Simpson Grierson

Submission by Simpson Grierson Employment Law Group on A New Zealand Income Insurance Scheme

to the Ministry of Business, Innovation and Employment | Hīkina Whakatutuki (**MBIE**)

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BACKGROUND AND SUMMARY

Simpson Grierson is a national law firm. Its Employment Law Group (**Group**) comprises 15 solicitors (including four partners, five senior associates, one senior solicitor and seven solicitors) specialising in employment law and health and safety law. The Group acts for approximately 450 clients, the majority of which are employers.

We have advised a significant number of employers in the public and private sector on issues in relation to redundancy and incapacity to work due to health conditions and disabilities, including obligations under the Employment Relations Act 2000 (**ERA**), Health and Safety at Work Act 2015 and Human Rights Act 1993. While we primarily represent employers, we also act for employee clients in relation to matters involving redundancy and incapacity (including on a pro-bono basis). Members of our team volunteer at the Auckland and Wellington Community Law Centres where advice on issues of this nature is sought.

We therefore welcome the opportunity to make submissions about the proposal for a New Zealand Income Insurance Scheme (**Scheme**) to MBIE.

We support the objectives of the Scheme to:

- minimise the immediate financial impact of losing income and work for workers and their families;
- support workers back to good jobs; and
- support the economy to adjust more rapidly to shocks or downturns.

These objectives touch on concerns which we have observed as on the minds of employers and employees dealing with the uncertainty and financial impacts of the ongoing COVID-19 pandemic.

The Scheme will provide greater certainty to employees on their entitlements when affected by displacement, health conditions or disabilities.

RECOMMENDATIONS: In summary, if the Scheme is implemented we recommend that changes are made:

- the requirement for an employer to pay a bridging payment is removed. Alternatively, if the bridging payment is included, entitlement to an income insurance payment under the Scheme is reduced from six to three months;
- employees are not able to double dip and receive contractual entitlements to redundancy or medical retirement payments as well as an income insurance payment under the Scheme; and
- for claims relating to health conditions or disabilities, there is a review and assessment process by an independent medical practitioner.

Submissions

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?*

A New Zealand Income Insurance Scheme (**Scheme**) has the potential to benefit New Zealanders by providing a safety net to those who lose their work due to displacement or health conditions or disabilities. The extent to which the benefits of the Scheme outweigh the costs will depend on its final design.

The proposed Scheme is not without risk and the current design may create perverse incentives and unintended outcomes. We wish to highlight the following, each of which we explore in further detail throughout our submission:

- The requirement for an employer to pay a four week bridging payment, in addition to the introduction of a four week minimum notice period and six months' income insurance payment under the Scheme, should be removed. We are concerned that a base insurance entitlement length of six months plus a four week bridging payment paid by the employer goes beyond what is necessary to achieve the purposes of the Scheme. If the bridging payment is not removed entitlement to the income insurance payment should be reduced from six months to three months.
- We understand that the purpose of the bridging payment is to discourage employers from cooperating with employees to lodge spurious claims under the Scheme and to prevent unnecessary redundancies. We do not consider that employers should bear the cost of preventing manipulation of the Scheme or that the bridging payment would achieve this purpose. In any event, our experience is that the risk of sham or unnecessary redundancies is negligible and not sufficient justification for a bridging payment, which imposes a significant additional cost on employers.
- There is currently some uncertainty about the circumstances in which employers would be required to pay bridging payments, exposing employers to potential liability for incorrectly interpreting their obligations.
- We can envision that, in some cases, the Scheme may incentivise employees to request redundancy in inappropriate circumstances or hold off from resigning in appropriate circumstances so that they may be eligible under the Scheme.
- We are concerned that the proposed Scheme is in addition to existing contractual redundancy provisions. Many of our clients already voluntarily provide for the possibility of loss of work due to displacement through minimum paid notice periods and redundancy payments. If employees are also eligible under the Scheme, this could result in a double dipping scenario, or potentially triple dipping if the employee is also eligible for other government payments
- Similar concerns arise for terminations for medical incapacity or medical retirements, if an employee receives a contractual payment on termination. Employees are likely to be able to double dip with receiving both income insurance payments under the Scheme and contractual entitlements.

- The Scheme's statutory four week notice period and four week bridging payment at 80 per cent of salary could have the wider implications of setting a de facto standard for negotiating settlement in other exits.
- There is currently a lack of clarity about how employers are to manage situations where less than 100 per cent of capacity to work is lost. Partial and/or temporary replacement of an employee creates a number of risks for employers under the current statutory framework.
- We are concerned that the Scheme does not provide for impartial health assessments, rather focusing on the claimant's health practitioner's assessment. As employee' health practitioners are primarily advocates for the employee, this may create conflicts of interest and make it difficult for the employer and the Scheme to obtain the full information required to assess a claimant's claim.
- We are concerned that offers of employment with lower wages or conditions that are not substantially different from the employee's existing wages or conditions create a risk of being used by employees to turn down otherwise suitable employment, accepting of which would still achieve the aims of the Scheme.

Each of the risks highlighted here, and throughout our submission, will need to be carefully considered and addressed before the Scheme is finalised, if the Scheme is to provide the most benefit to New Zealanders.

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?*
3	*What are the opportunities for partnership and Māori representation in the proposed income insurance scheme's governance and operations?*
4	*How can we ensure equity of access, participation, and outcomes for Māori in the proposed income insurance scheme?*
5	*How can we reflect and embed te ao Māori in the proposed income insurance scheme's design?*

We recommend a process of engagement and consultation directly with Māori about the above matters, which is then followed by a tailoring of the proposed Scheme to ensure it honours Te Tiriti o Waitangi.

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?*

We agree with the definition of displacement as the involuntary loss of work due to the disestablishment of a job. As outlined in the discussion document, this definition is consistent with domestic and international understandings of displacement and is wide enough to capture displacement by restructuring or an entire firm ceasing to operate.

The definition is narrowed by making clear that the loss of work must be involuntary. Therefore, the loss of work cannot be at the employee's initiative (ie by resignation). We agree that employees who voluntarily resign should not be eligible under the Scheme. Resignation is discussed further in question 8.

The definition is further narrowed by the clarifying phrase "*due to the disestablishment of a job*". This excludes loss of work at the employer's initiative for reasons other than disestablishment, for example, dismissal for poor performance or gross misconduct. We agree that employees who are dismissed for poor performance or gross misconduct should not be eligible under the Scheme. Dismissal for poor performance or gross misconduct is discussed further in question 7. We also note "gross" misconduct is no longer a term widely used in employment law. It is either misconduct or serious misconduct.[1]

Disestablishment is accepted to mean that a role has been made redundant because it is surplus to business needs. We consider that the use of this term aligns with the intention of the Scheme to support workers who have lost work involuntarily due to a restructure or a firm ceasing to operate.

We do not agree with the use of the phrase "laid off", which is used throughout the proposal and discussion documents. "Laid off" is not a technical term in employment law and its colloquial usage can mean dismissal of workers more generally or, where it refers to ending a worker's employment, it is often taken to be temporary. The use of this phrase may cause uncertainty on which workers are eligible under the Scheme. We instead recommend the consistent use of the word displacement, as defined.

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

We agree that poor performance and gross (serious) misconduct should be excluded reasons for claiming insurance. More accurately, we note that all reasons *other than* the involuntary loss of work due to the disestablishment of a job (or a health condition or disability) should be excluded as reasons for claiming insurance. For example, repeated lower level misconduct, dismissal during a trial or probationary period, and incompatibility can also result in loss of work but are not necessarily involuntary and due to the disestablishment of a job. Under the current Scheme it is implied but not explicit that loss of work for other reasons, such as these, is not covered by the Scheme. To ensure that all other possibilities are captured, we do not recommend that an exhaustive or closed list of exclusion criteria focusing on poor performance and gross misconduct is used. However, for the purpose of our submission we will continue to refer to poor performance and gross misconduct only.

We would not consider it to be just or equitable for dismissal due to poor performance or gross (serious) misconduct to be covered by the Scheme. We understand the purpose of insurance to be to protect people from the effects of adverse events beyond their control. Poor performance and gross misconduct are examples of events within a worker's control and when a worker is dismissed for one of these reasons they are considered "at fault". Therefore, allowing cover for poor performance or gross misconduct would be inconsistent with the objectives of the Scheme and would increase the financial burden of the Scheme for employers and employees.

Allowing cover in these situations would also create a perverse incentive in that workers looking to move roles could deliberately engage in poor performance or gross misconduct in order to be dismissed and eligible under the Scheme, rather than resign and be excluded from the Scheme. Such an outcome is not desirable from any point of view.

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

Resignation is a voluntary loss of work and so does not meet the definition of displacement.

We agree that the Scheme should not be extended to include resignation as a reason for claiming insurance. This is because resignation is an event within a worker's control. The decision to resign is usually made with the knowledge that the worker will lose or reduce their income for a period of time

1 Employment New Zealand "Misconduct and serious misconduct" (2022) https://www.employment.govt.nz/resolving-problems/types-of-problems/misconduct-and-serious-misconduct/

(eg to be a stay at home parent, take a sabbatical, engage in full time study or retraining) or not at all (eg if the employee is moving straight into a new role). This knowledge means that any loss of income is expected and can be planned for. Therefore, allowing cover for resignation would be inconsistent with the objectives of the Scheme.

Under the proposed Scheme, a worker could claim up to six months of entitlement every 18 months. This means that, if resignation were a permitted reason to claim insurance, a worker could maximise their entitlements by resigning from their employment every 18 months. Even if the Scheme did not nudge behaviour, we consider that ordinary patterns of resignation would be enough to significantly increase the financial burden of the Scheme for employers and employees. This view is based on the Auckland University of Technology Wellbeing@Work study which provides insight on the "turnover intentions" (thoughts of leaving their role) of 1000 New Zealand workers in May 2020, December 2020 and April 2021.[2] The study found an upwards trend of "high turnover thoughts" with an 11.7 per cent increase over the period, peaking at 46.6 per cent of the participants in April 2021.

	May 2020	Dec 2020	April 2021
No turnover thoughts	19.1%	10.7%	9.2%
Low Turnover thoughts	20.1%	27.3%	18.4%
Moderate Turnover thoughts	26.1%	22.4%	26.0%
High Turnover thoughts	34.7%	39.7%	46.4%
	100.0%	100.0%	100.0%

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?*

We agree that the Scheme should only cover complete loss of a job, and situations where a person loses one of several jobs that they hold (assuming there is a minimum threshold for income loss, discussed in question 10).

This approach balances the benefits of extending cover to those in permanent part time employment with the increased costs and administrative difficulties that would arise if cover was also allowed for partial displacement (ie loss of hours within a job).

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?*

We agree that insurance should only be payable where income loss is greater than a minimum threshold of total earnings, counting income from all jobs.

A minimum threshold is necessary from an administrative point of view, to minimise the number of small claims of lost income. We understand that the 20 per cent threshold reflects the intention of the Scheme to only replace up to 80 per cent of pre-displacement income, but question whether the threshold should

2 Professor Jarrod Haar "The 'great resignation', NZ-style" (2021) Auckland University of Technology New Zealand https://news.aut.ac.nz/news/the-great-resignation,-nz-style

instead be based on evidence as to the point at which the income replacement would have a visible impact on income smoothing, as supported by evidence.

Coverage provided for complete job loss only

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

Non-standard workers include casual, fixed term, seasonal, temporary and self-employed workers. We understand the desire to include non-standard workers in the Scheme to extend the benefits of insurance to a wider portion of the labour force, including more vulnerable workers. However, we do not support the Scheme being extended to cover non-standard workers.

Non-standard workers

To the extent that non-standard workers have a regular pattern of work and a reasonable expectation of continued employment, these workers could establish they have been misclassified and be covered under the Scheme as permanent part time or full time workers. This is discussed further at questions 13, 15 and 16.

Casual workers

We do not consider that casual employees should be covered by the Scheme. Although the casual employment relationship is not defined in the Employment Relations Act 2000, it has evolved to mean a mutually beneficial arrangement where work is offered and accepted or declined on each occasion as a new period of employment. No hours of work are guaranteed and the employee is under no obligation to be available. This means that a casual employee cannot be displaced, because they do not technically hold a role capable of being disestablished. Instead, the employer may choose not to offer or the employee not to accept additional periods of employment — as they are entitled to under the employment agreement entered into. This would be the case even if displacement occurs because the employer ceases to operate. We discuss casual employees further at question 16.

Self-employed workers

We do not consider that self-employed workers should be covered by the Scheme. Self-employed workers are not employees, and are not in roles capable of being disestablished. Instead, they are contractors who are deemed to be in a more equal position of bargaining power with their clients. Self-employed workers are assumed to be able to negotiate terms and conditions that factor in the risk of the work not being renewed after a specified period of time and a subsequent loss of income. It is our experience that this risk is often built into the price of the contract, and is why self-employed workers are remunerated at higher levels than employees who require the protection of minimum entitlements. The exception to this is dependent contractors. We discuss self-employed workers further at questions 18-22.

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

We agree that income insurance should cover the loss of reasonably anticipated income, and so (in the case of fixed term and seasonal employees) should be limited to the length of the employment agreement or the maximum insurance entitlement duration, whichever is shorter. However, we note that such a position may result in unintended outcomes.

For example, allowing cover for the loss of reasonably anticipated income may encourage employers to set the duration of fixed term or seasonal agreements for shorter periods, to minimise the risk of having to pay out an employee under the Scheme.

In the alternative, allowing cover for the loss of reasonably anticipated income could cause employers to choose to bear the cost of paying employees up until the end of the date of the employment agreement to avoid the additional costs that would arise from triggering cover under the Scheme. While this would achieve the objective of minimising the immediate financial impact of losing work to the employee (by ensuring there is none), such an outcome would inhibit some of the flexibility that is critical to New Zealand's seasonal industries (eg agriculture and horticulture), which are inherently vulnerable to external factors and difficult to predict.

If seasonal and fixed term workers are covered under the Scheme for the loss of reasonably anticipated income, we recommend that the same income threshold applies as is proposed when multiple jobs are held. For example, (using the proposed 20 per cent threshold) to be eligible under the Scheme, the end of the agreement would need to result in the employee losing 20 per cent or more of their reasonably anticipated income under the agreement. Otherwise, if an employer does not have work for a seasonal worker within a few days or weeks of the end date in the employment agreement, this could trigger a range of benefits wholly disproportionate to the income lost.

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

It is a feature of most non-standard work (casual, fixed term, seasonal) that there is no expectation of work beyond the period contracted for. We do not consider it necessary that income insurance entitlements are based on an 'established pattern of work' because, if one were to exist, the non-standard worker would likely be able to establish that they are in fact a permanent full time or part time worker, and covered by the Scheme.

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?*

We agree that income insurance should cover fixed term and seasonal employees if they are displaced before the end of an employment agreement. This is because the definition of displacement — involuntary loss of a job due to disestablishment — is made out.

We also agree that the duration of the payment should run to the scheduled end of the employment agreement or the maximum insurance entitlement duration, whichever is shorter. It would not be appropriate for fixed term or seasonal workers to be able to recover more under the Scheme than they would be entitled to under their employment agreement and, if the scheduled end of the employment agreement is more than six months, it would be appropriate to limit cover to the same duration as for other types of workers.

However, as discussed above in question 12, we consider that a fixed term or seasonal worker should only be eligible under the Scheme if their loss of reasonably anticipated income is above a minimum threshold.

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?*

We do not consider 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 employment.

The fact of non-renewal of a fixed term or seasonal employment agreement is part of the nature of, and is inherent in, these types of employment relationships. In this sense, when a fixed term or seasonal employee's employment comes to an end without being renewed, on the date that was agreed on, the employee has not been displaced because they have not involuntarily lost work. The loss of the job was at least somewhat at the employee's initiative because the employee agreed to the employment ending at a specified date when they signed the fixed term or seasonal employment agreement.

If fixed term and seasonal employees can show a regular pattern of work and a reasonable expectation of future income beyond the term or expiry of their employment agreement, then it is unlikely they are truly fixed term or seasonal employees. If these employees can establish that they have been misclassified and are more properly permanent part time or full time workers, they will be eligible under the Scheme and would not need to qualify as "non-standard workers".

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?*

It is not unusual for an employee to begin as a casual worker and for the employment relationship to change over time. A regular pattern of work and reasonable expectation of future income are two indications that the employee is or has become a permanent part time or full time worker. If a casual employee can establish that they have been misclassified and are more properly a permanent part time or full time worker, they will be eligible under the Scheme and would not need to qualify as a "non-standard worker".

The Forum proposes that the Scheme should be able to determine whether a casual employee is not truly casual before, and without prejudice to, any separate court decision on the same question. Casual workers claiming insurance would need to identify an event that has interrupted their work and casual employers must certify that they would have employed the casual worker (and how long for) except for that event.

We are concerned by the suggestion that the Scheme could determine employment status. We question which person(s) would be given the authority to make the classification and what training, experience or specialist knowledge they may have. This is a decision that is properly within the jurisdiction of the employment institutions and should not be an administrative decision made by the Scheme — in particular, because employment status has wider employment law implications. If a casual employee is more properly a permanent employee this will change their entitlements, not only under the Scheme, but to the full suite of employment rights and responsibilities.

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

There is no established definition for "regular pattern of work". However, a regular pattern of work will typically be found to exist where the same hours or days are worked across a period of time and can be supported by evidence eg consistent timesheets or payslips.

Without a precise and easy to apply definition, there is a risk that the proposed Scheme could result in increased disputes and costs in resolving disputes as to whether employees are casual or permanent. It is likely that an administrative decision as to employment status made by the Scheme would be challenged in the employment institutions.

If a definition were to be developed for the purposes of the Scheme it could have further reaching consequences and be used in the assessment of employment status more generally.

We also note that with prescriptive definitions there is always an enhanced risk of manipulation by employers or employees trying to be covered or excluded by the Scheme. For example, if "regular pattern of work" was defined as working the same days and times for three out of four consecutive weeks, an employer could deliberately alter the day or time in the final week to avoid creating a regular pattern of work. Alternatively, an employee could look to swap shifts with a colleague in order to create a regular pattern of work that would not otherwise exist.

Coverage provided for self-employed workers

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

We recognise there are risks both with covering and not covering people in self-employment.

If the self-employed are covered by the Scheme, it could significantly increase costs — particularly if the Scheme covers all people in self-employment. However, if the Scheme only covers some self-employed workers eg on an opt-in basis, this could also lead to increased costs due to higher risk workers opting in and lower risk workers opting out, or an increase in uptake during times of economic uncertainty.

We are concerned that there are not enough measures in place to protect the integrity of the Scheme, if self-employed workers are covered. The nature of being self-employed means that workers have greater control over their work, and it would be difficult to verify that any loss of work is involuntary not planned or voluntary.

However, we also acknowledge that if self-employed workers are excluded from the Scheme there is the possibility to create a perverse incentive for employers to hire self-employed workers or classify its employees as self-employed workers to avoid the costs of the Scheme. We consider this unlikely.

If self-employed workers are excluded from the Scheme, it would significantly reduce the complexity and administrative burden of the Scheme. We note, as set out in the discussion document, that no comparable scheme has full compulsory cover for the self-employed, reflecting the difficulties of extending cover to this group of workers.

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

"Dependent contractors" who most closely resemble employees could potentially be covered under the Scheme. However, more work is required to establish a definition of dependent contractors and this should align with the advice of the tripartite Working Group on alternative ways to categorise self-employment.

	We do not consider that "independent contractors" who have autonomy and control over their work should be covered under the Scheme. It is inherent in the classification and choice of work that there will be some level of risk, but independent contractors should be in a position to negotiate and factor in the additional risks of contracting into the terms and conditions of work.
20	*How can we practically distinguish between contractors who resemble employees, and those with a high degree of independence?*
	The question of whether and how to practically distinguish between contractors who resemble employees and those with a high degree of independence is a difficult one that currently is decided by the employment institutions. We do not think it should be decided by the Scheme. We consider that this question fits more properly within the scope of the tripartite Working Group's advice to the Minister for Workplace Relations on alternative ways to categorise self-employment. We agree that no decision should be made as to whether self-employed workers should be covered by the Scheme until the Working Group's advice has been considered.
21	*Because a self-employed person cannot technically be made redundant, what types of events would be appropriate 'triggers' for insurance payments?*
	In order to maintain consistency across the Scheme, we would recommend (to the extent that it is possible) following the same approach for self-employed workers as is taken for workers with multiple part time sources of income. This means the triggering event should be an involuntary loss of income, above a minimum threshold of income from all sources. However, we foresee issues with proving and verifying that any loss of income was involuntary and not planned or voluntary, given the election of self-employed status.
22	*How do you think the levy should be collected from self-employed workers?*
	We consider that the simplest way to collect the levy from self-employed workers is in the same way that ACC levies are collected — by annual invoice. While this would mean that the self-employed worker would bear the full cost of their contribution to the Scheme, it is likely that the cost will be passed on to the client. This approach avoids the practical issues and administrative burdens that would arise if the self-employed worker's "employer" were required to directly pay an equal percentage or via the self-employed worker's invoice, similar to how GST is charged.
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?*
	We agree that there needs to be a minimum contribution period to be eligible to make a claim under the Scheme. We consider that a contribution period of six months over a period of 18 months preceding the claim is a very low threshold and, even with a limit on subsequent claims, the contribution period could be increased to be more in line with comparable international schemes. With a contribution threshold of six months over a period of 18 months an employee could receive a longer entitlement under the Scheme (four weeks' paid notice, the four week bridging payment and six months' support) than the actual contribution made.

Limits on subsequent claims	
24	*Do you agree limits should be placed on the number of claims people can make?*
	Yes.
25	*Do you agree with limiting claims to a total of six months within an 18-month period?*
	We consider that limiting claims to a total of six months within an 18-month period may not go far enough to prevent the Scheme being abused through repeated insurance claims. However, the proposed limit may be appropriate in conjunction with an increased proposed minimum contribution period.
26	*Could the risks associated with a low contribution history be managed in other ways?*
	The risks associated with a low contribution history could alternatively be managed by entitlements increasing on a graduated basis as an employee contributes to the Scheme. However, such an approach would be difficult to administer.
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?*
	The nature of these types of visas is that they are limited to a fixed term and so not all visa holders in these categories would qualify for an income insurance payment under the Scheme during their time in New Zealand. As such, we do not think working holiday makers, international students and temporary work visa holders (and their employers) should be required to contribute to or be able to benefit from the Scheme. We consider that any "disadvantage" this position may create to New Zealand workers is overstated.
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?*
	Yes. Particularly given that the accident compensation scheme has a similar purpose and design to the Scheme, we consider it is important that the replacement rate is consistent across both schemes.
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)?*
	Yes, as above.

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?*
	Yes.
32	*Do you agree that income insurance should have individualised entitlement, meaning a partner's income would not affect the rate payable?*
	Agreed. While the welfare system is based on family income, we consider that the proposed Scheme is more analogous to the accident compensation scheme which is based on an individual's income only. For consistency across the schemes, income insurance should be an individualised entitlement.
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?*
	We agree that the Scheme should have an abatement-free threshold, allowing a person to earn some income from paid employment before it affects their entitlements to income insurance. This approach is consistent with the approach taken to payment of weekly compensation under the accident compensation scheme and incentivises people to pick up part time work while receiving insurance. It would be inconsistent with the objectives of the Scheme (to minimise the immediate financial impact of losing income and work; support workers back to good jobs; and support the economy to adjust more rapidly to shocks or downturns) if the Scheme's design and entitlements discouraged workers from seeking and accepting paid employment.
34	*Do you agree that insurance should abate 'dollar for dollar' when earned income and insurance combined reach 100 percent of previous income?*
	We agree that insurance should abate 'dollar for dollar' when earned income and insurance reach 100 per cent of previous income. Again, this approach is consistent with the approach taken to payment of weekly compensation under the accident compensation scheme and it is consistent with the income-smoothing purposes of the Scheme. 'Dollar for dollar abatement' ensures that no person is better off financially as a result of their redundancy, health condition or disability than if they were in paid employment; this would not be the case if a more gradual approach to abatement was taken (eg losing 70 cents of entitlement per extra dollar of income earned).
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?*
	The purpose of income support (eg main benefits, Working for Families tax credits and student support) is to minimise the impact of having low or no income, and so it is income tested. This purpose is similar to the purpose of the Scheme, to smooth income and support workers back to good jobs. As such, we agree that income insurance should be treated as income for assessing eligibility to income support, noting that this may decrease entitlements in some cases and increase entitlements in others.

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. The availability of these tax credits together with income insurance may reduce the financial incentives for income insurance claimants to return to work. This would be inconsistent with the purpose of the In-Work Tax Credit and Minimum Family Tax Credit.
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?*
	Yes. New Zealand Superannuation and the Veteran's Pension are not income tested, and recipients are still able to work while receiving these benefits. Therefore, the receipt of income insurance should not affect eligibility for New Zealand Superannuation or the Veteran's Pension.
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?*
	There would be a de facto limit of the worker's length of eligibility for the income insurance period. As this period is already limited to 6 months, we do not consider a further limit is necessary.
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?*
	We do not consider that insurance claimants should be able to access both Paid Parental Leave (**PPL**) and income insurance. The purpose of each scheme is to replace some of the income lost, either to support new parents or to support workers who have lost work due to displacement or health conditions or disabilities. If a person was on PPL and then lost their work because of redundancy or a health condition or disability, it would create a double-dipping effect for the person to be eligible under both schemes — regardless of whether payments could be accessed at the same time or sequentially. That person would be better off than their counterparts who are only eligible under the Scheme because they would, in effect, receive payments for lost income twice over.
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?*
	We agree that claimants should be able to 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, but only to the extent that: • the schemes cover a different loss of income;

- entitlements to insurance would not cover lost income already covered by ACC weekly compensation (or vice versa);
- the income insurance would not top up a claimant to more than 80 per cent of previous income (inclusive of any ACC weekly compensation being received); and
- if a worker is receiving ACC weekly compensation but is still working for their employer and subsequently made redundant, that worker could opt to continue to receive payments under one scheme only.

A sufficient base entitlement period

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

We do not agree that there should be a four week bridging payment, where there is a four week notice period and entitlement to six months' income insurance payment under the Scheme.

We are concerned that a base insurance entitlement length of six months plus a four week bridging payment paid by the employer goes beyond what is necessary to achieve the purposes of the Scheme.

We understand that the purpose of the bridging payment is to discourage employers from cooperating with employees to lodge spurious claims under the Scheme and to prevent unnecessary redundancies. We do not consider that employers should bear the cost of preventing manipulation of the Scheme or that the bridging payment would achieve this purpose. In our experience, the risk of sham or unnecessary redundancies is negligible and not sufficient justification for a bridging payment, which imposes a significant additional cost on employers. This is particularly in circumstances where all employees will be guaranteed four weeks' paid notice under the Scheme or where employees are entitled to redundancy compensation under their employment agreement (which would act as a disincentive to employers to cooperate and lodge a spurious claim).

Contractual entitlements

In our experience, many employers voluntarily include redundancy entitlements in their employment agreements. Because the Scheme would be in addition to any contractual entitlements, the financial burden to employers (and workers) of a six month entitlement length and four week bridging payment may be disproportionate to the harm the Scheme tries to address and may result in a windfall for displaced employees.

We have received feedback from clients and are of the view that the Scheme should prevent double dipping with contractual entitlements. As a minimum, the Scheme should not provide cover to workers with contractual entitlements for redundancy that are equal to or greater than what is provided for by the Scheme, and contractual entitlements that are less than what is provided for by the Scheme should reduce cover under the Scheme on a 'dollar for dollar' basis.

Financial burden

In effect, the four week bridging payment plus the four week notice period would create a quasi eight week paid notice period for employees. Where the loss of work is due to redundancy, it is likely employers will struggle to fund this — particularly as redundancies are often undertaken in response to financial difficulty.

Further risks

Further, a seven month entitlement period (base period of six months plus four week bridging payment) does not guarantee favourable employment outcomes. There is a risk that the increased costs of the

Scheme will simply result in longer periods of unemployment and decrease workers' motivation to search for work until the end of the period, without achieving the purposes of the Scheme.

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

We support a shorter length of base insurance entitlement, particularly if the bridging payment is not removed, from six months to three months.

During periods of particular economic uncertainty that may warrant greater support to displaced workers (eg during a pandemic or recession) the entitlement length could be temporarily extended to reflect the circumstances.

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?*

We are concerned that the proposed Scheme is not adequately set up or supported by the infrastructure it would need for extended training or vocational rehabilitation under the Scheme to be fully realised. Currently, there is no program or resource to identify workers' training or vocational rehabilitation needs or appropriate courses available to meet these needs. We consider that individuals who seek further training or vocational rehabilitation, beyond the base period of income insurance entitlements, could access this through the welfare or education systems (eg Studylink/Student Allowance).

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?*

Notice to employees

In our view, the concern that employees are displaced with a lack of notice is overstated. Most employers specify notice periods in their employment agreements and, as a backstop, employers are required to give employees 'reasonable notice'. Our experience is that four weeks or more is a common notice period for most permanent employees and so a minimum notice period would be of no effect.

However, if, as proposed, the Scheme covers non-standard workers (eg casual workers and self-employed workers), a minimum notice period could introduce undue restraints and costs on employment relationships characterised by flexibility. Such a situation may result in differing notice periods for the employment relationship to end in different circumstances (eg four weeks for redundancy but a shorter period for a casual worker to give notice of resignation). This would either result in added complexity or in a four week notice period becoming the de facto for all employment relationships and circumstances, which is not necessarily favourable to either party.

Notice to the insurer

We understand the administrative benefits to the Scheme of the insurer receiving notice before a redundancy takes effect, however, a minimum four week notice period to the insurer may not always be possible.

Avoiding unnecessary redundancies	
45	*Do you agree that employers should pay former workers for the initial period of unemployment for four weeks?*
	We do not agree that an employer should have to pay a bridging payment of four weeks. We outline our concerns about bridging payments in question 41. We also note where the employer already provides compensation for redundancy as a contractual entitlement and this is of an amount equal to or greater than four weeks' salary, in our view, such employers are already disincentivised to undertake unnecessary redundancies and this 'double-dipping' would increase the costs of the Scheme without achieving a corresponding benefit.
46	*Should bridging payments be applied to all workers, including those not eligible for income insurance?*
	Workers who are not eligible for income insurance should not be eligible for bridging payments. We outline our concerns about bridging payments in question 41.
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?*
	Yes.
48	*Do you consider that stronger integrity measures are necessary to manage the risk of spurious claims to the income insurance scheme?*
	Yes. We are concerned by the lack of detail on how the enforcement and monitoring aspects of the Scheme would operate in practice, including how the lack of resources will be remedied. We suggest that, in practice, the process of monitoring and enforcing the Scheme (eg checking that claimants are applying for and accepting suitable roles) will be more labour intensive than anticipated.
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?*
	Yes, we agree the current approach avoids arbitrary distinctions between different types of conditions. We support the evidence based analysis in the discussion document used to reach this conclusion.
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)?*
	Yes, we support that all work arrangements should be covered. However, we question how self-employed workers would be expected to contribute towards the Scheme. Will employer or employee levies be required? Unlike workers' insurance levies that would be matched by their employer, there will be less funds provided from self-employed workers. Will they be entitled to the same insurance payment?

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?*
	In principle, we see no issue with the Scheme covering partial loss of earnings due to a health condition or disability reducing work capacity. We think this provision would meet the objectives of the Scheme. However, we think there should be some protections for employers if their employees' hours are reduced. We think the Scheme should ensure there is scope for employers to be able to hire temporary staff to assist with any reduced capacity (to the extent this is not already covered by section 66 of the Employment Relations Act 2000).
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?*
	We consider the time frame is very short, even as a minimum time frame. If an employee is unable to work for four weeks, they are unlikely to be dismissed in that time, as the process to gather information and reach a final decision is likely to take longer than that. Employees are also likely to be able to use accrued sick leave during at least some of that time. Employees of employers with generous sick leave policies may not suffer any financial loss at all during a four week absence. We consider the minimum period for partial job loss to be covered should be increased to take into account the time a medical incapacity process would take, and the fact that sick leave could be used for some or all of that period. We think further discussion needs to occur about the 50 per cent reduction of work capacity for at least four weeks' threshold. There is insufficient evidence provided in the discussion document to reach a well-reasoned conclusion. We agree there are both issues with the threshold being set too low or too high as outlined in the discussion document. However, we think there needs to be further investigation and explanation about how this threshold best meets the objectives of the Scheme.
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. We think that the claimants' health practitioner's assessment should be subject to an impartial health practitioner's assessment or review. We think the claimants' health practitioner role is primarily a health advocate and this may cause conflicts of interest. In our experience, an employee's health practitioner provides medical information in relation to work capacity in a way that is favourable to the employee (as would be expected). In addition, claimants could change medical practitioner until they receive a favourable assessment. Employers would likely be willing to provide their own views on whether they agree or disagree with the assessment if asked. We agree that monitoring and training should occur for medical practitioners.

54	*Do you agree that, where appropriate, employers could provide supporting information to inform the claimant's work capacity assessment process?*
	Yes. This will ensure the assessment is well-rounded and all factors of the worker's position can be taken into account.
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, the current measures are reasonable. We do not think the Scheme should outline specifically what the reasonable steps are. This is because every workplace is different and employers should have discretion to take reasonable steps to allow claimants to return to regular employment.
56	*How could employers be supported to help workers with health conditions or disabilities to remain in or return to work?*
	We think employers should be supported by the Scheme to support workers to remain in or return to work. If the Scheme uses case workers, we think case workers should support both the employee and the employer to help tailor existing roles to accommodate the claimants' health condition or disability. There should also be financial support offered to employers and education about the worker's condition.
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?*
	We do not agree employers should be expected to keep a role open for six months. This change appears to be contrary to the well-established principle that an employer can terminate employment for medical incapacity, even when there is a prognosis for return to work if that does not align with the reasonable business needs of the employer. The possibility of keeping jobs open for a reasonable period (as judged by the employer) is likely to be raised and considered during the consultation phase of any medical incapacity process, but this proposal goes further than that.
58	*Should this be a statutory requirement placed on employers or an expectation?*
	We do not think this should be a statutory requirement or expectation, and consider that the existing law already places sufficient obligations on employers to consult with employees and act reasonably.
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?*
	We refer to our response to question 41 which, although relates to bridging payments for displaced workers, also applies here. We do not agree that a bridging payment is required at all. We do not think

	the bridging payment achieves the purposes of the Scheme, instead imposing a cost on employers who may already be paying employees (*ie* through sick leave payments during a medical incapacity process, and notice in lieu upon termination). Medical incapacity processes typically take time until a final decision is made, which is required under existing law. Employees are already protected during this time by the general requirement to be subject to a fair process. In situations where bridging payments are required, we suggest that bridging payments should take into account the notice period in employees' employment agreements. We agree the four week bridging payment should be payable in situations where there is a notice period of up to four weeks. If the notice period is longer than four weeks we think the bridging payment should be reduced to account for the additional paid notice provided. The purpose of this is to ensure that employers are not disadvantaged for providing longer notice periods.
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. We think there should be a focus on providing support to claimants to ensure they have the skills and resources to look for meaningful work. Once recovered, we support the implementation of reasonable obligations.
61	*Do you agree that claimants would not be expected or required to accept offers of employment that provide lower wages or conditions?*
	We think this requirement should be slightly modified so claimants would not be expected or required to accept offers of employment that provide substantially lower wages or conditions. This would ensure that small changes in wages and conditions are not used to turn down suitable offers of employment. A test of no less favourable or substantially similar could be adopted rather than lower wages or conditions. For example, if the salary is $2,000 less but an employee gets additional leave, this should be taken into account.
62	*Do you agree the insurer could waive obligations partially or fully where a claimant is unable to meet those obligations?*
	Yes. We support the suggested recommendations outlined in the discussion document.
63	*Do you agree claimants should be obligated to remain in New Zealand to remain eligible for income insurance?*
	Yes, this aligns with the purposes of the Scheme.
64	*Do you think a period of time, such as 28 days, should be allowed for travel overseas, for example, to support ill family?*
	Yes.

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.
66	*Should claimants with health conditions and disabilities be subject to obligations to search for work or undertaking training where they are able to?*
	Only when claimants are medically fit and able to do so. However, we support a return to work plan while a claimant is still recovering to begin to prepare them for work.
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, but these should be limited to serious non-compliance. Our main concern with this is how the Scheme will ensure there is funding and resources to enforce compliance with these requirements. It is a costly exercise to enforce compliance and the costs may outweigh the benefits if penalties are used in too broad circumstances.
68	*Do you agree that payments could be fully suspended in cases of serious, intentional non-compliance with obligations?*
	Yes. Minor and unintentional failures to comply with obligations should not result in full suspension. Full suspension should be reserved for serious non-compliance and should only occur after warnings.
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, but only if the repeated obligations are serious. Support should be offered by case managers to understand why obligations are not met rather than using penalties as a first response. This approach will align with the Scheme's purposes.
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?*
	Yes.
71	*Would the income insurance scheme be better delivered by a government department or a new entity?*
	Delivering the Scheme by another government department or new entity would likely involve additional administrative burden (such as increased information sharing capability) that would not be required if the Scheme was managed and delivered by ACC.

	Management by ACC would provide increased simplicity for employers who are already required to deal with ACC. Other options may mean employers need to communicate with an additional entity or government department, who they do not currently already have dealings with.
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?*
	In addition to this consultation document and consideration of the feedback received during the consultation process, employer and worker perspectives could be considered at periodic intervals during the Scheme's infancy. For example, once the Scheme is in place, employer and worker stakeholders (eg the EMA, Business NZ and CTU) should be consulted following the first rounds of collective bargaining after the Scheme is in place. Any trends that are observed (eg bargaining difficulties as a result of the Scheme) may be incorporated into updates to the Scheme. This will also capture a period of time where employers have had to negotiate new individual terms, terminate employees for redundancy and medical reasons, and comply with the requirements of the Scheme. Any 'teething problems' for example during the first year of the Scheme should be picked up in these periodic reviews, and attempts made to address them.
73	*How could Māori perspectives best be incorporated to ensure the income insurance scheme is delivered equitably and with aspiration?*
	We recommend a process of engagement and consultation directly with Māori about the above matters, which is then followed by a tailoring of the proposed Scheme to ensure it honours Te Tiriti o Waitangi.
Displaced workers: Getting back to good jobs	
74	*What practical support should be available to insurance claimants to return to work?*
	We support the options in the discussion document.
75	*Who should provide that return-to-work support?*
	We support the options in the discussion document.
76	*What type of claimants would need an employment case manager, and who could self-manage?*
	We agree that training and rehabilitation needs may vary between individuals and under different labour market conditions. Case managers may be preferable for claimants who have been in one job for a long period of time and have no recent experience of being in the job market. They may also be useful for claimants who are changing industries entirely. Claimants who have a demonstrated an ability to be able to source work and/or are looking for work in the same industry may be able to self-manage.
77	*What do you think a 'return-to-work plan' should include?*
	This will depend on many factors specific to the claimant, but should include the following:

	• identify whether skills are still required in current job market (eg if industry wide redundancies have taken place); • identify what other skills and experience a claimant has; • if skills are no longer required, retraining should be a first step in a return to work plan, and the retraining should be in an area that: o the employee would like to seek employment in; and o has employers seeking newly qualified / retrained employees to fill roles.
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?*
	The support suggestions stated in the discussion document seem to be effective measures of assisting claimants return to work.
79	*Who should provide that support to return to work?*
	The support should be split, as suggested in the preferred approach and rationale in the discussion document. However, employers who make workplace changes to support people back to work may be required to incur costs. The Scheme may be able to offer an opportunity for employers to recover these costs, as they are also making a contribution to the Scheme.
80	*What type of claimants would need a case manager, and who could self-manage?*
	Those claimants that need assistance navigating support services and assistance with returning to work. Employers should be able to request that claimants be assigned case managers where this may facilitate engagement.
Dispute resolution	
81	*Do you agree with the proposed four-step dispute resolution process for the scheme?*
	Yes.
82	*Are there specific aspects to the scheme's dispute resolution you think should be considered?*
	No.
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.

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?*
	Yes.
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?*
	Yes, we agree with this approach. However, consideration should be given to how any required funding increases will be managed. Increasing the levy may be an option – but in cases of mass redundancies for example following a major economic event, any significant funding increases needed may be obtained from multiple sources including general taxation and government loans to be repaid with levy increases over time. This appears to be also covered in questions 91 and 92. There should be some flexibility in the Scheme for this funding to come from other places, should it be needed to such an extent that increasing levies would be unreasonable.
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?*
	Yes, we see no issue with this, provided the levy is the same. However, the discussion document confirms that the proposed levy rates are GST inclusive. This means that employers will generally be able to recover the GST charged on the employer levy as input tax. Employees will not. It would also be expected that, consistent with the treatment of ACC levies, the employer will be entitled to an income tax deduction for the employer levy. This, on top of the GST credit available to the employer, will further reduce the after-tax cost of the employer levy for the employer. This buttresses our further submission (at 89 below) that employee levies should also be deductible.
87	*Do you agree that levies for health conditions and disabilities and for redundancy should be set separately?*
	Yes, we see no issue with this.
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?*
	Yes, we see no issue with this.

89	*Do you have any other suggestions for how the employee levy should be structured?*
	We understand that IRD and other agencies are considering whether the employee levy should be allowed as an income tax deduction for the employee. While employees are generally prohibited from claiming work-related expenses, employees are generally allowed a deduction for premiums paid under an income protection policy. IRD has endorsed this position historically. By analogy, employees should be allowed a deduction for employee levies under the proposed Scheme. This would alleviate the financial burden of the Scheme for employees. It would also be distortionary if premiums paid under an income protection policy were deductible but employee levies under the Scheme were not. There also would be an element of unfairness (albeit one that already exists in relation to ACC levies) if self-employed persons were covered by the Scheme and could deduct the levies (which it would be expected they could in the normal course) but employee members could not. The deduction for employees could be automatically allowed through an adjustment to PAYE withholding, or the tax effect of the deduction could be provided through a tax credit.
90	*Do you agree that experience rating would not be an appropriate design setting for the employer levy?*
	Yes, and we agree with the potential for a future policy adjustment, if it turns out that the lack of experience rating is affecting (disincentivising) genuine business restructuring.
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?*
	Yes.
92	*Do you favour a Pay As You Go or Save As You Go funding approach?*
	We have no preference and consider that, whichever approach is used, some sort of reserve funding would be essential to avoid the need for sudden levy increases. This appears to be provided for in both approaches.
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?*
	Yes.
94	*Does such flexibility create risks that require additional mitigations?*
	The discussion document is not clear as to what this flexibility would involve. It appears that it would only be to extend employee entitlements, funded by the government (presumably general taxation) where necessary. We see no possible detriment arising from this. We do not see any risks arising from the possibility of increased entitlements in situations of displacement due to economic crisis.