



## BRIEFING

### New Zealand Income Insurance – Bridging Payment and Contractual Redundancy Compensation

<b>Date:</b>	30 June 2022	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-5096

Information for Ministers	Deadline
Hon Grant Robertson <b>Minister of Finance</b>	4 July 2022
Hon Carmel Sepuloni <b>Minister for Social Development and Employment</b> <b>Minister for ACC</b>	
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Francis van der Krogt	Acting Manager, Income Insurance Policy	Privacy of natural persons	✓
Tracy Mears	Policy Director, Workplace Relations and Safety Policy		

The following departments/agencies have been consulted
N/A

Minister's office to complete:

Noted

Overtaken by Events

Approved

Needs change

See Minister's Notes

Declined

Seen

Withdrawn

#### Comment



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#### Purpose

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This briefing provides background information and further advice about the proposal for bridging payments to be payable to all displaced employees, and in addition to negotiated redundancy provisions.

#### Recommended action

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The Ministry of Business, Innovation and Employment recommends that you:

1. **Note** that the New Zealand Income Insurance Discussion Document proposed introducing a bridging payment payable to:
  - a. all displaced employees, and
  - b. in addition to any negotiated redundancy provisions

*Noted*

#### *Payment of bridging payment to all displaced employees*

2. **Note** that paying a bridging payment to displaced employees who are not eligible for income insurance, as recommended in the Cabinet paper *New Zealand Income Insurance – Detailed Scheme Design*:
  - a. avoids making this group of employees (especially temporary migrants) relatively more attractive to employers
  - b. gives this group some protection from unnecessary redundancy, and
  - c. provides some income protection if they are made redundant

*Noted*

*Payment of bridging payment in addition to contracted redundancy compensation*

3. **Note** that paying a bridging payment to displaced employees in addition to contractual redundancy provisions they have already negotiated, as recommended in the Cabinet paper cited above:
- a. ensures that those who have made a prior trade-off in other terms and conditions in exchange for redundancy provisions are not disadvantaged at the time the new bridging requirement is introduced
  - b. would provide additional compensation to those employees who have already negotiated redundancy entitlements
  - c. means some employers need to pay both bridging payment and the negotiated redundancy compensation, which may encourage employers to seek at the next bargaining opportunity to reduce the redundancy compensation offered
  - d. may appear inconsistent with other instances where minimum employment standards are introduced or increased

*Noted*

4. **Note** that, if the proposal were amended so that employers could meet the bridging payment requirement by paying contracted redundancy compensation that meets or exceeds the bridging requirement, this will:
- a. still achieve the policy intent for the New Zealand Income Insurance scheme of discouraging unwarranted redundancies
  - b. diminish the trade-off that some employees have made in other terms and conditions in exchange for contractual redundancy compensation, as others will get a similar entitlement without having made a trade-off
  - c. not add costs for employers who have agreed to contractual redundancy provisions
  - d. slightly reduce the complexity of enforcing the requirements

*Noted*

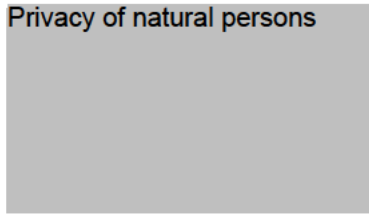
5. **Note** that officials have not discussed the content of this briefing with the social partners

*Noted*

6. **Indicate** whether you wish any amendments to be made to your Cabinet paper *New Zealand Income Insurance – Detailed Scheme Design* in relation to either of these matters, for resubmission to the Cabinet Office.

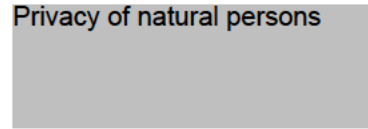
Yes / No

Privacy of natural persons



Francis van der Krogt  
**Acting Manager, Income Insurance Policy**  
Labour, Science and Enterprise, MBIE

Privacy of natural persons



Tracy Mears  
**Policy Director, Workplace Relations and Safety Policy**  
Labour, Science and Enterprise, MBIE

Hon Grant Robertson  
**Minister of Finance**  
..... / ..... / .....

Hon Michael Wood  
**Minister for Workplace Relations and Safety**  
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## Background

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1. On 29 June 2022, the Cabinet Economic Development Committee (DEV) considered the detailed design settings for the New Zealand Income Insurance (NZII) scheme [DEV-22-MIN-0157 refers].
2. During the meeting, Committee members sought further advice on two aspects of the proposal relating to the bridging payment:
  - a. that employers are required to provide a four-week bridging payment when making any employee's position redundant, not just employees who are eligible for income insurance
  - b. that employers must pay the bridging payment in addition to any contractually agreed redundancy payments.
3. This briefing provides background information and further advice to support you to make a recommendation to Cabinet on these matters when it considers the NZII proposal and detailed scheme design on 4 July 2022.

## Payment of bridging payment to all displaced employees

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### Previous advice

4. The purpose of the bridging payment is to discourage unwarranted claims against the scheme – particularly sham redundancies. Putting a cost on a decision to disestablish a position encourages employers to consider carefully whether redundancies are the best choice for the business and discourages them from cooperating with employees to lodge spurious claims.
5. The proposal for the bridging payment included that it would be paid to any employee when made redundant, not just those employees eligible for income insurance, because it would otherwise incentivise employers to hire employees who are ineligible due to the lower contingent liability in case of any future redundancy. The Social Unemployment Insurance Governance Group (SUIGG) noted this in advice from the Tripartite Working Group from 30 July 2021<sup>1</sup> and 14 December 2021<sup>2</sup>.
6. The Discussion Document also reflected this position, noting that:

*The bridging payment would be paid by employers...to all workers made redundant and medically dismissed by the employer (p. 93)*

and

*If bridging payments were adopted, they may need to apply to all workers, including those not eligible for income insurance (for example, migrants and those who do not meet the contributions requirements). (p. 94)*

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<sup>1</sup> Further advice on key social insurance design issues

<sup>2</sup> New Zealand Income Insurance – further thinking on remaining design issues

## Rationale for the proposal

7. If New Zealand employment law included a statutory obligation to pay redundancy, then introducing the bridging payment would not be necessary to deter gaming of the NZII scheme. The bridging payment is effectively a new minimum employment standard, so that employers are required to provide the four-week bridging payment when making any employee's position redundant.
8. Because the bridging payment expressly aims to deter unnecessary income insurance claims, eligibility for bridging could be limited only to those employees also eligible for income insurance. The largest group of ineligible employees would be temporary migrants, who may only be eligible for income insurance after two years' continuous residence in New Zealand at the time of a qualifying event.
9. However, there are several reasons why it is desirable for bridging to be payable to temporary migrants. Without the bridging obligation in place, some employers may see temporary migrants as a relatively more attractive source of labour than citizens or residents. This is because the employer will have lower contingent liabilities associated with hiring them, as the cost of a possible future redundancy will be lower relative to citizens or residents. This will:
  - a. disadvantage New Zealand citizens and residents in the labour market (levies are required from the employers of temporary migrants for the same reason)
  - b. make temporary migrants more vulnerable to displacement than currently. Access to bridging also goes some way to mitigating their lack of eligibility for insurance payments.
10. Citizens and residents who have not yet met the minimum contributions requirements are the second significant group who will not be eligible for income insurance.
11. There are similar reasons for this group to be entitled to bridging payments. Without bridging, this group of workers – who may well already face labour market disadvantage – could become more prone to displacement in the period before they meet the contributions threshold. In this situation, such employees would lack access either to bridging payments, or income insurance.
12. There is also an administrative consideration for making bridging payments apply to all redundancies. If the bridging payment were only to apply to employees who are eligible for NZII, employers would need to have the necessary information to determine their eligibility, or be notified by the scheme of the employee's eligibility, to determine to whom they must pay a bridging payment. This would likely lead to significant administrative costs and could raise privacy concerns.
13. During public consultation there were no new considerations identified that led officials or social partners to change their view on this position. It therefore was not raised for discussion at the SUIGG meeting on 13 June 2022.
14. We consider that these reasons for applying the bridging payment in all instances of displacement remain compelling.

## Interaction between bridging and contractual redundancy payments

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### Previous advice

15. As currently proposed, bridging would be payable in addition to any contractually negotiated redundancy compensation. This means an employer would pay the contractual entitlement and a four-week bridging payment to their employee if making them redundant.
16. The SUIGG noted the proposal for a bridging payment to be payable in addition to any negotiated compensation in advice from the Tripartite Working Group of 30 July 2021<sup>3</sup>, and this was noted by Cabinet in approving the release of the Discussion Document:

*This “bridging payment” would be in addition to any existing contractual redundancy arrangements. (DEV-21-SUB-0198 refers, para 57)*

17. The Discussion Document accordingly stated:

*The Forum proposes to establish employer bridging payments to avoid unnecessary and spurious redundancies. The bridging payment would be paid by employers...to all workers made redundant..., in addition to any negotiated redundancy compensation provision, given existing contractual provisions may reflect an express or implicit wage sacrifice... (p. 93)*

### Rationale for the proposal

18. The Forum's position was a response to strong concerns raised by the New Zealand Council of Trade Unions (NZCTU) that collective employment agreements often include redundancy clauses negotiated through trading off other benefits, such as wage rates. Therefore, not providing bridging to these employees is inequitable relative to those who have not sacrificed wages or other terms.
19. The Tripartite Working Group also recognised that this problem will only persist in the short term. Over time, collective agreements will be renegotiated, with the bridging payment serving as a new minimum floor, with parties free to negotiate around this. With income insurance available, the importance of redundancy clauses is likely to diminish.

### Alternative option and possible recommendations to Cabinet

20. There are several reasons why Ministers may wish to reconsider the position reached by the Tripartite Working Group and consulted on through the Discussion Document.
21. Firstly, contractual redundancy entitlements are likely to achieve the principal purpose of the bridging payment – deterring unnecessary displacement – as effectively as bridging payments. Bridging payments are therefore not necessary to achieve the policy objective of deterring unnecessary redundancies, where redundancy entitlements that meet or exceed the bridging payment are already provided in employment agreements.

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<sup>3</sup> Further advice on key social insurance design issues

22. Secondly, making the new minimum standard (the bridging payment) additional to existing entitlements (contractual redundancy compensation) would be an unusual approach to the introduction of a new minimum standard. New minimum employment standards (such as additional sick leave) generally raise the minimum terms of employment to the new level only, rather than increasing entitlements for those whose terms already meet the new minimum standard.
23. Thirdly, Ministers may wish to avoid adding to the costs that employers will already face when making employees with existing redundancy entitlements redundant. Although some employees who have traded-off wages or other benefits for redundancy provisions may feel that they do not gain anything additional in the event of a redundancy event, they will still receive any redundancy entitlement over and above the level of the bridging payment as well as any income insurance entitlement they are entitled to.
24. A consequence of this approach would be less pressure from employers for renegotiation of any redundancy provision in contracts at the next opportunity (eg the next negotiation of a collective agreement).
25. We also note that the avenue for resolution of disputes about non-payment is likely to be clearer if employers are enabled to meet their bridging payment obligation through paying a contractual redundancy entitlement. An employee seeking to recover non-payment of redundancy payments would be directed to mediation. However, in either case (this option, or where bridging is additional to a contracted redundancy entitlement), enforcement will be complicated because of the hybrid between a minimum standard and negotiated entitlement. Further work on enforcement is needed and will be undertaken in coming months.
26. If Ministers agree, then recommendation 35 in *New Zealand Income Insurance – Detailed Scheme Design*, could be redrafted as:
 

***agree** that the bridging payment obligation may be met by a redundancy entitlement in individual and collective employment agreements, where the employer provides an entitlement that meets or exceeds the bridging payment calculation described in recommendation 34<sup>4</sup>.*
27. Income insurance payments would still begin after the first four weeks of displacement, where a displaced worker remains unemployed.
28. If Ministers elect to change the recommendation, we recommend that the Cabinet paper *New Zealand Income Insurance – Detailed Scheme Design* is also updated and resubmitted to the Cabinet Office, so that the papers reflect Ministers' agreed position.

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<sup>4</sup> Recommendation 34 reads: **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).



## Social partner views

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29. We have not discussed the contents of this briefing with social partners. Ministers may wish to do so, or direct officials to engage with them.
30. We expect that the NZCTU will continue to strongly hold the view that the bridging payment ought to be additional to any negotiated entitlements. Unions and employees are likely to be concerned about the loss of a benefit achieved through bargaining and the potential sacrifice of other terms and conditions during that process.
31. Employers would likely welcome a proposal for negotiated terms to satisfy the bridging obligation, given that this would reduce the cost they face in the event of redundancy. We note that recent commentary from Business New Zealand supports the bridging payment mechanism as a complement to the NZII scheme. A small number of submitters commented that requiring employers to pay a bridging payment in addition to existing redundancy provisions would penalise good employers.