

From: Privacy of [REDACTED]
To: [IncomeInsurance](#)
Subject: Re: Submission: NZ Income Insurance Scheme
Date: Tuesday, 26 April 2022 4:53:32 pm
Attachments: [7439cfc9.jpeg](#)

Hi there

I am having trouble getting my PDF to attach in my email.

I am including our submission below for ease of reference, to get it in before the deadline, in the meantime however I will keep trying to send it across as an attachment.

NZ INCOME INSURANCE SCHEME SUBMISSION

- The scheme itself will attract a wide range of views depending on political and philosophical positions – it is not proposed that RITANZ comments on the necessity or desirability of this scheme.
- In general, RITANZ would be concerned if this scheme were rushed through. There are obviously significant impacts on all stakeholders. It is difficult to answer some of the very specific questions being posed without access to any modelling that has occurred. A consideration needs to be given to the interface with other areas of legislation including the Companies Act 1993 and the Insolvency Act 2006.
- RITANZ' comments will, at this stage be limited to the practical effect and implementation of the scheme as it affects insolvent entities. Insolvency practitioners are more likely to be required to consider cases of displacement (redundancy) and, in particular, employers' obligations to make a bridging payment, on top of 4 weeks' notice, upon displacement. This is a form of compulsory redundancy payment which needs to be carefully considered in an insolvency where a number of stakeholders will be competing for an equitable distribution of limited assets.
- The rationale for this "bridging payment" is to discourage unnecessary or spurious redundancies by ensuring that employers face a direct cost in making people redundant (see discussion paper at page 93).

Issues

- RITANZ considers that aspects of this scheme may reduce flexibility and lead to unintended consequences where an employer entity is insolvent or requires a restructure to remain viable. The following examples should be considered:
 - Where a company facing insolvency is advised that a restructure is required and 30 out of 150 workers must be displaced. The cost of employing those 30 workers for a further 4 weeks, then paying the first month's bridging payment (on top of any contractual redundancy entitlements) could be prohibitive. This could influence a decision to cease trading altogether, putting all 150 employees out of work;
 - Where a receiver is appointed and decides to continue trading. There may need to be some displacement of employees in order to reduce costs. This itself would trigger the notice and bridging payment requirements which may not be achievable by the ailing business. Furthermore, in order to avoid personal liability for wages after the first 14 days of receivership, the Receiver will inevitably make all employees redundant then re-employ them on receivership terms. The scheme may lead to inflexibility with Receivers unlikely to have ability to give 4 weeks' notice or, much less, to make the bridging payment. The prospect of a 7-month entitlement may encourage employees to abandon ship rather than accept the receiver's terms and support the business into a going concern sale or a trade out. Similar considerations may apply when the receiver comes to sell the business and

a new employer is introduced. Would this trigger a further displacement? Would there be a duplication of entitlements? This may be addressed in the definition of "displacement", which should not arise where there has been a technical redundancy but no actual loss of work or reduction in benefits.

- On liquidation of a company, it is likely that all employees will be made redundant. In some cases, the liquidator may trade on for the limited purpose of realising the assets of the company. If the liquidator was required to re-employ the employees, thereby triggering a further entitlement to 4 weeks' notice and a bridging payment, neither of which the company is likely to be able to fund. The additional liability on the company, from this scheme, may discourage a trade on/sale as a going concern which could be in the best interests of all parties.
- Where the costs of the scheme means it is better to do a "Phoenix" structure. The company is closed down immediately (liquidation). The State picks up the cost. The management then re-employs the key staff in a new company, buys the physical assets for minimal price from the liquidator, takes over the lease, and continues on. Affected employees are paid for any down time but basically business resumes on a restructured basis.
- Careful consideration would have to be given in relation to a Voluntary Administration. The scheme may have some impact on who has claims and how they may be recovered. Could a Deed of Company Arrangement vary the obligations under this scheme?
- The additional liability on the company (effectively 8 weeks of wages) may encourage unwise trading on and/or discourage a sensible restructure.
- From a mechanical point of view, it is unclear how the scheme would interface with insolvency law. There is statement that "*In the event a business fails, and the business can't pay, the scheme will cover this payment and seek to recover this from liquidators.*" It is unclear what is proposed in this respect:
 - Would there be an Amendment to 7th schedule (Companies Act) making this entitlement a preferential payment?
 - Would ACC/Scheme pay the first four weeks and claim in liquidation, subrogated to the employees' claims?
 - Payment in lieu of notice is currently not a preferential claim. The basis for this is that employees should only have preference for payments relating to work they have done. This stance should be maintained.
- RITANZ would be happy to make submissions or provide assistance when any legislation is being drafted. This aspect of the scheme needs to be considered through an insolvency law lens. We would also recommend a consideration of what works and what doesn't work in respect of similar overseas schemes such as Australia's Fair Entitlements Guarantee and the UK's compulsory notice and redundancy provisions.

Thanks and kind regards

Nikki
Executive Director



On 2022-04-26 16:46, nikki@ritanz.org.nz wrote:

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Dear Sir/Madam

Please see the attached RITANZ submission on the NZ Income Insurance Scheme for your consideration.

If you have any questions, please don't hesitate to let me know.

Thanks and kind regards

Nikki
Executive Director

