

RCSA Submission to the Ministry of Business, Innovation and Employment

Response to the New Zealand Income Insurance Scheme Discussion Document

26 April 2022

Overview

The Recruitment, Consulting and Staffing Association (RCSA) welcomes the opportunity to make a submission to the Ministry of Business, Innovation and Employment (MBIE) in response to the New Zealand Income Insurance Scheme Discussion Document (the scheme).

RCSA is the peak body for the recruitment, staffing and workforce solutions industry in Aotearoa New Zealand and Australia, representing a membership of over 850 businesses in recruitment and staffing, including on-hire worker services – also known as triangular employment, agency work, labour-hire and contracting services. Our members source, place, and assign workers across a variety of industries and workplaces, supporting labour and professional demands across all forms of business and government.

Staffing agencies are specialist employers and workforce managers who are critical to New Zealand's economy. Not only do our members engage and deliver flexible workforces across the labour market, they also offer employment opportunities to displaced workers, workers with health conditions and disabilities that prevent them from working permanent hours, and many others who may not fit the mold of permanent work.

RCSA sees its relationship with MBIE and, in future, the Accident Compensation Corporation (ACC), as vital in the Government's bid to protect displaced workers, as it is our members who can best facilitate movement and placement of workers within the labour market. On-hire work offers people the ability to engage with New Zealand's employment market in a unique and autonomous way, by permitting them to trial different types of work and workplaces, ultimately finding work that fits with their circumstances. Perhaps most relevant to this submission, on-hire work also permits people to remain connected to work and skills training if they have been made redundant, helping workers avoid the devastating impacts of long-term unemployment.

Any scheme or initiative that seeks to deliver confidence in the future of work in New Zealand and offer protections for those who take on jobs in dynamic, yet potentially risky sectors, should therefore complement the activities of both our industry and the broader market. The scheme in which this submission pertains to raises more questions and concerns than genuine solutions to enhancing and evolving New Zealand's labour market. Concerns that RCSA believes, left unaddressed, will hinder the prospects of those it seeks to bolster.

Timing

RCSA perceives the proposal of the scheme as inconsistent with the realities of the employment market. Unemployment currently sits at 3.2%. Job security continues to increase, and wages continue to rise.¹ Our members are reporting that the New Zealand market is experiencing an unprecedented shortage of skills and labour. As confidence returns to a market emerging from strict lockdowns, recruiters note that businesses are keen to secure the scarce talent that remains. For many, this means becoming more responsive to the terms and conditions of conditions laid out by candidates.

To this end, we are seeing contracts being better tailored to suit individuals' needs. Employers know how important it is, in this climate, to be flexible when it comes to attracting and retaining talent. It also indicates that the market has moved faster and more efficiently than Government policy in this area.

Our members report that many businesses, challenged by the tight labour market, are responding to the skills crisis by making changes to their organisational structure and hiring needs. Indeed, many are now leaning upon the expert consulting services of recruitment and staffing firms to help guide their understanding of the market and better shape their hiring needs within that climate. Should we find ourselves in a labour market where there are high levels of unemployment and greater re-skilling challenges, the scheme might make more sense. But in the current climate, it does not.

Existing structures

The scheme seeks to avoid 'unnecessary' or 'non-genuine' redundancies in a market that has already pivoted to achieve exactly these outcomes. This objective also overlaps with the role of the Employment Relations Authority (ERA), which is already in place to resolve employment relationship problems—including non-genuine redundancies.

Rather than creating an entirely new framework, the Government may consider strengthening the ERA, carrying across the legal definitions and enforcement standards as outlined in Proposal 2.² By proposing the scheme, it appears that the Government seeks to avoid all redundancies, genuine or not. This reflects a misunderstanding of how business and employment operate.

There are also existing structures that cover those who the scheme intends to support. The Jobseeker Support payment is available for those who have been made redundant. While the current criteria considers partner income and combined assets, this can easily be modified to ensure that anyone who has been made redundant, provided they meet other eligibility criteria, can access support while they look for other work. This includes the already available assistance offered by the Ministry of Social Development (MSD) to help individuals find new employment and engage with re-training should they wish to transition to another industry.

Additionally, the ACC currently covers most injuries resulting from an accident, has the exact requirements, and offers the same support as the proposed scheme. It is also already funded through employer and employee levies.

¹ Stats NZ. *Unemployment rate at 3.2 percent*. Retrieved April 19 2022, from <https://www.stats.govt.nz/news/unemployment-rate-at-3-2-percent>.

² Tripartite Unemployment Insurance Working Group. (2022). *A New Zealand Income Insurance Scheme*. p. 94. Retrieved April 15 2022, from <https://www.mbie.govt.nz/dmsdocument/18666-a-new-zealand-income-insurance-scheme-a-discussion-document>.

Establishing a new model that only replicates the existing two—albeit while also slightly expanding—is not what the New Zealand labour market needs. Existing models should be examined and strengthened, avoiding the need to create a new levy to achieve the same outcomes these existing payments and supports have been established to address. As discussed above, RCSA believes that we have a clear role to play in strengthening these processes through our membership networks and the capacity to connect people with employment that is suitable to them.

Scope

While we understand that the scheme was intended to address workers displaced by the eventual closure of coal mines in New Zealand, the reality is that many of these workers will not want to forfeit these salaries or their skills. From what our members have described, displaced workers in mining and similar industries will simply look overseas for comparable work, and with the likes of Australia offering six figure salaries, these global opportunities will also come with a higher wage too. This means not only that the workers for whom the scheme was designed for are unlikely to even utilise it, but that without a more targeted approach to transitioning such workers, we will see even more New Zealanders simply leaving for jobs in the global market.

Beyond this, RCSA holds concerns as to the scheme’s application to the on-hire/triangular model of employment. As we expand on these concerns below, we do not see how the scheme can be applied to fixed-term and casual employees, including on-hire, without changing the legal nature of such engagements and creating other issues for employers. We also contend the extensive use of the term “good” in reference to the type of employment that workers should be returned to is problematic—far too open to subjectivity and prejudice of Government, the ACC, and workers, and potentially excluding workers for jobs they would be perfectly suited for, and even benefit from.

With all things considered, RCSA submits that the scheme is ill-timed and careless in the face of other, more suitable initiatives to improve the current framework and services for unemployed, injured, and disabled workers. We therefore do not support the implementation of the Income Protection Insurance Scheme, and especially not in its proposed form.

Application to the on-hire/triangular employment model

In New Zealand, employment agencies typically employ their on-hire workers through casual individual employment agreements and/or fixed-term contracts. The use of either, or both, is a commercial decision for the employment agency. The decision to enter into such an agreement or contract, and accept its terms and conditions, is one for the worker.

On-hire casual individual employment agreements

Under an on-hire casual individual employment agreement, a worker is employed on a casual basis. This means that they have agreed to work “as required” by the client of the employment agency. As such, they have no guaranteed hours of work, no regular pattern of work, and ***no ongoing expectation of employment***. In fact, the absence of an expectation of ongoing employment is articulated on the employment.govt.nz website. Additionally, the employment agency does not have to offer work to the employee, and the employee does not have to accept work if it is offered, which is also emphasised on the website. Outside of their casual individual employment agreement with an employment agency, an on-hire worker is free to enter into employment agreements with other employers, whether that is on a full-time, part-time, or casual basis.

Put simply, casual employees, including those who are employed by employment agencies, do not belong in the Income Insurance Scheme. Individuals who are hired on a casual basis are used to fill intermittent and irregular gaps in the workforce. In signing a casual employment agreement, an individual acknowledges that their employment is likely to cease to exist after a certain period. It is this awareness, and in fact the absence of it, that redundancy payments and income insurance seek to compensate permanent employees for.

Beyond the above, the moment a casual employee meets the eligibility requirements of a 'regular pattern of work', it is arguable that they are not, in law, a casual employee. To this end, the discussion document, and the Government, contradicts itself in even considering whether 'casual employees' who meet this criterion should be included.

Furthermore, the scheme should not have the power to determine employment status. Employment status should be as contracted between the parties and any disputes on the nature of a person's employment should be reserved solely for the courts. These decisions are complex and nuanced and require expert evaluation, not the blunt instrument of legislation or policy. RCSA fears that the unintended consequences and risk of such decisions, especially if they were to be made without appropriate qualification and jurisdiction, are too great.

The proposed capacity for the scheme to ignore the expert decisions, even where it has produced a differing result, is also concerning. It highlights the Government's desire for the scheme to override not only the current social services framework, but our established and trusted legal processes too. Should these decisions vary, it would also be unclear how the employer and employee would proceed, what remedies they would be entitled to, and which status would take precedence.

On-hire fixed-term contracts

Like casual employees, RCSA also contends that the scheme cannot be applied to on-hire workers who are engaged on fixed-term contracts. In addition to outlining employment status (i.e., full-time or part-time) and a summary of assignment details, fixed-term on-hire contracts contain ***a date of termination of agreement.***

Analogous to casual employees, fixed-term employees are there to fill workforce gaps, such as maternity leave or to cover other clear periods of absence. They are also utilised—including by Government—to carry out projects that have a clear start and end date. In compensation for these shorter-term agreements, fixed-term employees are also competitively remunerated. With a clear date of termination, it also means that throughout their employment they can line up their next job, and even hold multiple contracts at a time.

Our members describe that for many on-hire employees, fixed-term assignment-based employment is a preference. Particularly for those who specialize in IT and software development, where there is a critical need for skills, fixed-term contracts offer higher wages and more diverse work opportunities. Not bound to a single employer, workers can play the different contracts off each other and use them to negotiate higher earnings. They can also line them up so that they can do multiple contracts at any one time, move from one straight to the other, and take holidays and breaks when they need to. Ultimately, they will take on a contract when it works for them.

Working with multiple employers and on various projects also means that these workers have the skills to transition easily across the workforce. Rather than having the one job with the one employer, fixed-term on-hire employees move from client to client and even industry to industry. This permits them to build a diverse range of professional and social skillsets to ensure that they

have the adaptability to successfully enter and contribute to the workplaces they agree to go to. This mobility highlights how employment agencies are already moving ahead of Government policy by re-skilling, up-skilling, and transitioning workers across the employment market.

When the agreement does terminate on the specific date, the project or need for the worker to fill the gap ends—not the job. When this happens, many fixed-term employees will either have another contract lined up or will be assisted by the employment agency to find other work. That retained connection with an employment agency also ensures that these workers do not become ‘displaced’.

With all the above considered, RCSA submits that on-hire fixed-term employment does not align with the intentions of the scheme. On-hire fixed-term employees agree to a contract that explicitly outlines a date of termination, meaning they have had adequate notice of the date their employment will finish and often ample time to organise work following this period should they choose to. The inclusion of on-hired fixed-term employees in a scheme designed to protect people for adverse events beyond their control, ignores the amount of notice and control that fixed-term employees are given within the contract, abating the scheme to the point that ‘displacement’ covers anyone who has found themselves outside of an employment arrangement.

On-hire independent contractor contracts

It also interesting to note that the only mention of on-hire, or labour-hire, in the discussion document is in reference to the coverage of self-employed workers. For RCSA, this indicates a clear misunderstanding of our industry given the relatively low number of on-hire workers engaged as contractors and the preference of these workers to be engaged this way. This is most predominant in the medical sector and again, in IT.

The experience of our members who supply into these sectors suggests that this preference is driven by several factors. Often, they are supplementing their permanent income with additional work and therefore do not want to be engaged as an employee of the on-hire agency. They enjoy the flexibility of being able to charge their own rates for the job or project, as well as the ability to determine their own working schedule and hours. These individuals are also usually working in sectors where skills requirement and remuneration levels are higher and where demand is significant. Because of this, they have increased bargaining power (beyond that of a fixed-term employee) which allows them to set their own terms of engagement in a way that works best for them.

Accordingly, RCSA is extremely doubtful that those workers who prefer, and even demand, independent contractor working relationships, and who are often in high demand for their skills, will be receptive to paying a compulsory levy in the highly unlikely event they find themselves out of a job.

The ‘good jobs’ fallacy

RCSA holds deep concerns as to the use of the term ‘good jobs’ in reference to an income insurance claimant’s obligation to accept certain types of employment. The discussion document defines ‘good jobs’ as those that can provide similar pay and conditions to what the worker was receiving before they lost their job. Such a definition is problematic for several reasons. Most notably, however, is the apparent detachment such a definition has from the realities of transitioning workers across industries, especially workers who are unfamiliar with new technologies and are required to learn new skills.

The reality is that for most workers who become displaced due to their industry being phased out or their employer closing, the likelihood of transition across the workforce to an equal or higher paying job is low. As described in the overview, the prospect of having to begin again in another industry forces many to consider global employment opportunities. And with global wages increasing at a rate that New Zealand has been unable to keep up with, this often allows them to remain in a familiar industry with the skills they have already acquired, and earn a higher income.

For the workers that do remain in New Zealand, encouraging them to compare the pay and conditions of their former job, which may have been at the higher end, with a job offer before them, actively dissuades workers from thinking long-term. Rather than considering the consequences of long-term unemployment and the opportunities that may sit behind such an offer, the idea that a similar job is out there, strings them along with an empty promise for the duration of the scheme—until, at the very end, they are forced to enter into a working arrangement that is purely motivated by financial security.

It also works to prevent claimants from exploring other forms of work, like on-hire. RCSA appreciates that on-hire is not a conventional model of employment. However, the benefits, especially for those who are experiencing unemployment due to redundancy, a health condition or disability, can be lifechanging. On-hire work permits people to regain control over their working life. It allows individuals to test out new careers, workplaces, learn new skills and even explore their own country. The transient nature of on-hire also means that it is also flexible and can be customized to fit in with the life of the person—as opposed to fitting life around work. For people who are experiencing unemployment, or who has a newly discovered or acquired health condition or disability, on-hire is an opportunity to have an advocate in the employment market who can advise on suitable roles and professional pathways that they may never have considered before. Nevertheless, without removing the requirement for a claimant to compare each offer with their old job, RCSA see sit likely that the opportunities afforded by on-hire will be overlooked as the claimant seeks to replicate exactly what they had before they found themselves out of work.

RCSA submits that the term ‘good jobs’ and associated definition be removed if the scheme truly seeks to avoid people remaining unemployed and disconnected from work.

Reform and partnership

As touched on in the overview, RCSA does not perceive a need for a scheme that only doubles-up on existing structures. Instead, we see opportunity for reform and partnership within these.

The current obligations for individuals receiving Jobseeker Support from MSD are rigid in comparison to those proposed for claimants of the insurance scheme.

MSD requires a jobseeker to:

- be available for and take reasonable steps to get a suitable job;
- take any offer of suitable employment;
- attend and take part in job interviews and interviews with MSD as required;
- work with MSD to plan how the individual will find a suitable a job; and
- take part in any job training courses, work experience or the like that is recommended and will improve a person’s work readiness.

There is no opportunity to waive these obligations in favour of undertaking training or participating in Active Labour Market Programmes (ALMPs). Failure to meet any of these obligations without good and sufficient reason is most likely to result in the benefit being reduced or stopped.

By comparison, for a claimant of the income insurance scheme, it is proposed that they will be required to:

- devise a plan to return to work;
- actively search for work and demonstrate such activities; and
- accept suitable offers of employment that offer at least pre-displacement wages and other terms and conditions or are seen by both claimant and insurer as suitable, given work capacity and other care responsibilities.

It is also proposed that these obligations be waived where the claimant:

- has a health condition or disability;
- is undertaking approved training;
- is participating in ALMPs; or
- has had a change in childcare responsibilities while in receipt of income insurance that may prevent them from returning to similar or any work.

The insurer can also assist claimants in meeting their obligations, by connecting them to appropriate employment service and job opportunities and using case management to understand individual needs and barriers, and to develop a suitable return-to-work plan.

Jobseeker Support recipients are clearly at the helm of MSD's determination and decision as to suitable employment. By removing the agency from job searching, recipients have reduced control over how they choose to engage with work following unemployment. This result of this may contribute to issues that the income insurance scheme has committed to addressing, such as wage scarring and income smoothing.

Instead of implementing an entirely new scheme, the Government may consider adopting the proposals and objectives outlined in the discussion document throughout its social welfare programs. Aside from the requirement to accept only suitable offers of employment that offer at least pre-displacement wages and conditions, which as described above is an unrealistic obligation that carries the potential to create adverse results for claimants, the obligations of the scheme give jobseekers far greater control over their employment pathway.

Offering a far more tailored and autonomous approach to job re-entry, these obligations allow jobseekers to devise their own plan to return to work, complete their own job searches, and access case management as they require. They also offer occasion to undertake vocational training in place of job searching. This flexible approach gives individuals the appropriate time and consideration they need to connect with themselves, their aspirations, and discover training and work that aligns with this.

This is also where RCSA sees great opportunity to partner with the Government. Our members are the canaries in the coal mines of the labour market. They see the threads thinning in the fabric of our workforce before they are gaping holes. They know where workers are needed, and most importantly, they know how to get them there. Equally, our members—in their representation of candidates—understand how people are connecting with work in the modern age. They have unique insights into the types of work that people are looking for and the motivators behind them taking on

work. This is all valuable information that can help guide the Government's future of work initiatives.

Not only do we see ourselves as information sharing partners, but we also see the flexibility of our members and their workforces as key to offering displaced workers opportunities to take up employment in new, dynamic, and risky sectors, without costing them security. As always, RCSA is open to further discussing such initiatives with the Government, MBIE, ACC and MSD.

Summary

RCSA does not view genuine redundancy and job loss as a policy issue currently in need of addressing. If it is specific industries and workers the Government is seeking to transition, efforts should be targeted. Likewise, if the Government is wanting to prevent non-genuine redundancies and better support unemployed, injured, or disabled workers, there are mechanisms in place that can be bolstered to do so. Introducing a brand-new broad-brush scheme that requires all employers and employees to pay a compulsory levy creates more problems than it seeks to solve, and only demonstrates a disconnect between Government, business, and the realities of the employment market.

About RCSA

RCSA is the peak body for the recruitment, staffing and workforce solutions industry in Aotearoa New Zealand and Australia.

RCSA promotes and facilitates professional practice within the recruitment and staffing industry. It sets the benchmark for industry standards through representation, education, research and business advisory support to our member organisations and accredited professionals who are bound by the RCSA Code for Professional Conduct.

In addition to the Code, RCSA has established the StaffSure Certification Scheme. StaffSure permits business, government, and workers to find and partner with reputable Workforce Service Providers such as on-hire companies, professional contracting firms and private employment agencies. Going beyond most Labour Hire Licensing Schemes, providers are independently audited against the StaffSure Standard, which includes a fit and proper person check, work status and remuneration, financial assurance, safe work, immigration, and accommodation.

RCSA is also a proud member of the World Employment Confederation (WEC), the voice of the recruitment and staffing industry across 50 countries, and Business NZ, New Zealand's largest and most representative business network.