



COVERSHEET

Minister	Hon Grant Robertson	Portfolio	Finance
Title of Cabinet paper	Cabinet Paper 2: New Zealand Income Insurance – Detailed Scheme Design	Date to be published	28 April 2023

List of documents that have been proactively released

Date	Title	Author
July 2022	Cabinet Paper 2: New Zealand Income Insurance – Detailed Scheme Design	Office of the Minister of Finance
4 July 2022	New Zealand Income Insurance: Detailed Scheme Design CAB-22-MIN-0250.02 Minute	Cabinet Office

Information redacted

YES / NO [select one]

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Some information has been withheld for the reasons of Confidential Advice to Government and Free and Frank Opinions.

In confidence

Office of the Minister of Finance

Office of the Minister for Social Development and Employment

Office of the Minister for ACC

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Development Committee

Cabinet Paper 2: New Zealand Income Insurance – Detailed Scheme Design

Proposal

- 1 This paper seeks agreement to the detailed design of the New Zealand Income Insurance scheme (NZII), including:
 - 1.1 Scheme coverage
 - 1.2 Scheme entitlements
 - 1.3 Claimant and employer obligations
 - 1.4 Scheme delivery and funding.

Relation to government priorities

- 2 *Cabinet Paper 1: New Zealand Income Insurance – Agreement to Proceed* sets out this proposal’s relation to Government priorities.

Executive Summary

Part I: Scheme coverage

- 3 We propose that NZII covers complete job loss due to economic displacement, and any health condition or disability (existing or newly acquired condition) that significantly reduces work capacity (by at least 50 percent for four weeks or longer), with health practitioners certifying incapacity. Coverage would depend on a minimum period of contributions.

Part II: Scheme entitlements

- 4 NZII would replace up to 80 percent of lost incomes, up to ACC’s maximum payment cap, currently \$136,544, for up to six months (as well as a notice period and bridging payment where appropriate), with limits for subsequent claims. Entitlements would generally be treated as income for tax purposes, welfare, and other transfers. Personal exertion income would abate income insurance payments, after a threshold.

Part III: Claimant and employer obligations

- 5 Claimants would be obliged to search or prepare for work and would risk suspension of payments for serious cases of non-compliance. Claimants with health conditions or disabilities would be obliged to participate in work capacity assessments and return-to-work support (such as rehabilitation activities, employment support) where appropriate.
- 6 Employers would support the scheme's operation through giving four weeks' notice and by paying workers a 'bridging payment' of 80 percent of four weeks' pay after making a position redundant. The bridging payment seeks to discourage unwarranted claims against the scheme. Employers would be encouraged to help claimants with health conditions or disabilities to return to work and to keep jobs open for the length of their claim.

Part IV: Scheme funding and delivery

- 7 ACC would administer the scheme, handling claims and helping claimants return to good jobs where they need additional support. The scheme would provide case management services and link eligible claimants to existing support, including active labour market programmes (ALMPs) and vocational rehabilitation, but would not fund any new services. The scheme would handle disputes independently and efficiently and take enforcement action where necessary in response to (alleged) fraud or to ensure levy payment.
- 8 Employers and workers will share the costs of the scheme through a compulsory levy, although the Crown would contribute in rare situations, such as in response to a severe economic crisis.

Release of contingency funding and legislative process

- 9 At Budget 2022, a tagged contingency was created for the establishment of NZII and, if Cabinet agrees to proceed with the scheme, we propose to release the tagged contingency to enable ACC and MBIE to progress preparatory and policy/legislative work respectively.
- 10 Legislation is required to establish the proposed NZII, including the establishment of a new standalone Act, and amendments to other legislation. We propose that legislation is introduced by the end of 2022, to be passed by mid-2023.
- 11 A summary of proposed scheme settings is provided in the Annex.

Part I: Scheme Coverage

The scheme's coverage settings are key to cost management, equitable outcomes, and meeting our Treaty of Waitangi obligations

- 12 In *Cabinet Paper 1: Agreement to Proceed*, we proposed an income insurance scheme to cover economic displacement and reduced work capacity due to health conditions and disabilities.

- 13 Clearly defining the scope of this coverage will help to establish who can make a claim, the circumstances that can lead to a claim, and the conditions a worker must meet to be eligible. A wider scope of coverage would lead to a higher levy, and a narrower scope to a lower levy.
- 14 Coverage decisions have significant equity implications. In particular, decisions on what working arrangements are covered is crucial. As disadvantaged groups tend to be over-represented in non-standard working arrangements, there is a risk that narrow coverage could entrench labour market disadvantage that these groups experience.
- 15 Coverage decisions will also impact on the Crown's ability to meet its obligations under the Treaty of Waitangi/te Tiriti o Waitangi. The scheme's outcomes for Māori will be affected by coverage settings for people in non-standard work or who have health conditions and disabilities: Māori are over-represented in non-standard work, are more likely to be made redundant when in permanent work, and face a greater risk of job loss due to health conditions and disabilities.

We propose that the scheme covers complete job loss due to economic displacement

- 16 Economic displacement can arise in two broad situations:
 - 16.1 restructuring, where a firm changes its business model or reduces in size so that some positions are no longer required and the employer and employee cannot find suitable alternative work within the firm (redeployment)¹
 - 16.2 where the firm ceases to operate and all positions are therefore disestablished.
- 17 In both situations, the employee has lost their job through no fault of their own. We propose that the scheme adopt a definition of economic displacement which covers the loss of work due to the disestablishment of a position. This is consistent with well-established international practice and New Zealand common law.

This definition excludes job losses due to poor employee performance, gross misconduct, and constructive dismissals

- 18 The proposed definition of economic displacement excludes job losses due to:
 - 18.1 poor employee performance

1 The definition of economic displacement includes voluntary redundancy, where employers offer employees the opportunity to express interest in accepting redundancy during the restructuring process.

- 18.2 gross misconduct
 - 18.3 dismissal during the 90-day-trial process, and
 - 18.4 an employee choosing to end the employment relationship (including where this is later found to have been a constructive dismissal).
- 19 Excluding constructive dismissals carries some risk that employees who would have been made redundant, but have instead left under circumstances that are later found to be a constructive dismissal, will not be covered by the scheme. Some could be employees who have left a job due to bullying or harassment.
- 20 However, there is no way to identify these employees prior to a determination by the Employment Court or Employment Relations Authority, and it may not always be possible even with a determination. Employees whose job loss is determined to be a constructive dismissal would expect the employer to be subject to a monetary remedy covering any of the employee's losses resulting from the constructive dismissal.

We propose a principles-based approach to non-standard work

- 21 Income insurance schemes can struggle to effectively cover non-standard working arrangements, such as fixed-term, seasonal and casual working arrangements. But it is desirable to include this group as far as practical, as covering non-standard workers extends the benefits of insurance to a wider portion of the labour force, including more vulnerable workers. It also avoids the distortions that can arise when some groups are exempt from levies.
- 22 The scheme's ability to cover these workers will have significant distributional effects. Māori, Pacific peoples, women, and younger people are disproportionately represented in these working arrangements, and non-standard workers are generally lower paid.
- 23 To cover non-standard working arrangements, the scheme will need specific settings to assess eligibility and entitlements. We propose the following two principles to inform these policy settings:
- 23.1 NZII will cover the loss of income from reasonably anticipated work. This is income a worker could reasonably have expected to have received from their work, during the period they could reasonably have expected to work. For fixed-term workers this would usually be the length of their remaining employment agreement, but a succession of fixed-term agreements with one employer could suggest the arrangement is similar to permanent employment.
 - 23.2 NZII entitlements will be based on an 'established pattern of work'. Part-time workers, and casual and other non-standard workers might not have employment agreements that state their expected hours or conditions. Because insurance is intended to substantially replace actual losses, the true nature of the employment arrangement – as

shown by established work patterns – would be more important than what appears in any written employment agreement.

- 24 Further work will be done to specify what exactly amounts to ‘reasonably anticipated income’ and an ‘established pattern of work’, including ensuring these concepts align with existing employment law concepts.

Coverage will be provided for fixed-term and seasonal workers

- 25 We propose fixed-term and seasonal employees would be eligible for the scheme if they are displaced before the planned end of an employment agreement. The payment would last until the planned end of the employment agreement, or for the maximum length allowed by the scheme, whichever is shorter. This ensures only expected income is replaced by income insurance.

- 26 Fixed-term and seasonal workers would be eligible for support 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:

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

26.2 Reasonable expectation of future income: although an expectation will be clearest in situations where an agreed contract is in place for work, a seasonal worker may have worked regularly for the same employer so that the next season’s work is part of their employment expectations.

- 27 In general, workers who meet these criteria, whether they are fixed term or seasonal, will be eligible for income insurance should the expected work not be available.

Coverage will be provided for casual employees

- 28 As for fixed-term and seasonal employees, we propose to cover casual employees who can prove a regular pattern of work and a reasonable expectation of future work. Evidence would need to be provided that demonstrated how long the parties would have expected future work to continue and coverage would be matched to that period. ACC would be empowered to make a determination on this and other situations, where information is not forthcoming from the employer, based on the evidence that is available to them.

- 29 The discussion document proposed that casual employees claiming insurance would also need to identify a third-party event that has interrupted their work. The types of events envisaged as triggering these criteria include a workplace change process that indirectly affects casual employees (e.g. where a shift towards fewer casual positions results in casual employees losing work), the

liquidation of an employer, and weather-related events that prevent their work being carried out (such as floods for agricultural work).

- 30 The aim of identifying a third-party event was to ensure that parties were not incentivised to game the scheme by categorising mutually agreed cessations of casual agreements as no-fault terminations. The proposed bridging payment (outlined under Part III: Claimant and employer obligations) would limit this risk. It could also prevent workers with casual employment agreements from accessing the scheme where they had a genuine expectation of ongoing work.
- 31 At this stage, we propose that more work be done on whether any further criteria may be needed to narrow the types of events that would enable a person on a casual employment arrangement to qualify for the scheme.

We propose the scheme cover both part- and full-time job loss

- 32 The scheme could cover full time jobs only, or both full-time and part-time jobs.
- 33 There are compelling reasons for the scheme to cover part-time work as well as full-time work. Excluding part-time work would raise equity issues for women and older people, who make up large proportions of the part-time workforce. Additionally, multiple (part-time) jobholders include some of our more vulnerable workers. Covering part-time workers ensures broad scheme coverage, including of more vulnerable workers.
- 34 Excluding part-time workers would also significantly increase administrative complexity and cost, particularly as the information required to implement the option (e.g. hours worked) is not comprehensively collected or held by any agency. It would also likely require excluding them from levy collection.
- 35 We therefore propose the scheme covers job loss for both part- and full-time jobs, regardless of the hours worked.

For economic displacement, only complete job loss will be covered

- 36 Internationally, income insurance schemes usually cover the full loss of a job (i.e. termination of employment), whilst some cover partial job loss (i.e. reduced hours).
- 37 In the context of the proposed scheme and New Zealand's employment laws there are few benefits to covering partial job loss for economic displacement. Significant reductions in hours can only occur where an employee agrees, or after a formal change proposal. Employees who do not accept substantially reduced hours after such a proposal are considered to have been made redundant.
- 38 We therefore propose that the scheme only cover complete job loss for economic displacement. This does not apply to loss of work capacity due to a health condition or disability, and we set out our preferred approach below.

We propose that the scheme cover a loss of work capacity of at least 50 percent and lasting at least four weeks, caused by any health condition or disability

- 39 *Cabinet Paper 1: Agreement to Proceed* outlined the case for including loss of work capacity due to a health condition or disability in the proposed income insurance scheme. Usual international practice is to cover all forms of health conditions and disabilities (pre-existing and new) where these limit a person's capacity to work.
- 40 Internationally, spending on health and disability-related benefits in insurance and welfare schemes has grown, with people granted a benefit on the grounds of a mental health condition making up a greater share of caseloads. This is the situation in New Zealand. It is unclear what is driving the trend, but various reasons are possible.²
- 41 It can be challenging for income insurance schemes to verify conditions and their effect on work capacity where a high reliance exists on subjective information, there are co-morbidities, and the severity of conditions fluctuates. Mental health conditions have these features. Many schemes have policies to reduce the costs associated with claims for health and disability, e.g., certification guidelines for health practitioners and early support for claimants.
- 42 To respond to this challenge, we could limit coverage to health conditions and disabilities where the diagnosis does not rely on subjective information. Given that mental health conditions are likely to be common amongst the scheme's claimants, limiting coverage could reduce scheme costs.
- 43 However, such an exclusion would mean people with these health conditions or disabilities would continue to experience the adverse effects associated with loss of income, including worse health and employment outcomes. Such exclusions would likely be considered unfair by many. For people with long-term physical health conditions, co-morbid mental health conditions are common. Allowing one group of people with mental health conditions access to the scheme and not others is difficult to justify.
- 44 Feedback from disability representatives during public engagement showed support for an approach that included all health conditions and disabilities with a focus on work capacity and not diagnosis.
- 45 We propose that the scheme does not place any coverage restrictions on the types of health conditions or disabilities causing a loss of work capacity (except for accidents covered by the accident compensation scheme, which would continue to be covered by that scheme). The focus would be on the extent to which the health condition or disability reduces the individual's work

2 For example, there is a growing awareness and acceptance of mental health conditions, social deprivation, trauma, exclusion, and aspects of modern life (e.g. social isolation) contribute to increased mental stress.

capacity. This approach is equitable, avoids arbitrary distinctions between types of health conditions and will simplify assessment procedures.

Coverage for loss of at least 50 percent of capacity to work, for at least four weeks

- 46 Insurance coverage could be limited to full loss of work capacity only or could also cover partial loss of work capacity due to a health condition or disability. This choice will influence claimant behaviour and health outcomes, and the scheme's costs.
- 47 Limiting coverage to full loss of work capacity would reduce costs. Further, workers whose capacity is partially reduced may be able to continue to work full-time with the right support. But significant drawbacks are also involved. A requirement for full loss of work capacity could lead to:
 - 47.1 presenteeism – where people with limited capacity continue to attend the workplace full-time because they cannot afford to reduce their hours, affecting workplace productivity
 - 47.2 poorer health and employment outcomes because health conditions would need to become severe before insurance became available
 - 47.3 more people becoming fully detached from employment (with low prospects of returning to work)
 - 47.4 working people overstating symptoms to qualify for coverage.
- 48 Alternatively, the scheme could cover partial and full loss of work capacity, consistent with most European countries. Allowing partial payments to cover lost hours rather than full job loss is associated with shorter sickness absence and higher work participation. This can create gains, such as slowing skill and earnings deterioration, maintaining a connection with the employer, and allowing for a gradual return to work, as well as signalling that disabled people and people with health conditions have valuable contributions to make to the workplace. Further, suitable work can support positive benefits for health, especially mental health.
- 49 Partial loss schemes still specify a minimum threshold of lost work capacity. Internationally, these insurance schemes vary considerably. Setting the threshold too high risks the same problems as providing coverage for full loss only. In setting the threshold too low, the risk is a large number of claims, including claims for minor and short-term conditions.
- 50 To manage costs, many schemes require employers to fund the initial period of absence and/or have unpaid waiting times before benefit take up. However, evidence shows that unpaid waiting times foster presenteeism, which can have a negative effect on businesses.
- 51 An alternative to having unpaid waiting time prior to becoming eligible for coverage is to limit coverage to health conditions and disabilities that are expected to affect a person's capacity to work for a minimum period. This

could also reduce the risk of large numbers of claims for minor and short-term conditions and abuse of the scheme.

- 52 We propose the scheme cover the loss of 50 percent or more of an employee's work capacity. Coverage would be limited to a loss of work capacity that is expected to persist for at least four weeks. People would be required to use their available statutory sick leave before accessing the scheme.
- 53 As with economic displacement, both part- and full-time work would be covered. However, coverage for loss of 50 percent of work capacity is an important difference from economic displacement, where coverage is only provided for complete job loss. People experiencing loss of work capacity who do not meet the eligibility criteria would be able to use sick leave but workers with limited or no sick leave could be disadvantaged.
- 54 The four-week loss threshold could be waived or reduced in a pandemic such as COVID-19, along the lines set out in the section on crisis payments.

Claimants' medical practitioners would assess work capacity, with final eligibility assessed by ACC

- 55 An assessment of work capacity is a central part of scheme eligibility in most jurisdictions. It is the loss of work capacity due to a health condition or disability that triggers access to insurance benefits, rather than the health condition or disability itself.
- 56 Assessing work capacity is complex because it is multidimensional and dynamic. Work capacity is a person's overall ability to perform their work tasks. A person's health or disability is only one factor affecting work capacity. The same condition may affect individuals differently depending on various factors, including work environment and labour market position.
- 57 A holistic approach that considers all factors influencing work capacity is often required to understand why an employee has lost some of their capacity. This would usually include information from the claimant, their treating health practitioner, and their employer. In some cases, other professional input may be useful, e.g. from vocational rehabilitation specialists.
- 58 The stringency of work capacity assessments will depend on the entry thresholds. Stricter assessment processes come with trade-offs. More or less strict entry requirements may lead to genuine claimants being excluded, or people receiving a payment who should not.
- 59 Schemes typically require employers to be informed of a person's reduced work capacity, but employers are rarely asked to counter-check medical certificates. Some schemes allow employers to ask the insurer for additional evidence of the person's incapacity. Some workers may be reluctant to make a claim because of privacy and discrimination concerns if they disclose to their employer.

- 60 We propose that the claimant's health practitioner would provide an initial assessment with targeted use of more costly second opinions. The use of the claimants' health professional is common internationally and is less costly than the alternatives. We propose that health practitioners empowered to certify a work capacity assessment would be those registered with an authority as a practitioner of a particular health profession under the Health Practitioners Competence Assurance Act 2003, working within their scope of practice. Regulations would specify types of health practitioner to undertake work capacity assessments if required.
- 61 The risk that health practitioners certify a person meets the entry criteria when they do not can be mitigated through:
- 61.1 focusing health assessments on what a claimant can reasonably still do and what workplace changes may be necessary to support a return to work
 - 61.2 monitoring certification practice and providing certification guidelines to treating health practitioners
 - 61.3 systematically undertaking independent medical reviews.
- 62 The health workforce already faces capacity constraints. Health practitioners will need dedicated training and guidance so they can provide work capacity assessments efficiently and effectively. Health sector stakeholders and people with lived experience indicated during consultation that they would collaborate with ACC to develop assessment guidance and forms. Once developed, regulations would specify the information to be provided in work capacity assessments.
- 63 Employers would also provide supporting information for the work capacity assessment, where appropriate and required. An employer could sign a declaration that their employee's work capacity is reduced by at least 50 percent, and that the employer has made reasonable accommodations to support the employee to remain in work. Employers will also need guidance to support them in this role.
- 64 Where an employer does not agree that the employee has lost at least 50 percent of their work capacity, the employee could apply directly to the scheme. There may also be cases where the employee has good reason not to disclose their health condition or disability to their employer, and this could also lead to the employee directly applying to the scheme.
- 65 The final decision to accept a claim would rest with the scheme administrator. The administrator will need the expertise to make eligibility decisions based on the health assessment, and the employer's declaration, and to determine when second opinions are needed. An appeals and review process will be available.

We propose to undertake further work on how to include certain groups of self-employed people in the scheme

- 66 Income insurance schemes struggle with coverage of self-employed workers. Coverage for displacement is especially complex. This is because it is difficult to exclude the genuinely self-employed without also excluding those employees misclassified as self-employed or contractors.
- 67 Irrespective of type of working arrangement, anyone can experience hardship while unemployed. Ideally, self-employed workers should be treated the same as standard employees to ensure they receive the benefits of the scheme. This approach also avoids incentives to reclassify work. For example, encouraging more self-employment or pressure from employers on employees to change their relationship to self-employment to avoid paying the levy
- 68 We know less about how often, and for what reasons, self-employed workers move in and out of work, compared with standard workers. Therefore, including self-employed workers may make the cost of the scheme more uncertain and could potentially increase its cost to all workers if self-employed workers move in and out of work more often than other workers.
- 69 Coverage for self-employed workers is also difficult because it is hard to define an equivalent to a 'no-fault redundancy' type event, as well as distinguish between standard business risk and a redundancy-type event. This could increase the complexity and uncertainty of the scheme, which may also result in higher costs.
- 70 We engaged on a range of options for the treatment of self-employed workers, with submitters acknowledging the complexity of coverage for self-employed and was mixed on whether to cover it or not. In the discussion document, we noted that we had established the Better Protections for Contractors tripartite working group to consider how regulatory protections apply to working arrangements at the intersection of "employment" (employment law) and "contracting" (commercial law).
- 71 We consider that there would be clear benefits to including some self-employed workers in the scheme; particularly self-employed workers who closely resemble employees. The risk of employees being misclassified as contractors to avoid employment obligations is being considered as Better Protections for Contractors work. We consider it appropriate to undertake further analysis on options to include some self-employed workers in alignment with the Better Protections for Contractors work. We have requested further advice from officials, and if Cabinet agrees to progress the scheme, we expect to come to a preferred option to be included in the New Zealand Income Insurance Bill.

Claimants will be required to meet a contribution history to be eligible for payments

- 72 Income insurance schemes usually require claimants to satisfy minimum contribution or employment requirements. A minimum contribution or employment period is a specified period of weeks, months, or years during which a worker must have contributed to an insurance scheme, or been in employment, to be eligible for support from the scheme. Workers who do not meet these requirements are not eligible for insurance payments.
- 73 Contribution periods foster a sense of reciprocity by requiring people to contribute to the scheme before claiming support. Contribution periods also help contain costs by reducing the number of insurance claims. However, contribution histories also mean some groups of workers miss out on insurance support. Contribution histories are more difficult to meet for people who are new or move in and out of the labour force, such as for parental responsibilities, or with irregular patterns of work.
- 74 We propose a contributions history of six months over a period of 18 months preceding the claim.³ The contributions could be across multiple employers and include statutory parental leave, including paid parental leave and unpaid leave, to mitigate against gender bias. This is a short requirement by OECD standards.
- 75 Engagement showed widespread support for a contribution requirement, though some concerns were raised about the disproportionate impact of the policy.
- 76 We estimate that 12-14 percent of potential claimants will not meet the contribution requirement. We expect that young people will be most affected by the policy, with more modest disproportionate impacts for Māori experiencing economic displacement and Pacific people experiencing health conditions and disabilities.⁴ Removing the contribution history would remove these impacts, but would remove the link between contributions and entitlement, and increase costs by between 12-20 percent.
- 77 The proposed contribution history requirement is designed to ensure that non-standard workers are not disadvantaged, by including all work completed and requiring the claimant to have worked a third of the period assessed, with no

3 To operationalise this requirement, a potential claimant's earnings history will be used to assess whether they meet the contribution history. This ensures that, where an employer has withheld but not passed on the employee levy, the potential claimant is not disadvantaged.

4 We estimate that approximately 12 percent of people economically displaced would not meet the contribution history, and 14 percent of those who lose work due to health conditions or disabilities. This increases to 17 percent of economically displaced Māori, and 17 percent of Pacific peoples who lose their jobs due to health conditions or disabilities. This rises to 41 percent of economically displaced young people (15-17 year olds), and 28 percent of young people who lose their job due to a health condition or disability.

requirement such as for a continuous period of work, or for a minimum weekly number of hours.

- 78 Overall, we consider the contribution history a finely balanced decision. Whilst we propose that the scheme adopt such a requirement, ongoing monitoring and evaluation is important to understand the contribution history's impact and to inform future decisions on whether to maintain this requirement.

When the scheme begins, we propose that a worker's earnings history is considered to meet the contribution requirement

- 79 The proposed contribution history raises the question of what happens when the scheme commences. Potential claimants could be required to have contributed to the scheme prior to access. This would mean there would be a six-month gap between the commencement of the scheme (and levy requirement) and eligible claimants receiving support.
- 80 We do not consider that this is appropriate, as it is important that scheme's entitlements are available when people begin paying levies. We therefore propose that, until the scheme has been operating for 18 months, a person's work history will be used to determine eligibility, regardless of whether they paid a levy on earnings from that work.
- 81 This will create cashflow issues for the scheme in the first year of its operation, but this is proposed to be managed via the provision of a Crown liquidity facility for the scheme (see Part IV: Scheme Delivery and Funding).

Coverage for migrant workers

- 82 Workers with residency have a permanent right to work in New Zealand. Temporary migrants may have open or closed work rights. Migrants with open work rights can work for any employer. Migrants with closed work rights can only work for a specified employer
- 83 As of June 2021, 182,000 migrants had temporary work rights, and 445,087 had permanent work rights ('residents'). These numbers are expected to rise this year with border restrictions easing.⁵
- 84 Where migrants have a permanent right to work, it is important to make the best use of their skills and support them to thrive in New Zealand. Many people with residence class visas hold these visas because they, or their partners, have valuable skills demanded by New Zealand employers. Residents are expected to stay in New Zealand for the long term. Supporting residents through the insurance scheme would be consistent with its objectives of reducing wage scarring and ensuring good transitions between jobs.

5 Prior to the pandemic, in June 2019 there were 268,883 temporary migrants with work rights.

- 85 Temporary work visa categories vary, and include working holiday visas, international student visas, and temporary work visas. For working holiday makers and international students, their main purpose for being in New Zealand is to holiday or to study. Employment is a secondary activity.
- 86 For closed work visa holders (such as the essential skills visa), employment is their main reason for being in New Zealand, but their visa will often be linked to a particular employer and generally used to fill skills gaps that cannot be filled by domestic workers. If that worker is made redundant, or becomes unable to work, they will lose their eligibility to work in New Zealand, but their skills could support New Zealand if covered by the scheme.
- 87 In the discussion document, we proposed that temporary visa holders would not be eligible for coverage by the income insurance scheme. Allowing them to access the scheme would generally be inconsistent with the basis for their eligibility to be in New Zealand. To ensure this approach does not disadvantage New Zealander job seekers, we proposed that temporary visa holders – and their employers – would still contribute to the scheme’s costs by paying levies.
- 88 There were strong views during targeted engagement that this option was not fair to levy workers who would never be eligible for the scheme. However, most survey respondents supported limiting eligibility to New Zealand Citizens and residents.
- 89 Following further consideration, we propose levying all temporary visa holders and allowing those who have resided in New Zealand continuously for at least two years at the time they experience a trigger event to access the scheme. This option strikes a balance between the inequity of levying temporary workers but not covering them, and the labour market risks of excluding them from coverage and levies.
- 90 This option requires temporary migrants to demonstrate a connection to New Zealand, ensuring that those migrants who are well-established in New Zealand would receive support to find good jobs following economic displacement or losing work capacity due to a health condition or disability.
- 91 The proposal to differentiate access to the scheme for temporary migrants may potentially engage the right to be free from discrimination in section 19 of the New Zealand Bill of Rights Act 1990. This may be justified by the policy objectives, but this proposed limitation on the section 19 right and justification will need further testing as the Bill is drafted. Legal advice from the Crown Law Office has been requested on this issue.

Part II: Scheme Entitlements

Well-designed entitlements are essential to ensuring the New Zealand Income Insurance scheme meets its objectives

- 92 At the heart of the NZII proposal is the provision of financial support related to an individual's prior income. The provision of such support is essential to ensuring NZII meets its objectives, as it will:
- 92.1 reduce the impact of sudden large income losses, allowing people time to adjust their circumstances
 - 92.2 reduce the financial pressure to find a new job quickly, allowing time for a thorough job search and to obtain new skills, or to recover or adjust to a health condition or disability
 - 92.3 maintain consumer spending through economic shocks and downturns and keep disabled people and people with health conditions connected to their employers.
- 93 This section covers our proposals for the detailed design of the financial entitlements of NZII, and covers the scheme's replacement rate and maximum payment, the entitlement duration, the abatement regime, and interactions with other government schemes.

We propose that NZII will provide a replacement rate of 80 percent of prior income up to an indexed cap of \$136,544

- 94 The level of insurance payments is defined by its replacement rate, which is the proportion of lost salary or wages that the insurance pays, and its income cap, which is the upper limit on insurable and leviable income.
- 95 The choice of replacement rate and income cap are critical to:
- 95.1 the overall cost of an insurance scheme
 - 95.2 how effectively insurance protects against income loss
 - 95.3 the incentives on claimants to search for work
 - 95.4 the type of work claimants accept.
- 96 Higher replacement rates and higher income caps more effectively protect against income loss. This means such an insurance scheme ensures a high level of 'income smoothing', so that claimants do not experience large drops in income when they lose employment due to economic displacement or health conditions or disabilities. This can be important for allowing people to adjust to sudden income loss in a considered way.
- 97 Replacement rates and income caps also affect the types of jobs a claimant will seek. A person receiving insurance payments has little financial incentive to accept job offers that pay less than their insurance payments until the end

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of their entitlement approaches, though entitlement lengths and limits on subsequent claims can mitigate this.

- 98 This means when replacement rates and income caps are high, claimants are supported to look for jobs that pay a similar salary or wages to the jobs they have lost. Higher income replacement rates and caps should therefore help to reduce wage scarring to the advantage of working people, employers, communities, and the economy.
- 99 Improved income smoothing through higher replacement rates and income caps also reduce the trade-off between treatment and income for disabled people and people with health conditions, potentially improving both longer-term health and employment prospects.
- 100 High replacement rates and income caps have disadvantages. As well as increasing costs, they can reduce the incentive to search for work at all; some claimants can be content to rely on their insurance payments rather than to search or prepare for work. For disabled people and people with health conditions, the risk is that the scheme incentivises staying out of work longer than necessary to recover. This can lengthen periods of unemployment and therefore the scheme's cost. These risks can be mitigated through a shorter scheme duration and appropriate work-focussed obligations.
- 101 Concerns were raised during engagement that a high-income cap would be more generous than international schemes, may increase gaming risks for higher-income earners, and that higher-income individuals have lower need for income replacement.
- 102 We propose setting a relatively high replacement rate of 80 percent and an (indexed) income cap that aligns with ACC, which is currently \$136,544 per annum.⁶ This will support the objectives of the scheme by effectively smoothing incomes following job loss, and by reducing wage scarring by providing support to search for a job that pays a similar salary to previous employment.
- 103 These settings are the same as the accident compensation scheme. We propose the same replacement rates and income caps for claims arising from both displacement or health conditions and disabilities.
- 104 For claimants who qualify for insurance due to a health condition or disability, the level of financial support will be based on the level of income loss caused by their loss of work capacity, and not the loss of work capacity itself. For example, if an employee has lost 75 percent of their work capacity, but their employer is unable to modify their role or redeploy them for that level of work

6 This cap will be indexed to changes in average weekly earnings, meaning the cap will shift in line with changes in people's income.

while they are addressing their health condition or disability, the claimant would be entitled to receive coverage for the full loss of their income.

- 105 We note, however, that the replacement rate is a key driver of the scheme costs which will be borne by levy-payers. We are concerned about the scheme's impact on low-income workers and families; and we propose to consider further advice on the replacement rate, including whether to lower the rate or to introduce a step-down in replacement rate.⁷ A different replacement rate would reduce scheme costs, which in turn could either lower the overall levy rate (for employers and workers) or offset the cost of a progressive levy structure. This is discussed further in *Areas of continuing policy work*.

We propose claimants can access NZII for up to six months in an eighteen-month period

- 106 The length of insurance entitlement shapes the opportunities available to claimants. A shorter entitlement is likely to incentivise more rapid job search or return to work. A longer entitlement gives claimants more time to find a better job match, retrain or upskill, and/or to adjust to or recover from a health condition or disability.
- 107 Longer maximum entitlements create more opportunities for claimants, but they also risk longer periods of unemployment, and higher scheme costs, potentially without improving employment outcomes. With long entitlements, the risk is that some workers will lose their motivation to search for work until near the end of their entitlement.
- 108 A range of views was heard through engagement, with some people supporting the proposal, some highlighting the risk that a six-month period would increase detachment from the workforce, and others expressing concern that six months would not be enough time for retraining and/or rehabilitation.
- 109 We propose that the maximum duration for insurance entitlements be six months. Where applicable, the entitlement period will begin after the period of bridging payments, meaning people will receive up to seven months of support. We anticipate this will provide a sufficient period for most people to find or return to work⁸, whilst maintaining return-to-work incentives.
- 110 For people who may need longer to find work due to significant skill gaps or more complex health and social issues, a six-month duration provides

7 For example, the replacement rate for the first three months of entitlement could be 80 percent, stepping down to 60 percent for the final three months.

8 Our modelling suggests that people will spend an average of 4.9 months on the economic displacement side of the scheme, and 2.7 months on the health condition and disability side of scheme.

sufficient time to adjust to a different income and support to transition into the welfare, health, or education systems for continued support.

- 111 For people with fixed-term work arrangements, coverage would also be limited by the length of time remaining in the employment agreement. This reflects that NZII is intended to cover the loss of reasonably anticipated income, and fixed-term workers do not have a reasonable expectation of work beyond the end of their fixed-term contract (including seasonal workers).

Claimants can access the scheme for six months in an eighteen-month period

- 112 The scheme could allow a greater or lesser number of claims within a timeframe. Most people are unlikely to need to claim against the scheme repeatedly.
- 113 Repeated insurance claims could suggest that a person was trying to exploit the scheme. Placing limits on repeated claims helps to manage this risk. Limiting claims will also help to manage costs. The longer the minimum period between claims, the lower the overall cost of the scheme to levy payers.
- 114 However, such limits will disadvantage some workers, such as those who genuinely experience repeated displacement (for example, because they work in an industry with a high turnover of firms) or who experience recurrent reductions in work capacity due to relapses in their health condition. Tight limits on repeated claims could also deter people from jobs in more dynamic fields, where the chance of displacement is greater.
- 115 Given the relatively short contribution history requirement proposed, a limit on repeated claims becomes a more important way to manage the risk of non-genuine claims, and to manage costs.
- 116 We propose allowing a total of six months' entitlement every 18 months. This could be spread over multiple claims where the claimant uses any unused entitlement for the 18-month period beginning from the initiation of the first claim.
- 117 Alternatives were considered, such as a shorter period between claims or a longer period between claims (every two years), and a lifetime maximum on the total number of claims. However, an 18-month period for a total limit of six months of entitlement strikes a better balance between managing costs and abuse of the scheme and mitigating against disadvantaging workers with a genuine need.

We do not propose permitting extensions of the six-month period of entitlement

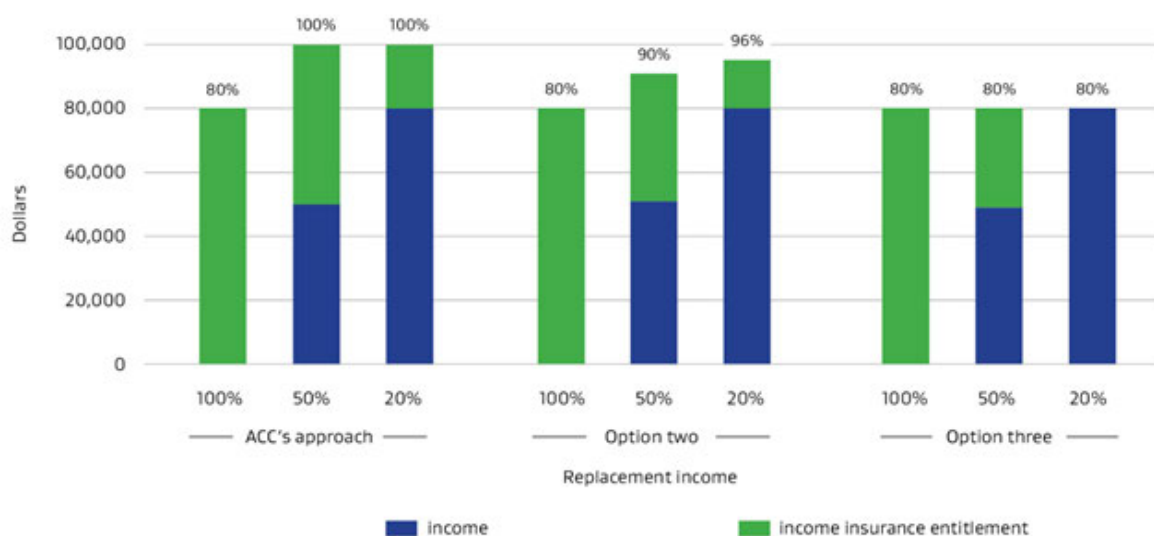
- 118 We sought feedback through the public consultation on whether the scheme should provide for the extension of a claimant's entitlement to a maximum of 12 months for approved training or vocational rehabilitation. Overall, feedback was mixed with no clear preferred option.

- 119 The decision on extensions is a finely balanced one. On the one hand, some claimants may take longer to find work because they need to undertake training or vocational rehabilitation that extends beyond six months due to significant skill gaps or more complex health issues. Enabling extensions could improve labour market outcomes over the medium and long-term if appropriately targeted.
- 120 On the other hand, enabling extensions would raise the scheme's costs, although the level of increase is uncertain because we do not have reliable modelling about the number of claimants who may need extensions. Enabling extensions could also affect claimants' behaviour, incentivising entry into low-value programmes just to extend their income insurance, and a reduction of job-search effort. This would make it more difficult to return to the labour market over the longer term.
- 121 The scheme as proposed is short duration with a generous level of entitlement. A six-month period will be sufficient for most to return to work. It is also imperative in the initial years of the scheme's operation to carefully manage scheme costs. We therefore propose not to permit extensions of the six-month period of entitlement.

Where a person retains some income from work, insurance would top up their income to 80 percent of their pre-loss level

- 122 Cases will occur where someone may be eligible for income insurance while still retaining some employment income. For example, they could be multiple job holders who lose one of their jobs, or those who have a reduction in work capacity due to a health condition or disability working a fewer number of hours.
- 123 While applying the replacement rate to instances of complete job loss is straightforward, choices are available in how the replacement rate applies to partial income loss. These choices have implications for the level of income replacement provided, financial incentives to find additional work, and for the scheme's affordability.
- 124 There are three approaches for replacing partial loss of income, from more to less generous:
- 124.1 the replacement rate is applied to total pre-loss income, to determine a maximum insured amount, and any losses equal to or below this are fully covered so the worker continues to receive their total pre-loss income from a combination of earned income and insurance payments (the accident compensation scheme approach) (option one)
- 124.2 the replacement rate is applied to the lost income only (option two)
- 124.3 the replacement rate is applied to pre-loss income to determine a maximum insured amount, and insurance tops up residual income to this amount so the worker would at most get 80 percent of their pre-loss income (option three).

125 The below graph illustrates the practical impact of these policy choices, showing the differences in the options when someone loses all of their income, compared to losing 20 or 50 percent:



126 We recommend adopting option three. This option ensures a financial incentive to work remains for those with partial income loss jobs and reduces the scheme's cost for covering partial loss of income. While this option is not as generous as the two others outlined above it still provides for 80 percent of income cover to provide a level of income smoothing, consistent with those who experience a 100 percent income loss.

Only personal exertion income would abate insurance entitlements

127 Insurance schemes aim to replace lost income. If a claimant begins earning additional income, this starts to reduce their income loss, raising questions about how this should change the entitlement.

128 The first question is about the sources of income that could affect insurance entitlements. Individuals and families may have income from several sources, including earned income from employment or investments.

129 Including only personal exertion income ensures a higher level of income smoothing, whilst reducing the administrative burden on individuals and agencies. Including other forms of income would introduce a form of means testing to the scheme and reduce overall costs.

130 We propose that income insurance would only be abated (reduced) by personal exertion income.

131 Personal exertion income means income that is earned, derived, or received by a person by way of payment for their active labour, for example, wages, salary, or income from self-employed work. This would mean that other income, such as from investments, would not affect NZII entitlements. Redundancy payments based on a contractual entitlement are also not

considered personal exertion income as they are a capital item. This approach is consistent with the role of insurance in replacing lost income, rather than ensuring a minimum level of income.

- 132 A second question is whether a partner's income should affect the claimant's entitlements. In the welfare system, entitlement is based on family income, meaning one partner's income can affect the other partner's entitlements. In the accident compensation scheme, entitlement is based on an individual's income only and disregards any partner income.
- 133 Individualised entitlement ensures that the income provided effectively smooths a family's combined income and ensures the claimant does not face financial pressure to find an unsuitable job because they have an earning partner. As with asset testing, considering partner income would introduce a form of means testing to income insurance, significantly increase administrative complexity, and reduce the scheme's effectiveness in smoothing incomes. It would, however, reduce scheme cost. Individualisation entitlement is also consistent with the individualised nature of levies.
- 134 We propose that income insurance entitlements would be individualised to ensure effective income smoothing, as with the accident compensation scheme. This means that one partner's income would not affect the other partner's entitlements to insurance. While this differs from New Zealand's welfare system, it is common in insurance schemes internationally.

Abatement rules would ensure a claimant is not financially better off as a result of their loss of work

- 135 Abatement rules determine how and when earned income reduces insurance payments. Abatement rules should reward work, while ensuring that people are not better off as a result of losing their employment. This ensures the income insurance scheme incentivises work, whilst also affecting the costs of the scheme.
- 136 New Zealand has differing abatement rules in the welfare and accident compensation systems. Main benefits have a set abatement threshold that currently allows for someone to earn \$160 before earnings affect their benefit entitlement. Once earnings exceed this threshold, entitlements reduce by 30 cents to 70 cents for every dollar, depending on the circumstances. Those in receipt of weekly compensation from the accident compensation scheme can earn up until their combined weekly compensation and income from employment reaches 100 percent of their income before their accident. Once they exceed 100 percent, weekly compensation reduces by a dollar for every extra dollar earned.
- 137 There is a wide range of abatement settings that could be adopted. However, the main abatement design choices are:
- 137.1 How much should someone be able to earn before earning affects insurance payments (the abatement-free threshold)?

137.2 How should that income affect those payments?

- Is it gradual, for example, losing 70 cents of entitlement per extra dollar of income earned?
- Is it sudden, for example, once you earn a certain amount you lose all of your entitlements?

138 We propose abatement settings that ensure a person is not financially better off as a result of their loss of work through the scheme. Insurance claimants would be able to earn up until the point where their combined income insurance entitlements and employment income reach 100 percent of their pre-loss income before it affects their entitlements, as with weekly compensation from the accident compensation scheme.

139 For example, someone who was made redundant from a job that paid \$1,000 per week (before tax) would be entitled to \$800 income insurance per week (before tax). Under the proposed abatement settings, this person could earn \$200 without affecting their insurance entitlements. This means they would have \$1,000 per week overall: \$800 from income insurance and \$200 from paid employment.

140 Income earned above this point should then abate (reduce) insurance entitlements 'dollar for dollar'. This means, for every additional dollar earned from employment, they would lose a dollar of insurance. Using the example above, if this person earned \$201 from paid employment, their insurance entitlement would become \$799, or if they earned \$300 from paid employment, their insurance entitlement would become \$700. In either scenario, their total income (from insurance and paid employment) per week will still be \$1,000, but how much of that is from paid employment and how much is from insurance changes.

141 These abatement settings would mean that people receiving insurance can 'top themselves up' to their previous level of income through finding some form of employment, providing an incentive to pick up part-time work or increase hours from remaining employment while receiving insurance. Abating entitlements dollar for dollar once the claimant has reached 100 percent of their previous income means that no-one should be better off financially as a result of their redundancy or loss of work capacity than they would have been in work.

142 However, this abatement regime means that there would be no financial gain from taking work subject to 100 percent abatement, because any earned income would reduce insurance payments by the same amount. This may particularly affect those with health conditions and disabilities, as increasing hours at work would not lead to any financial gain. The potential effects of this can be mitigated through the work obligations and appropriate case management.

The Scheme will interact with existing government institutions

143 NZII will interact with the existing tax and transfer system, including the welfare, student support, Paid Parental Leave, and accident compensation systems. We propose a set of rules to guide these interactions which aim to uphold the intent of NZII and the other government institutions it is interacting with.

Insurance would generally be treated as income to determine eligibility for welfare and student support

144 Through the welfare system, a range of support is available for individuals and families with low or no income. This includes (but is not limited to) main benefits, tax credits, and supplementary assistance to help with specific costs such as the Accommodation Supplement and Disability Allowance, as well as hardship assistance.

145 Almost all of this support is income-tested on the basis of couple income and assets. Put simply, the amount of income a couple has affects the amount of income support they are entitled to (if any).

146 How insurance payments are treated for the purpose of these income and asset tests will determine how much (if any) other income support someone is eligible for while receiving their insurance payments.

147 We propose that insurance entitlements would generally be treated as income for assessing entitlements for these forms of income support.

148 This would mean individuals already entitled to support before their loss of work, (e.g. Accommodation Supplement), may receive increased support because their income has reduced. Other individuals and families would become eligible for support, whilst those earning higher family incomes would not be eligible.

149 Overall, people may be eligible for a package of income support, including from NZII, the welfare system, and tax credits (e.g. Family Tax Credit and the Best Start tax credit). This is consistent with the purposes of welfare and is consistent with how other income is treated.

150 Some Working for Families tax credits, such as the In-Work Tax Credit and Minimum Family Tax Credit, are designed to encourage people into employment, ensure people are better off in work than on a benefit, and help with in-work costs. Therefore, they are generally only paid to people in employment. People receiving main benefits are not eligible for these tax credits, whereas those receiving ACC and Paid Parental Leave, but who are out of work, are eligible.

151 On balance, we propose that income insurance claimants would not be eligible for the In-Work Tax Credit or Minimum Family Tax Credit. This is consistent with the purpose of these tax credits but does exacerbate the

existing inconsistency between beneficiaries and recipients of ACC and Paid Parental Leave.

- 152 We also propose insurance would be treated as income for student support eligibility. Insurance being considered as taxable income also means that Student Loan repayments may be deducted from insurance payments should they meet or exceed the repayment threshold. As with income support, we propose treating insurance as income for determining entitlements to student support such as the Student Allowance.

Insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension

- 153 Unlike main benefits, entitlement to New Zealand Superannuation and Veteran's Pension is not income-tested. Given this, we propose that New Zealand Superannuation or the Veteran's Pension and income insurance could be received at the same time, so long as the eligibility criteria (and any obligations) are met. This is particularly important for those receiving New Zealand Superannuation or Veteran's Pension who rely on income from employment to meet their costs.

Where eligible, insurance claimants could choose whether to access Paid Parental Leave or income insurance and may receive both sequentially

- 154 Paid Parental Leave (PPL) is available for up to 26 weeks in New Zealand for those eligible. Generally, PPL is paid when an expectant parent stops work or begins parental leave from work.
- 155 Instances may occur where someone may be eligible for both PPL and income insurance at the same time, given both aim to replace income. For example, this could happen for those made redundant while in receipt of PPL or those who have a health condition resulting from their pregnancy or birth, which reduces their capacity to work.
- 156 Several choices are available for how PPL and NZII may interact, such as income treatment or a 'one or the other' rule. Our objective is to uphold the objectives of the schemes and to ensure that PPL recipients are not disadvantaged by becoming eligible for NZII, mitigating any potential gender bias.
- 157 We propose that PPL and insurance should both be available to those eligible but that they may not be accessed at the same time. In practice, this means payments could be accessed sequentially. For example, someone who has a health condition during pregnancy⁹ that reduces their capacity to work may be able to access insurance and then subsequently access PPL after the birth.

9 This could include complications associated with pregnancy.

- 158 The income that would be paid through the insurance scheme (assuming sequential take up) would be 80 percent of the worker's pre-PPL income and would not include their PPL payments in the calculation.

Insurance claimants could also receive weekly compensation from the accident compensation scheme where it covers a different income loss

- 159 As with PPL, circumstances may occur where someone qualifies for both weekly compensation from the accident compensation scheme and income insurance for economic displacement at the same time. For example, a multiple job-holder could be unable to work in one role because of an accident and lose another job through redundancy. This could also happen when someone is receiving weekly compensation from the accident compensation scheme but is still attached to their employer and is then made redundant.
- 160 We propose that in cases where a claimant independently qualifies for weekly compensation from the accident compensation scheme and income insurance for separate events, they could access both. However, entitlements to insurance would not cover lost income already covered by the weekly compensation from the accident compensation scheme (or vice versa). In practice, this means that:
- 160.1 income insurance would not top up a claimant to more than 80 percent of previous income (inclusive of any weekly compensation being received from the accident compensation scheme)
- 160.2 income insurance and weekly compensation from the accident compensation scheme could be received at the same time for independent qualifying events but only where they cover a different loss of income.
- 161 These principles, alongside the accident compensation scheme's abatement rules, mean claimants will not be better off than their pre-injury and pre-displacement income but could access both payments where eligible for both for differing income loss.
- 162 In cases where they are eligible for both for the same income loss (for example, those who are receiving weekly compensation from the accident compensation scheme while still attached to their employer and who are subsequently made redundant), we propose that the claimant could either opt to continue to receive the weekly compensation or opt to receive income insurance instead. Should the claimant remain on weekly compensation from the accident compensation scheme, they could claim any remaining insurance entitlement were their weekly compensation to end during period of entitlement for income insurance.
- 163 Allowing claimants to access both weekly compensation from the accident compensation scheme and income insurance at the same time for differing income loss acknowledges the levies paid for different types of cover as well as supporting the objectives of both schemes to provide compensation for

loss and reduce the immediate pressure to find work should claimants face a loss of employment.

Insurance payments would be considered income for Child Support purposes

- 164 Child Support is money paid by parents (liable parent) who do not live with their children, or who share care with someone else, and helps with the cost of raising that child.
- 165 Child Support is in part determined by each parent's income. As insurance payments will be treated as income, we propose that insurance payments will be considered income for Child Support purposes.

Tax treatment of income insurance levies and payments

- 166 The tax treatment of the NZII scheme will affect the amount of income insurance people receive, the total levy costs employees and employers pay, as well as the revenue received by government.
- 167 We propose that the tax treatment of NZII align with the overall framework for the tax system as well as with the tax treatment of the accident Compensation scheme.
- 168 This means both the employer and employee levies will be subject to goods and services tax (GST). Employers who are registered for GST will be able to claim a deduction for the GST paid on employer levies. NZII entitlements and bridging payments would not be subject to GST.
- 169 NZII entitlements and bridging payments will be defined as salary and wages under the Income Tax Act 2007 and will be subject to income tax. Tax on NZII entitlements will be withheld by ACC, and tax on bridging payments will be withheld by the employer.
- 170 Payments under the scheme will also be subject to ACC levies, KiwiSaver employee contributions, Student Loan repayments, and Child Support deductions. However, they will not be subject to NZII levies on the basis that these levies only apply to income insured by the scheme.
- 171 Employers will be able to deduct the cost of employer levies and bridging payments when calculating their net taxable income. On the other hand, employees will not be able claim a deduction for the cost of the employee levies they pay.
- 172 The extent to which the self-employed are included in the scheme is yet to be determined. If included, they could be liable for both employee and employer levies and will be able to claim back the GST on both levies if they are GST-registered. They may also be able to claim a deduction against their taxable income for both levies as they are costs incurred in carrying on a business activity.

We seek delegated decision-making to address further detailed interactions and related matters of detail

173 The above decisions provide clear guidance on how NZII will be treated across key systems it will interact with. There are some remaining detailed interactions to work through, including other income-tested products across the social sector, as well as some remaining detailed interactions with some legislation, such as the Social Security Act 2018¹⁰. We seek Cabinet's agreement for the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to make delegated decisions on the detailed interactions between NZII and other schemes and on related matters of detail, in consultation with relevant portfolio ministers as appropriate.

The scheme could be used to support New Zealanders in response to crises

174 The COVID-19 pandemic and other relatively recent crises (e.g. the Global Financial Crisis and Canterbury Earthquakes) have shown both the unpredictability of economic crises and the value of counteractive measures for protecting jobs.

175 New Zealand (like many other OECD countries) took unprecedented actions in response to the shock of COVID-19. For instance, New Zealand was able to establish wage subsidies and provide a leave support scheme in a short time.

176 Most other developed countries, however, were advantaged in already having social insurance infrastructure available to automatically deliver generous, widely available income support and economic stimulus to reduce the recessionary effects of the COVID-19 crisis. Many countries also instituted temporary or permanent extensions to their schemes, typically funded by government rather than from levies.

177 For these reasons, in the discussion document we outlined our intention to enable the scheme to provide additional support during a crisis, funded by the Crown, at times when the economic shock is so significant that additional stimulus may be needed.

178 The types of supports in a crisis that the scheme could provide include:

178.1 longer periods of entitlements than the standard six months of cover, and entitlements to claimants who would not otherwise be entitled to NZII, e.g. because they have not met the contributions history requirement, or their loss of work capacity is expected to be for less than four weeks; and

10 For example, whether the bridging payment is considered a redundancy payment or treated as income for the purposes of the Social Security Act 2018.

- 178.2 payments to people still attached to their job but whose employers are unable to continue paying their normal level of wages or salary. Such payments could be either a wage subsidy in return for the employer providing a certain level of employment, or a top-up to a certain level of income while the employee's hours worked reduce (furlough). Depending on the circumstances, the payments might be either paid directly to the worker, or indirectly via their employer.
- 179 The scheme could be provided with this type of emergency flexibility by giving the responsible Minister the ability to declare an economic crisis, either due to a specific event (e.g. natural disaster or epidemic) or a severe recession, and to direct ACC to make crisis payments in line with regulations. The declaration-making power could include identifying particular regions and/or certain industries as those the declaration relates to. It would be prudent for such a declaration to expire after a fixed period (e.g. no later than three months after it was made) and for the Minister to be empowered to withdraw it at any time.
- 180 Regulations relating to the crisis payments would specify the length of any extended entitlement for claimants, any changes to eligibility, and the type and level of payment for people still in employment. In the case of crisis support for firms and workers still attached to their jobs, regulations could set parameters such as eligibility criteria for firms to qualify, maximum payments, maximum duration, and categories of workers.
- 181 The Crown would fund any crisis payments made by the scheme. The Minister's power to direct ACC to make crisis payments would be limited to the extent that the Crown had made an appropriation for that purpose.
- 182 Our intention is for the scheme to have the flexibility to provide additional Crown-funded support during a crisis. We have directed officials to do further work to determine the operational feasibility of the scheme doing so and we will report back to Cabinet by October.
- 183 Assuming it will be operationally feasible for the scheme to provide additional support during a crisis, we propose that any additional system capability required would be second-order decisions for implementation, rather than as part of the primary capabilities developed to deliver the scheme.

Part III: Claimant and Employer Obligations

- 184 Obligations – for both claimants and employers – are essential tools for supporting an income insurance scheme to efficiently achieve its outcomes.
- 185 Some obligations are necessary to underpin the efficient administration of income insurance schemes. Other obligations relate to the scheme’s intended outcomes. For claimants, obligations determine what someone is required or expected to do while receiving financial help and can vary depending on the desired goal of the scheme. Obligations on employers can help incentivise behaviours that also contribute to the scheme’s objectives.
- 186 Internationally, obligations are a feature of income insurance schemes. These obligations are found within the schemes themselves and more broadly in the labour market to incentivise behaviours that align with the scheme’s objectives, such as minimum employment standards that apply whether a person is eligible or not.

We propose a reasonable set of obligations for both employers and claimants to support the administration of the scheme and people’s return to good work

- 187 Overly onerous obligations can risk pushing people into poorly matched jobs and could undermine core NZII objectives. There is also limited evidence on the effectiveness of obligations, in isolation, to support a return to work. This is because the reasons people exit insurance schemes vary, and it is hard to isolate the effect of obligations from other influences.
- 188 We propose a set of obligations that will support NZII’s objectives but avoid forcing people to accept unsuitable offers of work. This will strike a balance between preventing potential poor outcomes and providing effective support to workers through changes in their circumstances. ACC will have the ability to defer or waive obligations in certain situations (discussed further below).

Obligations to support administration of the scheme

- 189 In most circumstances, the scheme will receive information about a person’s potential eligibility to claim income insurance from their employer in the first instance. Employers will be required to:
- 189.1 notify the scheme when they provide notice to an employee of their role being made redundant
 - 189.2 notify the scheme that an employee may be eligible due to a health condition or disability if the employee has provided a relevant medical certificate (outlined in *Part I: Coverage*)
 - 189.3 provide appropriate information about the worker to support the claim, e.g. about the requirements/tasks involved in the claimant’s job if the claim relates to a health condition or disability.

- 190 Potential claimants will also have the right to lodge a claim directly with the scheme. This may be appropriate, for example, if the employee becomes aware their employer has failed to meet their obligation to notify the scheme, or would otherwise be reluctant to make a claim due to privacy and discrimination concerns if they disclose a health condition or disability to their employer.
- 191 Potential claimants will be asked to confirm their intention to claim. Claimants will be obliged to provide ACC with additional information needed (if any) to determine their eligibility. Claimants will have an ongoing obligation to inform ACC of any changes in their circumstances that may impact on their eligibility or the level of insurance payment they should receive, e.g. taking a part-time job, acceptance of a suitable job offer, absence from New Zealand.

Obligation for claimants to be in New Zealand to receive entitlements

- 192 We propose that NZII claimants will be required to be in New Zealand to receive their income insurance entitlements, given the objective is to support workers to find work in New Zealand. Such a requirement would also signal that the period covered by insurance is intended to be used for job search or to recover from a health condition and not for leisure.
- 193 However, it may be that claimants need to travel overseas during their entitlement period for a significant family event, health treatment, or important event (e.g. participating in a court case, participating in Special Olympic or Paralympic Games). We therefore propose that, for a limited set of permitted reasons, a claimant could continue to receive income insurance when overseas, usually for no longer than 28 days. The circumstances will be defined in regulations and ACC's waiver of the requirement to be in New Zealand will be required.
- 194 If a claimant is overseas receiving publicly funded specialist health care, the 28-day rule would not apply. We propose that ACC may also extend the 28-day rule if the claimant would experience undue hardship if an extension was not granted. These exceptional permitted reasons that would allow a claimant to continue to receive their income insurance payments while overseas are intended to align with the settings for beneficiaries to travel overseas for approved reasons while continuing to receive a main benefit.

Work-focussed obligations

- 195 Claimants will be required to:
- 195.1 actively search for work and demonstrate job search activity in most circumstances (see section on deferrals and waivers of obligations, below); and
 - 195.2 accept offers of suitable employment.

- 196 Suitable employment for NZII purposes is employment that offers at least the same wages or salary and other terms and conditions as the claimant's pre-displacement work, or the offer is deemed suitable by both the claimant and ACC, given factors such as work capacity and caring responsibilities. Claimants will not be expected to accept offers of employment that provide lower wages or less favourable terms and conditions than the role they were displaced from.
- 197 To support a return to work, claimants may be required to undertake activities, including completing a return-to-work plan and participating in employment-related programmes (work preparation). Claimants may also choose to upskill before searching for a new job by undertaking training. Provided the training is approved by ACC, the claimant's work search obligation could be deferred.

Additional obligations for claimants with a loss of work capacity due to a health condition or disability

- 198 As discussed in *Part I: Coverage*, potential claimants who have experienced a loss of work capacity due to a health condition or disability will be required to supply, either through their employer or directly, a work capacity assessment, completed by their health practitioner, in order for the scheme to determine their eligibility. Claimants may be required to provide ACC with a subsequent work capacity assessment if a reassessment within the entitlement period is recommended by the health practitioner. The scheme will provide claimants with as much notice as possible of the need to comply with this obligation.
- 199 Claimants may also be required to participate in an independent assessment related to returning to work. NZII would pay all costs associated with such an assessment. An independent assessment may be required by ACC if it considers there are grounds to seek assurance about the claimant's health practitioner's assessment, e.g. the work capacity assessment does not appear to align with other information the case manager may have available.
- 200 Claimants with a health condition or disability may be required to participate in vocational rehabilitation as part of their return-to-work plan. Vocational rehabilitation is a service that helps someone with a health problem to stay at, return to, or remain in work.
- 201 We propose that regulation-making powers be established to define the specific information employers and claimants will be required to provide to the scheme to meet their obligations.

There will be circumstances where these obligations can be deferred or waived

- 202 Some NZII claimants will not be able to meet their work obligations for good and sufficient reasons. We propose that ACC may defer a claimant's work obligations, for a period ACC determines is appropriate, if the claimant:
- 202.1 has a health condition or disability that means they are unable to search for, or prepare to return to, work

202.2 is undertaking approved training, or is participating in employment-related programmes or vocational rehabilitation

202.3 would face undue hardship if required to meet the obligations.

- 203 We propose that ACC may waive a claimant's work obligations completely if ACC agrees with an assessment by the claimant's health practitioner that they have no reasonable prospect of being able to return to any work within the entitlement period. We propose that ACC would also have discretion to waive a claimant's work obligations if the claimant would face undue hardship if required to meet the obligations at any time during the entitlement period.

It is important that claimants have support to meet their obligations

- 204 Most claimants will be able to return to work using their own resources. For claimants unable to self-manage their return to good work, a more intensive case management service will be provided, tailored to need. Case managers will work one-on-one with these claimants to understand their needs and barriers and to support them to develop a return-to-work plan where that is assessed as beneficial. If a claimant needs additional supports, their case manager will connect them to appropriate employment and vocational rehabilitation services, if available and any eligibility criteria are met. This is discussed further in Part IV: Scheme Delivery and Funding.

- 205 ACC will be obliged to make NZII claimants aware of their obligations, explain consequences of non-compliance and ensure claimants are aware of their rights to review and appeal decisions relating to the obligation.

Interactions with and implications for other systems

- 206 There will be instances where claimants are eligible for support from both MSD and NZII. This means claimants could be subject to two sets of obligations. Both systems have work-focussed obligations but differ in the detail of the obligations.
- 207 Meeting two sets of obligations would increase compliance costs, lead to significant confusion where the obligations conflict, and not improve a claimant's outcomes. We seek Cabinet's agreement to delegate decisions on how the obligations will interact to the appropriate Ministers.

Financial sanctions for NZII claimants to be used as a last resort

- 208 We expect that most claimants will be motivated to find suitable work and willingly comply with their obligations while receiving NZII. Compliance is likely to be greater, however, if financial consequences are in place for non-compliance.
- 209 Imposing financial sanctions for non-compliance is consistent with the approach in both the welfare and accident compensation systems, but sanctions must be used with care. In the welfare system sanctions can result

in the loss of 50 to 100 percent of main benefits and supplementary assistance, depending on the client's circumstances.

- 210 Penalties are also common in international insurance schemes, particularly where people refuse suitable employment. In such cases many schemes suspend or terminate payments and/or impose larger penalties or permanent loss of entitlement for repeated non-compliance.
- 211 NZII could operate without financial penalties and rely on voluntary compliance and the incentive provided by NZII's short entitlement duration. There remains a risk though if claimants do not comply with the obligations, particularly given the generosity of the scheme. This risk would mean such claimants remain on NZII for longer than necessary which would increase the cost of NZII. It could also undermine the public trust and confidence in NZII to support good employment outcomes.
- 212 Financial penalties could range from a partial loss of payment to a 100 percent loss of payment, or a sliding scale between the two. Evidence suggests that sanctions do not need to be harsh to be effective and may even be counterproductive by pushing people into unsuitable jobs with lasting negative effects.
- 213 We propose that financial sanctions for non-compliance should only be used as a last resort in cases of serious, intentional non-compliance with obligations, and in line with ACC's approach. This could include repeated refusal to comply with obligations or misleading ACC. More serious penalties may be imposed for fraud, and this is addressed later in the paper, which covers dispute resolution and enforcement.
- 214 This would mean entitlements could be suspended for as long as the claimant unreasonably refused or unreasonably failed to meet certain obligations. The claimant would receive written notice of the proposed suspension within a reasonable period before it took effect and with the opportunity to re-comply before it took effect. Entitlements would resume once the claimant complied.

There would also be some obligations and expectations for employers that apply whether or not the employee is eligible for NZII

- 215 The experience of overseas income insurance schemes indicates that such schemes can influence employers' decisions about layoffs. In some cases, terminations could be reclassified as redundancies and, in others, firms could be less restrained in opting to end the employment relationship. Obligations for employers relating to minimum employment standards can help to incentivise behaviours that align with the objectives of income insurance.

Notice period for workers economically displaced

- 216 While employers are required to give employees reasonable notice of displacement, New Zealand law has no minimum notice requirement for displacement.

- 217 A lack of notice about displacement can exacerbate the disruptiveness experienced by people when they lose a job. A lack of notice about job loss can worsen the effects of displacement as it reduces the time people can prepare for a drop in income or to look for other work.
- 218 A minimum notice period for a dismissal due to displacement would also have benefits for the scheme by enabling ACC to front-foot the impact for the worker by providing them with information about alternative employment options or training if appropriate, and processing claims promptly. This will ultimately reduce costs to the scheme through better job matching and support.
- 219 We propose the introduction of new minimum standards that employers must provide four weeks' notice of redundancy before the redundancy takes effect. If necessary, employers could instead pay employees four weeks' wages/salary in lieu of notice. This would not be in addition to any existing notice periods in existing employment agreements. This obligation would sit in the Employment Relations Act 2000.

We propose bridging payments that are paid by the employer for all economically displaced workers, supported by ACC providing an online calculator

- 220 A significant risk to introducing the scheme is that New Zealand's current institutional provisions could result in unnecessary and spurious redundancies, additional claims costs and undue effects on workers. The need to manage such 'sham' redundancies was strongly emphasised in consultation from both employers and workers.
- 221 Incentives will need to be in place to avoid and mitigate these risks. But any incentive needs to balance the cost imposed on employers and workers. If the cost is too high for employers, it could deter hiring or incentivise unlawful dismissals and disputes.
- 222 While existing redundancy compensation provisions in employment contracts could provide an incentive for some employers to avoid unnecessary redundancies, New Zealand law does not require employers to provide redundancy payments. It is estimated that fewer than half of New Zealand employees have redundancy provisions in their contracts, so many employment relationships are unlikely to be protected from unnecessary redundancy.
- 223 We consider the most effective way to mitigate against unnecessary redundancies is to establish employer-paid bridging payments to cover the first four weeks of the initial period of unemployment based on 80 percent of a worker's normal pay before they enter the scheme.
- 224 We propose that this would be in addition to any negotiated redundancy compensation provision, given existing contractual provisions may reflect an express or implicit wage sacrifice, and to mitigate any additional incentive the scheme may create for employers to make workers redundant.

- 225 Some employers may consider this as ‘doubling up’ existing contractual redundancy provisions, and this will require careful communications to explain the proposed policy. Over time, bargaining is likely to see redundancy compensation adjust to reflect the statutory position.
- 226 The bridging payment would be paid to all workers made redundant irrespective of their eligibility for the scheme. This could include, for example, those who do not meet the residency or contribution history requirements. Extending eligibility to these groups ensures there is no financial incentive for employers to make these workers redundant compared to those who are eligible for the scheme.
- 227 The proposed bridging payment imposes additional compliance costs on all employers, and increases costs of making staff redundant, but it also significantly lowers the overall cost of the scheme¹¹ through reducing the number of claims and ensuring that (for displaced workers) the costs for the first four weeks of entitlement are borne by the ‘displacing employers’, rather than all employers.
- 228 The bridging payment and notice period will collectively increase the cost of restructuring for businesses and government employers. They will also have an immediate effect of increasing employer liabilities that will in some cases affect their solvency.
- 229 A bridging payment would encourage employers to give more careful consideration to redundancies, discourage employers cooperating with employees to lodge spurious claims and offset an otherwise higher levy. This will need to be set out in employment law.
- 230 To support employers, ACC will provide an online guide and calculator for employers to assess the size of the bridging payment required. This will help ensure workers receive correct payments.
- 231 Alternatives to the bridging payment were considered, including a stronger focus on enforcement standards or a stand-down period for workers before accessing the scheme. However, whilst there will be enforcement standards, relying on them alone would require a significant increase of resources for enforcement, including litigation. Implementing a stand-down would leave workers without support from NZII for a period, undermining the objectives of the scheme.

11 A six-month scheme without a bridging payment is expected to require a levy of at least 2.88 percent rather than the 2.77 percent rate if a bridging payment is in place, though this is likely to be an under-estimate, as there would likely be significant behavioural changes if a bridging payment were not in place.

We propose the scheme steps in to make bridging payments in cases of insolvency

- 232 In cases of receivership or insolvency, entities may not be able to meet their notice period and bridging payment obligations or may not do so in a timely manner. In those circumstances, we propose that the scheme should step in and pay bridging to all workers, including those not eligible for the scheme.
- 233 We considered alternatives such as only stepping in for those eligible for the scheme or treating bridging as solely an employment relationship matter in line with unpaid wages or holiday pay. The option of the scheme stepping in was preferred as it provides the best support for workers who lose their jobs, by effectively guaranteeing everyone a minimum of one month's payment at 80 percent of earnings, equivalent to one month on the scheme.
- 234 In situations where the scheme has made the bridging payment to a worker, we propose that this be treated as debt owed by the employer and the scheme be treated as an unsecured creditor. The scheme would then seek to recover funds alongside other unsecured creditors. Alternatives include either treating the scheme as a preferential creditor or treating the bridging payment as wages. Either of these would reduce the funds available for other unsecured credits and increase their financial risk.
- 235 While this approach offers the best protection for working people, it will increase administrative costs and complexity for the scheme, as well as increasing financial costs through pay-outs and exposing the scheme to increased bad debt risk. It could also increase the risk of companies 'phoenixing' to avoid cessation obligations. These costs have not been factored into the financial modelling for the scheme.

We propose no statutory notice period or bridging payment in the case of medical dismissal

- 236 The discussion document proposed that employers would also be required to provide four weeks' notice and pay a four-week bridging payment in the case where an employer dismisses an employee on grounds of medical incapacity. The rationale for this was to encourage employers to make best efforts to support claimants who have lost work capacity due to a health condition or disability to return to work.
- 237 However, feedback from the consultation raised concerns about imposing compliance costs on employers for situations that are not their fault. Further concern was raised that rather than incentivising employers to support their employees with a health condition or disability to return to work, it would create a further barrier in the labour market and discourage employers from hiring them.
- 238 Existing arrangements in New Zealand obligate employers considering a medical dismissal to ensure deliberation is fair and actions reasonable. Best practice is that employers take medical expert opinion on the likelihood and capacity of an employee returning to work.

- 239 Medical dismissals are relatively rare. This suggests that the existing employer obligations provide sufficient “grit” to encourage employers to give careful consideration before deciding to dismiss a worker on grounds of medical incapacity. Further, given the small number of medical dismissals, most people entering NZII due to a health condition or disability would not receive a bridging payment.
- 240 On further consideration, we do not propose either a statutory notice period or a bridging payment paid by employers in the case of medical dismissal. The rationale for requiring these additional measures in the case of medical dismissal is not as strong as for redundancy and is for very different reasons. Further, it could result in greater disincentives for employers to hire people with existing health conditions or disabilities. This means the notice period and bridging payment only apply in situations where employees are economically displaced, and not when employees lose work due to a health condition or disability.
- 241 Having no requirement for a statutory notice period or bridging payment in the case of medical dismissal may be perceived by some as creating inequity for claimants, depending on whether they are economically displaced or have a health condition or disability. However, claimants will be entitled to the same duration of entitlements, no matter the reason for becoming eligible. The notice period and bridging payment are employer obligations, not entitlements under NZII.

We do not propose allowing for a mechanism to refund the bridging payment to employers

- 242 The discussion document proposed partially refunding bridging payments to employers who help their workers find alternative employment. This proposal received little feedback in public consultation.
- 243 Initial design work suggests refunds could be complex to administer and add costs liabilities to the scheme. Nor is it clear at this stage what effect, if any, refunds would have on employer behaviour. We therefore propose not including any refund of bridging payments to employers at this stage.

Notice periods and bridging payments for fixed-term and casual workers

- 244 Imposing an obligation on employers for notice periods and bridging payments is problematic for fixed-term employment, where any employer obligation is time-bound, and therefore any requirement to pay beyond the contracted end-date is unjustified. These obligations are also challenging for casual employment, where the obligation does not align with the informal nature of the arrangement, where generally there is no expectation on an employee for future work, nor on the employer to offer it.
- 245 Both working arrangements are generally expected to have a reduced level of commitment to future work, because of the shorter term of most such arrangements.

- 246 However, not imposing these obligations for both working types could incentivise employers to use these arrangements to avoid the cost of the notice period and bridging payment.
- 247 We therefore propose to pro-rate the notice period and bridging payment for fixed term and casual employment. The pro-rating would be based on length of employment (including where contracts have been rolled over): Those employed for:
- 247.1 more than six months would receive the full four-week notice period and four-week bridging payment
 - 247.2 between three and six months would receive a two-week notice period and two-week bridging payment
 - 247.3 less than three months would receive a one-week notice period and one-week bridging payment
- 248 For fixed-term employees, the notice and bridging payment could only cover the period to the contracted end date.

Employer obligations to support disabled people and people with health conditions

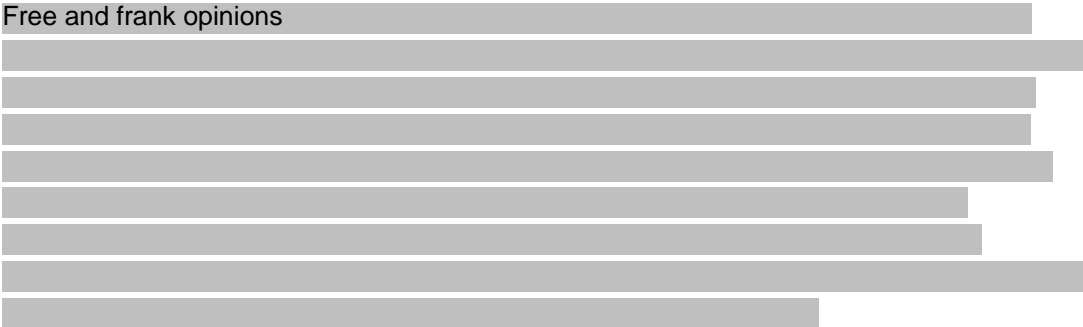
- 249 Findings from the public engagement suggest that more could be done to improve employers' perceptions, confidence and knowledge around reasonable accommodations and support for employees who have lost work capacity due to a health condition or disability to return to work.
- 250 Under the Human Rights Act 1993 (HRA), employers are required to take reasonable accommodation measures to support an employee with a health condition or disability to continue working, including redeployment where possible. While not always well-understood or taken up, there is advice and support available to help employers meet this obligation.
- 251 NZII also allows for a graduated return to work if that has been identified as an effective reasonable adjustment to support people back to work.
- 252 In addition to the existing obligation under the HRA, we propose to introduce an expectation in legislation that employers will make reasonable efforts to protect a job where their employee has a reasonable prognosis of returning to work within six months. It will not be mandatory for an employer to keep the job open for their employee as it may not be financially viable for the business to do so. However, employers will be expected to take reasonable steps to protect their worker's job for up to six months, if the employee is assessed as likely to return within that timeframe.

Part IV: Scheme Delivery and Funding

We propose that ACC administer the scheme

- 253 We are committed to delivering a scheme that will be trusted, accountable, efficient and that effectively and empathetically delivers the intended outcomes for NZII.
- 254 Having a competent, independent entity is important for providing assurance, for instance, that the scheme's employer and worker levy funding will be used for the purpose for which it is collected (and not diverted to other uses).
- 255 We considered a range of options, including establishing a new Crown entity or delivering it through the Ministry of Social Development.
- 256 We recommend that ACC administers the NZII, which would be delivered alongside, but separate to, the accident compensation scheme, which would not be changed. ACC has institutional features and functional capabilities that NZII could leverage and build on:
- 256.1 being a Crown agent, ACC is well suited to deliver a trusted levy funded scheme. Having a higher level of independence will help to provide assurance that it will manage funding for its intended purpose
- 256.2 ACC is the most practical and cost-effective option. NZII will build on many of the same systems that ACC uses for the accident compensation scheme
- 256.3 introducing NZII into ACC may help to strengthen the accident compensation scheme, particularly ACC's return to work focus, an important driver of rehabilitation performance (which is a key performance focus for ACC).
- 257 This will require investment in information technology platforms, staff, good information collection, and information-sharing systems with other agencies, so that information already collected by agencies can be used efficiently and safely by the scheme to deliver its services and manage integrity. It will also require suitable information to monitor whether the scheme is meeting its objectives, whether interventions are effective and to enable public transparency.
- 258 Establishing NZII in a new Crown entity or in a department such as MSD would be feasible and have certain merits (e.g., a new entity could have a dedicated focus on NZII performance). However, each of these options entail significantly higher build costs and risks than using ACC. It would also be more difficult to realise synergies across the schemes.
- 259 At the same time, establishing NZII in ACC will still require it to leverage other government systems to achieve the scheme's outcomes, including the public health system, the vocational education and training system, and public employment services.

Meeting the Crown's obligations under the Treaty of Waitangi/te Tiriti o Waitangi

- 260 The way the scheme is governed, delivered, and monitored needs to recognise the Crown's obligations under the Treaty of Waitangi/te Tiriti o Waitangi (te Tiriti). Māori are disproportionately more likely to be made redundant and to leave work for health or disability reasons and are likely to make up a significant proportion of claimants.
- 261 Our proposal for the incorporation of te ao Māori perspectives in governance is outlined further below. In addition, there is a range of steps that can be taken to ensure the implementation of the scheme honours te Tiriti (e.g. kaupapa Māori approaches to service delivery and evaluation, and performance measures assessing the equity of the scheme for Māori).
- 262 We propose to include a te Tiriti provision in the Bill. Inclusion of the provision in the Bill will build on the spirit of the provision included in the Income Insurance Scheme (Enabling Development) Act 2022 (the Enabling Act). It would recognise the Crown's responsibility under te Tiriti to work towards achieving equitable policy outcomes for Māori and that the way the NZII scheme is operated will influence Māori labour market outcomes.
- 263 Including such recognition is consistent with the aspiration Ministers and social partners have expressed for the scheme. Given the different purpose of the legislation to govern the scheme, the substantive elements of this te Tiriti provision will differ from that of the Enabling Act.
- 264 Free and frank opinions 
- 265 Officials will report back to NZII ministers and the Minister for Māori Development on the development of te Tiriti clause prior to the Bill's introduction.

Administration of NZII

- 266 We propose that, to effectively administer NZII, ACC would have a similar set of functions as it has for the accident compensation scheme. ACC would be responsible for:
- 266.1 collection of employer levies (including, if appropriate, levies paid by the self-employed) and management of funding (discussed below)
 - 266.2 claims administration – ACC would be responsible for systems to receive and assess claims for eligibility and entitlements, and make payments
 - 266.3 case management – ACC would be responsible for providing claimants, upon entry to NZII, with information and support to help them to return to work. ACC will need to identify claimants who are likely to be able to self-manage their own return to work and readily meet their obligations and those who will need more intensive support. Case management will be tailored to need: ranging from a proforma set of online resources, to on-on-one support. Case managers would connect claimants with appropriate employment and vocational rehabilitation services, if available and any eligibility criteria are met (discussed below).
 - 266.4 monitoring for compliance and where necessary issuance of sanctions, or enforcement (discussed below)
 - 266.5 dispute resolution – discussed below
 - 266.6 data collection and analytics of NZII performance
 - 266.7 receive and share information with other agencies to efficiently and effectively process and manage claims and NZII integrity – information sharing provisions are being developed in consultation with Office of the Privacy Commissioner and will be reported back to Cabinet by October 2022 to inform drafting of legislation.
 - 266.8 any additional functions that are in keeping with NZII purposes that are authorised by regulation or Ministerial direction.
- 267 Inland Revenue would be responsible for collecting the employee levy as part of PAYE withheld by employers. Employee levy revenue would then be passed on to ACC.
- 268 NZII administration is estimated to cost between ~9 and ~12 percent of overall NZII costs and would be funded by levies (consistent with the accident compensation scheme approach to funding administration). This is a higher cost, as a proportion of NZII costs, than for the accident compensation scheme. This in part reflects uncertainty, but also the higher cost per claim in administering a short duration, as opposed to a lifetime duration, scheme.

Interactions with, and implications for, other publicly funded services

Health system

- 269 NZII can be expected to place additional demands on the health system. Initial modelling estimated 135,300 people might access the scheme each year due to a health condition or disability. Extra demand will arise due to the need for health practitioners to undertake work capacity assessments for workers seeking to access the scheme. NZII may also surface unmet health needs, which will create additional pressure for services in a system already subject to significant constraints.
- 270 Work capacity assessments will involve additional appointment time beyond what the health system currently provides. The additional demand is expected to fall mostly on primary care, with general practitioners likely to form the backbone of the assessment workforce, with additional demand for specialist time as well, including occupational therapists.
- 271 Implementing NZII will result in behaviour change – much of which will be positive. In respect of health conditions and disabilities, it will incentivise people to seek health services, and reduce the effect of presenteeism and lower productivity from people with limited capacity continuing to work full-time because they cannot afford to reduce their hours. This behaviour change will surface unmet health needs.
- 272 As NZII will not fund health treatment, these needs will lead to increased demand for publicly funded health services (although some claimants may have private health insurance). This could lead to longer waiting times for non-urgent services, including appointments to see general practitioners, appointments with specialists, and access to planned care. Access to publicly funded health services is prioritised based on clinical need and ability to benefit, meaning that NZII claimants' access to services will not be prioritised as of right.
- 273 Officials will undertake further analysis to identify the potential scale and distribution of additional demand and costs for the health system, including in respect of workforce, capacity building, and service provision. It will also be important to ensure improved equity in both health outcomes and employment outcomes are supported in the interaction between NZII and the health system.

Active labour market programmes

- 274 As noted above, some claimants may need access to additional services to support their return to good work, e.g. vocational rehabilitation, career advice, job brokerage, access to subsidised on-the-job training.
- 275 MSD provides employment services to people at risk of long-term benefit receipt (whether currently on a main benefit or not), with tiered intervention and support depending on need. Access is determined by eligibility criteria set in secondary legislation. Other ALMPs are provided by MSD and other agencies without eligibility criteria.

- 276 Some NZII claimants may share characteristics with people currently receiving MSD's employment services and could be in scope for targeted ALMPs. However, some claimants who need support may not be captured in this targeting or meet current eligibility criteria. In addition, NZII will increase demand for ALMPs due to increased awareness that support is available and greater visibility of people who may need support.
- 277 The Government currently has underway a review of ALMPs, which aims to understand the sufficiency of support for people including future NZII claimants, as well as addressing recommendations from the Welfare Expert Advisory Group. The review is reporting to the Employment, Education and Training Ministers Group in June 2022, and will provide the Ministers with advice about potential new services that may be required, both in respect of supporting workers who have been economically displaced and who have lost work capacity due to a health condition or disability.

Vocational education and training

- 278 Some claimants will either need or benefit from training after displacement to address skills gaps or to learn new skills if their previous occupation is sunseting. Some claimants who have lost work capacity due to a health condition or disability may only be able to return to a different type of work that they need training to learn (which may be either through a course or on-the-job training).
- 279 The reform of vocational education (RoVE) currently underway is important to support claimants to access vocational education that will help them to return to good work. The reform is changing the system so that learners receive vocational education that is more relevant to work. The new system will have a stronger focus on employers and delivering the skills they need.
- 280 The work of the Regional Skills Leadership Groups and Workforce Development Councils, both established as part of the RoVE programme, will also be important for NZIIS. Their work will support claimants to identify regional labour market and skills opportunities, and improve access to courses, apprenticeships, pre-employment training and qualifications aligned with a region's needs.

An effective dispute resolution process will help maintain the integrity of NZII

- 281 Unresolved disputes and substandard dispute resolution can be socially and financially costly and affect public confidence. Having an effective disputes resolution process that resolves disputes as soon as possible is crucial to maintaining the integrity of NZII.
- 282 We propose a four-step dispute resolution process for NZII in line with the process already operated by ACC:
- 282.1 Internal review: the insurer would undertake an internal review of a review application. It is expected that a large proportion of disputes would be resolved at this stage.

I N C O N F I D E N C E

- 282.2 Mediation: for reviews unable to be resolved internally, mediation could be offered as an alternative dispute resolution tool.
- 282.3 Formal review: unresolved disputes would be referred to an independent, third-party reviewer for a legislatively defined formal review. Claims could be withdrawn or settled before a review hearing took place.
- 282.4 Appeal to the courts: any review decision would be fully appealable to the District Court and from there to the High Court.
- 283 Broadly, claimants would have a right of review of any decisions relating to the claim eligibility and entitlement. The review process could be initiated by claimants or people acting on behalf of a claimant (e.g. a friend, or family member, or client advocate, or lawyer).
- 284 Where a dispute exists over eligibility, the requestor would not receive insurance payments until the dispute is resolved. An NZII claimant may apply and, where eligible, be granted assistance through the welfare system until entitlement can be determined.¹² We did consider whether insurance payments should continue while eligibility is established, with insurance payments being repaid by the NZII applicant if they were determined not to be eligible. This approach would create significant debt for individuals and the scheme and is therefore not preferred.
- 285 We propose that regulation-making powers be established to set:
- 285.1 timeframes for completion of each stage of the review process
- 285.2 reasonable costs or contributions payable by the scheme to support a claimant to access the review process.
- 286 We propose that the insurer would pay for the costs of an independent review process. NZII disputes are likely to occur in a small number of cases and most disputes will be managed in the first instance by the internal review and mediation. There is some uncertainty about the number of Court appeals. Based on the experience of ACC we have assumed about 98 appeals each year¹³. As is the practice with the accident compensation scheme, ACC would fund judicial and Court capacity to manage NZII appeals.
- 287 We propose undertaking further work on the enforcement of the notice period and bridging payment, including who will undertake enforcement action. This work will likely have cost and resourcing implications.

12 Consistent with the existing approach to disputed Accident Compensation claims.

13 This does not factor in the potential for substitution for disputes over Accident Compensation claims.

We propose to adapt and update ACC's enforcement frameworks for NZII

- 288 NZII will face broadly similar integrity challenges as the accident compensation scheme, failure to provide information, provision of misleading information, and non-payment of levies.
- 289 We consider that the offences in the Accident Compensation Act 2001 should also be used for the NZII scheme, as the behaviours they seek to deter or encourage are the same.
- 290 However, there are integrity and other risks relating to the NZII scheme that are additional to those in the accident compensation scheme, and there will be a need for some new offence provisions (for instance relating to non-payment of a bridging payment by an employer). Most of these are expected to be enforced as minimum employment standards and contained in the Employment Relations Act 2000, and we propose to provide further advice and seek decisions on those in the future.
- 291 However, the penalty levels for the relevant offences in the Accident Compensation Act do not appear to be appropriate. In particular, the penalty rates are insufficient, having become out of date since they were introduced in 2001. They have not been adjusted for inflation in the interim.
- 292 We consider the NZII offence penalties should generally be set higher than they are currently set for the accident compensation scheme. We also consider it is desirable to avoid penalty levels progressively becoming less effective as a result of inflation. To achieve this, it would be desirable to set some NZII scheme penalty levels as a multiplier of any financial gain obtained from the offending. This approach is used in other regulatory regimes, including the enforcement of minimum employment standards, such as non-payment of minimum wages where the penalty is up to three times the amount of financial gain obtained from the offending.
- 293 If this approach is taken with NZII scheme penalty levels, we consider it would be sensible to ensure the accident compensation scheme penalty levels are also updated to use the same inflation-neutral approach and, where the risks and impacts of offending are similar, set at the same level.
- 294 Enforcement of new standards, such as those relating to bridging payments and notice periods, will also have resource implications for the employment standards system. We propose to undertake further work on how to enforce compliance with the new standards. Effective enforcement would require additional resources. We will give this consideration as part of Budget advice (as such enforcement is outside the scope for NZII levy funding).

We propose to update ACC’s existing governance arrangements

- 295 Effective and efficient governance will be important to the NZII’s success. There has been limited public feedback on governance. Iwi leaders have expressed an expectation to see a strong role for Māori/iwi through co-governance of the scheme. The New Zealand Council of Trade Unions has expressed an expectation to see a continued role for social partners in direction and oversight of the scheme. Representatives from the disability community have also commented that representation by disabled people is vital.
- 296 ACC’s existing governance arrangements (role and composition of board, Ministerial oversight, monitoring, reporting, and legislative obligations and constraints) are broadly fit for purpose. However, with the introduction of NZII we consider that it is timely to update certain aspects of ACC’s governance.
- 297 ACC is subject to the Crown Entities Act 2004, and the convention that board members are appointed based on having the necessary skills to provide good governance of the relevant Crown entity. We consider that including Māori/iwi, employer and employee perspectives would benefit the governance of both the accident compensation scheme and NZII. It remains important that the Minister make decisions on board membership based on the best interests of the entity and the individual members’ capabilities to contribute to the board. The board members must likewise make decisions in the best interests of the Crown entity.
- 298 We therefore propose to:
- 298.1 broaden the skill and capability matrix for the ACC board to include employer and employee perspectives, and a deep understanding of te ao Māori and disability, and
- 298.2 (more broadly) legislatively require the Minister to consider qualified candidates for the combined ACC-NZII board nominated by representative bodies (of Māori/iwi, employers, and employees).
- 299 New requirements to seek nominations from representative bodies are unlikely to cause time delays or additional costs in the usual appointment cycle. However, it may incur additional costs, and require more time, to fill unanticipated vacancies.
- 300 Additionally, ACC will identify operational opportunities for representatives of Māori/iwi, employers, employees, and the disabled community to be part of sub-board level aspects of governance (e.g. advisory boards, board sub-committees).
- 301 In developing a Treaty of Waitangi/te Tiriti o Waitangi provision for the legislation, officials will consider how to embed requirements to monitor and report on key scheme outcomes for Māori/iwi and provide feedback loops into planning and operations.

Funding income insurance

302 The scheme specification outlined above is estimated to cost \$3.54 billion per year based on 2018 data, which will increase from year to year with wage growth and increases in the labour force.¹⁴ This cost covers the payment of entitlements and the cost for ACC to administer the scheme.

We propose that the scheme is levy funded, equally shared by workers and employers, with joint ministers to consider further advice on the levy's structure

303 As noted in *Cabinet Paper 1: Agreement to Proceed*, we propose that the scheme be funded from compulsory flat-rate levies on wages and salaries.

304 The discussion document proposed that the levy be equally shared by workers and employers at the outset of the scheme. To meet the estimated cost of the scheme, the levy would be reviewed, consulted on, and set every three years in regulations. Based on the initial cost estimate for the scheme, employers and workers would each pay 1.39 percent (inclusive of GST) on wages and salaries up to a maximum leviable cap, which will align with ACC's maximum cap (currently \$136,544).

305 International income insurance schemes are funded by levies on wages and salaries. Levies are a good payment model for social insurance because the revenue is needed for a reasonably defined group of people (working people) and a link exists between the amount paid and the benefit received.

306 International literature indicates that, regardless of how the levy is split, levy costs can be passed through to some employees in the long run, particularly those with limited bargaining power. This pass-through will be in the form of a reduction in net pay increases over time.

307 Concerns were raised during consultation on the impact of the levy on low-income workers and their families. We are mindful of the impact, though this needs to be balanced against the significant additional protection the scheme will provide to them.

308 We propose that the NZII Ministers and the Minister for Child Poverty Reduction consider further advice on options for reducing the impact of the levy on low-income workers (such as through a lower levy rate or a progressive levy). As noted earlier, we intend to consider whether changes to the scheme's replacement rate could help fund a reduction in the levy rates or offset the cost of a progressive levy rate. A change to the proposed flat-rate levy of 2.77 percent would be preferred if an option can be identified that:

14 The Treasury estimates the scheme cost will increase to \$4.7 billion in 2025/26. As the increase is driven by wage growth, the levy rate may not need to change.

- 308.1 meets the scheme objectives, including a sufficiently high level of income smoothing
 - 308.2 provides effective levy relief to low-income workers who would struggle to meet the cost of the levy
 - 308.3 does not require Crown funding, and
 - 308.4 is operationally feasible.
- 309 If there is a case to revisit the choice of a flat-rate levy, Ministers will seek Cabinet's agreement to rescind the decision on the flat-rate levy and to determine the preferred option for the levy by October 2022. Options to offset any cost of a progressive levy through changes to the replacement rate will be considered.

Funding model

- 310 We propose that the scheme be largely funded on a Pay-As-You-Go (PAYGO) approach (whereby levy rates are set to cover the expected cost of claims in a year), but with an additional levy loading to build up an appropriate reserve fund over time to smooth out levy fluctuations through the economic cycle. The reserve would develop over time as a buffer for annual cashflow issues, and support levy stability over time.
- 311 We also propose that the scheme can access a Crown lending facility – subject to commercial terms, including an interest cost established by New Zealand Debt Management (part of the Treasury), and a payment timeframe determined by a scheme funding policy (discussed below).
- 312 Most countries operate a variant of the PAYGO model (collecting levies sufficient to cover claims costs in a given year) but apply smoothing strategies to pursue financial balance over the medium term such as accumulating reserve funds. A number operate with a working capital facility as a short-term financial buffer.
- 313 Access to lending will be critical as the scheme is expected to face cashflow issues, particularly upon go-live, and over time due to:
- 313.1 levy income and claims incurred differing over any given year (potentially incurring a shortfall of up to \$1 billion in the initial year)
 - 313.2 uncertainties relating to the scheme's true cost upon the scheme's introduction and economic cycle timing issues, and
 - 313.3 recessionary events (a GFC-level downturn could require access to ~\$1.3 billion over two years, and over \$2 billion in a more extreme event).

- 314 Despite this, the scheme is expected to make a potentially sizeable contribution to New Zealand's existing automatic stabilisers.¹⁵ It would do so by helping to improve consumption smoothing and associated stimulus in economic downturns.

Separate displacement and health condition and disability levies

- 315 We propose that funding requirements for economic displacement and health condition and disability claims be accounted for separately. The respective levies would include a share of scheme administration cost proportionate to the respective claim costs for economic displacement and health conditions and disabilities.
- 316 Maintaining separate accounts would be preferable for tracking claims trends and supporting scheme transparency, performance monitoring, and targeting interventions to where they are most needed. It allows for separate development of levying approaches to be applied for each area of cover.
- 317 We propose that the legislation allow flexibility to enable inter-account loans, according to terms prescribed by a funding policy established by ministerial direction.

Levy setting process and frequency

- 318 Over time the levy rates may need to change as more data becomes available and NZII experience changes.
- 319 Establishing a clear and robust levy setting process will support scheme transparency and financial sustainability and will help to maintain public confidence.
- 320 We propose that key levy process requirements be set in legislation, in support of a broader legislated and operational levy-setting process, namely requirements for:
- 320.1 the Minister to establish a funding policy, to give practical effect to legislated funding principles (discussed below)
 - 320.2 ACC to publicise an annual statement of the financial condition and outlook for the scheme
 - 320.3 the ACC/NZII Board to recommend to the Minister the need for a levy review if this is required earlier than the default interval (based on the scheme's financial condition)

15 These include the welfare and tax systems, which automatically increase expenditure and reduce revenue during a downturn helping to stabilise the economy after shocks, without requiring new government action.

- 320.4 periodic review of, and consultation on, levy rates at intervals not longer than three years (i.e., sooner, if recommended by the ACC/NZII Board).
- 321 This is broadly consistent with the approach to adjusting AC scheme levies, however given the NZII funding model will be simpler than the ACC's fully funded model, and reliant on Crown lending.
- 322 It is proposed that the NZII levy setting consultation would align with the ACC levy setting consultation (currently being reviewed) but be Minister-led, with MBIE leading the consultation process. This approach would ensure trade-offs between NZII and Crown risk (scheme debt-funding) were considered in equal measure.

Overarching funding principles

- 323 We propose that the legislation establish:
- 323.1 overarching funding principles, and
 - 323.2 provision for ministerial directive to establish a more detailed, prescriptive funding policy to give practical effect to the funding principles.
- 324 Establishing overarching funding principles will ensure levy-setting and stewardship of funding is guided by clear and consistent objectives over time. Given it would be set in legislation, the principles would need to provide sufficient detail to be meaningful, but also latitude for specific NZII funding parameters to be adapted to differing contexts over time in the funding policy.
- 325 The following overarching funding principles are proposed, to be included in the New Zealand Income Insurance Act. The principles have been developed with reference to the accident compensation scheme funding principles (section 166A of the Accident Compensation Act 2001) and Treasury principles for setting charges in the public sector:
- 325.1 sustainability, resilience: a key principle for the long-term credibility of NZII
 - 325.2 levy stability: levies should be set to look through fluctuations in cost and revenue impacts as far as practicable
 - 325.3 economic efficiency: levy rates should avoid either over- or under-collection as far as practicable, recognising each state entails cost.
- 326 Additionally, it is proposed that the following general principle underpin the levy framework: Transparency and accountability. This would apply to the levy, the approach to levy-setting, NZII's financial condition, NZII's equity, and the use of levy funding (which is subject to scope choice, described below).

- 327 It is proposed that the Ministerially directed funding policy would give specific practical effect to the funding principles but be easily adapted for a particular economic and NZII financial context.
- 328 The funding policy could, but would not be limited to, setting lower or upper NZII funding levels that trigger levy increases or decreases (to manage sustainability and economic efficiency objectives), stipulate pay-back periods for debt drawn down from the lending facility (discussed above), maximum increases to levy rates that could applied from year to year or levy period to levy period (to manage funding stability).

NZII requires rules governing the use of levies

- 329 We propose that the levy would fund the costs of entitlements, administration, and case management. The levy would not fund costs associated with claimants' work capacity assessments (but would fund independent assessments required by the scheme), additional supports that claimants may need, e.g. health or employment services, or training (relying instead on existing Crown funded services delivered by other agencies).
- 330 The discussion document noted that, over time, it may be desirable for ACC to purchase a wider range of services from various providers. While this would cost more, effective employment services could reduce the time people spend receiving insurance, reducing overall costs.
- 331 Public consultation has revealed a high level of interest in the availability of services to match the provision of income insurance payments. The initial levy estimates have not allowed for the costs of purchasing such services. There may be value in exploring the options for purchasing employment and related services alongside the Review of ALMPs.

Areas of continuing policy work

- 332 This Cabinet paper proposes the detailed design of the scheme to inform the legislative drafting and continued work on delivery of the scheme. There are a number of areas where we propose the ministers of Finance, Social Development and Employment, Revenue, and Workplace Relations and Safety (NZII Ministers) consider further advice on discrete policy issues, including:
- 332.1 non-standard workers
 - 332.2 self-employed workers
 - 332.3 crisis payments
 - 332.4 levy relief
 - 332.5 information sharing.
- 333 NZII ministers will report back to Cabinet by October 2022 on these issues as appropriate.

Implementation

- 334 We propose to report back by October 2022 with a Better Business Case on implementing the scheme for Cabinet approval.
- 335 ACC and MBIE, with involvement from MSD and Inland Revenue, are currently developing a Better Business Case to guide implementation of the scheme. Confidential advice to Government [REDACTED]
- 336 ACC proposes to use the design and implementation preparation funding contingency allocated in Budget 2022, with the support of Inland Revenue and MSD, to complete high-level scoping, cost estimation, delivery planning, and some early commercial planning.

Implementation risk

- 337 There are also potential risks of using ACC in that it could be distracted from obtaining the benefits from its recent transformation programme, and driving ACC scheme performance, particularly during NZII's establishment. These risks can be managed with:
- 337.1 ensuring ACC continues to be subject to effective governance, including well-focused performance expectations for each of the schemes during the development and initiation of NZII
- 337.2 adequate start-up funding for establishing NZII (discussed below in the financial implications section)
- 338 Another key risk is that necessary expertise will not be available to implement the operational design and development according to the implementation timeline and objectives. The timing of a number of large reorganisation projects are expected to overlap, drawing on the same pool of expertise (e.g. IT, Māori cultural capability), in a tight labour market. This will be mitigated by the extension to the implementation timeframe.

Monitoring and evaluation

- 339 Introducing income insurance represents a significant shift for New Zealand.
- 340 Work to establish a performance and monitoring framework for the scheme will be carried out as part of the overall approach to establishing scheme governance. This will establish the baseline indicators that will be regularly reported on to understand the impact of the scheme.
- 341 An interagency group of research and evaluation experts is being established to consider and advise on the approach to evaluation. This will include contracting for an independent formative evaluation of scheme outcomes and effectiveness, which will inform ongoing reviews of the scheme and its policy settings over time.

Financial Implications

342 *Cabinet Paper 1: Agreement to Proceed* covers the financial implications of NZII.

Release of contingency funding

343 At Budget 2022 the Minister of Finance and Minister of Social Development and Employment jointly agreed, as authorised by Cabinet [refer CAB-22-MIN-0129 - Initiative 13624 refers], to establish a tagged contingency for the establishment of a new income insurance scheme, for MBIE and ACC to draw down over the scheme's implementation period.

344 It was agreed that funding would be released with joint Ministerial approval subject to:

344.1 Cabinet deciding to proceed with the proposed NZII, and

344.2 further advice from ACC on design and implementation work required to prepare for NZII (refer to the section above on implementation).

345 Subject to Cabinet agreeing to proceed with NZII, we propose that Cabinet approve the release of tagged contingency funding.

Legislative Implications

346 Legislation is required to establish the proposed NZII. This will require a new act of Parliament to (subject to policy scope):

346.1 establish a clear scheme purpose

346.2 establish the income insurance scheme functions for ACC (in addition to its accident compensation scheme functions), including administrative functions such as managing scheme funding, debt recovery, claims administration and management, dispute resolution, enforcement, and information sharing

346.3 require the payment of levies by employers and workers to fund the scheme

346.4 obligate employers to provide notice periods and bridging payments to workers being laid off

346.5 provide certainty about the funded parameters of scheme cover

346.6 provide certainty about the funded parameters of scheme entitlements and other supports for workers to return to work

346.7 establish governance and accountability requirements over and above those provided by the Crown Entities Act 2004.

347 Work is continuing on some provisions for the Bill, such as for information sharing, which will require subsequent decisions by Cabinet to feed into drafting.

Timeline

348 To support a robust implementation process, legislation should be passed by July 2023. To meet this timing, a Bill will need to be introduced this year, and accordingly is a category 4 bill (referred to a select committee in the year).

349 We propose that PCO be authorised to draft legislation so that the Bill is ready for introduction this year.

350 The proposed timing for the legislation is summarised as follows:

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date for initial drafting instructions will be sent to the Parliamentary Counsel Office (PCO) (this will be an iterative process)	31 July 2022	It will be a lengthy Bill with some complexity but will be able to draw from technical provisions in the AC Act 2001, which will support drafting. PCO will be consulted at the outset.
Date by which the Bill will be provided to the Ministry of Justice for an assessment of consistency with the New Zealand Bill of Rights Act 1990 (BORA)	Early November 2022	The Bill is expected to be able to be provided to Ministry of Justice for NZBORA vetting in November, but officials have built in time to ensure the Bill is vetted in time.
Dates on which the Bill will be before LEG and Cabinet for approval for introduction	5 December 2022	This is the latest possible date to enable introduction of the Bill this year.
Date requested for introduction of the Bill	By mid-December 2022	This is the latest possible date to enable the Bill to undergo a full select committee process and be passed in mid-2023.
Date of report back from select committee	Mid-June 2023	This allows for a 6-month Select Committee process
Date of enactment	June – July 2023	Before Parliament rises in 2023

351 As well as a new standalone Act, new sections in the Employment Relations Act 2000 are required to establish some employer obligations. The scheme also interacts with a range of existing government institutions, and consequential amendments will be needed to a wide range of legislation, for example the Social Security Act 2018, the Accident Compensation Act 2001, and the Income Tax Act 2007.

352 The Bill is included in the 2022 Legislation Programme, with a priority 4, for introduction in the year.

353 The new standalone Act establishing NZII will be binding on the Crown.

Impact Analysis

Regulatory Impact Statement and Climate Implications of Policy Assessment

354 *Cabinet Paper 1: Agreement to Proceed* covers the impact analysis requirements.

Population Implications

355 *Cabinet Paper 1: Agreement to Proceed* covers the population impacts of the scheme.

Human Rights

356 With one exception, the proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. The proposal to differentiate access to the scheme for temporary migrants may engage the right to be free from discrimination under section 19 of the NZBORA by reference to one of the prohibited grounds of discrimination under section 21 of the Human Rights Act. This may be a justified limitation on the right, but this will need further testing as the Bill is drafted. Legal advice from the Crown Law Office has been requested on this issue.

Consultation

357 *Cabinet Paper 1: Agreement to Proceed* sets out the consultation on NZII.

Communications and Proactive Release

358 *Cabinet Paper 1: Agreement to Proceed* sets out the communications and proactive release plans for NZII.

Recommendations

The Ministers of Finance, Social Development and Employment, ACC, and Workplace Relations and Safety recommend that the Committee:

- 1 **note** that *Cabinet Paper 1: Agreement to Proceed* recommended that Cabinet agree to introduce a New Zealand Income Insurance scheme (NZII);
- 2 **note** that this paper proposes the detailed design for NZII;

Part I: Scheme Coverage

- 3 **agree** that the NZII covers complete job loss due to economic displacement. This coverage:

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- 3.1 includes the complete loss of a job due to redundancy (including voluntary redundancy) or similar event
- 3.2 excludes job loss due to resignation (including where this is determined to be a constructive dismissal), poor employee performance, and misconduct;
- 4 **agree** that NZII covers loss of work capacity caused by any health condition or disability (not covered by the accident compensation scheme) that is assessed as reducing work capacity by at least 50 percent and is expected to last four weeks or longer;
- 5 **agree** that the scheme will determine a person's eligibility due to a health condition or disability primarily on the basis of a work capacity assessment in the form of a medical certificate the claimant obtains from a health practitioner registered under the Health Practitioners Competence Assurance Act 2003, working within their scope of practice;
- 6 **agree** that regulation-making powers be established to specify:
 - 6.1 the types of health practitioner to undertake work capacity assessments
 - 6.2 the detail to be provided in a work capacity assessment certified by a health practitioner;
- 7 **agree** that NZII covers permanent, full-time, part-time, fixed-term, seasonal, and casual employment arrangements;
- 8 **agree** that non-standard employment arrangements (fixed-term, seasonal and casual work) are covered using a principles-based approach, namely that income insurance would:
 - 8.1 cover the loss of income from reasonably anticipated work, and
 - 8.2 be based on an established pattern of work;
- 9 **note** that we propose further work on how to apply these principles for casual workers;
- 10 **note** we are undertaking further work to consider whether and how self-employed workers could be included in the scheme;
- 11 **agree** that people must meet a contribution history requirement of six months in the 18 months preceding a triggering event to be eligible for NZII, and that statutory parental leave would be considered part of the contribution history;
- 12 **agree** that, as a transitional provision, for the first 18 months of the scheme's operation a person's work history and any statutory parental leave will be used to determine eligibility regardless of whether they paid an NZII levy on any earnings from that work;

- 13 **agree** that coverage is provided for eligible:
- 13.1 New Zealand citizens and residents
 - 13.2 temporary visa holders who have been continuously resident in New Zealand for at least two years at the time of the trigger event;

Part II: Scheme Entitlements

- 14 **agree** that income insurance would provide a replacement rate of 80 percent of prior income up to a maximum cap which aligns with ACC's maximum cap (currently \$136,544 per annum, adjusted annually according to changes in average wages);
- 15 **agree** that the maximum duration of cover for a claim is six months, with a limit on subsequent claims so that workers can only claim a cumulative total of six months of cover in an 18-month period;
- 16 **note** cases will occur where someone may be eligible for income insurance while still retaining some income and hours from employment, including those with multiple jobs, and people with a health condition or disability who have continued to work part time;
- 17 **agree** that, where a person loses one of multiple jobs, or reduces their hours due to a health condition or disability, the income insurance entitlement would 'top-up' their total income to 80 percent of the total pre-loss level;
- 18 **agree** that income insurance payments will be calculated on an individual basis (with no asset testing or partner income assessment);
- 19 **agree** that income insurance payments would abate (reduce) dollar for dollar (100 percent) once the combination of personal exertion income and insurance reached 100 percent of pre-loss income;
- 20 **agree** to the following interactions between NZII and other forms of financial assistance provided by the government:
- 20.1 insurance payments are treated as income to determine eligibility for welfare and student support, and liability for child support
 - 20.2 insurance claimants are not eligible for the In-Work Tax Credit, Minimum Family Tax Credit, or Independent Earner Tax Credit
 - 20.3 insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension
 - 20.4 where eligible, insurance claimants could choose whether to access Paid Parental Leave or income insurance and may receive both sequentially

- 20.5 insurance claimants could also receive weekly compensation from the Accident Compensation scheme where it covers a different income loss
 - 20.6 insurance claimants could not receive both insurance and weekly compensation for the same income loss, but that they could choose to receive the weekly compensation or income insurance instead;
- 21 **agree** that:
- 21.1 NZII entitlements and bridging payments will be defined as salary and wages under the Income Tax Act 2007 and will be subject to income tax
 - 21.2 NZII levies will not apply to payments under the NZII scheme
 - 21.3 NZII entitlements will be subject to ACC levies, KiwiSaver employee contributions, Student Loan repayments, and Child Support deductions
 - 21.4 KiwiSaver employer contributions will not be made on NZII entitlements;
- 22 **note** the intention for the scheme to have the flexibility to deliver additional, Crown-funded support during crises, and that further advice will be provided on proposed legislative settings and the necessary operational capability to enable crisis payments;

Part III: Claimant and Employer Obligations

- 23 **agree** that employers are subject to the following obligations to the scheme:
- 23.1 notify the scheme at least four weeks prior to making an employee's position redundant
 - 23.2 notify the scheme that an employee may be eligible due to a health condition or disability if the employee has provided a relevant medical certificate to the employer
 - 23.3 provide appropriate information about the worker or the requirements of their job to support the claim;
- 24 **agree** that employees will also have the right to lodge a claim directly with the scheme;
- 25 **agree** that all income insurance claimants are subject to the following obligations:
- 25.1 provide the scheme with information to determine their eligibility if required
 - 25.2 inform the scheme of any changes in circumstances that may affect their eligibility

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- 25.3 be based in New Zealand, except if they have received a waiver from the scheme because they:
 - 25.3.1 meet criteria specified in regulations to be outside of the country for up to 28 days, or
 - 25.3.2 would face undue hardship if their original waiver is not extended, or
 - 25.3.3 are receiving publicly funded specialist health care overseas;
- 26 **agree** that claimants are subject to work-focussed obligations to:
 - 26.1 actively search for work and demonstrate job search activity
 - 26.2 accept offers of suitable employment
 - 26.3 complete a return-to-work plan if required
 - 26.4 participate in employment-related programmes if required;
- 27 **agree** that claimants who have lost work capacity due to a health condition or disability are subject to the following additional obligations:
 - 27.1 provide further work capacity assessments completed by a health practitioner if their health practitioner recommends any reassessment within the entitlement period
 - 27.2 participate in any independent assessments related to returning to work required, and funded, by the scheme if it considers there are grounds to seek assurance about the claimant's health practitioner's assessment
 - 27.3 participate in vocational rehabilitation programmes if required;
- 28 **agree** that ACC may defer a claimant's work obligations, for a period ACC determines is appropriate, if the claimant:
 - 28.1 has a health condition or disability that means they are unable to search for, or prepare to return to, work
 - 28.2 is undertaking approved training, or is participating in employment-related programmes or vocational rehabilitation
 - 28.3 would face undue hardship if required to meet the obligation;
- 29 **agree** that ACC may waive a claimant's work obligations completely if:
 - 29.1 ACC agrees with an assessment by the claimant's health practitioner that they have no reasonable prospect of being able to return to any work within the entitlement period

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- 29.2 the claimant would face undue hardship if required to meet the obligations during the entitlement period;
- 30 **agree** that regulation-making powers be established to specify:
- 30.1 the information employers and claimants are to provide to the scheme to meet their obligations
- 30.2 criteria for a claimant to be eligible for a waiver from their obligation to be in New Zealand (refer to recommendation 25.3.1)
- 31 **agree** that, in cases of non-compliance:
- 31.1 entitlements could be suspended for as long as the claimant unreasonably refused or unreasonably failed to meet their obligations
- 31.2 the claimant would receive written notice of the proposed suspension within a reasonable period before the proposed starting date, with the opportunity to re-comply before the suspension took effect
- 31.3 entitlements would resume once the claimant had re-complied and the duration of entitlements remaining would be based on the original start date;
- 32 **agree** that the scheme is required to make NZII claimants aware of their obligations, explain consequences of non-compliance and ensure claimants are aware of their rights to review and appeal decisions relating to the obligation;

There would also be some obligations and expectations for employers that apply whether or not the employee is eligible for NZII

- 33 **agree** that, where an employer makes an employee's position redundant, the employer must provide a minimum four-week notice period between the notification of redundancy and the redundancy taking effect;
- 34 **agree** that employers are required to provide a four-week bridging payment when making an employee's position redundant, calculated based on 80 percent of their prior income from that work (methodology to be defined in regulation if necessary);
- 35 **agree** that the bridging payment must be in addition to any contractual entitlement to redundancy compensation;
- 36 **agree** that the statutory notice periods and bridging payments should be given effect through amendments to the Employment Relations Act 2000;
- 37 **agree** that the scheme would make bridging payments in cases of insolvency or receivership where the employer cannot meet their bridging payment obligations, including to employees who are not eligible for the scheme;

- 38 **agree** that the scheme will seek to recover bridging payments paid on an employer's behalf alongside other ordinary unsecured creditors;
- 39 **note** that, under the Human Rights Act 1993, employers have existing obligations to take reasonable measures to support an employee with a health condition or disability to continue working, including redeployment where possible;
- 40 **agree** that employers will be expected to make reasonable efforts to protect an employee's job if their employee has a reasonable prognosis of returning to work within six months;

Part IV: Scheme Delivery and Funding

- 41 **agree** that NZII be administered by ACC;
- 42 **agree** that ACC will have the following NZII functions:
- 42.1 collection of employer levies (including, if appropriate, self-employed)
 - 42.2 management of scheme funding according to funding principles (refer to recommendation 64)
 - 42.3 debt recovery
 - 42.4 claims administration
 - 42.5 case management
 - 42.6 facilitation of dispute resolution
 - 42.7 monitoring of compliance and taking enforcement action
 - 42.8 receipt and sharing of information with other agencies to support good claimant outcomes, NZII integrity, and other agencies' objectives
 - 42.9 data collection and reporting of NZII performance
 - 42.10 any additional functions that are in keeping with NZII purposes that are authorised by regulation or ministerial direction;
- 43 **agree** that Inland Revenue will be responsible for collecting the employee levy;

Dispute resolution

- 44 **agree** to establish a four-step dispute resolution process for NZII:
- 44.1 Internal review: the insurer would undertake an internal review of a review application. It is expected that a large proportion of disputes would be resolved at this stage

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- 44.2 Mediation: for reviews unable to be resolved internally, mediation could be offered as an alternative dispute resolution tool
- 44.3 Formal review: unresolved disputes would be referred to an independent, third-party reviewer for a legislatively defined formal review. Claims could be withdrawn or settled before a review hearing took place
- 44.4 Appeal to the courts: any review decision would be fully appealable to the Courts, via the District Court;
- 45 **agree** that regulation-making powers be established to set:
 - 45.1 timeframes for completion of each stage of the review process
 - 45.2 reasonable costs or contributions payable by the scheme to support a claimant to access the review process;
- 46 **agree** that the scheme would pay for the costs of an independent review process, including for Court capacity to manage appeals;

Enforcement

- 47 **note** that the offence provisions in the Accident Compensation Act 2001 are also appropriate to address potential abuses against the NZII scheme, however some additional offences will also be required for the NZII scheme;
- 48 **note** that many of the maximum penalty levels in the Accident Compensation Act 2001 are too low and have been affected by inflation;
- 49 **note** that, rather than setting the scheme's criminal offence maximum penalties as inflation-prone fines, these should be better set as multipliers of the gain obtained from offences that are prosecuted;
- 50 **note** that officials will work with the Ministry of Justice on the detail of the offences and penalties for the NZII scheme and provide further advice and recommendations;
- 51 **note** that changes to the offence levels set out in the Accident Compensation Act 2001 will also likely be required to ensure the two schemes have consistent penalty levels, and this would also have the benefit of making those penalty levels inflation-proof;
- 52 **note** that further work is needed to determine how statutory notice periods and bridging payments will be enforced;

Governance of NZII

- 53 **agree** that the existing skills and capability framework for ACC board members be amended to reflect additional responsibility for, and Māori and stakeholder interests in, NZII (but this would not be legislated);

54 **agree** that the responsible Minister be required to seek nominations for prospective ACC Board appointments from:

54.1 Māori/iwi (linking to the Treaty of Waitangi / te Tiriti o Waitangi provision proposed in recommendation 80)

54.2 social partners (representatives of workers and employers);

Funding NZII

55 **agree** that the costs of NZII be met through a compulsory levy paid by all employers and employees;

56 **agree** that the levies be equally shared by workers and employers at the outset of NZII, but this could be adjusted over time by regulation as is deemed equitable;

57 **note** it is estimated that the scheme will require an initial, total, GST-inclusive levy of 2.77 percent of salary and wages (with workers and employers paying a flat rate of 1.39 percent each (rounded)), but this may be updated prior to NZII taking effect;

58 **agree** that NZII be largely funded on a Pay-As-You-Go (PAYGO) approach, but with a levy loading incorporated to build up a small reserve fund over time to smooth out levy fluctuations through the economic cycle;

59 **agree** that funding requirements for claims respectively due to economic displacement and loss of work capacity due to a health condition or disability be accounted for separately (including apportioned administration costs);

60 **agree** that the Crown will act as lender of last resort when required according to terms established by New Zealand Debt Management and as part of a funding policy established by ministerial direction (refer recommendation 65);

61 **agree** that the legislation also enable inter-account loans between the economic displacement and health condition and disability funds, according to terms prescribed by the funding policy referred to in recommendation 65;

62 **agree** that key levy process requirements be set in legislation, namely requirements for:

62.1 the Minister to establish a funding policy, to give practical effect to legislated funding principles (refer recommendation 64)

62.2 the scheme to publicise an annual statement of the financial condition and outlook for NZII

62.3 periodic review of, and consultation on, levy rates at intervals not longer than three years

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- 62.4 the scheme Board to recommend to the Minister the need for a levy review if this is required earlier than the default interval (based on NZII's financial condition);
- 63 **note** that the NZII levy-setting consultation would align with the ACC levy setting consultation but be Minister-led, with support from the administering government agency and ACC;
- 64 **agree** that the legislation establish overarching funding principles:
- 64.1 NZII would be funded to be sustainable and resilient
- 64.2 levies would be set so as to promote levy stability over time
- 64.3 levies would be set so as to avoid over-collection to maintain economic efficiency
- 64.4 levies and the processes surrounding setting and use would be transparent and accountable;
- 65 **agree** to a ministerial direction power to establish a more detailed, prescriptive funding policy to give specific practical effect to the funding principles, to guide levy setting;
- 66 **agree** that the levy fund the cost functions conferred on the scheme in administering NZII (refer recommendation 42);
- 67 **agree** to include the following regulation-making powers in the New Zealand Income Insurance Bill to:
- 67.1 change employer and worker levy rates
- 67.2 change maximum income levels that levies can apply to
- 67.3 the income tax period to which levies apply;

Areas of continuing policy work

- 68 **invite** the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to report back to Cabinet by October 2022 on the outstanding policy questions relating to:
- 68.1 non-standard workers
- 68.2 self-employed workers
- 68.3 crisis payments
- 68.4 levy relief
- 68.5 information sharing;

Implementation

- 69 **note** that the design and implementation preparation phase is planned to run until June 2023 to:
- 69.1 establish an implementation blueprint for the NZII based on the approved policy settings
 - 69.2 establish a cross-agency delivery approach and plan that appropriately leverages the joint capabilities of ACC, Inland Revenue and Ministry of Social Development
 - 69.3 complete an analysis of the risk profile and costing for the implementation of the NZII
 - 69.4 create a plan for the inclusion of Māori and equity stakeholders in the design and implementation of the NZII;
- 70 **note** that a Better Business Case Confidential advice to Government is being prepared based on the work being completed in the design and implementation preparation phase;
- 71 Confidential advice to Government
- 72 **invite** the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to report back to Cabinet by November 2022 with a Better Business Case on implementing NZII for Cabinet consideration;

Release of contingency funding

- 73 **Note** that Cabinet [CAB-22-MIN-0129 – Initiative 13624 tagged contingency (14577) refers]
- 73.1 **agreed** that, pending officials' advice on the proposed NZII scheme following public consultation and advice from ACC on preparatory work required to implement the scheme, the 2022/23 and 2023/24 Non-Departmental Output Expenses: ACC - Establishment of new income insurance scheme funding be held in contingency, and released according to joint agreement by Minister of Finance and Minister for ACC

	\$m - increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Operating contingency	-	47.150	4.950	2.050	2.050
Capital contingency	-	0.350	-	-	-
Total	-	47.500	4.950	2.050	2.050

IN CONFIDENCE

73.2 **authorised** the Minister for ACC and Minister of Finance jointly to draw down the tagged operating and capital contingency funding in recommendation 73.1 above subject to their satisfaction with the outcome of the further work described in recommendation 73.1;

74 **agree** that, as the further work described in recommendation 74.1 has been satisfactorily completed, MBIE policy and legislative work for an income insurance scheme and ACC preparatory work can now proceed;

75 **approve** the following changes to appropriations to provide for the decision in recommendation 74 above, with a corresponding impact on the operating balance and net core Crown debt:

Vote Labour Market Minister for ACC	\$m - increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Departmental Output Expense: Policy Advice and Related Services to Ministers - Income insurance (funded by revenue Crown)	-	1.750	2.550	2.050	2.050
Non-Departmental Output Expense: ACC – Establishment of new income insurance scheme	-	45.400	2.400	-	-
Vote Business, Science and Innovation Minister for Regional and Economic Development	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Ministry of Business, Innovation and Employment					
Capital injection	-	0.350	-	-	-
Total Operating	-	47.150	4.950	2.050	2.050
Total Capital	-	0.350	-	-	-

76 **agree** that the proposed changes to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

77 **agree** that the expenses incurred under recommendation 75 above be charged against the tagged contingency established as part of Budget 2022 for the establishment of a new income insurance scheme [CAB-22-MIN-0129 – Initiative 13624 tagged contingency (14577) refers];

Legislative implications

- 78 **note** that the introduction of income insurance would require a new act of Parliament to (subject to policy scope):
- 78.1 establish a clear scheme purpose
 - 78.2 establish the income insurance scheme functions for ACC (in addition to its accident compensation scheme functions)
 - 78.3 obligate employers and workers to pay levies to fund the scheme
 - 78.4 specify scheme coverage, for instance, types of employment arrangements covered, contribution requirements
 - 78.5 specify scheme entitlements and other supports for workers to return to work
 - 78.6 enable all the other recommendations that require legislative authority;
- 79 **note** that the introduction of income insurance requires a range of amendments to other legislation including, but not limited to, the Social Security Act 2018, the Income Tax Act 2007, the Accident Compensation Act 2001, and the Employment Relations Act 2000;
- 80 **agree** to include a Treaty of Waitangi/Tiriti o Waitangi provision in the Bill to recognise and respect the Crown's responsibilities, with reference to specific provisions within the Bill;
- 81 **note** officials will work with the Pou Tangata Skills and Employment Iwi Leaders Group, Crown Law Office, and the Te Arawhiti-convened Treaty Provisions Officials Group to develop a well-balanced and workable Treaty/Tiriti provision;
- 82 **note** the Bill is included in the 2022 Legislation Programme, with a priority 4, for introduction in the year;
- 83 **authorise** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to create a New Zealand Income Insurance Omnibus Bill to give effect to Cabinet decisions;
- 84 **authorise** the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to make additional policy decisions, minor and technical changes, and related matters of detail to the policy decisions outlined above, consistent with the general policy intent, on issues that arise in drafting of the Bill and its passage through the House, in consultation with relevant Ministers as appropriate;
- 85 **authorise** the Parliamentary Counsel Office to make technical or other drafting changes, that arise during the drafting of the legislation;

Next steps and commencement of the scheme

86 **note** that the Bill should be introduced no later than mid December 2022; and

87 **agree** that legislation be passed no later than July 2023.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance