



CONFIDENTIAL

To the Ministry of Business Innovation and Employment

26 April 2022

NZ Income Insurance Scheme Submission

NZ Steel welcomes the opportunity to provide a submission to MBIE's Income Insurance Scheme Discussion Document.

NZ Steel opposes the proposed scheme. **Commercial Information** [REDACTED]

In addition, there is no pressing need for unemployment insurance in New Zealand. New Zealand does not have a problem with high and persistent levels of unemployment.

However, should such a scheme be introduced, NZ Steel would suggest several adjustments to it and a reduction in its scope. Most significantly, NZ Steel would suggest that businesses that already provide redundancy compensation should be able to opt-out of the scheme or get credit / pay lower levies.

While NZ Steel is not equipped to address all the matters raised by the consultation document questions, it has sought to provide information to enable a more fulsome review of the impacts of the scheme to assist the MBIE's review.

Please note that all NZ Steel specific details and examples referred to in this submission are confidential and commercially sensitive. They are being provided only to ensure that the MBIE has detailed information to understand the practical implications of introducing such a scheme. NZ Steel specific details and examples should be redacted from any publicly released information or in response to any Official Information Act request.

Yours sincerely

Privacy of [REDACTED]
natural [REDACTED]

NZ Steel and Pacific Islands

Submission template

A New Zealand Income Insurance Scheme

This is the submission template for the discussion document, *A New Zealand Income Insurance Scheme*.

The Ministry of Business, Innovation and Employment (MBIE), on behalf of the Government, Business New Zealand and the New Zealand Council of Trade Unions, seeks your written submission on the matters raised in the discussion document by 5pm on 26 April 2022.

Your submission could be made public

The information provided in submissions will be used to inform policy development on the proposed income insurance scheme, including how it could be improved and how it could affect different groups. We may contact submitters directly if we require clarification of any matters in submissions.

The *Privacy Act 2020* applies to submissions and responses. Any personal information you supply to MBIE in making a submission will only be used for the purpose of assisting in the development of policy advice as part of this review. When businesses or organisations make a submission, we will consider that you have consented to the content being included in any summary of submissions unless you clearly state otherwise. If your submission contains any information that is confidential or that you do not want published, you can say this in your submission. Please clearly indicate in your cover letter or email with your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that may be published.

Submissions and responses may be subject to requests for information under the *Official Information Act 1982*. Please clearly indicate in your cover letter or email with your submission if you have any objection to the release of any information in your submission, and which parts you consider should be withheld, together with the reasons for withholding the information. Your views will be taken into account when responding to requests under the *Official Information Act 1982*. Any decision to withhold information requested under the *Official Information Act 1982* can be reviewed by the Ombudsman.

How to make a submission

Please send your written submission on the options and questions in this consultation document by 5pm on 26 April 2022. You can make your submission (preferably using this submission template) as follows:



1. Include your name, the name of your organisation (if applicable), and contact details. We may contact submitters directly if we require clarification of any matters in submissions.
2. Your submission may respond to any or all of the questions in the consultation paper. Where possible, please include information or evidence to support your views. We also encourage your input on any other relevant aspects of the income insurance scheme in the "Other comments" section.

3. Sending your submission:

- a. Attach as a Microsoft Word document or searchable PDF and email to:

incomeinsurance@mbie.govt.nz (preferred), or

- b. Mail your submission to:

Social Unemployment Insurance Tripartite Working Group
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6145

If you have any questions on the submissions process, please contact incomeinsurance@mbie.govt.nz.

Submission on A New Zealand Income Insurance Scheme

Your name and organisation

Name	New Zealand Steel Limited (NZ Steel).
Organisation (if applicable)	
Contact details	Privacy of natural persons [Redacted]

Responses to consultation document questions

Chapter 4 – How a new income insurance scheme could achieve our objectives (Pg 30-48)

The Forum considers the benefits of income insurance for job loss due to displacement or health conditions would outweigh its costs.

1

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

In NZ Steel's view and for the key reasons outlined below, New Zealand does not require an income insurance scheme:

- In December 2021, unemployment fell to 3.2 %, a historic low. Employers throughout New Zealand and particularly those in the manufacturing industry, are desperate for skilled workers. Employers are not making employees redundant, they are struggling to recruit them.
- Commercial Information [Redacted]
[Redacted] In NZ Steel's view employers and employees cannot afford to pay additional levies to support a scheme that will be of limited utility in a tight labour market.
- The scheme could also further contribute to the tight labour market because it will act as a disincentive for employees to obtain new employment in a timely way following a redundancy.
- Commercial Information [Redacted]
[Redacted]
[Redacted] Yet the scheme as proposed does not take into account in any way any contractual redundancy entitlements that may be provided in employment agreements. This is by far the most concerning element of the scheme for NZ Steel.
- For the reasons outlined below, should an income insurance scheme be introduced, NZ Steel's strong view is that employers ought to be able to set-off the cost of the income-

insurance scheme payments against an employee's contractual entitlements. In particular:

- Commercial Information
[Redacted]
 - Commercial Information
[Redacted]
 - Commercial Information
[Redacted]
- It is unreasonable to expect NZ Steel to bear further cost by way of levies, longer notice periods, and first-month insurance in the event of a redundancy or medical incapacity. It ought to be entitled to set off any additional costs under the income insurance scheme against an employee's contractual entitlements.
 - An income insurance scheme would add further costs to the manufacturing industry which already pays significant compensation on the end of employment and employees would receive such significant compensation that they would be unlikely to re-enter the workforce for some time. Commercial Information
[Redacted]

NZ Steel recognises that for those employers that do not currently provide redundancy entitlements that this would be an additional costs and burden. However it would better align New Zealand with other countries and it would be a simpler scheme to administer, including by giving credit to those employers who already provide levels of redundancy compensation and post-termination support to employees.

As should be clear from the above, NZ Steel's primary position is that the scheme should not be adopted and NZ Steel's answers to your detailed questions need to be read in that context.

Please note that all NZ Steel specific details and examples referred to in this submission are confidential and commercially sensitive. They are being provided only to ensure that the MBIE has detailed information to understand the practical implications of introducing such a scheme. NZ Steel specific details and examples should be redacted from any publically released information or in response to any Official Information Act request.

Chapter 5 – Honouring Te Tiriti o Waitangi (Pg 49-51)

Kawanatanga – Good governance and partnership

2 *How can we ensure the proposed income insurance scheme honours Te Tiriti o Waitangi?*

No comment.

3 *What are the opportunities for partnership and Māori representation in the proposed income insurance scheme's governance and operations?*

No comment.

4

How can we ensure equity of access, participation, and outcomes for Māori in the proposed income insurance scheme?

No comment.

5

How can we reflect and embed te ao Māori in the proposed income insurance scheme's design?

No comment.

Chapter 6 – Coverage for displaced workers (Pg 53-72)

Displacement and standard employment (full- and part-time permanent employees)

6

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

Should the scheme be introduced, NZ Steel would support a clear definition of “displacement” for the purpose of administering the scheme. As suggested in the Discussion Document, any such definition should clearly exclude a situation where an employer is able to redeploy an employee into a new role but where the employee declines that redeployment offer. It should also exclude an external restructuring where an employee’s current employer does not have any redeployment opportunities, but the new owner of the business offers ongoing employment to affected employees.

If the scheme was introduced without specific exceptions for redeployment (both internally and in the context of an external restructure) then it would be inconsistent with:

- an employer’s obligation to try and find alternatives to redundancy, including by way of redeployment into roles that the affected employee is capable of performing (even if some degree of retraining or upskilling is required); and
- Part 6A of the Employment Relations Act 2000 which:
 - requires all employment agreements to include an employment protection provision setting out the process that an outgoing employer must follow in a restructuring. These provisions are designed to facilitate the affected employees ongoing employment within the business being sold; and
 - entitles vulnerable employees to elect to transfer to the new employer on the same terms and conditions, and with all accrued entitlements recognised.

7

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

Yes. It should also include termination for repeated misconduct.

8

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

Yes.

Coverage provided for complete job loss only

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 NZ Steel agrees that the scheme should only cover the complete loss of a job (subject to a threshold on the reduction of earnings). The scheme should not cover reduction of hours within a job. It should also not cover a minor change in responsibilities such as a change in job title, or a minor change to an employee's position description. For the scheme to be triggered, the employee should no longer have any employment opportunity with his or her current employer (including any redeployment opportunities that have been identified as suitable for the employee).

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, although NZ Steel would encourage a higher minimum threshold to reduce the overall cost of the scheme on workers and employers.

Displacement and non-standard employment – a principle-based approach

11

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

No. NZ Steel considers there are already sufficient protections in place within the Employment Relations Act to protect workers on non-standard working arrangements and particularly those on casual and fixed term employment agreements. The scheme should not apply to these categories of employees. In both cases, employers are required (by the Employment Relations Act 2000) to clearly communicate the nature of the offer that is being made and to have a genuine basis for it. Given the adhoc and temporary nature of those engagements, combined with the pre-existing statutory protections which already allow for determinations of the true nature of the contractual relationship NZ Steel's view is that any scheme should apply to permanent workers only. In particular:

- The scheme seems especially inconsistent with the nature of a genuine casual employment. A genuine casual arrangement is one where an employer does not have to offer any hours of work at all. And equally the employee does not need to accept any hours that are offered. An insurance scheme that provides payment when an arrangement of that nature comes to an end is completely inconsistent with the fundamental nature of casual employment. And in any event, employees are able to obtain casual work from multiple employers and are protected under the zero hour contract regime. Casual employees would therefore have the opportunity to obtain more work from other employers in the event that one casual engagement was brought to an end.
- Fixed term employees are knowingly engaged on a temporary basis, with many fixed terms contemplating that the particular project could finish early (for example, where an employee is engaged to provide maternity leave cover, the employer would ordinarily

retain the ability to terminate early if the employee on parental leave returns to work). It would therefore be unreasonable to expect to receive compensation on early termination in those circumstances. The Employment Relations Act already provides protection to ensure that fixed terms are only used in genuine and legitimate situations.

In both situations, an employee is entitled to bring a personal grievance against his or her employer in order to determine whether they were in fact a permanent employee. If an employee was determined to be a permanent employee, and their employment had been brought to an end due to displacement, then the Employment Relations Authority could determine that the terms of the income insurance scheme should apply to that employee.

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

No, for the reasons set out above.

13 *Do you agree that income insurance entitlements should be based on an 'established pattern of work'?*

No, for the reasons set out above.

Coverage provided for fixed-term and seasonal employees

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?*

No, for the reasons set out above.

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?*

No, for the reasons set out above.

Coverage provided for casual employees

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?*

No if a casual worker has an established pattern of work then it is highly likely that they would be considered a permanent employee and the scheme would therefore apply to them. It would otherwise be inconsistent with the nature of the casual agreement for the scheme to apply outside of those situations.

In NZ Steel's view, employees should retain all of their rights to bring a personal grievance and/or other claim in the Employment Relations Authority where they consider that their employment is in fact permanent. There is no need for the scheme to separately determine that question of fact and the application of legal principles.

17 *How would these design choices work in practice? What risks can you see with the approach to establishing a regular pattern of work?*

See above.

Coverage for self-employed workers

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

In NZ Steel's view, the scheme ought not to cover people in self-employment given that redundancy is inconsistent with the nature of self-employment. We note that the Government is separately considering protections for "dependent contractors" outside of the Income Insurance Scheme, and if separate protections were introduced there would be an even weaker argument for the self-employed to be included in this scheme.

No comment.

19 *Are there some groups of self-employed who should and should not be covered?*

No comment.

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

No comment.

21 *Because a self-employed person cannot technically be made redundant, what types of events would be appropriate 'triggers' for insurance payments?*

No comment.

22 *How do you think the levy should be collected from self-employed workers?*

No comment.

A modest minimum contribution period

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

NZ Steel would advocate for a higher minimum contribution period than six months over a period of 18 months preceding the claim.

As the Discussion Document mentions, a six month contribution history is low by OECD standards. In NZ Steel's view New Zealand can afford to have a longer minimum contribution period because of our tight labour market and the ability for workers to obtain employment in New Zealand so easily. A longer contribution period would:

- Reduce the overall cost of the scheme; and

- Incentivise workers to stay in the labour market in order to be eligible for benefits.

Limits on subsequent claims

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

Yes.

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

NZ Steel would support a longer period of one claim every two years as contemplated by the Forum and a life-time limit on the number of claims. If a scheme was introduced, this would be a reasonable way in which to limit the costs of that scheme (and therefore lead to a reduction in the employer contributions that would need to be made and the levies that would be charged).

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

As set out below, NZ Steel would support a reduced period of income support under the scheme and this would also manage the risk of a low contribution history.

Coverage for New Zealand citizens and residents

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

Yes.

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?*

Yes.

Chapter 7 – Entitlements for displaced workers (Pg 73-95)

Income caps and income replacement rates that match the accident compensation scheme

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

NZ Steel would support a lower replacement rate to keep the costs of the scheme low.

In NZ Steel’s view, a lower replacement rate would incentivise employees to return to the workforce and seek alternative employment, whilst still enabling them to meet standard living costs including accommodation costs. NZ Steel understands the comparison with the structure of the ACC regime but considers there are different policy reasons for the ACC regime that supports that particular structure and high replacement rate but which do not exist with the proposed income insurance scheme. In particular, the ACC regime was structured to compensate for the statutory bar on personal injury lawsuits and so the need to set a certain income rate and leviable income is in part to address that broader purpose and policy. In contrast, the income insurance scheme has no equivalent benefit and is instead aimed at supporting individual workers following displacement. NZ Steel disagrees with the assumptions made in the Discussion Document that there is a need to address an “inequity” between employees who are unable to work due to an ACC-covered accident versus employees who are unable to work for non-ACC reasons. There is good policy justification for that differential. Without that broader policy justification and given other benefits that are already available (and with options such as mandatory minimum redundancy compensation available as alternatives), NZ Steel does not support such a high replacement rate for this scheme.

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)?*

If a scheme was introduced, NZ Steel is supportive of a cap on insurable (and leviable) income.

Only personal exertion income would abate (reduce) insurance entitlements

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

NZ Steel doesn't agree that this scheme should be considered differently from New Zealand's other welfare benefits and does not agree that it should be structured in the same way as the ACC regime for the reasons set out above. Given the purpose of the scheme is to support employees for a period following displacement or medical termination, then NZ Steel would have assumed other forms of personal income should be considered (as they would be when assessing other welfare entitlements).

This would also help to reduce the overall cost of the scheme and encourages personal responsibility.

32 *Do you agree that income insurance should have individualised entitlement, meaning a partner's income would not affect the rate payable?*

No, see above.

Abatement rates would ensure a claimant is not financially better off as a result of their loss of work

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

NZ Steel agrees that someone should be incentivised to return to the workforce and therefore earn a limited income before it affects their entitlements under the scheme.

34 *Do you agree that insurance should abate 'dollar for dollar' when earned income and insurance combined reach 100 percent of previous income?*

Yes. NZ Steel agrees that no one should be better off under the scheme and so at a minimum there should be a "dollar for dollar" abatement.

Insurance would generally be treated as income, to determine eligibility for welfare and student support

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. NZ Steel supports this approach.

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?*

Yes. NZ Steel supports this approach.

Insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension

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

No comment.

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 income insurance?*

Yes a limit should be imposed.

Where eligible, insurance claimants could choose whether to access Paid Parental Leave or income insurance and may receive both sequentially

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

NZ Steel would support taking into account any parental leave payments when setting the level of payments under the scheme.

NZ Steel also considers that any employer contractual parental leave payments should also be taken into account for anyone's entitlements under the scheme.

Insurance claimants could also receive ACC weekly compensation where it covers a different income loss

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?*

No comment.

A sufficient base entitlement period

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

No. NZ Steel does not agree with a base insurance entitlement of six months. If a scheme was introduced, our view is that the base entitlement period should be at the shorter end of the spectrum (i.e. no longer than the three month period adopted by some of the other OECD

countries). The reason for this is that displaced employees ought to be incentivised to return to the labour market, rather than remain unemployed receiving significant benefits.

In addition, the proposed scheme does not take into account an employer's existing contractual redundancy entitlements in any way. Commercial Information

[Redacted]

- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] As the Discussion Document recognises, the longer the period, the greater the risk of longer periods of unemployment and employees losing motivation to search for work until towards the end of that period.

Commercial Information [Redacted]

[Redacted]

[Redacted] Employers who have chosen to provide such benefits in their contracts will have significantly increased and duplicated costs if this scheme was to be introduced as proposed. Where those benefits are already contained in collective or individual agreements, it is unrealistic to expect that those benefits will be negotiated downwards in light of this scheme. Commercial Information

[Redacted]

[Redacted] On the flipside, it will also disincentivise any other employers from agreeing to such contractual benefits which could provide better compensation to employees as those benefits are paid in a lump sum and at 100% of wages.

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

Shorter, if the scheme was to be introduced.

See above to the other responses advocating for a different system with lower cost and simpler administration.

Extending the maximum period in specified circumstances

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

No, NZ Steel does not consider that extensions to the base entitlement period should be allowed.

Enhancing the income insurance scheme with notice periods

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

Commercial Information

Avoiding unnecessary redundancies

45

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

No. Given the rising costs of doing business, and the tight labour market, to penalise employers by requiring them to pay a levy, plus a longer notice period (for those who do not already provide four weeks' notice), plus the first four weeks of insurance would add significant additional costs for employers. It also doesn't account for the employers who are also paying contractual redundancy compensation under their employment agreements. **Commercial Information**

Whilst NZ Steel's view is that no such scheme is necessary and that there are other options available such as minimum statutory redundancy payments, it considers that any introduced scheme should only require one level of compensation from employers (be that a levy; or a longer notice period; or "first month" insurance) not all three. It should also recognise any contractual payments that the employer has agreed to.

Despite opposing the concept of a "bridging payment", where a scheme is introduced, NZ Steel would support the scheme enabling employers to obtain a refund where they help the worker to find work within the initial period of unemployment. Indeed, NZ Steel recommends that the scheme go further, and allow employers to avoid the four week bridging payment altogether where they provide more generous contractual entitlements or introduce (and cover the costs of) outplacement counselling, recruitment support and EAP, on the termination of employment for redundancy or medical incapacity. This would be a form of "self-insurance".

46

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

No. This would lead to excessive further costs on employers and require higher levies.

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?

Whilst NZ Steel opposes the scheme, were it to be introduced, it would support penalties against employers who do not comply with the scheme (and payments being made by the scheme to the employee for the first four weeks) and refunds where employers help the employees to find work or who are otherwise providing contractual entitlements on termination (see suggestion in response to question 45 above).

48

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

No, the suggested integrity measures would appear sufficient.

Chapter 8 – Coverage and entitlements for loss of work due to health conditions or disabilities (Pg 96-112)

No restrictions on the types of conditions covered by the income insurance scheme

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

NZ Steel does not support an income insurance scheme for loss of work due to health conditions or disabilities. Its view is that there are separate policy justifications for ACC that do not exist for non-ACC injuries or illnesses and that instead this is a matter for private insurance schemes.

No restrictions on the working arrangements covered by the scheme

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

As set out above, NZ Steel is of the view that the scheme should only apply to permanent employment arrangements.

Coverage for loss of at least 50 percent of capacity to work, for at least four weeks

51

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

No. NZ Steel does not consider that an income insurance scheme is necessary to compensate for loss of earnings due to a health condition of disability reducing capacity. The ACC scheme already compensates employees for loss of income in certain circumstances, and in NZ Steel’s view it is an individual’s responsibility to privately insure against other risks.

The scheme proposes to place obligations on employers where an employee suffers from an illness which (unlike a work related accident) is completely outside of its control and separate to the employment relationship. NZ Steel is not aware of their being a public policy basis to require illness to fall under an employer’s responsibility, and cost. In NZ Steel’s view any scheme should focus on displacement only and New Zealand’s existing welfare and healthcare systems ought to be responsible for illnesses and disabilities. A scheme focussed only on displacement would be a lower cost scheme and easier to administer.

In addition, some New Zealand businesses **Commercial** chose to provide increased sick leave and/or meet the costs of medical insurance levies for workers which provide some benefits to employees who suffer a non-ACC related injury or illness. Extending the scheme to cover non-ACC health conditions will mean that those employers will be paying twice. Many of those benefits are contractual benefits and again, it is unrealistic to expect that there would be an agreement to remove those from collective agreements during bargaining or in individually negotiated agreements.

Commercial Information

- | [Redacted]
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[Redacted]

[Redacted]

[Redacted]

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?

See above.

Claimants' medical practitioners would assess work capacity, with final eligibility assessed by the scheme administrator

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

No. NZ Steel is concerned that General Practice Doctors and health practitioners already face significant capacity constraints and that any assessment would need to be conducted by an independent third party. GPs already have a practice of providing pro-forma medical certificates without any useful information to an employer and so we would expect they would be reluctant to provide additional information in order to comply with the scheme. GPs are also obliged to champion their patient's wishes and health outcomes and tend not to be experts in return to work rehabilitation

The main assessor will need to be independent and whilst that will come as an additional cost to the scheme, it would be an important feature to ensure the scheme operates effectively.

In NZ Steel's view the scheme could utilise resources from ACC's investigation and review function which includes occupational physicians, and expert medical practitioners.

54 *Do you agree that, where appropriate, employers could provide supporting information to inform the claimant's work capacity assessment process?*

See above.

Employers would remain responsible for taking reasonable steps to support an employee to continue working

55 *Are the current requirements on employers to make workplace changes sufficient to allow health condition and disability claimants to return to their regular employment (or alternative work)?*

Yes, NZ Steel considers the current protections under the Human Rights Act 1993 and the common law requirements relating to discrimination already provide significant protection to workers with a health or disability to return to work or regular employment.

56 *How could employers be supported to help workers with health conditions or disabilities to remain in or return to work?*

In NZ Steel's opinion, no further assistance is necessary.

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?*

No, see response to question 78 below. This work will be required to be carried out by employers before an employee's employment is terminated for medical reasons and as such it would be unreasonable to expect an employer to keep a job open.

58 *Should this be a statutory requirement placed on employers or an expectation?*

See above.

The scheme would generally meet the full cost of income replacement once a claim is accepted

59 *Do you agree that employers should only pay a bridging payment to employees leaving work because of a health condition or disability when the employment is terminated by the employer?*

NZ Steel does not support an employer paid bridging payment where that payment does not take into account contractual benefits that have already been provided by the employer. As set out above, **Commercial Information** it would be a significant burden to meet those contractual promises as well as pay the income insurance levies and a bridging payment.

Chapter 9 – Insurance claimants' obligations (Pg 113-120)

Reasonable obligations for people receiving income insurance payments

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

Yes, claimants should be obligated to look for work while receiving insurance.

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

Claimants should be encouraged to return to work and support the New Zealand labour market. The scheme should require employees to accept new employment where there is a small (i.e. 20% or less difference) in the wages and/or conditions to be offered by a new employer.

In all employment related disputes, an employee has an obligation to mitigate his or her own loss, and the scheme should be consistent with that legal principle.

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

No. All employees should be encouraged to return to the labour market. New Zealand has other welfare benefits that employees can access for long term sickness and illness that prevents them from returning to the labour market.

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

Yes.

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

If a scheme were to be introduced, then NZ Steel would support compassionate grounds for travel but does not consider that a person receiving entitlements should be permitted to leave New Zealand for more than 7 days for non-compassionate reasons.

Specific obligations for claimants with a health condition or disability

65 *Should claimants with health conditions or disabilities be subject to obligations to participate in rehabilitative programmes and other support, where appropriate?*

Yes, there needs to be an element of personal responsibility incorporated into the scheme.

66 *Should claimants with health conditions and disabilities be subject to obligations to search for work or undertaking training where they are able to?*

Yes, there needs to be an element of personal responsibility incorporated into the scheme.

Consequences for non-compliance

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

Yes, NZ Steel considers that payments should cease where a claimant does not meet their obligations while receiving insurance payments.

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

Yes.

69

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

Yes.

Chapter 10 – Delivering income insurance (Pg 121-134)

Independent and effective delivery

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

No comment.

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

No comment.

Accountable and effective governance

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

No comment.

73 *How could Māori perspectives best be incorporated to ensure the income insurance scheme is delivered equitably and with aspiration?*

No comment.

Displaced workers: Getting back to good jobs

74 *What practical support should be available to insurance claimants to return to work?*

No comment.

75 *Who should provide that return-to-work support?*

The scheme itself should be responsible for ongoing management and support to enable claimants to return to work. This should not be an additional burden on employers, when they are already bearing the cost of the scheme.

76 *What type of claimants would need an employment case manager, and who could self-manage?*

No comment.

77 *What do you think a 'return-to-work plan' should include?*

No comment.

Health condition and disability claimants: Getting back to good jobs

78 *What practical support should be available to income insurance claimants with a health condition or disability to return to work?*

NZ Steel disagrees with the Forum's suggestion that the scheme require the employer to be responsible for identifying part-time work, leaving jobs open for a return to work when well, and making workplace changes to support people back to work.

All of these factors would already need to be satisfied by an employer (acting in good faith) before making a decision to terminate employment due to a health condition or disability. In order to lawfully terminate an employee for medical incapacity an employer must:

- Consider up to date medical information and ascertain the likelihood of a return to work in the foreseeable future;
- Consult with the employee on the health condition or disability and reasonable accommodations that could be made to enable them to continue to be employed;
- Consider all available alternatives before termination of employment.

It would be unreasonable to expect an employer to go through the above steps twice, before and then after, an employee becomes eligible under the scheme.

79 *Who should provide that support to return to work?*

As set out above, post-employment support should be managed by the scheme itself and not place an additional burden on employers.

80 *What type of claimants would need a case manager, and who could self-manage?*

See above.

Dispute resolution

81 *Do you agree with the proposed four-step dispute resolution process for the scheme?*

If ACC is going to administer the scheme, then it makes sense to have a similar dispute resolution scheme to that operated by ACC.

However, NZ Steel notes that the courts assigned to considering disputes will be the District Court and High Court. NZ Steel is concerned that there may be some overlap between disputes on the operation of the scheme being heard by the District Court and High Court, and then legal questions around eligibility for displacement or permanent employment being heard by the Employment Relations Authority and Employment Court. This could lead to inconsistencies and NZ Steel would encourage the forum to consider whether the employment jurisdiction would be better placed to consider issues under the scheme.

82 *Are there specific aspects to the scheme's dispute resolution you think should be considered?*

The costs of dispute resolution should be met by the scheme levies and not be an additional cost on employers or employees.

Further, the dispute resolution process should be straightforward and primarily be able to be managed by employers and employees without representation. Should lawyers need to be instructed to assist with dispute resolution, this will lead to further cost for both employees and employers.

Scheme integrity and enforcement

83

Do you agree with the proposal to establish an effective offences and penalties framework to protect the scheme's integrity?

Yes, if a scheme is introduced then there should be an offences and penalties framework that covers both employers and employees.

Information collection and sharing

84

Do you agree with the proposal to develop information sharing agreements and sharing arrangements with employers, other agencies and service providers?

No comment.

Chapter 11 – Funding income insurance (Pg 135-144)

Most funding would come from compulsory levy payments on income

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?*

NZ Steel does not consider that an income insurance scheme is necessary in New Zealand and is therefore not supportive of funding via levies on either employees or employers.

Levy payments would be shared by employers and workers

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

As stated above, as the scheme is currently proposed, it provides no credit to employers who already provide contractual benefits for redundancy and medical issues.

If a scheme was to be introduced then there should be consideration of a self-insurance scheme which would enable employers to provide their own benefits to employees which are at least as generous as the scheme. Such a scheme could operate in a similar way to the ACC Accreditation scheme and employers could use the money that would have otherwise been paid in employer levies to support its own self-insured income insurance programme. This would be a way of giving appropriate credit for those employers with pre-existing contractual benefits and ensure that those employers are not disproportionately burdened by the introduction of such a scheme.

Alternatively, there could be an exemption regime similar to that which was introduced for private superannuation schemes at the time that KiwiSaver was established. That would also ensure that pre-existing contractual regimes can continue unaffected and that those employers are not disproportionately burdened by paying additional levies as well as providing their contractual benefits.

87 *Do you agree that levies for health conditions and disabilities and for redundancy should be set separately?*

See above.

Both the employee and employer would be charged at a flat rate

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

No comment.

89 *Do you have any other suggestions for how the employee levy should be structured?*

No comment.

90 *Do you agree that experience rating would not be an appropriate design setting for the employer levy?*

No comment.

Levies would adjust smoothly over time, with independent fund management

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

No comment.

92 *Do you favour a Pay As You Go or Save As You Go funding approach?*

No comment.

Building in scheme adaptability, while protecting levy sustainability

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?*

No comment.

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

No comment.

Other comments

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