exposure exceeds each consecutive band limit.

Table 3 provides an example of the set of parameters that have been tested based on data available as at 30 June 2010.

Table 3: Credibility bands

Credibility band	Total liable earnings during experience period	Credibility weight
1	\$0 – 2m	0 – 5%
2	\$2 – 5m	5 – 10%
3	\$5 – 10m	10 – 15%
4	\$10 – 20m	15 – 20%
5	\$20 – 50m	20 – 30%
6	\$50 – 100m	30 – 40%
7	\$100 – 200m	40 – 50%
8	\$200 – 1,350m	50 – 100%
Maximum credibility	\$1,350m	100%

4.3.4 Design of credibility standard

The credibility standard recognises:

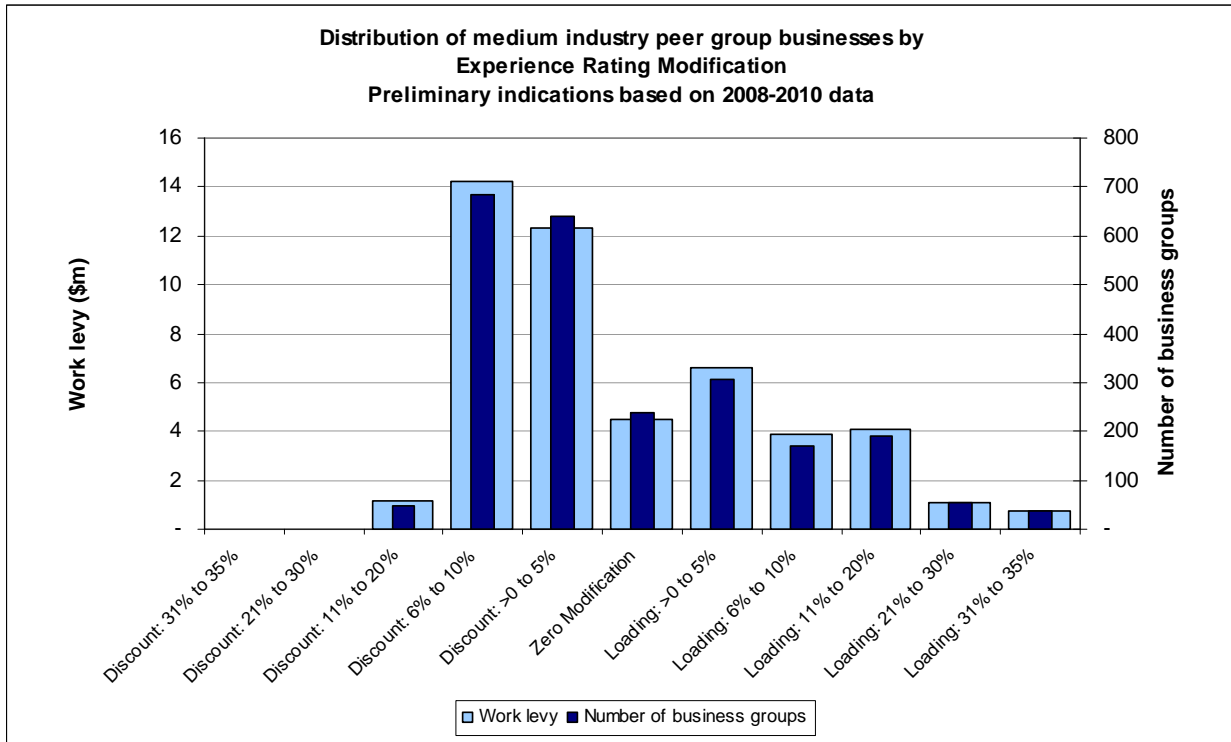
1. One of the key principles of experience rating – that it should be revenue neutral (i.e. the discounts should offset the loadings within an industry peer group). It aims to minimise any overall bias resulting from the application of experience rating.
2. The different business sizes to ensure that medium employers receive enough credibility in their experience while acknowledging the significant size differences among large business groups.
3. The need to allow for year-on-year responsiveness as a business group's experience may change, yet minimise extreme fluctuations in the business group's levy owing to annual changes in the business group's experience rating modification.
4. The need for transparency in its application.

We'll review the band exposure limits and maximum credibility weights every year in light of business groups' distribution by size and risk group to minimise overall bias while still allowing for responsiveness.

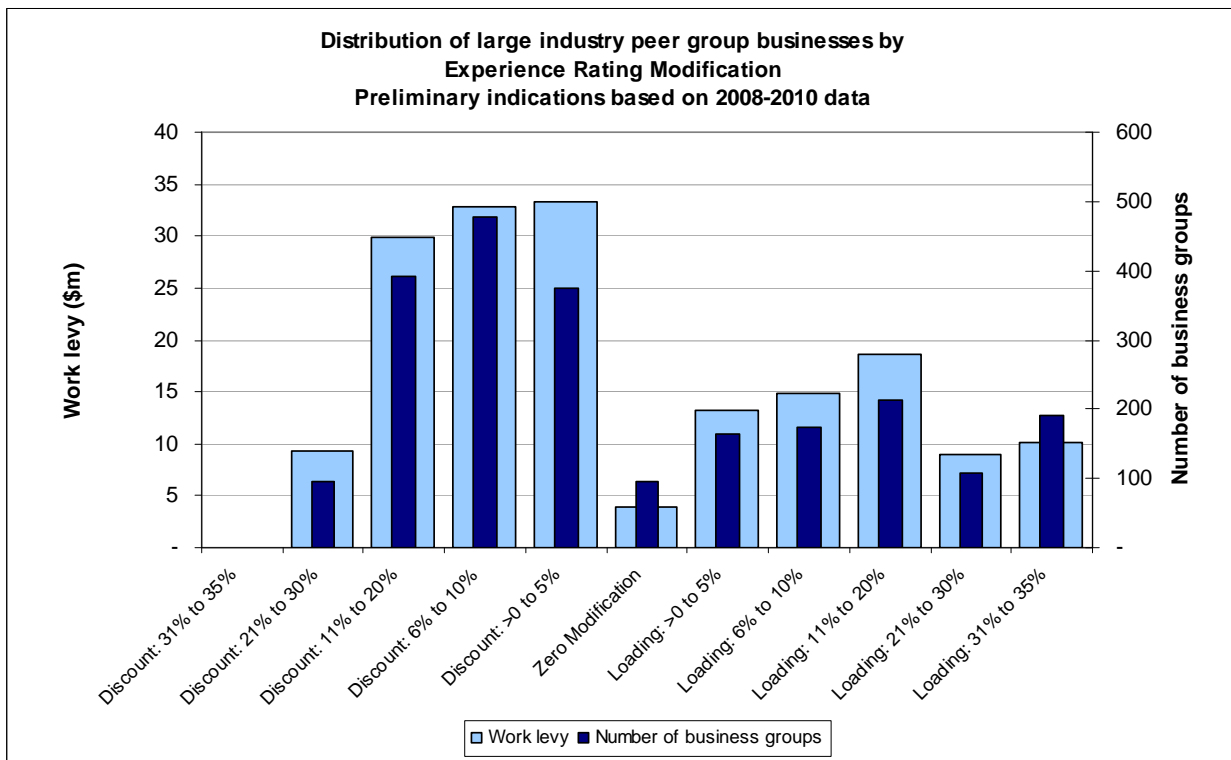
4.3.5 Expected distribution

Graphs 5 and 6 show preliminary indications of the distribution of business groups by experience rating modification based on data and information available as at 30 June 2010:

Graph 5: Distribution of medium industry peer group businesses



Graph 6: Distribution of large industry peer group businesses



4.3.6 Experience rating modification example

Information		Example	
Total liable earnings in experience period		\$15,000,000	
Average annual liable earnings		\$5,000,000	
Industry peer group for LRG		Large group (>\$2m)	
Number of weekly compensation days paid by ACC		10	
Number of claims with medical costs >\$500		15	
Credibility weight		18.54%	
Step	Definition	Calculation	Outcome
Weight to own experience			
1	Determine weight to actual		[W] 18.54%
Rehabilitation component (75%)			
2	Actual rehabilitation rate (# weekly compensation days / Total liable earnings) x 1m	$(10 / \$15,000,000) \times 1,000,000$	[A] 0.67
3	Expected industry peer group rehabilitation rate ¹⁰		[E] 25.00
4	Determine uncapped rehabilitation modification	$((0.67 - 25.00) / 25.00) \times 18.54\%$	-18.04%
Risk management component (25%)			
5	Actual risk management rate (# claims / Total liable earnings) x 1m	$(15 / \$15,000,000) \times 1,000,000$	[A] 1.00
6	Expected industry peer group risk management rate ¹⁰		[E] 5.00
7	Determine uncapped risk management modification	$((1.00 - 5.00) / 5.00) \times 18.54\%$	-14.83%
Final experience rating modification (capped at 35%)			
8	Determine modification	$75\% \times -18.04 + 25\% \times -14.83$	-17.24%
9	Off-balance adjustment ¹⁰		0.10%
10	Total experience rating modification		-17.14%

4.3.7 Off-balance adjustment

In applying the experience rating formulas there is often an overall bias towards a discount or a loading within an industry peer group.

We need to redistribute this bias among all peer group participants by using an 'off-balance adjustment' to return experience rating to a zero net impact on revenue.

The off-balance adjustment is distributed among participants based on the absolute size of their indicated modification. This prevents a business group's modification moving from a loading to a discount or vice versa. Business groups with an original modification of zero will not be affected by the off-balance adjustment.

Questions:

14. Do you have any comments/suggestions on the proposed approach to calculating the experience rating modification?
15. Do you think the proposed rehabilitation component is an appropriate measure of return-to-work outcomes? If not, why not?
16. Do you think that the risk management component is an appropriate measure of an employer's workplace safety practices? If not, why not?
17. Is \$500 of medical costs an appropriate threshold for counting a claim? If not, why not?

¹⁰ The expected industry peer group rehabilitation and risk management rates, and the off-balance adjustment, will be set by ACC on an annual basis based on industry specific data and are not able to be calculated by an employer.

4.4 Calculating the experience rating modification: an example

4.4.1 Business group with experience in only one industry (LRG)

Just over 80% of businesses have experience in only one LRG. The final experience rating modification for a business with experience in only one LRG is the sum of the industry size modification (capped at +/- 15%) and the experience rating modification (capped at +/- 35%).

$$\text{Employer modification} = \text{Industry size modification} + \text{Experience rating modification}$$

(Max 50%)
(Max 15%)
(Max 35%)

Experience rating modification example (LRG 14)

Information	Example
Levy risk group	LRG 14
Total liable earnings in experience period	\$15,000,000
Average annual liable earnings	\$5,000,000
Industry peer group for business group	Large group (>\$2m)
Number of weekly compensation days paid by ACC	10
Number of claims with medical costs >\$500	15
Credibility weight	18.54%

Step	Definition	Calculation	Outcome
Weight to own experience			
1	Determine weight to actual		[W] 18.54%
Rehabilitation component (75%)			
2	Actual rehabilitation rate	$(10 / \$15,000,000) \times 1,000,000$	[A] 0.67
3	Expected industry peer group rehabilitation rate		[E] 25.00
4	Determine uncapped rehabilitation modification	$((0.67 - 25.00) / 25.00) \times 18.54\%$	-18.04%
Risk management component (25%)			
5	Actual risk management rate	$(15 / \$15,000,000) \times 1,000,000$	[A] 1.00
6	Expected industry peer group risk management rate		[E] 5.00
7	Determine uncapped risk management modification	$((1.00 - 5.00) / 5.00) \times 18.54\%$	-14.83%
Final experience rating modification (capped at 35%)			
8	Determine modification	$75\% \times -18.04 + 25\% \times -14.83$	-17.24%
9	Off-balance adjustment		0.10%
10	Total experience rating modification		-17.14%
Industry size modification (capped at 15%)			
11	Industry size modification ¹¹		-7.50%
12	Total experience rating programme modification		-24.64%

Annual levy calculation				
			Levy rate	Work levy
13	Work levy rate	Per \$100 liable earnings	\$3.00	\$150,000.00
14	Modification	\$3.00 x 24.64% (discount)	\$-0.74	\$36,960.00
15	Modified work levy rate	Per \$100 liable earnings	\$2.26	\$113,040.00

¹¹ The industry size modification for each industry peer group, by LRG, will be set by ACC on an annual basis based on industry specific data and is not able to be calculated by an employer.

4.4.2 Business groups with experience in multiple industries (LRGs)

The overall modification for businesses with multiple LRGs during the experience period is the sum of the weighted average of the LRG experience rating modification and the industry size modification. The business group's levy in the three-year experience period is the weight used to determine the average of the LRG experience rating modification.

A sample calculation is provided below for a business group with experience in five LRGs during the experience period. Note that both Business B and Business C have liable earnings in LRG 463 that are added together in order to calculate the experience rating and industry size modification within that LRG.

Experience rating programme example – business group with multiple LRGs

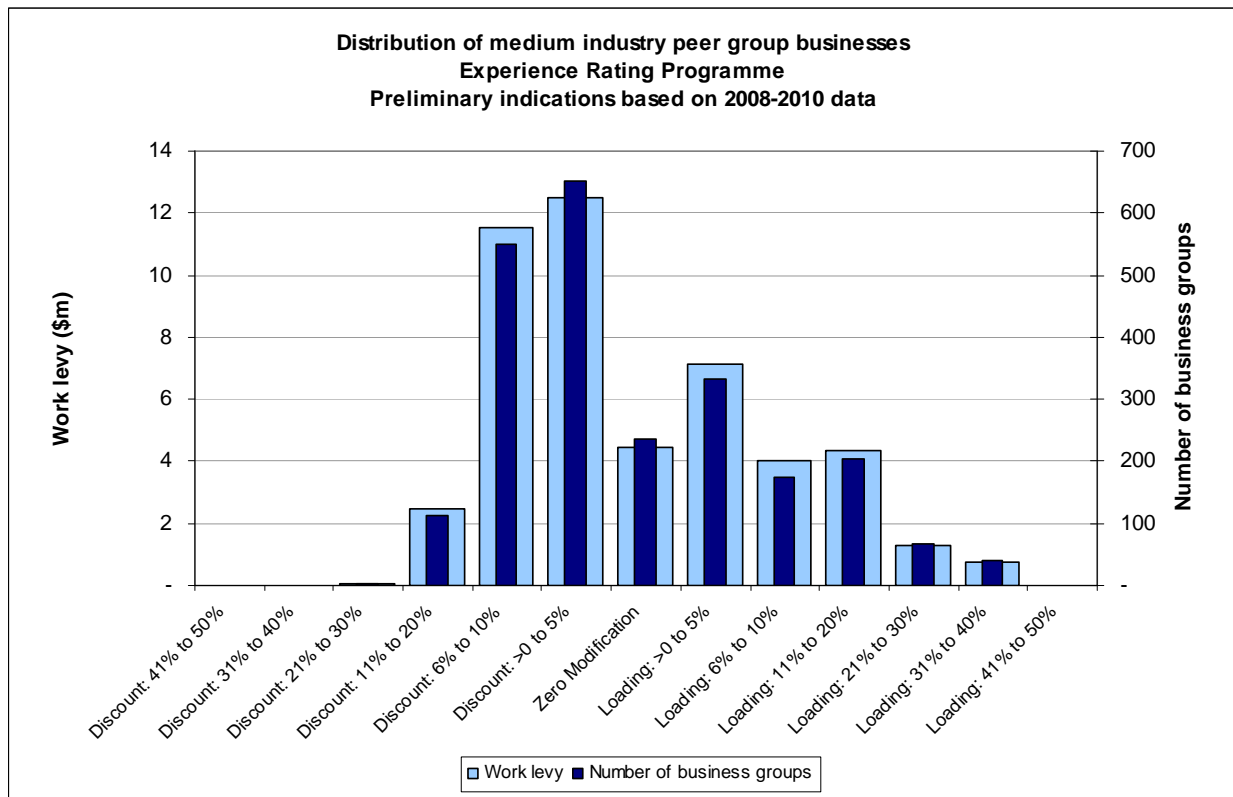
Business	LRG	3-year experience period		Annual liable earnings	Levy rate	Annual levy	
		Liable earnings	Levy				
A	14	\$15,000,000.00	\$450,000.00	\$ 5,000,000.00	\$3.00	\$150,000.00	
B	463	\$10,169,491.53	\$300,000.00	\$ 3,389,830.51	\$2.95	\$100,000.00	
C	463	\$ 3,050,847.45	\$ 90,000.00	\$ 1,016,949.15	\$2.95	\$ 30,000.00	
	501	\$ 670,391.07	\$ 12,000.00	\$ 223,463.69	\$1.79	\$ 4,000.00	
	523	\$ 1,935,483.87	\$ 30,000.00	\$ 645,161.29	\$1.55	\$ 10,000.00	
	726	\$ 1,071,428.58	\$ 3,000.00	\$ 357,142.86	\$0.28	\$ 1,000.00	
		\$31,897,642.50	\$885,000.00	\$10,632,547.50		\$295,000.00	
Business group experience rating modification							
LRG	LRG levy in experience period	Experience rating modification ¹²	Calculation	Total			
14	\$450,000	-17.24%	(450,000 / 885,000) x -17.24%	-8.77%			
463	\$390,000	5.00%	(390,000 / 885,000) x 5.00%	2.20%			
501	\$12,000	-5.00%	(12,000 / 885,000) x -5.00%	-0.07%			
523	\$30,000	20.00%	(30,000 / 885,000) x 20.00%	0.68%			
726	\$3,000	-10.00%	(3,000 / 885,000) x -10.00%	-0.03%			
Total	\$885,000	Weighted average experience rating modification			-5.99%		
				Off-balance adjustment	0.50%		
					Business group weighted average experience rating modification		-5.49%
Business group industry size modification							
LRG	LRG levy in experience period	Industry size modification ¹²	Calculation	Total			
14	\$450,000	-7.50%	(450,000 / 885,000) x -7.50%	-3.81%			
463	\$390,000	-5.00%	(390,000 / 885,000) x -5.00%	-2.20%			
501	\$12,000	0.00%	(12,000 / 885,000) x -0.00%	0.00%			
523	\$30,000	5.00%	(30,000 / 885,000) x 5.00%	0.17%			
726	\$3,000	-10.00%	(3,000 / 885,000) x -10.00%	-0.03%			
Total	\$885,000	Business group weighted average industry size modification			-5.88%		
				Weighted average experience rating modification		-5.49%	
				Weighted average industry size modification		-5.88%	
					Final experience rating programme modification		-11.37%
Annual levy calculation							
Business	LRG	Annual liable earnings	Levy rate	Business group modification	Modified levy rate	Modified annual levy	
A	14	\$ 5,000,000.00	\$3.00	-11.37%	\$2.66	\$132,945.00	
B	463	\$ 3,389,830.51	\$2.95	-11.37%	\$2.61	\$ 88,630.00	
C	463	\$ 1,016,949.15	\$2.95	-11.37%	\$2.61	\$ 26,589.00	
	501	\$ 223,463.69	\$1.79	-11.37%	\$1.59	\$ 3,545.20	
	523	\$ 645,161.29	\$1.55	-11.37%	\$1.37	\$ 8,863.00	
	726	\$ 357,142.86	\$0.28	-11.37%	\$0.25	\$ 886.30	
		\$10,632,547.50	Business group total annual levy			\$261,458.50	

¹² The experience rating modification and industry size modification percentages are calculated for each LRG as per the example in section 4.4.1.

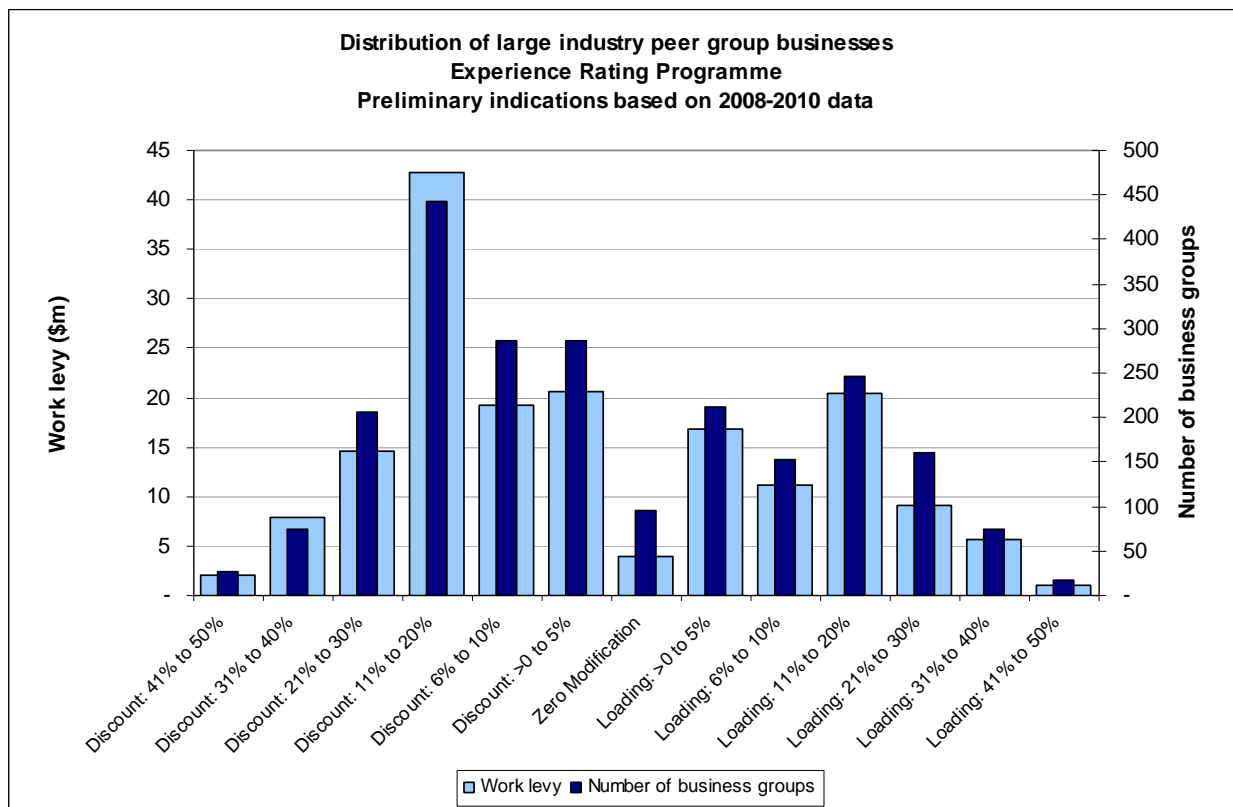
4.4.3 Expected distribution

Graphs 7 and 8 show preliminary indications of the distribution of business groups in the experience rating programme based on data and information available as at 30 June 2010.

Graph 7: Distribution of medium industry peer group businesses



Graph 8: Distribution of large industry peer group businesses



5.0 Business groupings and transfers

5.1 Overview

ACC will need to group businesses for the purposes of experience rating. This section outlines our proposals for two aspects of the experience rating framework:

- Grouping employers so that:
 - experience rating is, as far as possible, based on actual common control of the workplace
 - the claims histories of all entities that are under common control are taken into account when calculating a levy modification
- Transferring businesses from one business to another, so that where a business acquires or disposes of all or part of an activity (as defined for GST purposes), the historical payroll and claims experience of that activity or part activity remain associated with that activity for a specified timeframe (as defined in the pricing formula), and are moved to the new owner of that activity or part activity for experience rating purposes.

5.2 The grouping rules

5.2.1 The objective

The main objective of the proposed grouping rules is to group commonly owned or controlled employers/businesses.

The grouping rules are designed to result in equity between businesses no matter what their legal structure. They also ensure that ACC can take into account the injury records of all entities under common control when considering the application of a levy modification (which may be either positive or negative).

To achieve the objective the rules must group entities and/or individuals where common control actually exists.

This means the rules must strike a balance between being too narrow (where businesses that clearly have common control of the workplace won't be grouped, leaving ACC to identify and bring relevant businesses into scope), and too wide (where businesses without common control might be grouped, adding unnecessary compliance costs for businesses if they have to apply for exemption from the rules).

The rules must also ensure that businesses can't deliberately organise their interests in order to get the most beneficial result from the experience rating – for example by isolating poor-performing businesses or separating poor-performing and high-performing businesses.

5.2.2 Proposed grouping rules

Refer Appendix I – *Relevant sections of subpart YB of the Income Tax Act (associated person rules)* for details.

Applying 'associated person' rules

We propose that under the regulations, two persons are members of a group for experience rating purposes, if those persons are 'associated persons' under subpart YB of the Income Tax Act 2007, with certain exceptions.

We intend basing the grouping rules on the associated person rules in the Income Tax Act because they are well known and understood by businesses and their advisors. The link to the Income Tax Act will ensure that the grouping rules are accessible, with low associated costs for businesses in understanding and applying them.

The relevant sections of the Income Tax Act are attached as an appendix. Applying the associated person rules will mean, for example, that the following will be members of the same group:

- Two companies if a group of persons exists whose total voting interests in each company are 50% or more (section YB 2 of the Income Tax Act)
- A company and a person other than a company if the person has a 25% or more voting interest in the company (section YB 3)
- A trustee of a trust and a trustee of another trust if the same person is a settlor of both trusts (section YB 7)
- A trustee of a trust and a settlor of the trust (section YB 8)
- A partnership and a partner in the partnership (section YB 12)
- Two persons (person A and person B) if person B is grouped with a third person (person C) under the grouping rules and person C is grouped with person A under the grouping rules (section YB 14). The effect of section YB 14 would be modified to exclude groupings that are excepted as set out in section 5.2.3 below.

We also intend to enable two or more persons to be grouped where one of those persons (not being a PAYE intermediary approved under the Tax Administration Act 1994) submits tax returns to Inland Revenue relating to employees of the other person(s), or where any injury claims of those employees are attributed to a person other than the person submitting the tax return, where those persons are not grouped under any other grouping rule.

For example, this rule might apply to the Ministry of Education, which pays the salaries of employees of around 2,700 state and integrated schools, but all injuries to the schools' employees are recorded in the ACC accounts of the individual schools.

5.2.3 Exceptions

The nature and objective of the grouping rules mean it's not appropriate for all of the Income Tax Act associated person rules to apply. In particular, some of the associated person rules are broader than required to achieve the grouping rules' objective.

Unless otherwise stated we therefore propose that the following associated person rules under the Income Tax Act will not apply for the purposes of the grouping rules:

5.2.3.1 YB 4 – two relatives

This means that two persons will not be members of a group on the basis that:

- They are within two degrees of blood relationship
- They are married, in a civil union or in a de facto relationship, or
- One person is within two degrees of blood relationship to the other person's spouse, civil union partner or de facto partner.

5.2.3.2 YB 5 – a person and a trustee for a relative

This means that two persons (person A and person B) will not be members of a group on the basis that person A is the trustee of a trust under which a person associated under section YB 4 with person B has benefited or is eligible to benefit.

5.2.3.3 YB 6 – a trustee and a beneficiary

This means that two persons will not be members of a group on the basis that they are a trustee of a trust and a person who has benefited or is eligible to benefit under the trust.

5.2.3.4 YB 9 – a settlor and a beneficiary

This means that two persons will not be members of a group on the basis that they are a settlor of the trust and a person who has benefited or is eligible to benefit under the trust.

5.2.3.5 YB 11 – a trustee and a person with a power of appointment or removal

This means that two persons will not be members of a group on the basis that they are a trustee of a trust and a person who has a power of appointment or removal of the trustee.

5.2.3.6 Exception for certain government entities

We also propose that government departments, state-owned enterprises and other Crown-owned entities not be grouped with each other by virtue of common ownership by the Crown.

Questions:

18. *Do you consider it appropriate to base the grouping rules on the Income Tax Act's associated person rules? If not, why not?*
19. *Do you consider the proposed exceptions to the grouping rules appropriate? If not, why not?*

5.2.4 Determinations by ACC in relation to grouping rules

Our proposed grouping rules aim to group together entities and/or individuals where common control exists. However, we recognise that some businesses will inevitably be inappropriately covered by or excluded from the rules.

So we propose that ACC be given the ability to make binding determinations that a business is or is not within a group.

In doing this, we'd be required to consider whether a particular person should be included or excluded in order to achieve the rules' main objective. This means that ACC would be required to consider whether common control of the workplace actually exists in making a determination on whether a person should be included in a group.

We propose that determinations can be initiated by ACC or requested by affected businesses, and that regulations provide that determinations may be done on a business-by-business basis.

Question:

20. *What are your views on the proposed determination process in relation to the grouping rules?*

5.2.5 Tie-breaker rules

We also propose establishing 'tie-breaker' rules to address situations where applying the grouping rules places a person in more than one group. In these situations it is proposed that ACC will have the power to make a determination based on the tie-breaker rules.

It is proposed that the tie-breaker rules reflect the grouping rules' main objective (i.e. grouping commonly owned businesses so that experience rating is based on actual common control of the workplace).

In determining the group into which an affected business falls, the key test will involve determining the source of the largest single interest in that business. Where two interests are the same, we would consider other factors such as:

- Which group has the most influence over workplace safety in the affected business

- Which group exerts the most management or other control over the workplace.

Question:

21. *What are your views on the proposed tie-breaker rules?*

5.2.6 Anti-avoidance provision

We propose being able to apply an anti-avoidance provision, based on section BG 1 of the Income Tax Act, which would provide that:

- We can deem a company to be, or not to be, a group member if we believe that there is an arrangement in any way to ensure that the company is, or is not, part of a particular group
- Any arrangement entered into to alter the application of experience rating or the transfer of claims history, either directly or indirectly, is void for the purposes of the regulations.

The proposed definition of 'arrangement' is that in section YA 1 of the Income Tax Act: an agreement, contract, plan or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect.

Questions:

22. *What are your views on the proposed anti-avoidance provision in relation to the grouping rules?*

23. *Do you consider the proposed definition of arrangement appropriate? If not, why not?*

5.2.7 Disclosing information to ACC

To enable us to monitor and enforce the grouping rules, we propose that the regulations enable ACC to require the disclosure of certain information. In particular, it is proposed that the regulations provide that:

- ACC has the right to require from any person full details (a) of any other person or persons that control that person and (b) of any other person or persons controlled by that person, and the means by which that control is exercised
- ACC may specify the form on which and by what means that information is to be supplied, and the timeframe in which the information is to be supplied
- Where a 'representative business' has been established for a group (see section 5.2.9), ACC may make any such requests of that representative business in respect of the information relating to each member of that group
- The failure to supply information as required by ACC, or to supply it within the nominated timeframe, does not relieve any person of additional financial liabilities that would have been assessed had the information been supplied.

Question:

24. *What are your views on the proposed requirements regarding the disclosure of information to ACC in relation to the grouping rules?*

5.2.8 Status of groups

We propose that any group of businesses or associated persons will reflect the inter-entity arrangements in place on 1 April of any year, and that that group will be the basis of any experience rating levy modifications applied for the levy year starting on 1 April of that year.

We also propose that any business transfers, as detailed in section 5.3, effective from 1 April of any year up to and including 31 March of the subsequent year may be included in experience rating levy modifications applied for the levy year starting on 1 April of that subsequent year.

Question:

25. What are your views on the proposed status of groups outlined above?

5.2.9 Representative business

We propose establishing a 'representative business' within each group, which would be the nominated point of contact between ACC and that group (or any of that group's members) regarding the business group structure.

We propose that the regulations relating to representative businesses be based on the representative business regulations in the Accident Rehabilitation and Compensation Insurance (Experience Rating) Regulations 1993. However, we propose that the new regulations differ from those regulations in that the representative business will not be the person receiving and responsible for paying the experience rating invoices. Under the new system, it is proposed that invoicing of individual levy-payers within a group continue as normal.

The regulations should include the following requirements:

- Where two or more persons are members of a specified group for a levy year, they must, on or before a date specified by ACC, by notice in writing to ACC, specify one such company to be the representative business of the specified group
- The company specified as the representative business of a specified group must continue to be the representative business of that specified group until that company ceases to be a member of the same group of businesses as the other companies in the specified group, or another company becomes the representative business of the specified group
- The representative business of a specified group may apply to ACC for it to cease to be the representative business and for another member of the specified group, which applies in writing to ACC to become the representative business of the specified group, to be the representative business of the specified group, and ACC must grant the application with effect from the time specified in the application or such other time as ACC, with the agreement of the representative business, substitutes
- If at any time a specified group does not have a representative business, ACC may specify any company that is a member of the specified group to be the representative business
- Representative businesses, when one is established for a group, may exercise any right of review or appeal against ACC in respect of any matter dealt with by these regulations relating to the grouping of persons within the group
- Any notice given, under the Act or regulations made under the Act, to the representative business of a specified group would be deemed to be given to that representative business and to all members of that specified group.

Question:

26. What are your views on the proposed requirements in relation to representative businesses?

5.2.10 Voluntary grouping

The above rules will not capture all employers. Some businesses that would not be grouped together by any other provision of the proposed regulations may want to form a group voluntarily for experience rating purposes (e.g. franchisees who do not meet the grouping criteria as detailed in section 5.2.2).

It is envisaged that this provision may be attractive to groups with common interests but without formal common control. Examples would be groups of franchisees, members of trade associations, members of professional associations, or businesses within a defined geographical location.

Any such group and its members would have the same rights and obligations as would apply to a group required to be formed under any of the provisions detailed in sections 5.2.2 to 5.2.9 above.

While it is not ACC's intention to introduce voluntary grouping for the 2011/12 levy year, we are interested in your thoughts on this matter.

Question:

27. What are your views on the idea of voluntary grouping?

5.3 Business transfer rules

5.3.1 The objective

The objective of the proposed business transfer rules is that where an employer acquires or disposes of all or part of an activity (as defined for GST purposes), the historical payroll and claims history of that activity or part activity remain associated with that activity for a specified period of time (as defined in the pricing formula), and are moved to the new owner of that activity or part activity for experience rating purposes.

If all or part of an activity is ceased without passing to another business, the history remains with the business and continues to be considered part of its total claims history.

5.3.2 Proposed business transfer rules

Re-attribution of experience to another business

We propose that the position taken for GST purposes in respect of any transfer will also apply for experience rating purposes.

This means that ACC will attribute experience to a purchaser where all or part of an activity carried out by the relevant business has been transferred as a going concern (capable of separate operation), or is actually treated as 'zero-rated' for GST purposes, where this transfer happens other than through the sale of a legal entity.

We propose the following definitions for the purposes of the business transfer rules:

- 'Going concern' means the transfer of an activity, or part that is capable of separate operation, which is a supply of a taxable activity that is treated as a going concern for GST purposes under section 11 of the Goods and Services Tax Act 1985; or, if it is not such a transfer, means the transfer of an activity, or part that is capable of separate operation, from one business (first business) to another business (recipient business) if:
 - (a) all the goods and services that are necessary for the continued operation of that activity, or part activity, are transferred from the first business to the recipient business; and
 - (b) the first business carries on, or is to carry on, the activity or part activity up to the time of transfer to the recipient business
- 'Activity' means anything which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club. (NOTE: This definition will be specific to the business transfer rules [not the full experience rating regulations], and is not the same as the general definition of 'activity' in the Accident Compensation Act).

Amalgamations

We proposed that an amalgamation under the Companies Act 1993 cause the experience rating of the amalgamating company or companies to be attributed to the resulting/surviving company.

Ceased activities

We proposed that the following rules apply in relation to ceased activities:

- If an employing entity ceases to perform a particular activity, in whole or part, the historical payroll and claims experience remain with that business for experience rating purposes. They are also included in that business's experience rating assessment to the extent that, and for as long as, they are relevant in terms of the experience rating formula
- If an employing entity ceases to be part of a group and carries on business itself, or as part of a different group, its historical payroll and claims experience go with the leaving entity

- If an employing entity ceases to be a business, but remains part of the group, the historical payroll and claims experience stay with the group.

For example, the third scenario would apply where a company has a number of subsidiaries, of which one is making a loss so the parent decides to close it down. Under this rule, the claims would stay with the group, rather than disappear.

Question:

28. Do you consider the proposed business transfer rules appropriate? If not, why not?

5.3.3 Determinations by ACC in relation to business transfer rules

We propose that the regulations include a determination process that enables ACC to make binding determinations on whether transactions are business transfers. The determination process may also be used to determine whether or not a claims history and associated historical payroll will transfer to a purchaser with the transfer of an activity.

Question:

29. What are your views on the proposed determination process for the business transfer rules?

5.3.4 Anti-avoidance provision

The regulations would include an anti-avoidance provision, which provides that, if ACC is satisfied that an arrangement has been entered into to avoid falling within the definition of a going concern, we may deem any transfer of all or part of an activity to be a going concern.

Question:

30. What are your views on the proposed anti-avoidance provision in relation to the business transfer rules?

5.3.5 Disclosure of information to ACC

To enable us to monitor and enforce the business transfer rules, it is proposed that the regulations enable ACC to require the disclosure of certain information – and in particular that:

- Written notice must be provided to ACC by both the purchaser and the vendor when all or part of an activity is transferred as a going concern
- ACC may require the vendor or the purchaser to provide any information we need to determine the nature of the transaction, and to identify the portion of payroll and claims experience being transferred
- The failure to supply information as required by the regulations, or to supply it within the nominated timeframe, does not relieve any person of additional financial liabilities that would have been assessed had the information been supplied.

The timing of the above notices, and the periods for which the information will be taken into account, will be based on the proposal that any business transfers effective from 1 April of any year up to and including 31 March of the subsequent year be included in experience rating modifications applied for the levy year commencing on 1 April of that subsequent year

Question:

31. What are your views on the proposed requirements for disclosing information to ACC in relation to the business transfer rules?

6.0 Administration

6.1 Notification processes

6.1.1 Claims notification

All employers are notified of work-related claims as they are accepted. We plan to amend the existing Employer Claims Reports so that, throughout the year, employers have the claim information on which their experience rating will be based.

For every work-related injury claim ACC accepts, an employer notification letter is sent to the employer. This letter provides the employer with information regarding the claim (i.e. that the accident is work related and that the letter includes any extra information relating to the claim).

We plan to provide regular claims reports to all employers with claims during the preceding period. The reports will show the actual number of work-related claims, as well as the number of weekly compensation days that have occurred.

Employers that don't have any claims in this period won't be sent claims reports.

6.1.2 Employer Reimbursement Agreement

Employers who have joined the Employer Reimbursement Agreement must advise ACC of all work-related claims within the set timeframes.

6.1.3 Business grouping

Each group must appoint a 'representative business' to notify ACC of the group's make-up, including any subsequent changes (see section 5.2.9).

Disclosure of the group structure as at 1 April will be required by mid-April each year.

6.1.4 Business transfers

We require notification of all transfers. See section 5.3 for details of the proposed rules around business transfers.

6.2 Levy assessments

Work levies for businesses that qualify for either the Experience Rating or No-Claims Discount Programme will be calculated according to their recent claims experience.

For calculating the 2011/12 levies, we'll use claims that occurred between 1 April 2007 and 31 March 2010 to determine employers' claims experiences.

The aim of the Experience Rating Programme is to set a levy for the new levy year that reflects the expected outcomes for each employer, which will be based on the outcomes of the experience period (see section 2.2.5).

Levy modifications will not be reassessed, after the invoices have been issued, for any impact resulting from:

- Reviews/appeals
- Corrections of miscoding e.g. claims to incorrect employers; coding of claims to incorrect classification units.

All businesses will be sent final statements of their claims experiences separately from their levy invoices. The statements will outline the claims used to calculate the experience rating modifications or no claims-discounts. The levy invoices will indicate the impacts of any experience rating modifications on the current portion of the Work Account levy.

6.3 Review processes

6.3.1 Seeking a review of a levy calculation

Every employer has the right to apply for an independent review of an ACC decision relating to its levy calculation – including the information used to calculate the modified levy rate. The request for the review must be made within three months of receiving the invoice.

Note the employer still has to pay the levy indicated in the invoice by the due date.

6.3.2 Seeking a review of claim attribution

Every employer will still be able to apply for a review of an ACC decision to attribute a claim as a work-related personal injury suffered during employment with that employer, as prescribed in legislation.

6.4 Managing the risk of perverse behaviours

Research on experience rating models adopted by overseas workers' compensation schemes suggests that while there are some gains in workplace safety practices from levy incentives, such schemes also have a risk of perverse or unintended behaviours. Particular issues include injury underreporting, reporting work injuries as non-work injuries, employees returning to work before they are sufficiently recovered, and people with previous work injuries not being employed.

In mitigating these risks, the experience rating framework is based mainly on moderate to serious injuries, which are difficult to attribute to a different cause or scene. We also plan to:

- Monitor any abrupt changes in a business's safety record, and investigate them if necessary
- Educate businesses, employees and health providers in how the new experience rating system works.

In addition, we're currently:

- Reviewing our existing incentive programmes to ensure they provide additional incentives to support our focus on injury prevention and return to work.
- Enhancing our injury prevention and injury management programmes
- Working to improve the accuracy of our claim attribution processes in all ACC Accounts through data validation, process improvements, system improvements and training and education for staff and health providers.

Consideration is also being given to whether penalties should be imposed on employers that encourage employees to either not report work-related injuries or report work-related injuries as non-work injuries.

6.5 Monitoring and review

We'll regularly review the parameters of the experience rating framework – and we'll undertake public consultation on any proposals to change aspects of the experience rating system, such as the modification formulas, as part of our annual levy consultation process.

Given that experience rating aims to drive improvements in workplace safety practices, it could seem inconsistent for employers to receive discounts under one of our incentive behaviour programmes if they've been subject to enforcement action under the Health and Safety in Employment Act 1992 (HSE Act).

We'll work with the Department of Labour, and other agencies responsible for the administration of the HSE Act, on this matter.

Questions:

32. *Do you think experience rating will create additional compliance costs for businesses? If so, what will these costs be?*
33. *Are there any other operational or administration changes needed to support the experience rating programmes?*
34. *Do you think employers should be penalised if they are found to have encouraged employees to misreport work-related injuries?*
35. *Do you think there should be any linkage between an employer being subject to enforcement action under the Health and Safety in Employment Act 1992 and their eligibility for discounts or penalties under the proposed experience rating regime?*

7.0 Supporting Material

7.1 Injury management/injury prevention

We'll be reviewing and improving and/or enhancing the injury management and prevention services we offer to employers.

7.1.1 Better @ Work

'Better at Work' is the general name for ACC's workplace rehabilitation philosophy. It reflects an international view, based on a growing body of research, which shows that injured workers heal faster and avoid psychological impairment if they can safely recover in the workplace or return to it as soon as possible after an injury.

The aim of ACC's Better at Work philosophy is, therefore, to bring these benefits to injured clients. This will be achieved, over time, by:

- Providing claim-management services that support the Better at Work philosophy, these being ACC's current Better at Work programmes – Stay at Work and Better@Work (details are available at www.acc.co.nz)
- Encouraging GPs to shift their approach from routinely providing time off work to routinely certifying clients as 'fit for selected duties', where it is safe and practicable, because doing so will unlock the benefits of workplace rehabilitation for employees and their employers and GPs. To see how this works in practice, refer to 'Better at Work Philosophy in action' at www.acc.co.nz.

7.2 Supporting material

You'll find more on experience rating at www.acc.co.nz/ERconsultation, including frequently asked questions.

7.3 Glossary of terms

7.3.1 Definitions

Credibility – the level of credibility is determined by the amount of data available when calculating a projected outcome (i.e. the more data available the greater the credibility).

Incentive programmes – we currently have three health and safety incentive programmes (Workplace Safety Discounts, Workplace Safety Management Practices and Workplace Safety Evaluation).

Industry-based work levy – the current portion of the Work Account levy before discounts/loadings are applied as a result of participation in the incentive programmes.

Industry group – the levy risk group with which the employer's claims experience is compared.

Levy year – the period from 1 April to 31 March during which the current portion of the industry-based work levy will be modified based on the claims experience.

Liable earnings – the term ACC uses to describe the part of the payroll upon which ACC levies are payable. For employers, they are the wages or salaries paid to employees in a financial year, and for self-employed people they are the income earned in a financial year as declared on their end-of-year tax returns.

Qualifying claim – a work-related injury claim that has been accepted by ACC.

Minimum annual levy threshold – set at a \$10,000 industry-based work levy per each year of the experience period.

Minimum liable earnings – based on the minimum full-time self-employed liable earnings for which a levy is payable.

APPENDIX I – Relevant sections of subpart YB of the Income Tax Act (associated person rules)

This appendix sets out the associated person rules in subpart YB of the Income Tax Act 2007. Other sections of the Income Tax Act that are referred to in subpart YB and defined terms have not been reproduced in this appendix, but can be accessed at www.legislation.co.nz/act/public/2007/0097/latest/DLM1512301.html or by contacting ACC (refer contact details: Section 1.3).

YB 1 What this subpart does

Associated person rules and nominee rules

- (1) This subpart sets out the rules that—
 - (a) define when 2 persons are associated persons; and
 - (b) determine how nominees are treated.

Other references

- (2) If a rule in this subpart states that 2 persons are associated persons for 1 or more provisions in this Act, a reference in the relevant provision to persons who are associated with each other includes those persons.

Tests

- (3) The tests of association are categorised as follows:
 - (a) two companies, see section YB 2:
 - (b) a company and a person other than a company, see section YB 3:
 - (c) two relatives, see section YB 4:
 - (d) a person and a trustee for a relative, see section YB 5:
 - (e) a trustee and a beneficiary, see section YB 6:
 - (f) trustees with a common settlor, see section YB 7:
 - (g) a trustee and a settlor, see section YB 8:
 - (h) a settlor and a beneficiary, see section YB 9:
 - (i) a trustee and a person with a power of appointment or removal, see section YB 11:
 - (j) a partnership and a partner, see section YB 12:
 - (k) two persons who are each associated with the same third person, see section YB 14.

Application

- (4) The sections in this subpart relating to associated persons apply for the purposes of the whole Act unless a section expressly states otherwise.

Loss-attributing qualifying companies and shareholders

- (5) A special rule provides that a shareholder in a loss-attributing qualifying company and that LAQC are treated as associated persons for the purposes of section DS 4 (Meaning of film reimbursement scheme), see section DS 4(5).

Low-turnover traders

- (6) A special rule applies for the purposes of subpart EB (Valuation of trading stock (including dealer's livestock)) to determine when a low-turnover trader is associated with a company, see section EB 13(2) (Low-turnover valuation).

Control interests in foreign companies

- (7) A special rule applies for the purposes of section EX 3 (Control interests: total of direct, indirect, and associated person interests) to determine when a New Zealand resident is associated with a non-resident relative, see section EX 4(1) (Limits to requirement to include associated person

interests).

Supplementary dividend holding companies

- (8) A special rule applies for the purposes of section LP 2 (Tax credits for supplementary dividends) to determine when a company is associated with a supplementary dividend holding company, see section LP 2(6).

Defined in this Act: associated person, company, loss-attributing qualifying company, low-turnover trader, New Zealand resident, nominee, non-resident, relative, settlor, shareholder, supplementary dividend holding company, and trustee

YB 2 Two companies

Common voting interests

- (1) Two companies are associated persons if a group of persons exists whose total voting interests in each company are 50% or more.

Common market value interests

- (2) Two companies are associated persons if—
- (a) a market value circumstance exists for either company; and
 - (b) a group of persons exists whose total market value interests in each company are 50% or more.

Common control by other means

- (3) Two companies are associated persons if a group of persons exists who control both companies by any other means.

General aggregation rule

- (4) For the purposes of subsections (1) to (3), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4 to YB 14, person A is treated as holding anything held by person B.

Aggregation rule for land provisions

- (5) For the purposes of subsections (1) to (3), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4(1)(b) and (2) to (4), YB 7, YB 8, and YB 10 to YB 14, person A is treated as holding anything held by person B.

Exception for certain government entities

- (6) Subsection (3) does not apply to 2 companies if either or both are—
- (a) a state enterprise;
 - (b) a Crown Research Institute;
 - (c) a Crown health enterprise;
 - (d) a company that is part of the same group of companies as an entity referred to in any of paragraphs (a) to (c).

Exception for international tax rules

- (7) In the international tax rules, 2 companies are not associated persons if 1, but not both, is a non-resident.

Exception for managed funds

- (8) For the purposes of the land provisions, 2 companies are not associated persons if 1 is a portfolio investment entity or an entity that qualifies for PIE status.

Defined in this Act: associated person, company, Crown Research Institute, group of companies, group of persons, international tax rules, land provisions, market value circumstance, market value interest, non-resident, PIE, portfolio investment entity, state enterprise, voting interest

YB 3 Company and person other than company

Company and 25% voting interest holder

- (1) A company and a person other than a company are associated persons if the person has a voting interest in the company of 25% or more.

Company and 25% market value interest holder

- (2) A company and a person other than a company are associated persons if—
- (a) a market value circumstance exists for the company; and
 - (b) the person has a market value interest in the company of 25% or more.

General aggregation rule

- (3) For the purposes of subsections (1) and (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4 to YB 14, person A is treated as holding anything held by person B.

Aggregation rule for land provisions

- (4) For the purposes of subsections (1) and (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4(1)(b) and (2) to (4), YB 7, YB 8, and YB 10 to YB 14, person A is treated as holding anything held by person B.

Person other than company

- (5) In this section, a person other than a company includes a company acting in its capacity as a trustee of a trust.

Defined in this Act: associated person, company, land provisions, market value circumstance, market value interest, voting interest

YB 4 Two relatives

Degree of relationship

- (1) Two persons are associated persons if —
- (a) they are within 2 degrees of blood relationship:
 - (b) they are married, in a civil union, or in a de facto relationship:
 - (c) 1 person is within 2 degrees of blood relationship to the other person's spouse, civil union partner, or de facto partner.

Exception: blood relationships

- (2) For the purposes of the land provisions and sections EB 13 (Low turnover valuation) and EC 5 (Transfer of livestock because of self-assessed adverse event), subsection (1)(a) and (c) does not apply, and persons are associated persons because of a blood relationship only if 1 is the infant child of the other.

Treatment of adoption

- (3) For the purposes of this section, a child by adoption is treated as a natural child of the adoptive parents and not as a natural child of the birth parents.

Exception

- (4) A person is not associated with another person under this section if the person cannot reasonably be expected to know that—
- (a) the other person exists:
 - (b) the person is within 2 degrees of blood relationship to the other person.

Defined in this Act: associated person, land provisions

YB 5 Person and trustee for relative

Association

- (1) Two persons (**person A** and **person B**) are associated persons if person A is the trustee of a trust under which a person associated under section YB 4 with person B has benefited or is eligible to benefit.

Land provisions

- (2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions, trustee

YB 6 Trustee and beneficiary

Association

- (1) A trustee of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

Land provisions

- (2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions

YB 7 Two trustees with common settlor

Association

- (1) A trustee of a trust and a trustee of another trust are associated persons if the same person is a settlor of both trusts.

Treatment of spouses and partners

- (2) For the purposes of this section, 2 persons who are married, in a civil union, or in a de facto relationship are treated as the same single person.

Defined in this Act: associated person, settlor, trustee

YB 8 Trustee and settlor

Association

- (1) A trustee of a trust and a settlor of the trust are associated persons.

Exclusion

- (2) This section does not apply if the trust is a charitable trust.

Defined in this Act: associated person, charitable trust, settlor, trustee

YB 9 Settlor and beneficiary

Association

- (1) A settlor of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

Land provisions

- (2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions, settlor, trustee

YB 10 Who is a settlor?

- (1) For the purposes of sections YB 7 to YB 9, **settlor** has the meaning set out in section HC 27 (Who is a settlor?) but does not include a person who provides services to a trust for less than market value.

Defined in this Act: settlor

YB 11 Trustee and person with power of appointment or removal

- (1) A trustee of a trust and a person who has a power of appointment or of removal of the trustee are associated persons.

Defined in this Act: associated person, trustee

YB 12 Partnership and partner

Association

- (1) A partnership and a partner in the partnership are associated persons.

Limited partnerships

- (2) Subsection (1) does not apply if the partner is a limited partner. Instead a limited partnership and a limited partner are associated persons if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.

Limited partnerships: general aggregation rule

- (3) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2 to YB 11 and YB 14, person A is treated as holding anything held by person B.

Limited partnerships: aggregation rule for land provisions

- (4) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2, YB 3, YB 4(1)(b) and (2) to (4), YB 7, YB 8, YB 10, YB 11, and YB 14, person A is treated as holding anything held by person B.

Defined in this Act: associated person, limited partner, limited partnership, partnership share

YB 14 Tripartite relationship

Test

- (1) Two persons (**person A** and **person B**) are associated persons if—
- (a) person B is associated with a third person (**person C**) under any of sections YB 2 to [[YB 12]]; and
 - (b) person C is associated with person A under any of sections YB 2 to [[YB 12]]; excluding the section under which person B is associated with person C.

Exception: companies' tests

- (2) Subsection (1) does not apply if—
- (a) person B is associated with person C under section YB 2; and
 - (b) person C is associated with person A under section YB 3.

Association for purposes of research and development tax credits

- (3) Subsection (1) does not apply in relation to the association of a company and a person, for the purposes of section LH 1(2) (Who this subpart applies to).

Defined in this Act: associated person, company, tax credit

YB 15 Exceptions for employee trusts

Beneficiaries

- (1) Section YB 6(1) does not apply if—
- (a) the trust is only for the benefit of employees of an employer; and
 - (b) neither the beneficiary nor any person associated with the beneficiary directly or indirectly controls the trust.

Non-corporate settlors

- (2) For a settlor that is not a company, sections YB 7, YB 8, and YB 9(1) do not apply if—
- (a) the settlor settles property on the terms of the trust only for the benefit of employees of the

settlor; and

- (b) neither the settlor nor any person associated with the settlor directly or indirectly controls the trust.

Corporate settlors

- (3) For a settlor that is a company, sections YB 7, YB 8, and YB 9(1) do not apply if—
 - (a) the settlor settles property on the terms of the trust only for the benefit of its employees; and
 - (b) none of the following directly or indirectly controls the trust:
 - (i) the settlor;
 - (ii) a person associated with the settlor;
 - (iii) an executive of the settlor;
 - (iv) a director of the settlor;
 - (v) a person holding a direct voting interest of 25% or more in the settlor;
 - (vi) if a market value circumstance exists for the settlor, a person holding a direct market value interest of 25% or more in the settlor.

Persons with power of appointment or removal

- (4) Section YB 11 does not apply if—
 - (a) the trust is only for the benefit of employees of an employer; and
 - (b) neither the person (**person A**) who has a power of appointment or of removal of a trustee nor a person associated with person A directly or indirectly controls the trust.

Defined in this Act: associated person, company, direct voting interest, employee, employer, market value circumstance, market value interest, settlor

YB 16 Exceptions for certain trusts and charitable organisations

Trustee and beneficiary and trustee for relative tests: certain trusts

- (1) Sections YB 5 and YB 6(1) do not apply to a trustee and another person if the trust is—
 - (a) a lines trust established under the Energy Companies Act 1992;
 - (b) an approved unit trust referred to in clause 2 of the Income Tax Act (Exempt Unit Trusts) Order 1990.

Trustee and beneficiary and settlor and beneficiary tests: charitable organisation

- (2) Sections YB 6(1) and YB 9(1) do not apply to a trustee and a beneficiary or a settlor and a beneficiary if the beneficiary is a charitable organisation.

Defined in this Act: charitable organisation, lines trust, unit trust



www.acc.co.nz
0800 222 728