



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 <i>Minute</i>	Cabinet Office

Information redacted

YES / NO [select one]

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

New Zealand Income Insurance: Detailed Scheme Design

Portfolios **Finance / Social Development and Employment / ACC / Workplace Relations and Safety**

On 4 July 2022, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

- 1 **noted** that the accompanying paper *New Zealand Income Insurance: Agreement to Proceed*, under DEV-22-SUB-0156, seeks agreement to introduce a New Zealand Income Insurance scheme (NZII);
- 2 **noted** that the paper under DEV-22-SUB-0157 seeks agreement to the detailed design for the NZII;

Part I: scheme coverage

- 3 **agreed** that the NZII covers complete job loss due to economic displacement, and that this coverage:
 - 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 **agreed** 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 **agreed** 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 **agreed** that regulation-making powers be established to specify:
 - 6.1 the types of health practitioner to undertake work capacity assessments;
 - 6.2 the details to be provided in a work capacity assessment certified by a health practitioner;

- 7 **agreed** that NZII covers permanent, full-time, part-time, fixed-term, seasonal, and casual employment arrangements;
- 8 **agreed** that non-standard employment arrangements (fixed-term, seasonal and casual work) be covered using a principles-based approach, namely that income insurance would:
- 8.1 cover the loss of income from reasonably anticipated work;
 - 8.2 be based on an established pattern of work;
- 9 **noted** that further work is proposed on how to apply these principles for casual workers;
- 10 **noted** that further work is being undertaken to consider whether and how self-employed workers could be included in the scheme;
- 11 **agreed** 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 **agreed** 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 **agreed** that coverage be 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 **agreed** that income insurance will 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 **agreed** that the maximum duration of cover for a claim will be 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 **noted** that 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 **agreed** that, where a person loses one of multiple jobs, or reduces their hours due to a health condition or disability, the income insurance entitlement will 'top-up' their total income to 80 percent of the total pre-loss level;
- 18 **agreed** that income insurance payments will be calculated on an individual basis (with no asset testing or partner income assessment);
- 19 **agreed** that income insurance payments will abate (reduce) dollar for dollar (100 percent) once the combination of personal exertion income and insurance reached 100 percent of pre-loss income;

- 20 **agreed** 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 they could choose to receive the weekly compensation or income insurance instead;
- 21 **agreed** 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 **noted** 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 **agreed** that employers be 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 **agreed** that employees will also have the right to lodge a claim directly with the scheme;
- 25 **agreed** that all income insurance claimants be 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;
- 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 **agreed** that claimants be 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 **agreed** that claimants who have lost work capacity due to a health condition or disability be 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 **agreed** 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 **agreed** 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;
 - 29.2 the claimant would face undue hardship if required to meet the obligations during the entitlement period;

- 30 **agreed** 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 (paragraph 25.3.1 above);
- 31 **agreed** 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 **agreed** that the scheme be required to make NZII claimants aware of their obligations, explain the 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 **agreed** 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 **agreed** that employers be 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 **agreed** to do further work on whether the bridging payment is in addition to any contractual entitlement to redundancy compensation;
- 36 **agreed** that the statutory notice periods and bridging payments be given effect through amendments to the Employment Relations Act 2000;
- 37 **agreed** that the scheme will 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 **agreed** that the scheme will seek to recover bridging payments paid on an employer's behalf alongside other ordinary unsecured creditors;
- 39 **noted** 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 **agreed** 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 **agreed** that NZII be administered by ACC;
- 42 **agreed** 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 (paragraph 64 below);
 - 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 **agreed** that Inland Revenue be responsible for collecting the employee levy;

Dispute resolution

- 44 **agreed** to establish a four-step dispute resolution process for NZII:
- 44.1 internal review: the insurer will undertake an internal review of a review application. It is expected that a large proportion of disputes would be resolved at this stage;
 - 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 will 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 will be fully appealable to the Courts, via the District Court;
- 45 **agreed** 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 **agreed** that the scheme will pay for the costs of an independent review process, including for Court capacity to manage appeals;

Enforcement

- 47 **noted** that the offence provisions in the Accident Compensation Act 2001 are also appropriate to address potential abuses against the NZII scheme, but that some additional offences will also be required for the NZII scheme;
- 48 **noted** that many of the maximum penalty levels in the Accident Compensation Act 2001 are too low and have been affected by inflation;
- 49 **noted** 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 **noted** that officials will work with the Ministry of Justice on the detail of the offences and penalties for the NZII scheme, and will provide further advice and recommendations to Ministers;
- 51 **noted** 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 that this will also have the benefit of making those penalty levels inflation-proof;
- 52 **noted** that further work is needed to determine how statutory notice periods and bridging payments will be enforced;

Governance of NZII

- 53 **agreed** 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 (this would not be legislated);
- 54 **agreed** 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 referred to in paragraph 80 below);
- 54.2 social partners (representatives of workers and employers);

Funding NZII

- 55 **agreed** that the costs of NZII be met through a compulsory levy paid by all employers and employees;
- 56 **agreed** that the levies be equally shared by workers and employers at the outset of NZII, but that this could be adjusted over time by regulation as is deemed equitable;
- 57 **noted** that it is estimated 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 that this may be updated prior to NZII taking effect;
- 58 **agreed** 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 **agreed** 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 **agreed** 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 (paragraph 65 below);
- 61 **agreed** 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 paragraph 65 below;
- 62 **agreed** 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 (paragraph 64 below);
 - 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;
 - 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 **noted** 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 **agreed** 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 **agreed** 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 **agreed** that the levy fund the cost functions conferred on the scheme in administering NZII (paragraph 42 above);
- 67 **agreed** 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 **invited** the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to report back to the Cabinet Economic Development Committee (DEV) 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 **noted** 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 the 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 **noted** 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 **invited** the Ministers of Finance, Social Development and Employment, ACC, Revenue, and Workplace Relations and Safety to report back to DEV by November 2022 with a Better Business Case on implementing NZII for Cabinet's consideration;

Release of contingency funding

73 **noted** that as part of Budget 2022, Cabinet [CAB-22-MIN-0129 – Initiative 13624 tagged contingency (14577)]:

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 the Minister of Finance and the Minister for ACC, as follows:

	\$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

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

74 **agreed** that, as the further work described in paragraph 73.1 above has been satisfactorily completed, Ministry of Business, Innovation and Employment policy and legislative work for an income insurance scheme and ACC preparatory work can now proceed;

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

	\$m - increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Vote Labour Market Minister for ACC					
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 **agreed** that the 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 **agreed** that the expenses incurred under paragraph 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)];

Legislative implications

- 78 **noted** that the introduction of income insurance will 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 **noted** 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 **agreed** 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 **noted** that 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 **noted** that the New Zealand Income Insurance Bill has a category 4 priority on the 2022 Legislation Programme (to be referred to a select committee in 2022);
- 83 **authorised** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 84 **authorised** 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 **authorised** 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 **noted** that the Bill should be introduced no later than mid December 2022;

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

Rachel Hayward
Acting Secretary of the Cabinet

Secretary's Note: This minute replaces DEV-22-MIN-0157. Cabinet agreed to amend paragraph 35.
