



COVERSHEET

Minister	Hon Grant Robertson	Portfolio	Finance
Title of Cabinet paper	Income Insurance Scheme Enabling Bill: Approval for Introduction	Date to be published	28 June 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	Cabinet paper: Income Insurance Scheme Enabling Bill: Approval for Introduction	Office of the Minister of Finance
16 May 2022	Income Insurance Scheme Enabling Bill: Approval for Introduction CAB-22-MIN-0181 Minute	Cabinet Office

Information redacted

YES / NO [select one]

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Some information has been withheld for the reason of confidential advice to Government.

In confidence

Office of the Minister of Finance

Office of the Minister for Social Development and Employment

Office of the Minister for ACC

Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

Income Insurance Scheme Enabling Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Income Insurance Scheme Enabling Bill (the Bill), to be passed under Budget night urgency.
- 2 The paper also provides a revised timeline for the development of a New Zealand Income Insurance scheme ('the scheme') to better ensure views on the discussion document are fully taken into account in advice and the scheme can be developed to be robustly operationalised.

Policy

- 3 The Bill provides Accident Compensation Corporation (ACC) with statutory authority to undertake preparatory work to develop the operational requirements for the scheme.
- 4 The Bill does not commit the Government to proceed with, or to use ACC as the delivery agent for the scheme (officials will provide advice on this following analysis of public submissions in late June / early July), but simply provides ACC with a function relating to the development of the scheme.
- 5 The additional function provided by the Bill is necessary to provide legal authority for ACC to undertake work on the scheme's operational specifications, which in turn will inform the development of policy, a business case, and future Budget consideration.
- 6 ACC is currently only able to exercise functions that relate to the purposes of the Accident Compensation Scheme (AC Scheme) (refer sections 3 and 262 of the Accident Compensation Act 2001). ACC has been able to undertake pre-implementation work insofar as it has constituted consideration or planning to manage the implications of a government policy change, namely the introduction of an NZII scheme delivered by ACC, on the basis that this is "ancillary to and consistent with" its legislated functions (refer s.262(1)(d)). Without new empowering legislation, ACC will be constrained in undertaking the work necessary to properly identify and mitigate implementation risks and establish a scheme in an efficient manner.
- 7 On 4 October, Cabinet agreed to legislation being drafted to enable ACC to develop operational requirements for the scheme [CAB-21-MIN-0397 refers]

and subsequently approved the inclusion of the Bill on the 2022 Legislation Programme, with a category 2 priority (must be passed in the year).

- 8 The Bill could be viewed by some as contentious in that it could be perceived as committing the Government to proceeding with a scheme delivered by ACC. The general policy statement in the Bill makes clear that this is not the case. The Bill provides legal clarity to ACC to continue to support the Government's work to understand the operational implications of a scheme, and if the scheme is to proceed, the Bill will enable ACC to initiate the development of the operational requirements for a scheme.
- 9 Moreover, a mitigating factor is that the authority provided by the Bill is time-limited and will be replaced by subsequent legislation to govern the scheme intended to be developed for introduction in late 2022, and enactment midway through 2023, The Bill will be repealed in 2025 in the absence of subsequent legislation.

Specific policy matters

- 10 Cabinet delegated authority to the Minister of Finance to make decisions and approve matters of detail on the Bill, consistent with the policy proposal, on any issues that arise in the course of drafting the Bill [Cabinet CAB-21-MIN-0397 refers].
- 11 The Minister of Finance has approved the following policy matters for the Bill (according to the delegation provided by Cabinet).

The Bill is drafted as a standalone Bill

- 12 The Bill is drafted as a standalone Bill, rather than an amendment to the Accident Compensation Act as noted by Cabinet [CAB-21-MIN-0397 refers].
- 13 Early into drafting it was identified that the better approach would be to form a standalone Bill so as to minimise any disruption to the AC Act (and in turn minimise risks of unintended consequences). This approach is also more consistent with the intention to establish the scheme to operate independently of the AC Scheme.

The Bill includes a Treaty of Waitangi provision

- 14 This addition recognises that the way the scheme is operationalised will have implications for scheme outcomes, particularly for Māori individuals and whānau. The Bill requires ACC to engage with Māori (including representatives of iwi and hapū) and be purposeful in developing a scheme that is both accessible for Māori and responsive to Māori perspectives.
- 15 The Treaty of Waitangi provisions could be viewed by some people as contentious; either in that they are unnecessary, or that they do not go far enough.

- 16 Furthermore, the provisions are not without risks. It will create a precedent for including a strong Treaty provision in subsequent substantive legislation to govern the scheme. I do not consider this risk to be material given that this clause is unique to the nature of this Bill.
- 17 The overarching consideration is that it is important to ensure that ACC contributes to fulfilling the Crown's commitment to the Treaty principles in delivering the Government's policy for the scheme. The provision has been co-developed with ACC and the Iwi Leaders Group. The proposed provisions have also been discussed with the Treaty provisions oversight group.
- 18 The Bill also includes a provision requiring ACC to engage with worker and employer representatives out of recognition that the scheme should continue to be developed as it has from the outset, using a tripartite process.

The Bill includes information sharing provisions

- 19 The Bill includes information sharing provisions that authorise ACC to use information it receives from Government agencies and other information held by ACC for the purpose of setting up the systems and processes for the establishment of the scheme (namely for system testing).
- 20 For the most part ACC already has authorisation to receive and use the information in question for administering the AC scheme. The primary role of the new provisions is to authorise requests and use of information for the new purpose of establishing the operational requirements of the scheme.
- 21 The information sharing provisions could be viewed as contentious, as they are drafted to potentially allow a broad array of information sharing arrangements. The provision is important for the enabling Bill in that ACC will not have established relationships with levy payers or claimants until the scheme goes live but needs to ensure systems will work as intended at that point.
- 22 This situation will differ once the scheme goes live, and therefore some of the information sharing provisions may differ in the subsequent substantive legislation (e.g. ACC will be able to seek authorisation from individuals to access some personal information at claim submission). MBIE has worked closely with ACC and the Office of the Privacy Commissioner to develop appropriate mitigations and safeguards to balance the need for flexibility with appropriate risk management.

Revised timeline

- 23 Cabinet has agreed, through the Budget package, that subject to a decision to proceed the scheme will begin operation later than the original plan of December 2023, which will allow implementation to begin following the passage of substantive legislation. This mitigates a number of operational and policy risks. The revised timeframe ensures full consideration can be given to public submissions, and there is no longer a need to seek a decision at this

time on whether to implement NZII. That decision is now proposed to be sought in June / July 2022, alongside policy decisions.

Confidential advice to Government



Impact analysis

Regulatory Impact Statement

- 25 The broader case for change as outlined in the discussion document was assessed by a cross-agency Regulatory Impact Analysis (RIA) panel convened by MBIE at the time Cabinet agreed to the Bill, however, the specific proposal of the Bill was not covered by the discussion document or therefore by the assessment.
- 26 An RIA relating to the specific proposals of this Bill, to enable ACC to undertake preparatory work for a scheme, is appended to this paper.
- 27 The MBIE panel reviewing this RIA considers that it meets the RIA quality criteria and that our feedback on earlier drafts of the RIA has been addressed. The proposals for this legislation are clearly defined and limited to those needed for ACC to support the development of the scheme, with clarity over

the need for subsequent policy decisions for the detail of policy choices. The costs of proceeding now are clearly articulated and reasonable.

- 28 A further RIA will be developed to support Cabinet consideration in June / July on the substantive questions as to whether to proceed to introduce the scheme, whether ACC should deliver the scheme and detailed policy decisions.

Better Business Case

- 29 Work is underway on a detailed business case (Better Business Case), focussing on implementation. This will be completed for Cabinet agreement later in 2022, prior to Budget 2023.

Climate Implications of Policy Assessment

- 30 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Compliance

- 31 The Bill complies with each of the following:
- 31.1 the principles of the Treaty of Waitangi – MBIE’s policy and ACC’s operationalisation processes incorporate a commitment for the proposed scheme to work well for Māori. This commitment is reflected in the Bill with the inclusion of reference to the Treaty principles and obligations for ACC to engage with Māori and be purposeful in developing a scheme that is accessible to Māori and is responsive to Māori perspectives Māori. The provision has been co-developed with the Iwi Leaders Group and developed in consultation with Crown Law Office and the Te Arawhiti convened Treaty Provisions Officials Group;
 - 31.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 31.3 the disclosure statement requirements; a disclosure statement has been prepared and is attached to the paper;
 - 31.4 the principles and guidelines set out in the Privacy Act 2020; The Bill includes provisions for information sharing, which are necessary for enabling ACC to establish the necessary systems for the scheme, and ensure they have integrity, including for upholding the privacy of personal information once the scheme goes live. The provisions are largely based on ACC’s existing information sharing arrangements, including protections. The provisions in the Bill have been developed in consultation with the Office of the Privacy Commissioner;
 - 31.5 relevant international standards and obligations;

31.6 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 32 This paper was prepared by the Ministry of Business, Innovation and Employment. ACC, the Office of the Privacy Commissioner, Treasury, Inland Revenue, Ministry of Social Development, Public Service Commission, Ministry for Women, Crown Law Office and the Te Arawhiti convened Treaty Provisions Officials Group were consulted. Te Puni Kōkiri and the Department of Prime Minister and Cabinet were informed.
- 33 Public consultation on the scheme proposal closed on 26 April 2022. As part of this process, officials and social partners undertook a range of engagement activities, including targeted meetings with stakeholders with expertise in aspects of the scheme's design. Officials also actively reached out to a range of sectors with targeted information to share and promote consultation amongst networks. Given the tripartite nature of the work, social partners have also played a key role in engaging with workers and business. Importantly, to reflect the Crown's obligations under Te Tiriti o Waitangi and ensure genuine engagement with Māori the Government has worked with the Pou Tangata Skills and Employment Iwi Leaders Group (SE ILG) on key scheme design elements and on the Treaty provision included in the Bill.

Office of the Privacy Commissioner comment

- 34 The Privacy Commissioner has been consulted on the Bill as it has been developed. The Commissioner notes that the establishment and implementation of an Income Insurance Scheme has the potential to involve the collection, use and disclosure of large amounts of personal information. Ordinarily, a much more detailed process would have been undertaken to identify what personal information would be needed for system setup, and what mitigations could be put in place to ensure that privacy is protected. The Commissioner has appreciated the constructive approach that officials have taken to consulting her office and working to develop some risk mitigations. However, the Commissioner notes that that the timeframes for development have meant that it has not been possible for this process to be as detailed or robust as would be usual.
- 35 The Privacy Commissioner remains concerned about the potential for intermingling of personal information between the ACC scheme and Income Insurance Scheme. The Commissioner is aware that that in relation to recent incidents, ACC is undertaking work to improve privacy safeguards and processes. The ideal outcome from a privacy perspective would be for a legislative provision to provide for ring-fencing from ACC scheme so that there is no risk that information from the two schemes is mixed. Intermingling of information creates privacy risk and could potentially affect the entitlements of individuals. While practical considerations mean a legislative provision prohibiting ring-fencing has not been possible, the Commissioner notes that some useful risk mitigations have been included.

- 36 The Privacy Commissioner looks forward to working with officials on the next phase of work. During this time, the Commissioner expects that agencies will clarify both the scope of personal information to be collected and used, information sharing needs, and the most appropriate mechanisms, in line with the Privacy Act 2020. This will be critical in order to establish integrity, trust and transparency in the substantive scheme build.

MBIE response

- 37 MBIE and ACC do not consider it is practical to maintain duplicate sets of information received from agencies for the IIS and ACC schemes. For example, to do so for the Inland Revenue dataset would require the build of a new and separate system with an estimated start-up cost of at least \$25 million, ongoing costs and would create potential additional privacy risks in terms of accuracy.
- 38 MBIE and ACC will continue to work with OPC on clarifying what personal information would be needed for system setup, and what mitigations could be put in place to ensure that privacy is protected as part of policy and operational work on the substantive scheme.
- 39 The protections in the Bill ensure that this work will be undertaken in a way that minimises the use of personal information. Where it is necessary to use personal information in system testing ACC will do so in a transparent way, with appropriate safeguards in place, such as consultation with OPC.

Binding on the Crown

- 40 The Bill will be binding on the Crown.

The Bill amends law relating to existing agencies.

- 41 The Bill expands the scope of ACC's functions to enable preparatory work to develop the scheme. There is no intention to alter the ACC's existing obligations and duties under the Official Information Act 1982.
- 42 The scope of ACC's duties and functions under the Ombudsmen Act 1975 will need to be worked through for the scheme, but it is expected these would be broadly consistent with the scope of application of the Ombudsmen Act 1975 (e.g. actions taken by ACC in seeking repayment of a debt, delays in making a decision, delays in responding to correspondence).

Allocation of decision-making powers

- 43 The Bill does not allocate decision making powers.

Associated regulations

- 44 Regulations will not be needed to bring the Bill into operation.

Other instruments

- 45 The proposed bill includes a provision allowing for inclusion of new agencies to Schedule 3 by Order in Council which will enable information sharing requests to be made to them.
- 46 The provision is necessary to provide flexibility for ACC to effectively build systems that will work as they are intended to and provide the best possible client experience and outcomes once the scheme is up and running.

Definition of Minister/department

- 47 The Bill includes a definition of the chief executive of ACC, which aligns to the definition in the Accident Compensation Act 2001. This is required as the chief executive has duties in the Bill in respect of the information sharing provision.

Commencement of legislation

- 48 It is proposed that the Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 49 The Leader of the House has agreed that the Bill should be introduced under urgency as Budget night legislation on 19 May 2022. Ideally the Bill would be passed to coincide with funding being made available via Budget 2022. If the Bill is not passed on Budget night, it will be important to pass the Bill in an expeditious manner so that ACC may initiate the work required to develop the scheme.

Proactive Release

- 50 We propose to proactively release this paper, subject to redaction in line with the Official Information Act 1982.

Recommendations

- 51 The Minister of Finance, the Minister for Social Development and Employment, the Minister for ACC and the Minister for Workplace Relations and Safety, recommend that the Committee:
- 1 **note** that the Income Insurance Scheme Enabling Bill holds a category 2 priority on the 2022 Legislation Programme (must be passed in the year);
 - 2 **note** the Bill provides ACC with statutory authority to undertake preparatory work to develop the operational requirements for the scheme;
 - 3 **note** the Bill does not commit the Government to proceed with, or to use ACC as the delivery agent for, the scheme. Officials will provide advice on this following analysis of public submissions in late June / early July 2022;

- 4 **note** that the Minister of Finance has approved the following policy matters for the Bill (according to the delegation provided by Cabinet, CAB-21-MIN-0397 refers), that the Bill:
 - 4.1 be drafted as a standalone Bill, rather than an amendment to the Accident Compensation Act as noted by Cabinet [CAB-21-MIN-0397 refers];
 - 4.2 include a Treaty of Waitangi provision, which obligates ACC to engage with Māori and be purposeful in developing a scheme that will work for Māori;
 - 4.3 include information sharing provisions that authorise ACC to use information it receives from Government agencies for the purpose of setting up the systems and processes for the establishment of an income insurance scheme (namely for system testing);
- 5 approve the Income Insurance Scheme Enabling Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 6 agree that the Bill be introduced on 19 May 2022 as Budget legislation, and that it passes through all stages to be enacted on 19 May 2022;
- 7 authorise the Parliamentary Counsel Office to make any minor or technical changes to the legislation before the Bill is introduced to the House;
- 8 agree that the Ministry of Business, Innovation and Employment will work closely with the Office of the Privacy Commissioner on any subsequent income insurance scheme legislation enabling the sharing of personal information. This will include the development of appropriate information sharing mechanisms and privacy protections.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance