

Occupational Disease and Experience Rating A New Zealand Case Study

International symposium on the challenges of workplace injury
prevention through financial incentives.

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Overview

- Statistics suggest a high prevalence of occupational disease ('OD') in New Zealand.
- Our no-fault compensation scheme covers OD; however there is a significant disparity between the incidence of OD and the number of claims lodged and accepted by ACC.
- Almost impossible to accurately attribute OD claim costs to the correct employer, hence experience rating is ineffective for injury prevention.



Occupational Disease v Occupational Injury

- OD defined by the ILO as a ‘disease contracted as a result of exposure over a period of time to risk factors arising from work activity’.
- Distinct to workplace injuries – discrete events with immediate effects.



Occupational Disease in New Zealand

- High prevalence of OD in New Zealand.
- NOHSAC estimates 17,000 – 20,000 new OD cases arise annually.
- 2,500 – 5,500 classified as ‘severe’ – i.e. requiring payment of weekly compensation.



Occupational Disease in New Zealand

- NOHSAC estimates 700 – 1,000 deaths from OD annually. 30-40% are cancers.
- In 2004-2005, there were an estimated 18,500 OD incidents, attracting a financial cost of NZ\$1.1 billion, excluding consideration of the suffering of the victim.



Occupational Disease and ACC

- OD is covered by the ACC scheme – ‘work-related gradual process, disease or infection’.
- 2 routes to cover:
 1. Fulfilment of the 3-part test under section 30 of the Accident Compensation Act; or
 2. Proving that the OD is one listed in Schedule 2 of the AC Act.



Occupational Disease and ACC

- ❑ Statistics show ACC coverage of OD is low.
- ❑ From the 17,000 – 20,000 average annual new OD incidents, only 1,035 claims are lodged with ACC and only 554 are accepted (on average).
- ❑ From the estimated 700 – 1,000 premature deaths arising from OD each year, only 10 OD claims involving the death of the claimant (on average) are covered by ACC each year.



ACC Accounts and Levies

- ACC has 3 funding sources:
 - ▣ Levies paid by individuals and businesses.
 - ▣ Government contributions.
 - ▣ Investment income.
- Levies are paid into certain accounts, which are used to fund certain types of claim, e.g.:
 - ▣ The Motor Vehicle Account receives levies through car registration, and funds Motor Vehicle injuries.
 - ▣ The Earners Account receives levies via individual's earnings, and funds non-work injuries suffered by earners.



The Work Account

- Receives levies from employers and self-employed.
- Funds all work-related claims (including OD) that have occurred after 1999.
- Pre-1999 work-related claims (including OD) are funded via the Residual Claims Account.



Experience Rating

- Experience Rating is a method of adjusting employer's levy rates based on an individual employer's claim experience.
- Designed to recognise/reward employers with good claims experience, and to provide an incentive to improve workplace health and safety.
- Concern amongst academic community regarding the effectiveness/consequences of experience rating.



Experience Rating and the Work Account

- Mandatory experience rating was introduced into the Work Account from 1 April 2011.
- OD caused by exposure to asbestos, and OD resulting in hearing loss, were specifically excluded from experience rating.
- The Residual Claims Account, is not subject to experience rating at all.



Work Account Levies

- Employers are divided into Levy Risk Groups ('LRG') – based on industry and exposure to risk.
- Basic levy for each LRG is calculated with reference to the risk of harm involved in those industries: the higher the risk of harm, the higher the basic levy.



Work Account Levies

- The law now requires ACC to consider whether individual employer levies should be adjusted (up or down) with reference to a 3-year claim ‘experience period’.
- ACC must take account of:
 - The number of employee claims for cover.
 - The length of time employees required weekly compensation (if at all).
 - The number of fatal injury claims.



Problems with Experience Rating and Occupational Disease

- ACC must attribute responsibility to an employer at the deemed date of injury in order for the claimant to access weekly compensation
- For experience rating to operate as intended, the cost of a claim must be accurately attributed to the responsible employer. In the OD context, this is rendered very difficult by:
 1. Multiple exposures to hazardous agents.
 2. Long latency periods.



Multiple Exposures/Multiple Employers

- A worker's exposure to the causative agent might not be limited to a single employer, e.g. a plasterer is exposed to asbestos with 3 different employers over his career.
- Also consider a scientist who sustained leptospirosis from visiting farms ie the exposure occurred at a site not owned or under the control of the employer.



Latency Periods

- For many types of OD, there will be a significant time period between exposure and diagnosis.
- The worker might not only change jobs, but also industries.



Consequences

- Essentially, the right employer cannot be held responsible for a particular OD claim.
- Frustrates the purpose of experience rating: penalising the wrong employer provides no incentive for health and safety improvements.
- Also may encourage aggrieved employers to litigate, in order to avoid increased levies. A further barrier between injured workers and the assistance they require.



Practical application by ACC of OD claims and experience rating

- ACC has established “proxy” employer accounts
 - One where an employer cannot be identified, but it can identify the industry where the exposure occurred; and
 - Another where it is unable to identify the employer or the industry.
 - On-going entitlement costs debited against the first proxy employer account are shared across the relevant employer accounts falling within that industry; and those of the second employer account are shared across all of the Work Account
 - There is no experience rating of the proxy accounts as there is no actual employer and no earnings attributable to those accounts.



Discrepancy between diseases

- ACC agrees that hearing loss and asbestos related claims should be excluded from experience rating, yet in practice, ACC is excluding, for the most part, other OD claims from experience rating through the use of proxy accounts
- A principled approach would be to exclude all OD's from experience rating.
- Experience rating is not an effective injury prevention tool for OD.



Moving Forward

- All OD claims should be funded by way of a flat-rate levy, imposed on all employers.
- Avoids the difficulties regarding the accurate attribution of responsibility to particular employers or industries.
- Fairer, and would encourage all employers to improve workplace health and safety.
- Consistent with the Woodhouse principle of collective responsibility – i.e. the cost of injury is shared, rather than being determined by ‘fault’.



Summary

- Epidemiological evidence suggests a high prevalence of OD in NZ.
- More work needs to be done to ensure that cases of OD are identified covered by ACC, and that workers receive the assistance they need.
- The experience rating model is not appropriate injury prevention tool in the context of OD.
- A flat-rate levy is more pragmatic, and better reflects the principles of the ACC scheme, and shares the cost fairly.

