



FIRST Union submission

to the

Ministry of Business, Innovation and Employment

Regarding the

**New Zealand Income Insurance Scheme:
A discussion document**

1. Introduction

- 1.1 FIRST Union (hereinafter 'FIRST' or 'the union') is a private sector trade union representing almost thirty thousand workers across the retail, finance, commercial, transport, logistics and manufacturing sectors. FIRST Union also comprises the Union Network of Migrants ('UNEMIG') which advocates for the rights of migrant workers across Aotearoa. Migrant worker concerns are discussed in responses to Questions 27 and 28.
- 1.2 Over the past four decades our members, their families and their communities have faced harsh economic restructuring processes without adequate support and a sometimes-hostile approach from Government and the private sector. The reforms in the NZ manufacturing industry in the 1980s and 90s saw production largely outsourced to other countries, with large scale job losses in both urban and rural communities.
- 1.3 While the NZ economy survived remarkably well during the pandemic, the number of displacement events is growing. Between the current pandemic, the climate crisis, growing automation and digitisation, urbanisation and the transformation of urban form, and changing patterns of globalisation (or indeed de-globalisation), the need for greater support mechanisms to smooth the cycles of worker displacement is crucial. In this regard, we welcome the NZ Income Insurance Scheme (hereinafter 'NZIIS') as a positive step.
- 1.4 Unions have often implemented redundancy support programmes to fill the gaps around state assistance channels and support good labour market outcomes. FIRST Union has on dozens of occasions orchestrated support for workers at timber mills in the Central North Island, manufacturing firms in Auckland and in the wool spinning industry in Christchurch. During the pandemic the union ran a MBIE-funded programme that supported and tracked job transitions of more than 500 workers made redundant due to Covid's economic impacts.
- 1.5 Unions also always aim to negotiate redundancy provisions in all our agreements, which generally run for a period of weeks depending on the industry and the age of the collective agreement. After this point, workers who haven't found ideal employment that uses their existing skills or matches their wage expectations are effectively forced to either take lower-paying work or to go onto the (even lower-paying) Jobseeker benefit, if they are eligible. This would represent a significant loss in income, so taking a job – any job – is better. Through this low-trust rat-race model, many workers settle for less than they are worth so as to keep putting food on the table.
- 1.6 In the wake of the covid pandemic, we are glad to see the Government is taking a better approach to futureproof the economy. Effective labour market institutions support the focus on NZ becoming a higher productivity economy where businesses generate more value and greater returns, and workers are able to enjoy better living standards and higher wellbeing. Along with Fair Pay Agreements we think these

widespread labour market reforms will make New Zealand a better place to be a worker and a more attractive company to invest in.

- 1.7 FIRST Union General Secretary Dennis Maga has been an active participant within the Future of Work Tripartite Forum, including the discussion on the NZIIS. For this reason we believe that many of our thoughts about the scheme have already been captured in its design. For this reason, in this submission we have provided simple responses to most of the 96 questions in the Discussion Document in **Annex 1**. We have included more detail responses to specific questions where we have issues to raise or further detail to add. These main areas include sections on non-standard work (Questions 10-20), the rights of migrants to access the scheme (Questions 27 and 28), design questions and investment decisions (Questions 70-73).
 - 1.8 We strongly support this initiative as a new labour market institution that can help workers transition after displacement, without their wages being dragged backwards as they're forced to take the first job that comes their way, regardless if you can support your family on it. Poor job quality – in terms of wages, conditions, safety and training - is one of the key reasons people end up staying on benefits for longer.
 - 1.9 While we strongly support the NZIIS, we do not see it as a panacea for overall welfare reform. But neither do we see it antagonistic to the findings of the 2018 Welfare Expert Advisory Group that FIRST Union President Robert Reid was a member of. We call on the Government to update the WEAG figures for benefit level increases to take account of rapidly rising costs, and commit to faster implement its recommendations. Slow progress on the implementation of many of those recommendations is holding hundreds of thousands of workers (employed and unemployed) across Aotearoa from leading decent lives.
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Annex 1: Answers to specific questions

1. *Do you agree New Zealand should introduce an income insurance scheme for displacement and loss of work due to health conditions or disabilities?*

Yes.

6. *Do you agree with defining displacement as the involuntary loss of work due to the disestablishment of a job?*

Yes.

7. *Do you agree with excluding poor performance and gross misconduct as reasons for claiming insurance?*

Yes.

8. *Do you agree with excluding resignation as a reason for claiming insurance?*

Where a resignation is genuine then it should be a reason for claiming insurance. However for many workers the power imbalance is such that terminations and unjustified dismissals can be presented as resignations. Most constructive dismissals are unactioned because low-paid workers can't pay a lawyer or access a union. So in principle yes, but not where a resignation is properly construed as a constructive dismissal it becomes difficult. The NZIIS fund should have the capacity to work alongside the state employment law machinery and look into the real nature of an employment relationship and how it ended, before making its decision.

9. *Do you agree that income insurance should cover only the complete loss of a job, and cover situations where a person loses only one of several jobs that they hold?*

Yes, it should include all complete losses of a job regardless of the nature of that job. The growth of insecure work and the gig economy means that workers' income is derived from multiple insecure and overlapping sources, and subject to multiple risks. Working multiple jobs is not uncommon, including some with fluctuating hours. Gig work enables a worker to effectively contract with multiple different buyers within the course of a day, with no consistent employer and no security of tenure whatsoever. For workers in each of these circumstances, complete loss of job would have a major impact on their ability to make ends meet. Income insurance for the loss of that complete job will help them support themselves as they transition through the labour market.

10. *Do you agree that insurance would be payable only where income loss was greater than a minimum threshold, such as a 20 percent loss of total earnings, counting income from all of their jobs?*

Yes, especially given that people on relatively low incomes likely have access to other forms of support such as in-work tax credits that would ratchet upwards if existing employment is lost.

11. *Do you agree that it is important to provide income insurance coverage to non-standard workers, where practical?*

It is crucial. It is important to note, for example, that while unemployment is currently at its lowest point in 30 years, underemployment was actually lower in 2008. The rise of non-standard work has shifted transaction costs onto working people. It is important to make sure that employers pay the costs of non-standard work, and making sure non-standard work doesn't deliver employers reduced costs in terms of the NZIIS is a crucial way of ensuring this balance.

12. *Do you agree that income insurance should cover the 'loss of reasonably anticipated income'?*

Yes. FIRST Union represents workers in the horticulture industry that are largely employed on a fixed term basis during the course of the season. Workers often relocate their lives during this period (some are able to use relocation support costs from the Ministry of Social Development but not all are covered under this). Losing employment prior to the completion of a season means the loss of 'reasonably anticipated income', and should be covered under the scheme .

13. *Do you agree that income insurance entitlements should be based on an 'established pattern of work'? Coverage provided for fixed-term and seasonal employees*

Yes. Most insecure workers in a range of different industries do already have well-established patterns of work that generally entail working as many hours as possible when possible. This would be well-reflected in workers' payslips.

14. *Do you agree that income insurance should cover fixed-term and seasonal employees if they are displaced before the end of an employment agreement, with the duration of the payment running to the scheduled end of the employment agreement, or the maximum insurance entitlement duration, whichever is shorter?*

Yes.

15. *Do you agree that income insurance should cover fixed-term and seasonal employees, where their employment agreements are not renewed, and they can show a regular pattern of work and reasonable expectation of future income?*

Yes. There are many workers in industries that consistently renew fixed term agreements, often fails to tally statutory benefits such as sick leave that should accrue after a six month period of continuous employment. Workers whose contracts are habitually renewed should be transitioned into regular employment by their employer however this really happens, as employers want to maintain the flexibility to end contractual relationships quicker and lower their wage risk. Making ends meet while they look for a new job is a barrier to transitioning away from this work. NZIIS would make it easier for workers to transition out of seasonal or fixed-term work without losing out financially, therefore compelling employers to improve working conditions.

16. *Do you agree that income insurance should cover casual employees who can show a regular pattern of work with an employer and a reasonable expectation of future income?*

Yes.

18. *What risks do you see with covering, or not covering, people in self-employment?*

Our preferred approach is an opt-in scheme for all self-employed workers, with those self-employed who resemble employees compulsorily included.

20. *How can we practically distinguish between contractors who resemble employees, and those with a high degree of independence?*

Those with a small number of clients or counterparties could be presumed to be a contractors, while others can find additional means to demonstrate this based on the relevant tests of determining an the question at employment law (the Control, Integration and Fundamental tests).

22. *How do you think the levy should be collected from self-employed workers? A modest minimum contribution period*

Of the options presented in the discussion paper, we think the best approach is to compulsorily include contractors who depend on a small number of clients (i.e. most resemble standard employment), however we think it is also worthwhile to make it more broadly available for self-employed workers who don't fall into this group but do nonetheless want coverage.

23. *Do you agree with the proposed minimum contribution period of six months over a period of 18 months preceding the claim?*

Yes.

24. *Do you agree limits should be placed on the number of claims people can make?*

Yes.

25. *Do you agree with limiting claims to a total of six months within an 18-month period?*

Yes.

26. *Could the risks associated with a low contribution history be managed in other ways?*

Employers in industries with consistently turnover could be considered for higher levies over time so as to ensure they are paying the full cost of their business decisions, and there is an incentive to innovate.

Questions 27 and 28 have been answered together below.

27. *Do you agree with limiting coverage of the proposed income insurance scheme to New Zealand citizens and residents?*

28. *To ensure New Zealand workers are not disadvantaged by lower cost international workers, do you agree that working holiday makers, international students and temporary work visa holders – and their employers – should contribute to the proposed income insurance scheme's costs?*

As the scheme is currently designed, it will be paid into by migrant workers, but they will receive no support under the scheme. They are therefore subsidising New Zealand citizens and residents. We recognise however that not requiring employers of migrant workers to pay into the scheme could mean a significant

saving for migrant workers over local worker. Therefore we have considered the following approaches:

Option One:

Distinguish between workers with closed or open work rights visa

Workers with closed work rights have access to the scheme while they are in New Zealand. When displaced, most workers on closed work right visas have a narrow window in which they can find a new job before they must leave country, normally around six weeks. Given that the first four weeks of support are to be paid by the employer anyway, the remaining two-week liability on the NZIIS fund is a small price to pay to give workers the

For workers with open rights would have ongoing and open access to the scheme as long as they are in New Zealand.

Option Two:

Employers pay full cost

Where a worker is on a temporary visa they are not covered by the scheme, however to reduce the incentive to hire migrant workers instead of local workers the entire cost of the levy is paid by the employer.

29. *Do you agree with a replacement rate set at 80 percent?*

Yes.

30. *Do you agree with a cap on insurable (and leviable) income set at the same rate as the accident compensation scheme (currently \$130,911)? Only personal exertion income would abate (reduce) insurance entitlements*

Yes.

31. *Do you agree that only the insurance claimant's personal exertion income should affect their insurance entitlements?*

Yes.

32. *Do you agree that income insurance should have individualised entitlement, meaning a partner's income would not affect the rate payable? Abatement rates would ensure a claimant is not financially better off as a result of their loss of work*

Yes.

33. *Do you agree that someone should be able to earn some income from paid employment before it affects their entitlements to income insurance?*

Yes.

34. *Do you agree that insurance should abate 'dollar for dollar' when earned income and insurance combined reach 100 percent of previous income? Insurance would generally be treated as income, to determine eligibility for welfare and student support*

Yes.

35. *Do you agree that insurance should be treated as income for assessing eligibility for income support such as main benefits and Working for Families tax credits and student support?*

Yes.

36. *Given the purpose of the In-Work Tax Credit and Minimum Family Tax Credit in encouraging people into employment and helping with in-work costs, do you agree that income insurance claimants would not be eligible for these tax credits? Insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension*

Yes.

37. *Do you agree that income insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension?*

Yes, however we think the likelihood of receiving these supports simultaneously would be low.

38. *Do you think a limit should be placed on the amount of time someone can receive New Zealand Superannuation or the Veteran's pension and insurance?*

Since NZIIS payments are time-limited we are comfortable with this.

39. *Do you agree that income insurance and Paid Parental Leave could be accessed sequentially but not at the same time?*

Yes.

40. *Do you agree that claimants should be able receive both ACC weekly compensation and income insurance at the same time for differing income loss subject to independently meeting the eligibility criteria for both?*

Yes.

41. *Do you agree with a base insurance entitlement length of six months, plus a four-week bridging payment paid by the employer?*

Yes.

42. *Would you support a longer or shorter length of base insurance entitlement?*

We think there is value in preventing people from having to experience a major drop in income as they transition from NZIIS support into other work. Where possible we think it is worthwhile for NZIIS to have the capacity to extend its base entitlement where it helps support pathways to better employment. Given the damage done to a worker's earning prospects by going on to WINZ support

(which entails a significant drop in living standards), we would support a longer period on a case by case basis.

43. *Do you think the scheme should allow extensions to the base period of income insurance entitlements for training or vocational rehabilitation?*

Yes, provided there are clearly defined criteria.

44. *Do you agree that employers should give at least four weeks' notice to employees, and the insurer, before redundancy takes effect?*

Yes.

45. *Do you agree that employers should pay former workers for the initial period of unemployment for four weeks?*

Yes.

46. *Should bridging payments be applied to all workers, including those not eligible for income insurance?*

Yes.

47. *Should the income insurance scheme finance bridging payments in circumstances where the payments are not forthcoming from employers, and refund employers for bridging payments if workers find work within this period?*

Yes.

48. *Do you consider that stronger integrity measures are necessary to manage the risk of spurious claims to the income insurance scheme?*

No.

49. *Do you agree there should be no restrictions on the types of conditions covered by the scheme?*

Yes.

50. *Do you agree that all work arrangements should be covered (assuming other eligibility criteria are met)?*

Yes.

51. *Should the scheme cover partial loss of earnings due to a health condition or disability reducing work capacity?*

Yes.

52. *If partial loss is to be covered, do you agree claimants should have at least a 50 percent reduction of capacity to work caused by a health condition or disability and that reduction is expected to last for at least four working weeks? Claimants' medical practitioners would assess work capacity, with final eligibility assessed by the scheme administrator*

Yes.

53. *Do you agree that the claimants' health practitioner should be main the assessor of work capacity?*

Yes.

54. *Do you agree that, where appropriate, employers could provide supporting information to inform the claimant's work capacity assessment process? Employers would remain responsible for taking reasonable steps to support an employee to continue working*

Yes, this may be appropriate in certain circumstances. However that supporting information must not be allowed to undermine the legitimate decisions and opinions of the claimant's health practitioner.

56. *How could employers be supported to help workers with health conditions or disabilities to remain in or return to work? Employers would be expected to make reasonable efforts to keep a job open where a return to work within six months is likely*
57. *Where an employee must stop work entirely because of a health condition or disability, do you think employers should be expected to keep a job open and help with vocational rehabilitation where a reasonable prognosis is made of return to work within six months?*

Where a reasonable prognosis of a likely return to work within six months is made and the worker indicates that they would like to return to the role, then an employer should be expected to keep a job open and help with vocational rehabilitation.

60. *Do you agree claimants should be obligated to look for work or prepare to return to work while receiving insurance?*

Yes, although we believe there should be some flexibility in how this is measured or assessed. Workers should feel comfortable looking for work at an appropriate pace and it will not necessarily help a worker find an appropriate next role if they are constantly subject to monitoring and having to show evidence that they are searching for work. Any kind of monitoring and case management should only kick in from the second half of the six month period.

61. *Do you agree that claimants would not be expected or required to accept offers of employment that provide lower wages or conditions?*

Yes. One of the main justifications for the scheme is to give workers the time to find appropriate employment based on their subjective expectations of skills and wages, and in doing so prevent wage-scarring. Compelling workers to accept lower-paying offers would do exactly this.

62. *Do you agree the insurer could waive obligations partially or fully where a claimant is unable to meet those obligations?*

Yes. This needs to be a higher trust model than the current MSD framework. Providing the insurer the discretion to waiver obligations where they deem it appropriate is part of that.

63. *Do you agree claimants should be obligated to remain in New Zealand to remain eligible for income insurance?*

Yes, although we should be careful not to be restrictive over what an individual can do in terms of searching for work. The increasing availability of working from home options means that while an individual might work for a company domiciled in another country they may still be earning and spending in the domestic economy. Finding and interviewing for those jobs may require some international travel, and therefore a flexible period of travel could be included as part of the scheme.

64. *Do you think a period of time, such as 28 days, should be allowed for travel overseas, for example, to support ill family?*

Yes.

67. *Do you think financial penalties should be in place for people who do not meet their obligations while receiving insurance payments?*

In most instances we do not think it would be appropriate. A worker who has not been able to find a job during the duration of their support under the scheme has not failed or committed an offence, they just haven't found the right match yet. While that may seem difficult to comprehend at the moment when the labour market is very tight, in a few years this may no longer be the case.

68. *Do you agree that payments could be fully suspended in cases of serious, intentional noncompliance with obligations?*

In certain very narrow instances it may be justified.

69. *Do you think any other consequences should be in place for people repeatedly not meeting their obligations, such as permanent suspension of entitlements?*

We would not support permanent suspension of entitlements. Workers contribute to schemes like this on the basis that they are universal. Enabling the permanent suspension of entitlements would undermine confidence in the scheme. Labour market mechanisms like this one work most effectively where they are streamlined and made as simple and as universal as possible. We like to see policies in place to prevent this likelihood from becoming a reality.

70. *Do you think it is best for ACC to deliver the income insurance scheme alongside the accident compensation scheme?*

We believe that there are some issues with ACC administering the scheme. On the one hand, ACC have a reputation for consistently trying to lower their liability. Their institutional directive is tailored around this approach. We do not think this is the appropriate approach to ensure the NZIIS is an effective measure that smooths the pathway for working people to transition towards their next appropriate labour market outcome, be that decent work or retraining.

71. *Would the income insurance scheme be better delivered by a government department or a new entity?*

FIRST Union supports the establishment of a new entity that focuses on using the capital generated by the NZIIS to invest in addressing social and environmental deficits here in Aotearoa. It could undertake this in tandem with private sector partners, on a project by project basis.

The NZIIS will accumulate a significant amount of capital in a short period of time, however will also likely have consistent demands on it from its inception. There will a temptation to pursue the highest returns and implement an investment approach that seeks to maximise shareholder returns. However an alternative approach could instead see NZIIS investment crowd into firms that deliver real value for national economic development – such as service delivery and infrastructure development – to ensure that workers benefit in multiple ways through their investment.

72. How could employer and worker perspectives best be incorporated to strengthen the income insurance scheme's delivery for New Zealanders?

Tripartite representation will be crucial, and workers and their unions bring an important perspective to scheme delivery. The NZIIS fund could play a role in addressing decent work deficits by investing in keystone firms (especially in oligopolistic markets) in search of long-term steady returns and improvement in labour market performance and productivity. The combined impact of this firm-level social investment approach and the emergence of Fair Pay Agreements could together have the capacity to shift industries plagued with labour market issues.

84. Do you agree with the proposal to develop information sharing agreements and sharing arrangements with employers, other agencies and service providers? Most funding would come from compulsory levy payments on income

Yes.

85. Do you agree the income insurance scheme should be funded from compulsory levies on the income that is insured, rather than from general taxation? Levy payments would be shared by employers and workers

Yes.

86. Do you agree that levy contributions should be equally split between the employee and employer?

In most cases we think this is appropriate. However we recognise that for workers this represents an additional cost – a worthwhile one but a cost nonetheless - during an already-inflationary period. For very low-income workers this may not be a realistic expectation. We would support the inclusion of some progressivity within the scheme. In this regard we have seen modelling done by the NZCTU on a fixed low-levy rate and a variable low-levy rate, which would substantially reduce the burden of paying into the NZIIS for low income workers, in some instances to nothing at all. We would support funding this either through a Crown contribution or adjusting levy rates for workers on higher wages.

88. Do you agree that employees should be levied at a flat rate on income below \$130,911?

Yes.

91. Do you agree that an independent fund with a stable levy-setting system should be established to finance the income insurance scheme?

Yes.

93. *Do you agree that the legislation for the income insurance scheme should provide the flexibility to vary entitlements and eligibility in times of crisis, over and above the proposed income insurance scheme?*

Yes.

94. *Does such flexibility create risks that require additional mitigations?*

Not really, given the overall size of the fund under management.