

NGĀ RANGAHAUTIRA

Māori Law Students Association of Victoria University of Wellington



Submission: New Zealand Income Insurance Scheme

Authors:

Kaea Hudson and Melissa Tabere

Date: 20 April 2022

1. INTRODUCTION

- 1.1. This submission is made for and on behalf of Ngā Rangahautira, also known as the Māori Law Students Association of Victoria University of Wellington and its sub-rōpu, Ngā Kaiaronui.
- 1.2. Ngā Rangahautira has a membership of approximately 300 Māori students studying towards a Bachelor of Laws at Victoria University of Wellington.
- 1.3. Ngā Rangahautira encourages its members to form educated opinions on contemporary Māori issues, makes submissions on a range of proposed legislation, and organises regular hui which provide opportunities for Māori students to discuss and debate legal issues relevant to Māori.
- 1.4. When making submissions on law reform, Ngā Rangahautira attempts to provide a unified voice for its members, seeks to highlight areas of concern, and suggest further reform options where appropriate. Ngā Rangahautira does not seek to usurp the authorities and responsibilities of whānau, hapū and iwi.

CONTACT PERSONS REGARDING THIS SUBMISSION

Melissa Tahere

Faculty of Law

Victoria University of Wellington

Government Buildings

55 Lambton Quay

Wellington 6011

Email: ngarangahautira1986@gmail.com

To: Ministry of Business, Innovation and Employment
By email to: incomeinsurance@mbie.govt.nz

2. SUMMARY

- 2.1. This submission expresses Ngā Rangahautira's opinions on the proposed MBIE New Zealand Income Insurance Scheme.
- 2.2. This submission will comment on the questions in Chapter 5 "Honouring Te Tiriti o Waitangi" of the Discussion Document, namely:
 - 2.2.1. How can we ensure that the proposed income insurance scheme honours Te Tiriti o Waitangi?
 - 2.2.2. What are the opportunities for partnership and Māori representation in the proposed income insurance scheme's governance and operations?
 - 2.2.3. How can we ensure equity of access, participation and outcomes for Māori in the proposed income insurance scheme?
 - 2.2.4. How can we reflect and embed te ao Māori in the proposed income insurance scheme's design?

3. TE TIRITI O WAITANGI

- 3.1. We believe that the best way to honour Te Tiriti o Waitangi in the scheme is to give effect to the words of the Māori text (Te Tiriti o Waitangi) as opposed to the English text (The Treaty of Waitangi). This is the preferred text alongside the doctrine of *contra proferentem*, because Māori rangatira only signed the terms detailed in Te Tiriti, opposed to the Treaty.
- 3.2. The Ministry must prefer the Te Reo wording, and not rely solely on the principles of the Treaty. Māori did not sign Te Tiriti on the promise of the Treaty Principles as they have been interpreted in the modern day. The Treaty principles do not encompass a full commitment to Te Tiriti, but are a reconciliation of Te Tiriti and The Treaty in a way that best fits the colonial system.

Kāwanatanga

- 3.3. We believe that equal partnership is the best way to exercise kāwanatanga.
- 3.4. The principle of kāwanatanga should be exercised in a way that gives Māori equal partnership with the Crown in all aspects. Partnership alone does not place enough burden on the Crown to act according to the wishes of Māori, but merely to 'work together' if they need to. The Crown should be held to this higher standard of equal partnership if the principle of kāwanatanga is to be truly honoured.
- 3.5. Simple representation in governance/board positions in this scheme is not the same as equal partnership. Māori Advisory groups will be very beneficial in all stages of the scheme, to give expert advice to the Crown on Māori issues. Māori board members, academics and policy developers will be

key in moving forward with this scheme effectively. But because their advice and recommendations are not binding on the Crown, they are not enough to amount to equal partnership. If the Crown has the power to disregard important information relating to Māori in this space, it will be in breach of Te Tiriti by putting our people at risk.

- 3.6. Māori must have the same power as the Crown when it comes to decision-making. Māori never ceded sovereignty,¹ and therefore have the right to be at the same level as the Crown, and not underneath. Te Paati Māori | The Māori Party gives an example of this in their COVID-19 Pandemic Response Plan, where they suggest that anything that is signed off by the Minister of Health must also be signed off by the Minister of Māori Affairs.² Māori need to have the same decision-making power at every level possible in order to receive the good governance and partnership promised in the principle of kāwanatanga.

Tino Rangatiratanga

- 3.7. We support the application of tino rangatiratanga within the scheme, but further submit that it must be applied with a wider scope. The essence of the doctrine of tino rangatiratanga is that Māori have complete and absolute sovereignty over their practices, places and people.
- 3.8. Tino Rangatiratanga must have its place in the scheme in order for it to honour Te Tiriti. The mandatory imposition of this scheme by the Crown onto Māori is at its core a breach of tino rangatiratanga. It will dictate how Māori run their businesses and how Māori workers spend their pay. The scheme should facilitate options for Māori, that empower them to make decisions that best suit them and their situation.. This could look like an opt-out scheme for workers, similar to the Kiwi-Saver scheme. We believe that employees should be able to dictate what happens to their pay as much as possible, especially in light of the economic challenges of the COVID-19 pandemic, the rising cost of living and inflation rates. The Crown must do everything in its power to ensure the scheme is appropriate for Māori, co-design on the scheme with Māori is the most important step.

4. EQUITY AND ACCESS OF OUTCOMES (RITE TAHI)

- 4.1. We submit that the best way to achieve equity in this scheme will be to consider the ways in which the scheme will impact Māori and how best to support them in their roles as both employees and employers. Māori will be impacted differently depending on which roles they play, and accordingly, will need different kinds of support.

¹ Te Rōpū Whakamana i te Tiriti o Wāitangi | Waitangi Tribunal *He Whakaputanga me te Tiriti* | *The Declaration and the Treaty* (Wai 1040, 2014) at 529.

² Te Paati Māori | The Māori Party “Covid-19 Pandemic Response Plan - Executive Summary” (17 November 2021) <https://www.maoriparty.org.nz/covid_19_pandemic_response_plan> .

Māori Employees

- 4.2. Māori employees will need protection as they are an adversely at-risk group. As explained in the Discussion Document, Māori are over-represented in lower-skilled, lesser paying jobs, and in casual work, therefore they are the most vulnerable group to job displacement. This scheme would provide much needed support for Māori who have lost their jobs - not only help get them back to work, but also to upskill and seek higher-paying opportunities. Māori are also disproportionately more likely to leave work for health or disability reasons, and older workers face higher rates of displacement due to a health condition or disability. This scheme will be especially relevant for Māori who work in the primary industries that have struggled during the COVID-19 pandemic, as the Discussion Document states, 'young people, and young Māori in particular, are disproportionately likely to be displaced' as an impact of COVID-19. It is critical that the Ministry create mechanisms that best help protect Māori workers in this scheme.
- 4.3. The Ministry must also consider the economic burden this will place on Māori who will never actually receive an income insurance pay-out. While the proposed 1.39% may not seem like much, page 40 of the Discussion Document shows that a person working 40 hours a week, earning \$880 per week will pay \$12.23 a week to this social insurance levy. This amounts to over \$600 a year. Māori workers who are already facing financial stress from supporting family members, the rising cost of living and inflation, and the recent economic impacts of COVID-19 may not be able to afford this added cost. The \$600 could be the difference in a whānau being able to use heating this winter, purchasing warm clothing or simply being able to put food on the table. Unlike Kiwi-saver payments, the proposed income insurance payments will not be given back unless you have been displaced from your job. The Ministry must seriously consider the impact that these levies will have on lower-income Māori employees. We recommend there be some leniency around finances, especially stressful times such as winter, or Christmas when individuals who have not been displaced, yet have been contributing are able to access some of their saved funds.

Māori Employers

- 4.4. Māori employers will bear a large economic burden under this scheme. Employers have faced rising costs since the beginning of the COVID-19 pandemic. While we believe that this scheme will be beneficial for Māori in the long-term, it undoubtedly comes at a bad time for employers. They will be subject to the same 1.39% levy at a time where businesses are getting back on their feet. Many Māori employers work for communities that may be impacted if they have less money in their budgets.
- 4.5. Māori employers often work in Māori systems that may be incompatible with the scheme. The proposed income insurance scheme will come with a certain amount of admin on behalf of the employer that may not be compatible with systems in place in Māori workplaces. In particular, Iwi organisations and Māori Land Trusts may not be as adequately equipped to handle this scheme as

larger established companies, or providers of private income insurance. The same extends to Māori small business owners. In order for this scheme to be delivered effectively and have the best outcomes for Māori, the Ministry must consider how employers will be educated about the scheme, and advised about the infrastructure that needs to be put in place.

Māori not in employment

- 4.6. Ngā Rangahautira are concerned that Māori who do not use income insurance may suffer an undue burden. As far as is outlined, the scheme extends itself to a small number of circumstances in which it applies. A group of Māori will not be eligible for the proposed scheme as they belong to the over-represented group of working-age people in receipt of main benefits. As they are not in employment, they are unable to build contributions. It is important that this proposed scheme is therefore looked at alongside the entirety of the welfare system here in New Zealand, to ensure that all levels of benefits improve Māori and help them into employment so they may receive this scheme.

5. TE AO MĀORI

- 5.1. We submit that the best way to reflect te ao Māori in the scheme is to incorporate Māori values and the Māori outlook on life. The only way to bring te ao Māori to life is to see things through a lens that considers not just the physical, but mental and spiritual aspects in every situation.
- 5.2. The Ministry should consider making a framework that incorporates Māori values. Many other government entities use frameworks, or Māori specific strategic plans to ensure that the work they do for Māori is in line with those values. An example the Ministry should consider is the He Ara Waiora framework from Te Tai Ōhanga | The Treasury.³ It was developed by their tax working group that considered how tikanga Māori could impact the tax system. This is a part of their living standards framework, that details these key principles:
- 5.2.1. Kotahitanga - working in an aligned, coordinated way
 - 5.2.2. Tikanga - making decisions in accordance with the right values and processes, including in partnership with the Treaty partner
 - 5.2.3. Whanaungatanga - fostering strong relationships through kinship and/or shared experience that provide a shared sense of wellbeing
 - 5.2.4. Manaakitanga - enhancing the mana of others through a process of showing proper care and respect
 - 5.2.5. Tiakitanga - guardianship, stewardship (e.g. of the environment, particular taonga or other important processes and systems).
- 5.3. If the Ministry decides to implement Māori tikanga and kawa (practices and values), it must be conscious of how they are exercised. We recommend working closely with Māori in deciding which

³ Te Tai Ōhanga | The Treasury *He Ara Waiora - Brief Overview A3* (May 2021).

principles, where and how they should be applied. They are guiding values that can be interpreted in many different ways. The Ministry should implement values that work towards the betterment of te iwi Māori in every aspect possible.

6. CONCLUSION

- 6.1. In closing, we recommend that the Ministry put further consideration into the impacts the scheme will have on Māori before moving forward. There is more to be done in terms of honouring Te Tiriti in the scheme as it stands, keeping in mind the exercise of kāwanatanga and tino rangatiratanga.
- 6.2. Thank you for the opportunity to submit this scheme. We hope you take our comments into consideration.
- 6.3. If you have any pātai or wish to discuss our submission further, please feel free to contact Melissa Tahere at ngarangahautira1986@gmail.com.

Aku mihi nui ki a koutou,

Kaea Hudson and Melissa Tahere,
On behalf of Ngā Rangahautira.