MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	2021/22 ACC Levies	**Date to be published**	20 August 2020

List of documents that have been proactively released		
Date	**Title**	**Author**
1 July 2020	2021/22 ACC Levies	Office of the Minister for ACC
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Information redacted **YES / ~~NO~~**

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In Confidence

Office of the Minister for ACC

Chair, Cabinet Economic Development Committee

2021/22 ACC LEVIES

Proposal

1 This paper seeks your agreement to:

a. The continuation of current Accident Compensation Scheme (the Scheme) levy rates for the Work, Earners' and Motor Vehicle Accounts (the levied Accounts) for the 2021/22 levy year.

b. The continuation of the experience rating system, in its current form, for the 2021/22 levy year.

c. The drafting of legislation to amend the *Accident Compensation Act 2001* (the AC Act) via the upcoming COVID-19 Omnibus Bill to apply the Accident Compensation (Experience Rating) Regulations 2019 (the experience rating regulations) to the 2021/22 levy year without needing to comply with the consultation requirements in the AC Act.

Executive Summary

2 I am seeking agreement from Cabinet to continue the 2020/21 levy rates for the 2021/22 levy year. The average levy rates under each Account are currently as follows:

Work Account	Earners' Account	Motor Vehicle Account
Average levy rate per $100 of liable earnings (excl. GST)	Average levy rate per $100 of liable earnings (excl. GST)	Average levy per vehicle
$0.67	$1.21	$113.94

3 The average levy rates above are the same as those currently in place. Effectively, this means that the current levy rates and regulations for the 2019/20 and 2020/21 levy years would continue (roll over) for one more levy year until the next levy period takes effect in 2022/23 [DEV-19-MIN-0348 refers].

4 Continuing current levy rates achieves the right balance between the financial sustainability of the Scheme and the interests of levy payers given the current economic environment.

5 The current levy Account Regulations[1] contain the ability to continue the existing levy rates so that they apply for subsequent years, which means that new regulations are not required to give effect to the proposed rates.

6 The one exception to this is the experience rating regulations which specifically apply to the 2020/21 levy year only, and so cannot automatically continue into the 2021/22 levy year. The experience rating system enables larger businesses to receive either discounts or loadings according to their work-related claims history, while small businesses can receive a no claims discount or loading.

7 I am seeking Cabinet approval to continue the experience rating system in its current form into the 2021/22 levy year and to amend the AC Act, via the upcoming COVID-19 Omnibus Bill, to apply the experience rating regulations to the 2021/22 levy year without the need to comply with any consultation requirements in the AC Act.

8 Continuing the 2020/21 levy rates and experience rating system for the 2021/22 levy year means that, if all else stays the same (income, earnings, petrol consumption), levy payers will pay the same ACC levies as they did in 2019/20 and 2020/21.

9 Should Cabinet decide to do anything other than keep the same levy rates, then amendment regulations will need to be considered, and consultation would need to start in October.

10 Following Cabinet's decision, I intend to announce the Government's decisions in respect of the 2021/22 levy rates immediately.

11 I also intend to Gazette the updated Funding Policy Statement confirmed by Cabinet in December 2019 [CAB-19-MIN-0675].

Background

12 Funding for the Scheme comes from levies and Government appropriations, depending on the type of injury and employment status.

13 ACC allocates the funds it collects into different Accounts, which it is required to maintain, and uses the funds to pay for different kinds of accidents. Table 1 below provides a summary of the different Accounts:

Table 1: Summary of Accounts

[1] These are: the *Accident Compensation (Earners' Levy) Regulations 2019*; the *Accident Compensation (Motor Vehicle Account Levies) Regulations 2019*; and the *Accident Compensation (Work Account Levies) Regulations 2019*.

Account	Funded by	Pays for
Work	Levies on employers and the self-employed	Work-related injuries
Earners'	Levies on earners through PAYE (or invoiced directly by ACC for self-employed people)	Earners' non-work injuries (not including motor vehicle and treatment injuries)
Motor Vehicle	Levies on motor vehicle owners through registration fees and users at the petrol pump	Accidents on public roads involving moving vehicles
Non-Earners'	Government appropriation	Non-earners' injuries (not including motor vehicle and treatment injuries)
Treatment Injury	Levies from the Earners' Account and appropriation from the Non-Earners' Account	People injured as a result of medical treatment

14 Levies are only required for the Work, Earners' and the Motor Vehicle Accounts. The appropriation for the Crown-funded Non-Earners' Account is now treated as a forecast adjustment as part of the Budget process each year [DEV-19-MIN-0348], while the Treatment Injury Account is funded through the Earners' and Non-Earners' Accounts.

15 ACC charges levies to motorists, employers, the self-employed and employees. ACC collects levies at the petrol pump and through vehicle registration (for motorists). ACC also collects levies based on information from Inland Revenue (for employers and the self-employed) and deductions as part of PAYE (for employees).

Setting the 2021/22 levy rates

The Government Funding Policy Statement and levy setting process

16 In order to connect levies to the actual full cost of providing injury cover, the AC Act requires that the cost of all claims under the Accounts be fully funded. To achieve the principles of financial responsibility outlined in the AC Act[2], ACC must recommend levies for each of the levied Accounts to give effect to the Funding Policy Statement issued under section 166B of the AC Act.

17 Amendments to the Funding Policy Statement were approved by Cabinet in December 2019 [DEV-19-MIN-0348 refers]. Cabinet agreed to set the funding target for the levied Accounts at 100% of liabilities excluding the risk margin. This is a reduction from the previous ratio of between 100 and 110 per cent, targeting the midpoint of 105 per cent.

18 The updated Funding Policy Statement that reflects these changes was due to be gazetted following Budget 2020. However, given the uncertainty with the 2021/22 levy setting process, this has been delayed. The Funding Policy

[2] Section 166A of the AC Act

Statement will now be gazetted immediately following Cabinet's decision on 2021/22 levy rates.

19 Cabinet also made the decision to set levies for one year only (i.e. the 2021/22 levy year) and noted further advice would be provided on moving to a three-yearly levy setting cycle.

Cabinet makes final levy decisions

20 The AC Act[3] requires me to have regard to the following principles of financial responsibility when recommending levy rates:

- the levies for each Account should meet the lifetime cost of claims in relation to injuries that occur in a particular year
- if an Account has a deficit or surplus of funds to meet the costs of claims, that deficit or surplus should be corrected by setting levies at an appropriate rate for subsequent years
- large changes in levies should be avoided.

21 In reaching a decision on levy rates Cabinet may take into account the wider public interest including the interest of levy payers, claimants and potential claimants. Cabinet's decision in relation to levies does not need to align with ACC's recommendation.[4]

Impacts of COVID-19

22 The current pricing environment is more volatile and unpredictable than in other levy periods. We do not know what the 'new normal' might look like and, while ACC will be in a better position to understand the initial impact later in July 2020, at this stage it is not possible to reliably assess the ultimate impact of COVID-19.

23 This financial volatility is inherent to the Scheme and cannot be avoided. However, a systematic approach to levy setting helps manage the extent to which pressures on the Scheme generate volatility in levies over time.

Proposed average 2021/22 levy rates

24 Given the current economic conditions and the pressures on both levy payers and the Scheme, I considered a number of options for setting the 2021/22 levy rates.

Option 1.1: Alignment with the Funding Policy Statement

25 Given global economic conditions, there is significant risk of volatility to the Scheme. As such, under the new Funding Policy Statement, ACC would likely need to consult on increases for each Account.

[3] Section 166(A) of the AC Act
[4] Section 331(5) of the AC Act

26 While COVID-19's impact on the wider economy is uncertain, I expect that in the near future the economic environment will put pressure on levy payers. Many levy payers face declining revenues and reduced wages in the immediate term, while low growth, low interest rates and high unemployment pose longer-term constraints.

27 Given this, there is likely to be a disparity between levies that ACC would be required to consult on and what levy payers can tolerate given the economic environment we are entering.

28 For these reasons, I do not believe that it is appropriate at this time for ACC to undertake a consultation process on levies that are based on the Funding Policy Statement.

Option 1.2: Temporary reduction in levies/levy relief

29 I also considered a number of options to provide temporary reductions to levies or levy relief. However, doing this would likely require ACC to draw down from its investment fund to pay for the outstanding claims liability (as costs exceed revenue) until that position is reversed.

30 Reductions to levies now may require increases to levies in the future, creating intergenerational equity issues. The current funding model is designed so that the Scheme can continue to fund past claims and minimise the burden for the cost of these injuries on future generations of levy payers.

31 Over the medium to long term, this could also lead to pressures on Scheme sustainability and, ultimately, on the Scheme's settings. For these reasons, I do not recommend a temporary reduction to levies.

Option 1.3: Allow the 2020/21 levy rates to continue for a further year

32 Amendments to levy rates (and therefore the levy regulations) would require consultation under the AC Act[5]. Specific consultation obligations in the AC Act only apply if new or amended regulations are made to update the levies that are currently in place, otherwise existing rates continue to apply for subsequent levy periods.

33 Continuing current levy rates for a further year removes the requirements for ACC to undertake a public consultation process at this time, in recognition of the impacts of COVID-19 on levy payers and the volatility of economic forecasts.

34 Some sectors may voice disagreement with this proposal (i.e. those levy payers who have had their employment impacted or suffered reduced revenue as a direct result of COVID-19). Although levy rates would remain the same, the system is self-adjusting in that most levies are only applied to the amount of income or revenue received, and therefore levy payers may pay a lower final amount of levies this year.

[5] Section 330 and 331 of the AC Act.

35 Continuing the 2020/21 levy rates for a further year (Option 1.3) achieves the right balance between supporting levy payers' interests and not causing additional risks to the financial sustainability of the Scheme. As I am only setting levies for 12 months, there is an opportunity to address any risks to the Scheme in the next levy round once ACC has more certainty around its financial position and further consideration can be given to any longer-term factors affecting the Scheme's solvency.

36 A year-on-year comparison of the Work, Earners' and the Motor Vehicle levies rates from 2009-10 is provided at Appendix 1. This shows that current 2019/20 levy rates are comparatively low.

37 As such, I propose that the 2020/21 levy rates continue for a further year. These average rates are as follows:

Table 3: Proposed average levy rates for 2021/22 levy year

Work Account	Earners' Account	Motor Vehicle Account
Average levy rate per $100 of liable earnings (excl. GST)	Average levy rate per $100 of liable earnings (excl. GST)	Average levy per vehicle
$0.67	$1.21	$113.94

The exception to continuing current levy rates is the experience rating system

38 The experience rating regulations specifically apply only to the 2020/21 levy period. Therefore, experience rating arrangements are not able to be applied to subsequent years.

39 Experience rating has two programmes that adjust Work Account levies based on an employer's or self-employed person's claims history for work-related injuries over three years compared to their peers: Experience Rating Programme and No Claims Discount (NCD).

40 The Experience Rating Programme applies to approximately 15,000 businesses (and groups of businesses) who pay annual ACC levies of $10,000 or more in each of the last three experience years. Employers with very good claims experience receive levy discounts of up to 50 per cent, while those with a negative claims experience receive a penalty of up to 75 per cent of their Work Account levy. The NCD programme applies for approximately 199,000 businesses and self-employed people with an annual Work Account levy under $10,000 in any of the last three experience years. More than 90 per cent of small businesses and self-employed people received a no claims discount of 10 per cent last year.

41 The experience rating system is intended to provide a financial incentive to employers to reduce the number and severity of workplace injuries and improve return to work outcomes. The experience rating regulations implement Cabinet's decision on the programme, while specifying both the entry criteria for NCD and experience rating programme and the formulae

required by ACC to calculate and determine discounts and loadings for levy payers.

42 Not making new experience rating regulations has the effect of suspending the experience rating system for the 2021/22 levy year. ACC has indicated that around half of all active businesses are captured under the experience rating system. Suspending the system for the year might see a large proportion of businesses and self-employed lose a discount to which they would otherwise be eligible, while loadings may not be applied to businesses that fail to reduce harm in the workplace. Without financial incentives, businesses may also may reduce efforts to improve workplace safety.

43 Given the likely impact on businesses and the potential to undermine sector wide 'buy-in' to improving safety in the workplace, I do not recommend that the experience rating system be suspended for the 2021/22 levy year.

44 In order for the experience rating system to continue in its current form for the 2021/22 levy year, new regulations are required to be made. I have considered a number of options to achieve this.

Option 2.1: Amend the experience rating regulations without consulting

45 Two statutory consultation requirements have previously been treated as applying to the experience rating regulations, namely sections 330 and 331 of the AC Act.

46 Section 330 requires the Minister for ACC to consult such persons or organisations as the Minister considers appropriate having regard to the subject matter of specific types of regulations. Legal professional privilege [redacted]

47 Section 331 requires the Corporation to consult and make a recommendation to the Minister before the Minister may recommend that regulations be made. Legal professional privilege [redacted]

48 Legal professional privilege [redacted]

[redacted]

49 Legal professional privilege [redacted]

50 Legal professional privilege [redacted]

51 Legal professional privilege [redacted]

Option 2.2: ACC to undertake a full consultation process to amend the experience rating regulations

52 ACC has traditionally consulted on any matter prescribed by regulations (for example minimum liable earnings, maximum liable earnings, levy period) in addition to rates of levies. This is because they have a bearing on the overall amount of levies an individual needs to pay, and providing this information informs levy payers of other relevant considerations about levies.

53 An isolated experience rating consultation document could set out some broad scenarios which might apply to individual levy payers (based on assumptions that are made about individual claims performance and industry peer claim performance). However, it would not provide any specific clarity about the levy outcome for an individual levy payer until the experience rating adjustments are carried out for that levy payer at the end of the claims activity period. Consultation would likely take place after the election (in October/November), and so businesses would not have certainty around the experience rating system until this process was concluded.

54 Notwithstanding this, consultation would still provide levy payers with an opportunity to comment on whether the experience rating system should be continued in its current form, not continued at all, or be changed in some way. This feedback would be given due consideration before a final decision is made.

55 While this option provides an opportunity to consult on the proposal to continue the experience rating system, it is not particularly useful in isolation. For these reasons, I do not recommend ACC undertaking a consultation process in accordance with section 331 of the AC Act.

Option 2.3: Amend the AC Act, via the upcoming COVID-19 Omnibus Bill, to allow the experience rating system to continue in the 2021/22 levy year
(my preferred option)

56 A third COVID-19 Omnibus Bill to deal with COVID-19 measures will be considered by the Cabinet Legislation Committee (LEG) in late July 2020. Proposals are required to meet the following criteria:

1. are clearly related to COVID-19 recovery
2. cannot wait to be passed until after the election
3. are sufficiently non-controversial that they are likely to get cross-party support
4. can be instructed on, drafted and settled by mid-July (and do not need select committee consideration)
5. have already received or will shortly receive policy approval.

57 There is a strong rationale for including amendments to the AC Act in the COVID-19 Omnibus Bill. Including amendments to the experience rating regulations in the COVID-19 Omnibus Bill ensures that changes can be made in a way that eliminates any legal risk (refer paragraphs 45-51). It also expedites an outcome that provides certainty for business (as opposed to undertaking consultation).

58 As such, I propose that Cabinet approve the drafting of legislation which allows the experience rating system to continue in the 2021/22 levy year, as part of the COVID-19 Omnibus Bill (Option 2.3).

59 Free and frank opinions [redacted]

60 MBIE will work with the Parliamentary Counsel Office (PCO) to ensure this is included in the COVID-19 Omnibus Bill.

The next levy setting process will move to a three-yearly cycle

61 Further advice will be forthcoming regarding a move to three-yearly levy cycles. If Cabinet agrees, the following levy period will be the first of the three-yearly levy cycles, noted by Cabinet in December 2019 [DEV-19-MIN-0348 refers]. Work on the next levy period will begin in late 2020, including a full consultation process in 2021 based on ACC's recommended levy rates. The final agreed levy rates would run from 2022/23 through to 2024/25.

62 Three-yearly levy periods provide an opportunity to understand the short and long-term trade-offs of any policy changes, along with a more detailed understanding of the financial implications to the Scheme as a result of COVID-19.

Work on understanding cost pressures can be done in the meantime

63 Confidential advice to Government [redacted]

64 Confidential advice to Government [redacted]

Financial Implications

65 Continuing the 2020/21 levy rates and experience rating system for the 2021/22 levy year means that, if all else stays the same (income, earnings, petrol consumption), levy payers will pay the same ACC levies as they did in 2019/20 and 2020/21

66 Due to the dynamic pace at which the economic environment is moving, any assumptions underpinning the pricing approach at this time may quickly become outdated. The magnitude and duration of an economic downturn, how long New Zealand takes to recover and the associated impacts on the Scheme depend on many factors, for which there is low confidence in a central estimate.

67 Commercial information [redacted]

Table 4: Estimate of COVID-19 impacts on the Scheme

	Actual	30 June 2020 Forecast			Budget
	30 Jun 19	31 Mar 20	30 Apr 20	31 May 20	30 Jun 20
	[$B]	[$B]	[$B]	[$B]	[$B]
OCL	53.3	Commercial information [redacted]			47.1
Investment reserves	45.1				42.8
YTD Surplus / (Deficit)	(8.7)				(1.0)
FY Forecast Surplus / (Deficit)					
YTD Investment Returns after costs	12.97%				3.98%

68 Commercial information [redacted]

69 Commercial information [redacted]

70 ACC's financial performance is reflected in the Government's financial statements. The impacts on ACC's OBEGAL result from continuing the current 2020/21 levy rates for the 2021/22 levy year and assuming levy increases from 2022/23 as per the Funding Policy Statement are noted in Table 5 below. This represents changes in levy revenue and the unexpired risk liability.

Table 5: OBEGAL impact of rolling over levy rates

OBEGAL Impact	
2020/21	$(278.4)M
2021/22	$(92.7)M

Non-Earners' Account

71 As part of Budget 2020, the Government increased its Non-Earners' Account appropriation by $285 million. The Non-Earners' Account appropriation process is separate to the levy process. As a result, the proposed levy rates do not affect Government appropriations.

Legislative Implications

72 The proposal to continue the current Motor Vehicle Account, Earners' Account, and Work Account levy rates for the 2021/22 levy year does not have legislative implications. The 2019 regulations for each levied Account would continue to apply.

73 If Cabinet agrees to amend the AC Act to allow the experience rating system to continue in the 2021/22 levy year as part of the COVID-19 Omnibus Bill, MBIE will work with PCO to draft the amendment. The draft amendment can be considered when the Omnibus Bill goes to LEG in late July.

Regulatory Impact Statement

74 The Treasury has determined that this proposal is a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet decision [CAB-20-MIN-0138].

Human Rights

75 The proposals contained in this paper are unlikely to raise issues of consistency under the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.

Consultation

76 This paper was prepared by MBIE. The Treasury and ACC were consulted. The Department of the Prime Minister and Cabinet was informed.

77 MBIE have also inform Inland Revenue, Ministry of Health, Ministry of Social Development, Ministry of Women's Affairs, New Zealand Customs, Ministry of Transport, New Zealand Transport Agency (NZTA), and Te Puni Kōkiri.

78 Following Cabinet's approval, I will also undertake an informal consultation process with Business NZ and the New Zealand Council of Trade Unions (NZCTU).

Communications

79 I intend to announce the Government's decisions regarding 2021/22 levy rates in July 2020, following Cabinet agreement. This paper will be made available to the public on MBIE's website, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Economic Development Committee:

Average 2021/22 levy rates

1 **Agree** to continue the 2020/21 levy rates for the 2021/22 levy year:

Earners' Account Average levy rate per $100 of liable earnings (excl. GST)	**Work Account** Average levy rate per $100 of liable earnings (excl. GST)	**Motor Vehicle Account** Average levy per vehicle
$0.67	$1.21	$113.94

Consultation

2 **Note** that, if the 2020/21 levy rates under the Earners', Work Account and Motor Vehicle regulations continue to apply to the 2021/22 levy year, there is no requirement to consult in 2020 (by either ACC or the Minister).

3 **Note** that ACC would next consult on and recommend levy rates next year.

Experience Rating

4 **Agree** to continue the experience rating system in its current form in the 2021/22 levy year.

5 **Approve** the drafting of legislation to amend the *Accident Compensation Act 2001* via the upcoming COVID-19 Omnibus Bill to apply the Accident Compensation (Experience Rating) Regulations 2019 to the 2021/22 levy years without needing to comply with the consultation requirements in the *Accident Compensation Act 2001*.

6 **Authorise** the Minister for ACC to make decisions on minor and technical issues that arise during the drafting process and that are consistent with the policy of this paper.

Financial implications

7 **Note** the effect of the levy rate decision on the Scheme's financial solvency and on the Government's financial statements.

Announcements

8 **Invite** the Minister for ACC to announce these decisions.

Funding Policy Statement

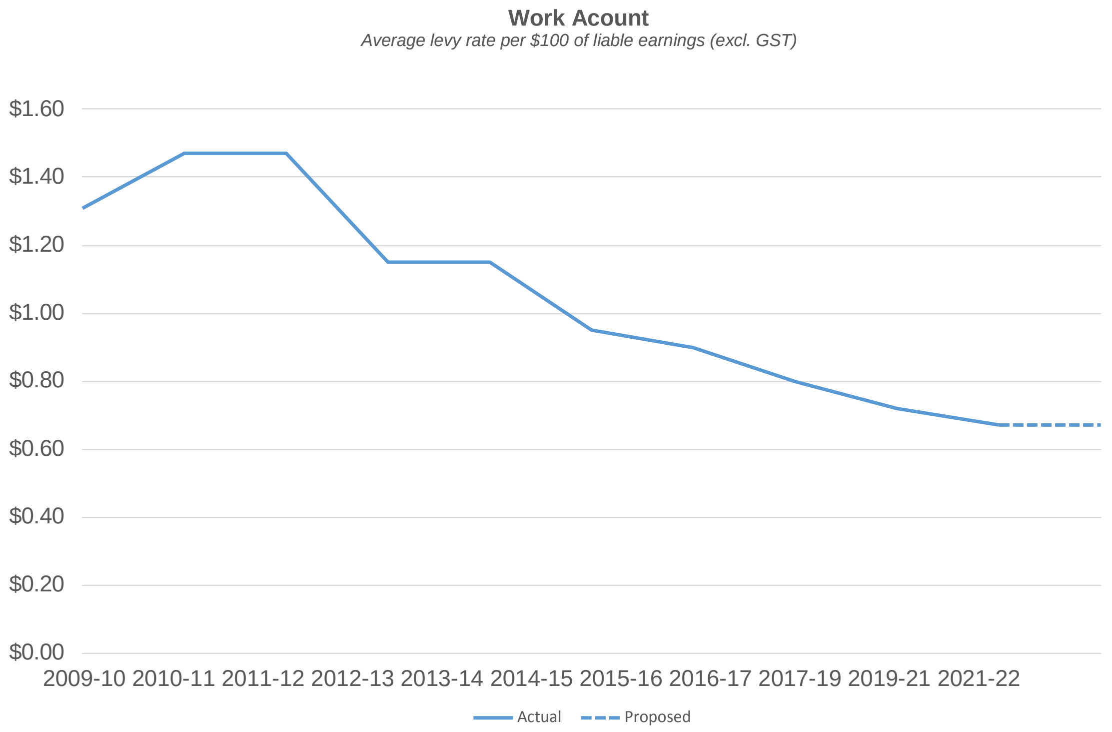
9 **Note** that the Funding Policy Statement (which was revised in December 2019) will be gazetted immediately following Cabinet's decision on 2021/22 levy rates.

Authorised for lodgement

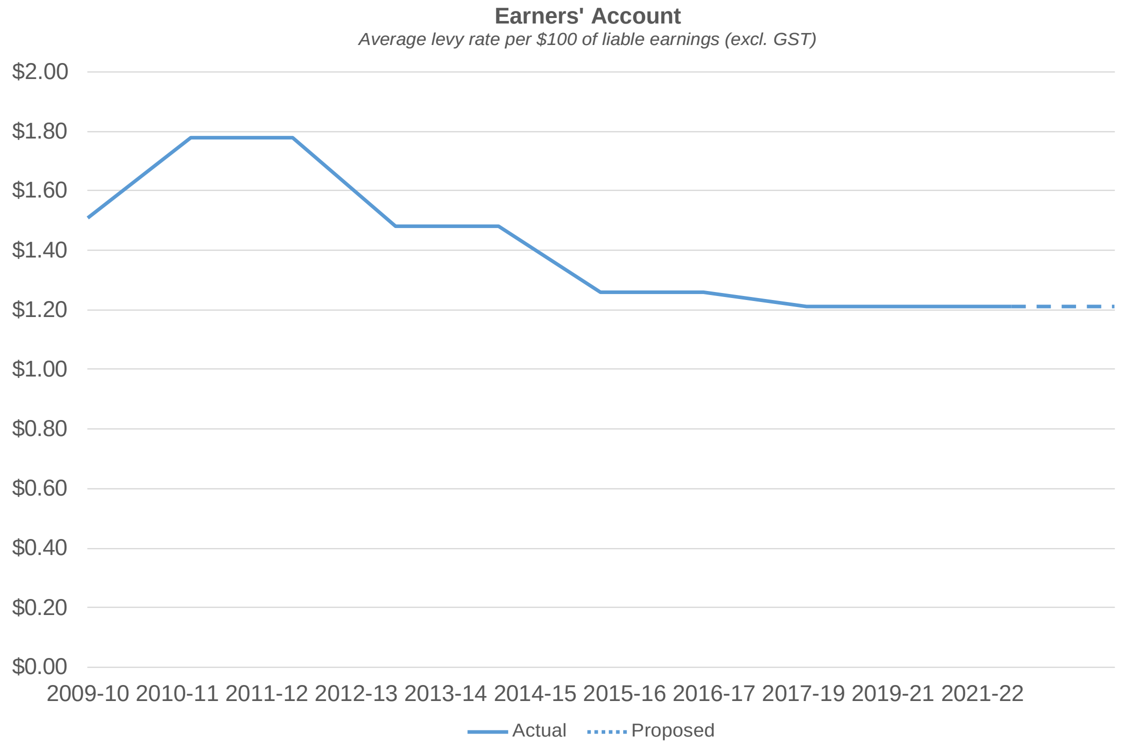
Hon Iain Lees-Galloway
Minister for ACC

Appendix 1: Year-on-year comparison of levy rates

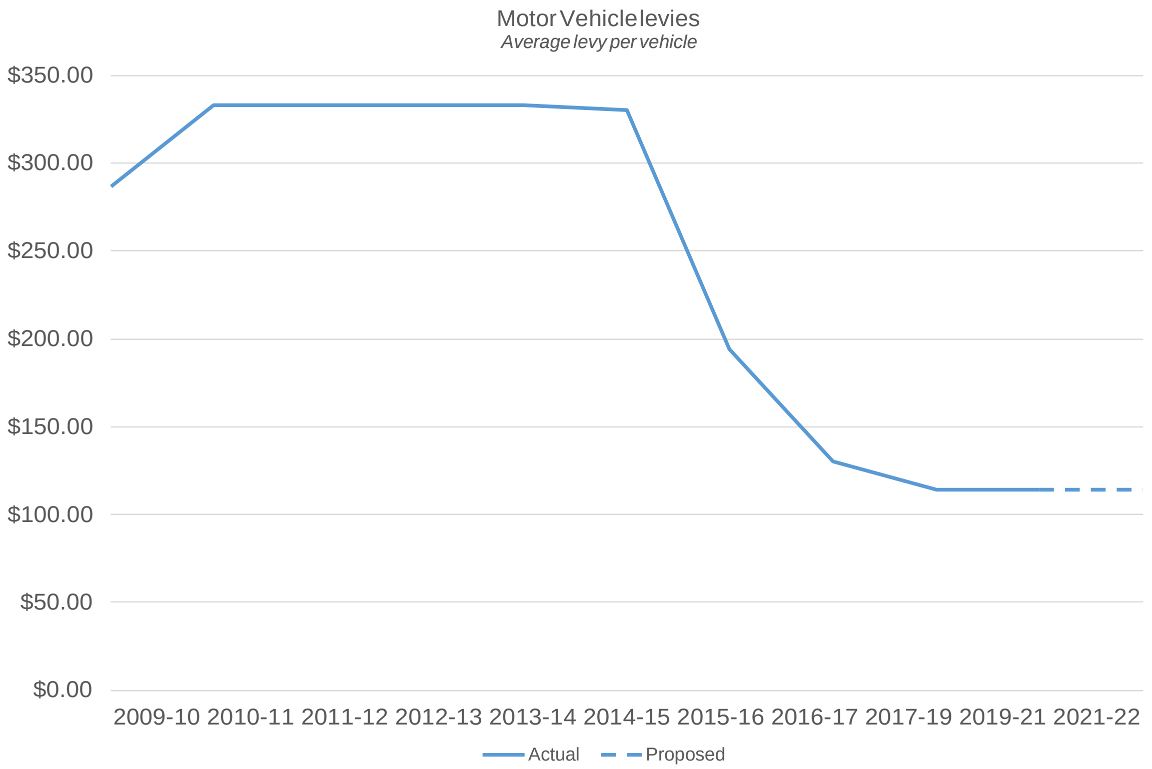
Graph 1: Work Account levies



Graph 2: Earner's Account levies



Graph 3: Motor Vehicle Account levies



Commercial information

Commercial information

Commercial information

Commercial information

[redacted]