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MEMO

To	MBIE
From	SFF – Employment Relations Team
Date	26 April 2022
Subject	Proposed Income Insurance Scheme

### Summary

An income insurance scheme may have merit and the proposed aims to prevent wage scarring and cushion income shocks are beneficial. However, the proposed scheme

- is flawed in its design and does not provide a solution to the supposed problem
- imposes an additional punitive 4 week bridging cost on employers with no justification
- is both unnecessarily expensive and likely underfunded based on the costs of comparable overseas schemes
- raises serious equity issues and has been deemed “middle class welfare”
- is ripe for exploitation and provides generous incentives for abuse; and
- is unfit for the meat industry.

These will be particualised in more detail below. No submissions address the extension of support due to health or disability. There is sufficient justification for an extension of ACC to cover sickness as initially envisaged by the Woodhouse Report<sup>1</sup>. This could proceed as an extension to ACC not as part of the Income Insurance Scheme (“IIS”).

### Democratic Deficit

We note that such a scheme would be a breach of the Labour Party election manifesto of introducing no new taxes and the Labour party did not campaign on introducing such a scheme. Governments of course have leeway to deal with unforeseen crises and respond accordingly. However, Covid-19 and the implementation of the wage subsidy scheme were well known at the time of the 2020 election. The Labour government sought not to even mention the scheme in its manifesto.<sup>2</sup> Such conventions should matter, and the Labour government has no mandate for introducing such a scheme. If the Labour government wishes to introduce such a scheme, they should clearly include the scheme in tis 2023 manifesto and delay any introduction until after the next election.

If convention is not enough to persuade the Workplace Relations Minster and the Cabinet of the inappropriate nature of introducing such a scheme prior to the 2023 election, the reality that the next government may be led by the National party should disavow the decision makers of any desire to rush through the scheme. This would avoid the farce, and dare I add ignominy, of the scheme being introduced in September 2023 followed by a swift repeal in November 2023.

The proposed scheme will radically restructure the labour market and as such, changes should enjoy, as far as, possible bipartisan support. In the absence of bipartisan support, a clear electoral mandate,

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<sup>1</sup> [Woodhouse Report Compensation for Personal Injury in NZ.pdf \(fyi.org.nz\)](#) The Woodhouse Report Chair, Sir Arthur Owen Woodhouse, “the proposals put forward for injury leave the way entirely open for sickness to follow”

<sup>2</sup> [Labour Manifesto 2020.pdf - Google Drive](#)

careful and extensive consultation of all aspects of the scheme, as well as transparent financial analysis which has been made public. This consultation has failed to meet those standards.

### **Do you agree New Zealand should introduce an income insurance scheme for displacement?**

An IIS for displacement should not be introduced. For the reasons set out below the scheme as proposed is not fit for purpose. If the principal aim is to prevent wage scarring, a short-term higher benefit for those who lose employment which is capped, and means/asset tested and funded through general taxation would be appropriate.

#### **Flawed Rationale – Insufficient Evidence**

In order to demonstrate the need for such a scheme to prevent wage scarring the consultation document cited only one 2017 study. On no reasonable grounds can such limited analysis be the basis for generational change in labour market dynamics. Dean Hyslop of Motu<sup>3</sup> has contested the evidence that insurance schemes assist redundant employees find better jobs. The OECD German Institute of Labour Economics study was cited as an example to show that the evidence for prevention of wage scarring is limited and uncertain.

#### **Flawed Design**

Other contributors and submitters have addressed in detail the inequitable - two-tiered nature of the welfare system created by the scheme<sup>4</sup>, the risk of creating an incentive to delay re-employment creating structurally higher unemployment in NZ, as well as the immorality of the IIS providing welfare to for earners in the top decile. The proposed IIS turns the social safety net into a hammock.

The IIS is regressive as it is paid for by the poorest, who would enjoy meagre benefits when they use the scheme which are not significantly higher than the unemployment benefit and other family related transfer support payments.

Cited MBIE unemployment data demonstrates a regular once in a decade spike in job losses. Households should be required to plan against such eventualities, either through personal savings or private income insurance. It is not the role of the government to provide for those who should be able to provide for themselves. The scheme covers the top decile of earners! The scheme must only cover those who are unable to cover themselves with an appropriate abatement between c\$86k and \$100k.

The salary threshold should be lower or the percentage of payments should be lower to reduce the additional cost of the scheme. Consistency with immigration remuneration thresholds would be appropriate. Individuals earning 1.5\* the median wage earn c\$86K pa and should be the trigger for any abatement. The IIS should be capped at 80% of 3 months wages of a person on 1.5 times the median wage, c \$17k. This is c. one third of the current cap of \$52,324.

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<sup>3</sup> ['Little, if any evidence' income insurance schemes improve job-market outcomes | Stuff.co.nz](#)

<sup>4</sup> [Social Insurance proposal would likely bake-in existing inequities and drive inequality, says anti-poverty organisation • Child Poverty Action Group \(cpag.org.nz\)](#)

## **Labour Market Impacts – Perverse Incentives**

### **Incentivisation of Redundancy**

The consultation document claims that the proposal will also create a much clearer statutory basis for the redundancy process, reducing employers' exposure to litigation without any evidence to support the claim. The redundancy process is well established in NZ and no information was provided as to how this change would impact the employer's good faith obligations Section 4(1A)(c) of the Employment Relations Act 2000 ("ERA") which employers must exercise before ending employment.

New Zealand has around 135,000 businesses with 1 to 19 employees. For those small business, the costs and time of managing poor performing employees and dealing with employee misconduct makes dismissing employees very difficult. This difficulty is spread across the labour market and larger employers either pay for the removal of underperforming employees through legal fees, in settlement at mediation or expensive and time-consuming Employment Relations Authority and Employment Court litigation. This scheme provides employers an incentive to never dismiss employees for anything other than redundancy. The scheme pays out close to double the lost wages provision under section 128(2) of the ERA.

The IIS will create a significant incentive for employers to make employees redundant as opposed to the unappealing options of enduring a 12-week performance improvement process or dismissing employees for misconduct as the taxpayer will be footing the cost for the dismissal. Despite suggestions abuse will be monitored they are not realistic. How will an overstretched and under resourced labour inspectorate team be able to assess 1,000s of redundancy processes?

### **Erosion of Employer Redundancy Schemes**

The consultation document argues that where a redundancy provision exists within an existing employment agreement, it can only be changed with the agreement of both parties. "It is hard to know how this would play out over time, but it is likely both parties would place less reliance on redundancy payments with an income insurance scheme in place."

It is not likely but certain that any employer faced with the cost of any existing redundancy scheme will seek to end the scheme for new employees and seek to reduce, amend or deduct from the scheme any government related contributions, especially the punitive 4 week bridging payment. As an employer we offer a redundancy scheme which can reach \$70k for long serving employees, \$25k after 10 years' service and spent over \$7m on redundancy payments when we closed our plant near Ashburton.

If the IIS must proceed, there is no justification for requiring an employer to make the bridging payment, the contractual redundancy entitlement under the contract of employment and levies for payments from the scheme. Payments must only begin once the quantum of the contractual redundancy has expired. (e.g. if an employee has a contractual redundancy scheme which pays the equivalent of 50% of the scheme value, the employee should not be entitled to more than 50% of the total of the IIS scheme and it should be pro-rated accordingly). The scheme will likely end all but the

public sector redundancy schemes. MBIE may also wish to consider a lower levy for employers with existing redundancy schemes.

### **Independent Contractors**

The IIS risks increasing the attraction for employers to stop employing employees and remove the costs of employment by engaging independent contractors. These additional costs will accelerate the gigification of the economy. Employers in many sectors will look again at whether hiring additional employees is worth the extra cost when many roles in our economy are undertaken by contractors. The IIS risks incentivising pushing more employees into precarious contracting relationships which provide scant protection to the contracting 'employee'. This would increase the vulnerability of a cohort of workers this scheme is looking to support.

### **Destruction of private insurance**

The IIS is undoubtedly a generous scheme with no asset or partner-based tests. It is a radical transformation of the social safety net. This will inevitably crowd out the private insurance market as it removes a large number of individuals from a relatively small pool of New Zealanders who currently purchase private insurance. The scheme's hobbling of the private insurance market is a likely consequence which may increase the frequency of the scheme payouts and drive up the cost of private insurance with fewer individuals in the pool of private insurance.

Other authors have cited in greater detail the cost of the comparable German scheme which has lower payouts and higher input costs through payroll taxes. The figures provided may end up being a gross underestimation of the scheme's true costs. This may result in the II subsidisation of the IIS through general taxation.

### **Interaction with maternity leave**

Redundancy payments under the IIS are evidently financially preferable to paid maternity leave for many women who receive only the statutory paid maternity leave. The IIS will become an incentive for women who have children to work with their employer to be made redundant rather than receive the capped lower maternity payments. This will increase costs and casts doubt on whether the levies will be sufficient to cover the cost of the scheme.

### **The Meat Industry**

#### **Unfit for the Meat Industry - Displacement definition**

"The Forum proposes that a New Zealand income insurance scheme would adopt a definition of displacement consistent with well-established international practice and New Zealand common law... The main elements of this definition would include the loss of work, due to the disestablishment of a position....

*The Forum further proposes to cover fixed-term and seasonal workers beyond the end of the*

*employment agreement, where a regular pattern of work is evident and a reasonable expectation exists of future income. We define these as follows:*

- *Regular pattern of work: workers may establish a pattern of work by repeatedly taking fixed term or seasonal contracts with the same employer.”*

The displacement definition needs to be sufficient narrow so that “seasonally laid off employees who retain the right to return to work” do not receive money from the scheme. As a seasonal employer, we operate in an environment of uncertainty and after many iterations of collective bargaining have arrived at a position whereby our meat workers remain seasonal employees. Seasons vary in length from 6 months to 11.5 months. This year, in particular, with covid related disruption we will have an incredibly short off season at many of our plants. Employees are seasonally laid off in order of seniority based on product availability with quieter periods (and fewer production staff) at the shoulders of the season (June/July and September/October).

As proposed an employee seasonally laid off today, would receive a 4-week bridging payment, 2 months payment from the IIS and could return to work in August. Alternatively, an employee seasonally laid off in the middle of July would receive a 4-week bridging payment and be back at work within a fortnight. The scheme is not designed for such situations and would undermine the very conditions of employment both parties have bargained in good faith. A clear distinction needs to be made between employees who are seasonally laid off and those who are made permanently redundant.

### **Impact on Migrants**

The analysis offered on page 72 of the consultancy document seems to erroneously conflate temporary visa holders with working holiday visas. Over the previous decade the essential skills work visas has been the primary steppingstone to the skilled migrant category residence visa. Therefore, migrants on the new temporary work visas should either be exempted from the levy or be entitled to reap the benefits of the scheme since they will be paying the costs if they have met the criteria.

As temporary work visa holders are required to work, they will meet the requirement for 6 months previous work in 18 months. Moreover, the wages floor for multi-year visas now require payment of at least the media wage of c\$57,200. Migrant workers will be net contributors to the scheme and it is inappropriate for migrants and their employers to pay for the scheme and receive no benefit.

With 3.2% unemployment migrant workers are filling shortages that NZers are unable or unwilling to do. There is no justification for employers having to pay levies on migrant workers who cannot benefit from the scheme. The 1.39% payment cannot be both only a “small cost” to pay for an employer to justify a supposed benefit yet a large incentive to not hire domestic labour. That supposed incentive for an employer to hire a foreign rather than a domestic employee on the median wage is c \$800 per annum. The argument is specious that this will create a meaningful incentive to overlook domestic employees.

### **Interactions between employment law/court**

The IIS will become unworkable unless clear guidance and potential legislative amendments are made to the ERA 00. Clear direction needs to be provided that employees who are unjustifiably dismissed cannot enjoy “double recovery” through a lost wages award and payments from the IIS. Payments for IIS should be expressly included as part of “lost wages” so any determinations for unjustified dismissal ought to be reduced accordingly by IIS payments.

Capped payments for the IIS should align with the 3 month lost wages payments under s128(2) of the ERA otherwise incentives will be created for employers to make employees redundant as opposed to running the gauntlet of personal grievances and the Employment Relations Authority Determinations.

### **Recommendations**

If the Labour government wishes to pursue the scheme despite objections, the payments should continue for no more than 3 months. Those earning over \$100,000 should be excluded from receiving any payments similar to Working For Families and other in work benefits. Assets, alternative sources of income, income of partners/spouses should be assessed prior to any payments being made which may render individual's ineligible for support. There should also be no bridging payment made by employers. Payments must automatically cease when an individual leaves the country for whatever reason. This should cut the cost of scheme significantly. No financial analysis was provided in the consultation document to accurately forecast the cost of the proposed amendments or whether such modifications render the scheme futile and whether a higher short term job loss benefit would become a more attractive to prevent wage scarring and deal with loss of income related shocks. Most importantly for the Meat Industry a clear distinction must be made to ensure temporary seasonally layoffs for employees with the right to return to work are not classified as “displaced.”