



## BRIEFING

### New Zealand Income Insurance – draft Cabinet paper for ministerial consultation

<b>Date:</b>	23 September 2022	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-1138

Action sought	Action sought	Deadline
Hon Grant Robertson <b>Minister of Finance</b>	<b>Agree</b> to review and consult with your Ministerial colleagues on the draft Cabinet paper seeking decisions on outstanding policy questions.	28 September 2022
Hon Carmel Sepuloni <b>Minister for Social Development and Employment</b> <b>Minister for ACC</b>		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Amy Hamerton	Acting Manager, Income Insurance Policy	Privacy of natural persons	✓
Jivan Grewal	General Manager, Employment, Skills and Immigration Policy		

The following departments/agencies have been consulted on the Cabinet paper

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Withdrawn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 a draft Cabinet paper for your review and Ministerial consultation, entitled:

- *New Zealand Income Insurance: decisions on outstanding policy questions* – to be considered by Cabinet Business Committee (CBC) on 3 October 2022.

### Recommended action

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

1. **Agree** to review the draft Cabinet paper ‘*New Zealand Income Insurance: decisions on outstanding policy questions*’ and consult with your Ministerial colleagues by 10am Wednesday 28 September.

*Agree / Disagree*

2. **Note** that the Cabinet paper will need to be lodged by 10am on Thursday 29 October for consideration by Cabinet Business Committee on 3 October, and Cabinet on 17 October.

*Noted*

3. **Note** that the draft Cabinet paper has been updated to reflect your changes and feedback.

*Noted*

4. **Note** that to meet the above timelines, agency consultation on the draft Cabinet paper is occurring concurrently with Ministerial consultation.

*Noted*

5. **Note** that you may wish to discuss with Minister Wood the additional advice provided on the applicability of the notice period.

*Noted*

6. **Note** that we will update the draft Cabinet paper accordingly based on your direction, as appropriate.

*Noted*

Privacy of natural persons



Amy Hamerton  
**Acting Manager, Income Insurance Policy**  
Labour, Science and Enterprise, MBIE  
**23 / 09 / 2022**

Hon Grant Robertson  
**Minister of Finance**  
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Hon Carmel Sepuloni  
**Minister for Social Development and Employment**  
**Minister for ACC**  
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## Background

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1. On 4 July 2022 Cabinet agreed to proceed with New Zealand Income Insurance (NZII) and made decisions on the detailed design of the scheme.
2. Cabinet invited Ministers with delegated authority to report back to Cabinet on a set of outstanding policy questions by October 2022. Key questions requiring Cabinet decisions are:
  - the scheme's income replacement rate and levy structure,
  - coverage of self-employment, and
  - bridging payments: eligibility and interaction between bridging and contractual redundancy payments.
3. Final Cabinet decisions are needed on these issues to inform legislative drafting.
4. You met with officials on 12 September to discuss your initial policy preferences on the outstanding policy questions. Officials were directed to draft a Cabinet paper reflecting these preferences and provided further advice and an early draft version of the paper to Ministers for review on 16 September (Briefing 2223-1039 refers).
5. On 20 September, your offices provided further direction on your preferred policy settings at a meeting with officials. You also requested further modelling and sensitivity analysis on the assumptions that underpin the 2.77% levy rate. These updates have been reflected in the draft Cabinet paper, attached.

## Updates to the draft Cabinet paper

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6. The key updates to the draft Cabinet paper since the version provided to you on 16 September relate to self-employed coverage and the levy rate.

### *Coverage of self-employed*

7. **Legal professional privilege**  
the draft Cabinet paper has been updated to indicate Cabinet's intention to bring some groups of vulnerable self-employed into the scheme in the future, with options for how this might be achieved.
8. Officials are meeting with the Legislation Design Advisory Group (LDAC) on 28 September and will discuss if there are other potential legislative options for preserving some ability to include targeted groups of self-employed workers in the scheme at a later date.

### *Levy rate*

9. The draft Cabinet paper confirms Cabinet's decision for an 80 percent replacement rate, to be funded by a flat rate levy equally shared by workers and employers. For purposes of due diligence, joint NZII Ministers requested an updated analysis on the assumptions that underpin the 2.77% levy rate.

10. To support the discussion at CBC, officials will provide you with talking points on the outcome of this analysis and a companion briefing on the levy rate sensitivity analysis being undertaken by ACC, Treasury, and MBIE. This will include an assessment of the implications of any variation between forecast and actual scheme experience over time on future levy rates and the Crown's liability as lender of last resort that arise from different levy rate settings.

## **Additional choices around notice obligations**

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11. The draft Cabinet paper reflects joint Ministers' preferred position on the bridging payment, namely that:
  - a) employers can satisfy the bridging payment requirement by paying contracted redundancy compensation that meets or exceeds the four-week bridging requirement
  - b) employers only be required to provide a four-week bridging payment when making an employee's position redundant if the employee is eligible for the NZII scheme.
12. Decision (b) on bridging eligibility raises the question of whether the four-week paid notice period for redundancy for all displaced workers - should mirror the change in the bridging payment and apply only to scheme recipients.
13. We propose that the obligation on all employers to notify the scheme of a redundancy (separate to the notice period itself) remains unchanged.

### *Objectives of the notice period obligation*

14. The objective of the notice period is to support the administration of the scheme through early notification of a redundancy, 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. However, the obligation also had broader objectives including providing more adequate time for workers to adjust to job loss and look for work, as well as providing certainty for those employees who do not have contractual redundancy provisions. It also provides opportunities for the wider system to intervene early to support people to look for work and potentially prevent people from needing the scheme or welfare supports.
15. The July 2022 Cabinet paper on the NZII detailed scheme design proposed that the obligation would sit in the Employment Relations Act 2000, and effectively constitute a new minimum employment standard. Cabinet agreed to pro-rate the notice period and bridging payment for fixed-term and casual employment but noted that these obligations would be particularly challenging for casual employment, where the obligation does not align with the informal nature of the arrangement, and where generally there is no expectation on an employee for future work, nor on the employer to offer it.

## *Options*

16. In light of the revised position on bridging eligibility, you may wish to consider whether the four-week paid notice period (pro-rated for non-standard workers) should apply to all workers, or just those eligible for the scheme.
17. If (as previously agreed by Cabinet) the notice period applies to all displaced workers, this would provide certainty of time to look for work for all workers (particularly those without existing contractual arrangements around notice periods). It would also provide some benefit/compensation to those workers who have been levied for the scheme but are not eligible for entitlements (due to not meeting the contribution history). The option would, however, create an inconsistency with the revised position on bridging payment eligibility, particularly from an implementation, enforcement, and legislative perspective.
18. Given the similarity between the circumstances that trigger the notice period and the bridging payment, there is a case for treating these obligations in the same way (i.e. making them apply to scheme recipients only) and situating these provisions in the same legislation. This option would, however, come with the same implementation and administration challenges as the narrowing of bridging eligibility. Namely, that ACC will need to be able to quickly advise employers as to whether a displaced employee is eligible for the scheme, so that they know whether or not the notice period obligation applies.

## *Additional consideration for casual workers*

19. Under either approach, there will be inherent issues relating to casual workers, where NZII eligibility is based on ACC's determination as to whether a worker had a 'reasonable expectation of future work' with the employer (in addition to meeting contribution history requirements). It is highly likely that employers and employees will have different views about whether a worker has a 'reasonable expectation of ongoing work', so in these circumstances, ACC would need to make a determination about a worker's expectation of future work before an employer would comply with the notice obligation, regardless of whether the obligation was scheme specific or not. For this reason, if Ministers elect to have the notice period obligation apply regardless of scheme eligibility, you may wish to narrow this to only permanent and fixed-term employees.
20. We suggest that Ministers consider and discuss the question of the notice period at the scheduled bilateral meeting on Tuesday 27 September. You may wish to raise this, alongside the bridging payment discussion, with Minister Wood.
21. Any changes to the notice period setting that has been agreed will need further discussion with ACC and social partners.
22. We will incorporate your direction into the final version of the Cabinet paper as appropriate.

## Next steps and timing

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23. The deadline for submitting the paper to the Cabinet Office is 10am Thursday 29 September. Your feedback on the paper is requested by 10am on Wednesday 28 September to enable us to update the paper accordingly, ready for lodging on Thursday morning.
24. To meet the Cabinet Office deadline, agency consultation is occurring concurrently with Ministerial consultation. The Ministry for Social Development, ACC, Inland Revenue, The Treasury, Ministry for Primary Industries, and Te Puni Kokiri are being consulted. We will notify you of any proposed changes to the paper as a result of agency consultation, prior to lodgement.

### *Legislation timeline*

25. The timeline below sets out the latest dates to enable passage of the legislation by July 2023. It includes the updated step of CBC on 3 October.

Step	Proposed date
Simultaneous Ministerial and agency consultation on Cabinet paper	23 – 28 September
Lodge for Cabinet Business Committee (CBC)	29 September
<b>CBC meeting</b>	<b>3 October</b>
<b>Cabinet for final policy decisions</b>	<b>17 October</b>
Near final draft of Bill for New Zealand Bill of Rights Act (BORA) vetting and agency consultation	31 October
Draft LEG paper and draft Bill for Ministerial consultation	14 -18 November
Date by which the Bill will be provided to the Ministry of Justice for BORA assessment	14 November 2022
Draft LEG paper and draft Bill for Ministerial consultation	21-25 November
Lodge for CBC (acting as LEG and assuming sitting)	1 December
<b>Cabinet approval to introduce &amp; introduction to the House</b>	<b>12 December</b>
<b>Select Committee</b>	<b>February to May 2023</b>
<b>Remaining stages of bill and enactment</b>	<b>June to July 2023</b>
Commencement	All parts commenced by 1 April 2025

## Attachment

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Draft version of the Cabinet paper titled *New Zealand Income Insurance: decisions on outstanding policy questions*.



