

Submission on the New Zealand Income Insurance Scheme

26 April 2022

Submission of the Human Rights Commission



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Human Rights Commission
Te Kāhui Tikā Tangata

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Introduction

1. The Human Rights Commission (“the Commission”) welcomes the opportunity to make a submission on the proposed introduction of an income insurance scheme as set out in the Ministry of Business Innovation and Employment’s discussion document *A New Zealand Income Insurance Scheme* (“the discussion document”).
2. As the country’s national human rights institution, the Commission’s role includes:
 - a. Advocating and promoting respect for human rights in Aotearoa New Zealand
 - b. Encouraging harmonious relations between individuals and among the diverse groups
 - c. Leading, evaluating, monitoring and advising on equal employment opportunities
 - d. Providing information to the public about discrimination and to help resolve complaints about discrimination.
3. This submission outlines the international and national human rights framework that is relevant to this proposal, and specifically to our pursuit of equal employment opportunity, the right to social security, and the right to an adequate standard of living.
4. Overall, the submission supports the introduction of an income insurance scheme because it is consistent with New Zealand’s human rights obligations.

Gap in protection

5. The Commission agrees with the discussion document that there is a particular gap in financial support for workers in Aotearoa New Zealand. Over the past few years, the Equal Employment Opportunities Commissioner (“the Commissioner”) has engaged with workers, businesses and unions involved with different industries to understand the issues that present as barriers to their fair and just work conditions and ability to gain an adequate standard of living. Through these engagements, the Commissioner has heard recurring accounts of people in precarious work situations, whether they be employed on casual agreements, independent contractors, or no agreement at all. Often they are marginalised groups including new migrants, Māori, Pacific, young people, women, and older workers.
6. The learnings from the engagements largely mirror the data provided in the discussion document – that of the over 100,000 workers that are displaced every year, Māori, Pacific, women, disabled, and younger workers are more likely to have non-standard working arrangements. The Commission agrees with the findings in the discussion document that these workers are often more vulnerable when they are displaced from a job and face significant socio-economic barriers.

7. It is well established that having a job is insufficient to escape poverty for so many in Aotearoa New Zealand, making job loss without an adequate buffer a dreaded reality. In 2019 the Commission released 'In-Work Poverty in New Zealand', a research work that highlighted the prevalence of in-work poverty and the characteristics of in-work poor households.¹ Some of the key findings of this research include:
 - a. Amongst working households, the proportion of households in poverty is 9.2 percent as at March 2013 (based on a 60 percent before housing costs poverty threshold). This is equal to over 66,000 households;
 - b. The overall average poverty rate across in-work and non-work households is 17.1 percent, with the rate of poverty close to 66 percent for non-work household;²
 - c. Households with at least one adult with prioritised ethnicity of Māori (8.6 percent), Pacific peoples (9.5 percent), Asian (9.4 percent) and MELAA (9.5 percent) experience an elevated in-work poverty rate relative to households of New Zealand European ethnicity (5.9 percent);
 - d. In-work poverty rises significantly for one-parent households with a child or children, at around 15% for Māori, Pacific and Asian households. The in-work poverty rate is also substantially higher if the main earner in the household is female (compared to male), regardless of household structure; and
 - e. Households with at least one disabled adult had a higher rate of in-work poverty (9.5 percent) compared to households without a disabled adult (6.6 percent).

8. This research drew on the 2013 census data, being the most recently available census data at the time. When considering the issue of in-work poverty, one can picture how significant the issue can become when compounded with the sheer number of job losses annually and wage scarring as identified in the discussion document. Further, it should be noted that while this data was pre-COVID19 and since that time, the Commission has witnessed job loss having an immediate and significant impact on the standard of living of workers who are already living on the margins, the socially and economically disadvantaged, and their direct dependents and community. We have witnessed households suddenly plunged into hardship or poverty as a result of a job loss as a result of the pandemic, without the ability to access a satisfactory social security net.³

9. Income insecurity, income inadequacy, and job displacement risk numerous vulnerable workers being exploited as they struggle to support themselves and their families, or accept lower/any paid work in desperation.

10. The Commission highlights the concerns for disabled people further, noting that 64% of disabled people, (71% of disabled women) have an income of \$30,000 or less. However, the median income

¹ Plum, A., Pacheco, G., & Hick, R. (2019). In-Work Poverty in New Zealand. Auckland.

² For the purposes of this research, the definition of 'in-work poverty' was the proportion of working households that fall below the poverty threshold. A "working" household was where at least one adult aged 18 to 65 inclusive is receiving positive wages or salaries for at least 30 hours a week for a minimum of seven months in the year preceding March 2013, excluding working for families tax credits and accommodation supplement. Poverty is defined as the total net household income (equivalized according to household size) falling below the 60% median income poverty threshold before housing costs.

³ See for example The Salvation Army Social Policy & Parliamentary Unit COVID-19 Lockdown Briefing 01 September 2021

https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/sppu_covid-19_2021_update1_v3.pdf; <https://www.rnz.co.nz/news/national/447762/covid-19-may-have-pushed-thousands-more-children-into-poverty>,

is even less at \$20,000.⁴ Disabled adults are twice as likely to indicate they do not have enough money to meet every day needs as non-disabled adults. The employment rate for disabled men is almost half that of non-disabled men: 43.9% vs 83.4%. The employment rate for disabled women is even lower for non-disabled women: 41.2%.

11. In 2021, Treasury released a report that suggested that a large portion of the upcoming generation of retirees will not be able to financially manage retirement on their own.⁵ The report noted that changing patterns of home ownership are likely to add to concerns around old age poverty as we see an increase in the number of people not owning their own home. This issue of declining home ownership disproportionately affects those who have remained on low incomes throughout their working life.
12. As part of the Commission's engagement with workers throughout the country's regions to better understand the challenges they face in their work and pay conditions, job insecurity comes up as a common theme. Workers based throughout the country's regions were not presented with the same ease of job opportunities that workers in cities have. In turn, the job insecurity enables people being forced into insecure working arrangements, prone to exploitation and wage scarring.
13. The Commission also highlights the challenges that migrant workers face in their struggles in not being able to access support following a job loss, particularly highlighted again during the pandemic.⁶ This raises further concerns when considering the fact that significant pay gaps also exist for migrant workers based on their country of origin. Recent research by Diversity Works show that migrants born in Asia, South America, Polynesia, Melanesia, and Micronesia earned lower wages than non-migrants on average.⁷ The data mirrors the many community engagements which the Commission has undertaken in the past year, particularly noting the lack of ability to access any income support.
14. To work for everyone, our safety net needs to provide income support that is liveable and enables workers to thrive and achieve a better standard of living for all, whether it be in the form of a welfare system or through a social insurance system.
15. Accordingly, there are significant gaps in the protection and support in the world of work to ensure that all people have an adequate standard of living. The Commission agrees that the gap means that working people can face large drops in income, risk long-term wage loss which can increase inequities.

⁴ Labour Market Statistics (June 2021),

⁵ Treasury, He Tirohanga Mokopuna 2021.

⁶ <https://www.stuff.co.nz/national/immigration/300563352/migrant-family-surviving-on-food-parcels-as-they-cant-afford-to-leave-nz>

⁷ Diversity Works NZ 'Migrant Pay Gap' 2022.

The international human rights framework

What are human rights?

16. The New Zealand government's human rights obligations arise from both domestic and international law. This submission focuses on the human rights obligations relevant to this proposal. Human rights are the rights and freedoms to which every person in the world is entitled. These basic rights are based on shared values such as dignity, fairness, equality and respect. They govern how individuals live in society and with each other as well as the State's relationship and obligations to their people. Human rights are inherent, inalienable, and universal.
17. Human rights are inherent in that they belong to all peoples based on common humanity. They are inalienable in that people cannot give up their rights and the government must not deprive the people of their rights. They are universal in that they apply regardless of distinctions on key grounds, including race, colour, sex, religion, national or ethnic origin.

Human rights engaged

18. The proposed income insurance scheme engages a range of human rights obligations, most notably those that concern the right to social security, right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment..
19. The right to social security is central to ensuring human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their other human rights, including those in the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.⁸
20. In contemporary human rights, the right to work can be seen first in Article 23 of the Universal Declaration of Human Rights, which provides:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
21. The right to social security is explicitly recognised in the ICESCR, Article 9, which provides:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
22. The right to social security is also recognised in other human rights instruments, including:
 - a. Universal Declaration of Human Rights (Article 22);
 - b. International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(iv));
 - c. Convention on the Elimination of All forms of Discrimination against Women (Article 11(1)(e));
 - d. Convention on the Rights of Persons with Disabilities (Article 28);
 - e. Convention on the Rights of the Child (Article 26).

⁸ General Comment No. 19, Committee on Economic, Social and Cultural Rights E/C.12/GC/19 para 8

f. Declaration on the Rights of Indigenous Peoples (Article 21).

23. Realisation of the right to social security is inherently linked to the right to an adequate standard of living contained in Article 11 of the ICESCR, which provides:

(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent

24. The Committee on Economic, Social and Cultural Rights have provided significant guidance on the right to social security in their General Comment 19.⁹ The Committee noted firstly that:

The right to social security aims to provide income security and support for all people across the life cycle, with particular attention to the most marginalised peoples. Such support, whether in cash or in kind, is provided without discrimination in order to secure protection from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access health care; (c) insufficient family support, particularly for children and adult dependents.

25. The Committee further noted that the wording of Article 9 of the ICESCR cannot be defined narrowly and supported a range of measures to provide such security. This includes both an insurance-based scheme – such as the one proposed – as well as a welfare system, with both systems complementing each other to fill in a gap for coverage.¹⁰ The Committee provides that States have a core obligation:¹¹

to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education"

26. Overall, the Committee's recommendations are that measures to realise this right should contain the following elements:

- a. Availability: a social security system has to be available and in place to ensure that security are provided for the relevant social risks and contingencies.
- b. Adequacy: the security must be adequate in amount and duration in order that everyone may realise his or her rights to family protection and assistance, an adequate standard of living.

⁹ Ibid.

¹⁰ Ibid para 4.

¹¹ Ibid para 59.

- c. Accessibility: all persons should be covered, especially the most disadvantaged and marginalised groups, eligibility criteria must be reasonable, and the costs must be affordable¹²

27. In principle, the New Zealand income insurance scheme would contribute towards the realisation of the rights to work and to social security

Support for the scheme

28. Accordingly, the Commission supports the proposal to introduce an income insurance scheme. The introduction of this scheme is a step in the right direction towards the realisation of a right to an adequate standard of living, which then also supports local businesses and the wider economy. This also helps the protection of existing employment rights

29. While the Commission's submissions highlight the relevance of income insurance to human rights generally, there are some technical questions that the Commission wishes to address with regards to eligibility and inclusivity.

Self-employed/contractors

30. The Commission welcomes the proposal to include coverage for self-employed workers and contractors. Through the Pacific Pay Gap Inquiry,¹³ the Commission has heard directly from vulnerable self-employed workers and contractors who are constantly subject to wage scarring, wage theft, and significant power imbalances, many of whom work in the informal sector. Often this involves situations where the worker is working under another contractor who contracts for services through a client. To this end, the Commission calls for the scheme to consider the most inclusive and accessible option to provide the requisite safety nets for these workers.

Resignation

31. The Commission is concerned about resignation being excluded as a ground of eligibility for claiming insurance. This risks excluding workers who may have felt coerced into resignation from the scheme, such as victims of bullying, sexual or racial harassment. Workers that resign from their jobs in response to the way their employer has acted (or decided not to act) towards them may amount to a form of unjustified dismissal known as constructive dismissal.

32. The Commission has heard from numerous workers who have suffered psychosocial harms in the workplace, whether it be through bullying, sexual harassment, or racial harassment, or through the exploitation of a migrant worker. It is often that the worker feels no option but to resign or continue to suffer the harm in the workplace. Alternatively, the worker chooses to stay working under duress as a result of having no other source of income.

¹² Ibid para 35 the Committee notes that "States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information."

¹³ <https://pacificpaygap.hrc.co.nz/>

33. In such cases, , the onus rests on the worker to raise a personal grievance under the Employment Relations Act 2000 for a finding that the resignation indeed was a constructive dismissal. The Commission submits that it is unfair for such workers to rely on the ability to commence and continue with litigation as their only means of access to remedy. It is unclear how such an exclusion would not incentivise constructive dismissals to the disadvantage of such workers.

Cost for low-income workers

34. The Commission is concerned about the cost of the levy for our lowest paid workers. The Commission continues to hear from minimum wage workers and low-income workers about the struggles in meeting the rising living costs through our community engagements. The Commission would like to put forward whether consideration can be made for an alternative method for calculation of the levies for the insurance scheme can be made to reduce the impact for our low-income workers.

Non-residents

35. The Commission agrees that it is important to provide income insurance coverage to non-standard workers. Workers that need this protection the most should be covered and so the scheme should include informal, precarious, seasonal, casual and low-paid jobs, that are prone to the most exploitation. However, the Commission submits that this should not be limited to New Zealand citizens and residents.

36. In discussing protection for those workers who are prone to the most exploitation, the Commission has long been concerned that workers on temporary work visas whose livelihoods depends on the ability to obtain another work visa following job displacement face significant vulnerabilities.

37. The Commission notes that the discussion document outlines the policy reason for excluding temporary work visa holders from the scheme as being that their visa will often be linked to a particular employer and so if that worker is displaced from a job they will lose their eligibility to work in New Zealand. However the Commission has called for changes to this system, noting that the job tying is an enabling factor for the exploitation of migrant workers and for modern slavery.¹⁴ From a human rights lens, The legally binding obligations under international law previously cited are clear that these rights apply to all within the State's jurisdiction without discrimination. Again, General Comment 19 of the Committee on Economic Social and Cultural Rights provides that non-nationals who contribute to a social insurance scheme should be able to benefit from that scheme.¹⁵ If the State has the ability to further realise the right to an adequate standard of living for migrant workers too, then it should enact the steps necessary. The Commission has previously called for the government to ratify the Convention on Protection of Migrant Workers, recognising that those migrant workers should be entitled to the same level of protection within the jurisdiction as all others, regardless of visa status.

¹⁴ https://www.hrc.co.nz/files/2016/3365/6318/HRC_Modern_Slavery_Petition_Submission.pdf

¹⁵ At para 36.

38. New Zealand endorsed the UN Global Compact for Migration in 2018. While not legally binding, the endorsement of this reflects our country's commitment to demonstrating international solidarity and a commitment to human rights principles for migrants within their jurisdiction. Of particular importance in this context are the objectives in the Global Compact to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work and reduce vulnerabilities. As such, restructuring the income insurance scheme to include migrant workers (and their children) would be consistent with human rights.

Disabled workers

39. Although there are already significant barriers to disabled people and those with health conditions entering and returning to work, which need to be addressed outside of the proposed scheme, 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.

40. Bridging payments should be available to employees leaving work because of a health condition or disability. Claimants with health conditions and disabilities should be actively supported and resourced to search for work and undertake training where an individual feels they are able to. However, it should not be an obligation on disabled people and those with health conditions to search for work for the duration of the support of the scheme.

Te Tiriti o Waitangi

41. The Commission welcomes the acknowledgement of the importance of honouring Te Tiriti o Waitangi in the discussion document. From a human rights lens, Te Tiriti o Waitangi affirms pre-existing rights that Tangata Whenua held prior to 1840. Upholding Te Tiriti o Waitangi and addressing the legacy of colonisation in Aotearoa New Zealand, including structural racism, will be foundational to addressing income disadvantage experienced by Tangata Whenua within this scheme. Thus, a Te Tiriti and human rights-based approach is essential to this scheme to ensure that Tangata Whenua modalities of mana motuhake and Tino Rangatiratanga are upheld.

42. The Commission acknowledges the findings in the discussion document that Māori are more likely to be in informal work and thus it is vital to ensure that the scheme is governed and operated in a way that it addresses Māori needs.

43. Accordingly, the Commission submits that the Tripartite Forum ("the Forum") should partner with the National Iwi Chairs Forum ("NICF") in its implementation and design process of the proposed scheme. It should work with NICF technical leads, so that a Te Tiriti based approach is reflected. This scheme provides a chance to look beyond the business-as-usual approach and see how this could improve financial situations for Tangata Whenua.

44. Partnership with NICF from the beginning of this project is pivotal to enabling the right groups to be involved in the scheme. This will also enable the Forum to have engagement with Tangata Whenua on how to best ensure mātauranga and te Ao Māori are implemented throughout.

45. Partnership with NICF will also enable the Forum to discuss what are adequate and suitable ways that Tangata Whenua can be engaged to ensure their views and perspectives are honoured and upheld in order for them to be able exercise their own modalities of mana motuhake and Tino Rangatiratanga.

Other comment – the benefit system

46. While the Commission supports the income insurance scheme as a means towards the realisation of the adequate standard of living and social security, the Commission has highlighted above that a measure towards the realisation of this right is also the provision of benefits in a non-contributory insurance scheme. In the context of Aotearoa New Zealand, this is the benefit system.
47. In supporting the income insurance scheme in the context of the right to an adequate standard of living, the Commission also supports others' calls in lifting benefit levels to ensure that our most vulnerable live dignified lives, including those excluded from employment not of their own choice.
48. The Commission reiterates the importance of the position that the income insurance scheme should not move towards replacing the benefit system in any way. To do so would be regressive and thus contrary to the obligations of progressive realisation under the ICESCR.

Conclusion

49. The Commission agrees that the New Zealand government should introduce an income insurance scheme for displacement and loss of work. The move towards this is consistent in principle with human rights commitments.
50. However, there are certain technical matters which the Commission has drawn on, which the Commission invites the Ministry of Business Innovation and Employment to consider further. These considerations are to ensure that the scheme is inclusive, accessible, and overall adds to the progressive realisation of an adequate standard of living and fair work for all.