



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Adjustments to the Employee Preference Cap under Insolvency Law	Date to be published	26 October 2021

List of documents that have been proactively released

Date	Title	Author
9 September 2021	Cabinet Paper: Adjustments to the Employee Preference Cap under Insolvency Law	Office of the Minister of Commerce and Consumer Affairs
9 September 2021	LEG-21-MIN-0129	Cabinet Office – Cabinet Economic Development Committee

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Adjustments to the employee preference cap under insolvency law

Proposals

- 1 This paper seeks approval for two Orders in Council (Orders) to be made to adjust certain dollar amounts under insolvency law.
- 2 These two Orders will revoke the Companies (Maximum Priority Amount) Order 2018 and the Insolvency (Maximum Priority Amount) Order 2018 and replace them with the Companies (Maximum Priority Amount) Order 2021 and the Insolvency (Maximum Priority Amount) Order 2021. The Orders will have the effect of increasing the maximum employee preferential claim figure in the Companies Act 1993 (Companies Act) and the Insolvency Act 2006 (Insolvency Act).
- 3 The adjustment is a statutory requirement, and the Orders are required to be made by 30 September 2021 for the Insolvency Act and by 31 October 2021 for the Companies Act. I propose that the Orders be made simultaneously and enter into force on 30 September 2021. This will ensure consistency between the Companies Act and the Insolvency Act.

The employee preferential claim cap

- 4 Clause 1 of Schedule 7 to the Companies Act (corporate insolvency) and section 274 of the Insolvency Act (personal insolvency) define the order in which distributions from a debtor's assets must be made to different classes of creditors. This includes a list of creditors that are given a preference over ordinary unsecured creditors.
- 5 Employees have a preference in relation to unpaid wages and salaries and related unpaid amounts such as holiday pay. The Acts set a maximum amount for the claim for any one employee, to be adjusted every three years. The cap is currently set at \$23,960.
- 6 The adjustment must be made in accordance with the overall percentage increase in average weekly earnings (total, private sector) over the three year adjustment period as published by Statistics New Zealand. Any adjustment is cumulative and must be rounded to the nearest \$20.
- 7 Using this formula, the new cap for the three years commencing on 30 September 2021 will be \$25,480. This reflects an overall increase of 6.30% in Statistics New Zealand's Labour Cost Index (Salary and Wage Rates) for all industries/occupations combined in the private sector over the three-year period ending 30 June 2021.

Timing and the 28-day rule

- 8 I propose to waive the 28-day-rule for the adjustment to the employee preferential claim cap as it is a minor, statutory requirement that has little to no effect on the public. I propose that the adjustment Orders comes into force on 30 September 2021 in order to meet the deadlines in the Insolvency Act.

Compliance

- 9 The proposals in this paper are consistent with:
- 9.1 the principles of the Treaty of Waitangi;
 - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020; and
 - 9.4 the Legislative Advisory Committee Guidelines on the Process and Content of Legislation (2018 edition).
- 10 The Orders will revoke and replace the Companies (Maximum Priority Amount) Order 2018 and the Insolvency (Maximum Priority Amount) Order 2018.

Regulations Review Committee

- 11 I do not consider there to be any grounds for the Regulations Review Committee to draw the proposed regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

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

Regulatory Impact Analysis

- 13 Treasury's Regulatory Impact Analysis team has determined that the proposal to adjust the employee preferential claim figure in the Companies Act 1993 and Insolvency Act 2006, are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals and not-for-profit entities.

Publicity

- 14 There is a statutory requirement to notify the changes in the *New Zealand Gazette*. In addition, the Ministry of Business, Innovation and Employment will:
- 14.1 publicise the changes on its website and on www.business.govt.nz; and
 - 14.2 notify the Recovery, Insolvency and Turnaround Association of New Zealand.

Consultation

- 15 The Treasury, Inland Revenue Department, the Department of the Prime Minister and Cabinet have been consulted on this paper.

Proactive Release

- 16 I propose that this Cabinet paper be proactively released on the MBIE website within 30 business days, with any redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Companies Act 1993 and the Insolvency Act 2006 require the employee preferential claim figure to be adjusted every three years, using a prescribed formula;
- 2 **note** that the next adjustments to the employee preferential claim figure must be made by Orders in Council, before 30 September 2021 per the Insolvency Act 2006 and before 31 October 2021 per the Companies Act 1993;
- 3 **note** that the adjusted employee preferential claim figure is \$25,480 which reflects an overall increase in average salary and wage rates for all industries/occupations combined in the private sector of 6.30 per cent over the three-year period ending 30 June 2021;
- 4 **note** that the Companies (Maximum Priority Amount) Order 2021 and the Insolvency (Maximum Priority Amount) Order 2021 will adjust the employee preferential claim figure in the Companies Act 1993 and the Insolvency Act 2006, by revoking and replacing the Companies (Maximum Priority Amount) Order 2018 and the Insolvency (Maximum Priority Amount) Order 2018;
- 5 **note** that both Orders will come into force on 30 September 2021;
- 6 **authorise** the submission to the Executive Council of the:
 - 6.1 Companies (Maximum Priority Amount) Order 2021; and
 - 6.2 Insolvency (Maximum Priority Amount) Order 2021;
- 7 **agree** to waive the 28-day-rule so that this adjustment can come into force on 30 September 2021 to meet the deadlines in the Insolvency Act.

Authorised for lodgement

Hon Dr David Clark
Minister of Commerce and Consumer Affairs