



BRIEFING

New Zealand Income Insurance – In-Principle and Second Order Policy Decisions for Drafting

Date:	6 October 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1111

Action sought	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Note that in-principle decisions on key outstanding policy questions are needed ahead of Cabinet, to inform the drafting of a complete NZII Bill by late November 2022, for introduction to the House in December 2022. Agree to the policy recommendations in this briefing.	10 October 2022
Hon Carmel Sepuloni Minister for Social Development and Employment Minister for ACC		
Hon David Parker Minister of Revenue		
Hon Michael Wood Minister for Workplace Relations and Safety		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Libby Gerard	Manager, Income Insurance Policy	Privacy of natural persons	✓
Natalie Nesbitt	Principal Policy Advisor, Income Insurance Policy		
Jivan Grewal	General Manager, Employment, Skills and Immigration Policy		

The following departments/agencies have been consulted
ACC was consulted on this briefing. ACC, Inland Revenue, the Ministry of Social Development, New Zealand Council of Trade Unions (CTU), Business New Zealand, and the Pou Tangata Skills and Employment Iwi Leaders Group (ILG) were consulted on the policy issues covered in this briefing.

- Minister's office to complete:
- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Noted | <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Overtaken by Events | <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen |
| | <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comment

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Purpose

This briefing seeks your agreement to policy decisions needed for drafting the New Zealand Income Insurance (NZII) Bill.

Executive Summary

In-principle decisions are needed on key outstanding policy questions to inform the drafting of a complete NZII Bill by late November 2022, for expected introduction to the House in December 2022.

Due to a delay in Cabinet committee consideration of these issues, we are seeking your in-principle agreement to allowing draft of the Bill to progress.

The in-principle decisions sought in this paper reflect the policy preferences indicated by Ministers Robertson, Sepuloni, and Wood at their meeting on 27 September 2022, following advice from officials [Briefing 2223-1138 refers]. The key outstanding issues are:

- the scheme's income replacement rate and levy structure. We seek in-principle agreement to confirm Cabinet's decision for an 80 percent replacement rate and a flat rate levy at the outset of NZII.
- coverage of self-employed workers. We seek in-principle agreement to exclude self-employed workers initially, in order to focus on establishing the regime.
- eligibility for notice period and bridging payments, and interaction between bridging and contractual redundancy payments. Existing Cabinet decisions on the scope of the notice period and bridging payment will continue to apply until Cabinet decides otherwise. We seek in-principle agreement that employers can satisfy the bridging payment requirement by paying contracted redundancy compensation that meets or exceeds the four-week bridging requirement. We also seek direction on the enforcement of these obligations.

The Cabinet Economic Development (DEV) Committee is due to consider these issues on 19 October and Cabinet on 25 October.

Decisions on the more technical, second-order policy issues set out in this paper are also needed for drafting the NZII Bill. These decisions fall within your Cabinet authorisation to make policy decisions consistent with the general policy intent agreed by Cabinet.

The main second-order issue covered in this paper is information sharing arrangements. A set of 15 minor and technical decisions relating to details around entitlement, eligibility, and process are also included as **Annex Two**.

Recommended action

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

1. **Note** that in July 2022, Cabinet made decisions on the detailed design of the NZII scheme and invited Ministers with delegated authority to report back to Cabinet on a set of outstanding policy questions by October 2022 [CAB-22-MIN-0250.02 refers].

Noted

2. **Note** that key outstanding policy questions requiring Cabinet decisions (scheduled for Cabinet on 25 October) are:
 - i. the scheme's income replacement rate and levy structure
 - ii. coverage of self-employed workers
 - iii. eligibility for notice period and bridging payments, and interaction between bridging and contractual redundancy payments.

Noted

3. **Note** that in-principle decisions on these questions are needed ahead of Cabinet to inform the drafting of a complete NZII Bill by late November 2022, for introduction to the House in December 2022.

Noted

4. **Note** that the in-principle decisions in this paper are consistent with direction from the offices of Ministers Robertson, Sepuloni, and Wood on Ministers' preferred policy settings, provided on 20 September.

Noted

In-principle decisions on key outstanding policy questions

Replacement rate and levy structure

5. **Note** that in July, Cabinet agreed that NZII would have an 80 percent income replacement rate [CAB-22-MIN-0250.02 paragraph 17 refers].

Noted

6. **Note** that Ministers advised Cabinet that they would consider further advice on options for reducing the impact of the levy on low-income workers and that a change to the proposed flat-rate levy would be preferred if an option can be identified that:
 - i. meets the scheme objectives, including a sufficiently high level of income smoothing
 - ii. provide effective levy relief to low-income workers who would struggle to meet the cost of the levy
 - iii. does not require Crown funding, and
 - iv. is operationally feasible.

Noted

7. **Note** that following further advice from officials, Ministers Robertson and Sepuloni have indicated that their preferred policy setting is to maintain an 80 percent replacement rate, to be funded by a flat rate levy shared equally between workers and employers.

Noted

8. **Agree in-principle** to maintain the 80 percent replacement rate and a flat rate levy at the outset of NZII.

Agreed / Not agreed

Coverage of self-employed workers

9. **Note** that officials have provided advice on a range of options for covering self-employed workers, each with challenges and risks that could complicate or delay the introduction of the Bill.

Noted

10. **Agree in-principle** to exclude self-employed workers from NZII initially, in order to focus on establishing the main scheme for employees.

Agreed / Not agreed

11. **Note** that officials intend to continue to explore avenues to bring vulnerable groups of self-employed workers into the scheme and mitigate the risk of employees being reclassified as contractors to avoid NZII levies.

Noted

Notice period and bridging payment

12. **Note** that in July 2022, Cabinet agreed:
- i. that employers would be required to provide a four-week bridging payment when making an employee's position redundant, whether or not they are eligible for income insurance, and
 - ii. to do further work on whether the bridging payment was in addition to any contractual entitlement to redundancy compensation.

Noted

13. **Note** that drafting will proceed on the basis of the earlier Cabinet position on 12(i), until Cabinet decides otherwise.

Noted

14. **Agree in-principle** that employers can satisfy the bridging payment requirement by paying contracted redundancy compensation that meets or exceeds the four-week bridging requirement.

Agreed / Not agreed

Enforcement of the bridging payment and notice period

15. **Note** that decisions on the applicability of the bridging payment and notice period will have flow-on implications for how these obligations are enforced.

Noted

16. **Note** that given the limited amount of time remaining for drafting, we are seeking direction on the preferred approach to enforcing the bridging and notice obligations, for each potential option.

Noted

If Cabinet decides that bridging and notice apply to all economically displaced employees:

17. **Agree in-principle** that these obligations would constitute new employment standards and be enforced through the ERES system.

Agreed / Not agreed

If Cabinet decides that bridging and notice would be limited to those eligible for NZII only:

18. **Note** that there are two broad approaches for enforcement:

- ACC could be entirely responsible for enforcing these obligations, with a new offence and penalty regime created to give effect to this
- that failure to comply with these obligations would be scheme offence, but pursued and enforced through the ERES system

19. *Noted***Note** that we will provide you with further advice on these options, including the cost and operational implications of each approach, following Cabinet decisions on the first order question of bridging applicability.

Noted

Second-order policy decisions

20. **Note** that Cabinet authorised you to make additional policy decisions, minor and technical changes, and related matters of detail to the policy decisions agreed by Cabinet, consistent with the policy intent agreed by Cabinet, in consultation with relevant Ministers as appropriate [CAB-22-MIN-0250.02 refers].

Noted

Information sharing arrangements

21. **Note** that the *Privacy Act 2020* and *Health Information Privacy Code 2020* hold that information should only be used for the purpose for which it is collected, and only shared and used for another purpose where an express legal authorisation is provided.

Noted

22. **Note** that although ACC is legislatively authorised to collect and share a range of personal information as part of administering the AC scheme, information sharing for administering NZII will need some form of legal authorisation.

Noted

23. **Agree** that the NZII Bill authorise information sharing across agencies to:

- i. maintain accurate levying, including levy assessment, administration, and compliance management, to ensure equitable sharing of scheme costs
- ii. ensure accessibility by minimising the information provision requirements on business and customers
- iii. ensure customer eligibility for the scheme and manage scheme integrity by accurately paying claim entitlements
- iv. support correct and full tax collection and entitlement to government benefits to avoid customer government debt accumulation
- v. ensure case management and return to work planning and assistance is effective, and
- vi. support scheme performance monitoring, labour market statistics and scheme policy development.

Agreed / Not agreed

24. **Note** the Privacy Commissioner does not at this point support the proposed information sharing proposal that recommends using legislation to allow for information sharing between agencies, as the Office of the Privacy Commissioner (OPC) has not been provided with the analysis that should exist to justify this approach (see comment from the OPC at paragraph 75). We will continue working closely with the OPC, provide analysis to address its recommendations, and ensuring that our preferred legislative authority for NZII information sharing follows good privacy practices and protects people's privacy as much as reasonably can be expected.

Noted

25. **Agree** that the information sharing model will be a hybrid model of legislative provisions and authorisation of individuals.

Agreed / Not agreed

26. **Agree** that to be efficient for ACC and partner agencies to implement, the provisions for information sharing should be consistent between the Accident Compensation Scheme and the Income Insurance Scheme, unless there is a compelling reason for them to differ.

Agreed / Not agreed

27. **Agree** that legislation enable ACC's information sharing agreements with agencies to be consolidated across the schemes over time, when appropriate, so that accountability and technical provisioning can be simplified.

Agreed / Not agreed

28. **Agree** that the legislated information sharing provisions include safeguards:

- agency agreements could only be entered into between ACC and an agency named, for information within scope of an information category, in the legislation
- ACC must have a reasonable belief that the information to be shared under an agreement is necessary for ACC to carry out an NZII purpose and that the authorised purpose could not be met by using non-personal information (the necessity test).

Agreed / Not agreed

29. **Agree** that provisions be included in the legislation to allow for some flexibility:

- the scope of agencies and information categories could be altered over time as operational requirements change over time, subject to a Cabinet agreed Order in Council, and
- ACC would also be able to request a specified agency to provide information that is not within one of the categories described in the legislated schedule subject to consultation with the Privacy Commissioner; and that the necessity test is met.

Agreed / Not agreed

Minor and technical policy issues

30. **Note** that **Annex Two** sets out policy recommendations and accompanying rationale for a set of 15 minor and technical NZII policy issues.

Noted

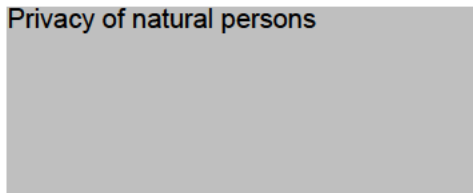
31. **Agree** to the policy recommendations set out in **Annex Two**.

Agree / Not agreed

Next steps

32. **Note that** officials are available to discuss the advice in this paper.

Privacy of natural persons



Noted

Libby Gerard

Manager, Income Insurance Policy
Labour, Science and Enterprise, MBIE

..... / /

Hon Grant Robertson

Minister of Finance

..... / /

Hon Carmel Sepuloni

**Minister for Social Development and
Employment**

..... / /

Hon David Parker

Minister of Revenue

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Hon Michael Wood

**Minister for Workplace Relations and
Safety**

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Background

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. Cabinet invited Ministers with delegated authority to report back to Cabinet on a set of outstanding policy questions by October 2022 [CAB-22-MIN-0250.02 refers].
2. On 23 September, we provided Ministers Robertson and Sepuloni with an updated draft Cabinet paper entitled '*New Zealand Income Insurance: decisions on outstanding policy questions*' for review and Ministerial consultation [Briefing 2223-1138 refers]. This Cabinet paper reflects Ministers' preferred policy settings and updates from further modelling and sensitivity analysis on the assumptions that underpin the 2.77 percent levy rate (Briefing 2223-1130 refers). The paper is due to be considered by Cabinet Economic Development (DEV) Committee on 19 October and Cabinet on 25 October 2022.
3. In-principle decisions on the key outstanding policy questions in this paper are needed ahead of Cabinet on 25 October to inform the drafting of a complete NZII Bill by late November 2022, for introduction to the House in December 2022.
4. Decisions on the more technical, second-order policy issues set out in this paper are also needed for drafting the NZII Bill. These decisions fall within your Cabinet authorisation to make additional policy decisions, minor and technical changes, and related matters of detail to the policy decisions agreed by Cabinet, consistent with the general policy intent agreed by Cabinet, in consultation with relevant Ministers as appropriate [CAB-22-MIN-0250.02 refers].
5. You may wish to update Cabinet on your decisions on these second-order issues on 25 October or when you seek approval to introduce the Bill to the House in December 2022.

Replacement rate and levy structure

6. In July 2022, Cabinet agreed that NZII would have an 80 percent replacement rate and noted that this would be funded by a flat-rate levy shared equally between employers and workers.
7. Cabinet noted that Ministers would receive further advice on these settings, in particular, whether a reduced replacement rate could fund a lower levy burden for low-income workers who may struggle to meet the cost of the levy. Ministers provided parameters to guide this analysis:
 - meet the scheme objectives, including providing a sufficiently high level of income smoothing to support workers back into good jobs (this means maintaining a reasonably high replacement rate)
 - provide effective levy relief to low-income workers who would struggle to meet the cost of the levy
 - no Crown funding, and

- is operationally feasible.
8. In August 2022, we provided advice covering a range of potential options to provide levy relief. These included reducing the scheme's replacement rate to fund levy relief, increasing levy rates for higher-income earners, and increasing the employer levy. None of these options met all the objectives set out by Cabinet (Briefing 2223-0592 refers).
 9. We seek your confirmation that you intend to seek Cabinet's agreement to maintain the 80 percent replacement rate and a flat rate levy.
 10. The Pou Tangata Skills and Employment Iwi Leaders Group (ILG) remain concerned about the impact the levy will have for low-income earners. ILG does not support a reduction in the replacement rate but want to see levy relief provided in some way. The New Zealand Council of Trade Unions and BusinessNZ support retaining the 80 percent replacement rate and flat-rate levy.

Coverage of self-employed workers

11. The inclusion of self-employed workers in the NZII has been the subject of significant consideration throughout the scheme's development.
12. The July 2022 Cabinet paper noted that there would be clear benefits to including some self-employed workers in the scheme, particularly self-employed workers who closely resemble employees, but did not settle on a recommended coverage approach. Rather, Cabinet noted further work would be undertaken to consider whether and how self-employed workers could be included in the scheme and invited Ministers to report back to Cabinet on this issue [CAB-22-MIN-0250.02 refers].
13. Officials have considered a range of options for covering groups of self-employed workers for economic displacement, health conditions and disabilities (HCD), or both. This analysis was set out in the August 2022 Social Unemployment Insurance Governance Group (SUIGG) paper and accompanying officials' advice (Briefing 2223-0592 refers).
14. Each of the options identified comes with challenges and risks that could complicate or delay the introduction of the Bill, and the establishment of the NZII scheme. We therefore recommend excluding the self-employed from NZII initially, to focus on establishing the main scheme for employees.
15. We propose, however, to continue to explore avenues to bring vulnerable groups of self-employed workers into the scheme and mitigate the risk of employees being reclassified as contractors to avoid NZII levies. This could be achieved through setting out in legislation the intention to review coverage of self-employed once the main scheme for employees has been established, the effects of excluding the self-employed are apparent, and when the impacts of the Better Protections for Contractors interventions are clearer.
16. There are other options for bringing self-employed into the scheme prior to the Bill's passing, but these are more complex and carry implications for the legislation timeline and overall introduction of the scheme. These are:

- expressly inviting the Select Committee to consider coverage of self-employed workers at the time of the first reading
- a Supplementary Order Paper (SOP) calling-in groups of self-employed to the scheme, which would be drafted and considered alongside the substantive Bill at Select Committee. Legal professional privilege

Notice period and bridging payment

17. In July 2022, Cabinet agreed:

- i. that employers would be required to provide a four-week bridging payment when making an employee's position redundant, whether or not they are eligible for income insurance, and
- ii. to do further work on whether the bridging payment was in addition to any contractual entitlement to redundancy compensation.

18. Ministers Robertson, Sepuloni, and Wood have considered issue (ii) and support allowing employers to satisfy the bridging payment requirement by paying contracted redundancy compensation that meets or exceeds the bridging requirement.

19. We understand that Ministers are further considering the question of whether the bridging payment should be payable to all economically displaced employees or just those eligible for the scheme and intend to take both options to Cabinet.

20. We propose that settings for the notice period (i.e. whether it applies to all economically displaced employees or just those eligible for the scheme) should align with Cabinet's final decisions on bridging payment eligibility, for simplicity, consistency and operational efficiency.

Enforcement of the bridging payment and notice period

21. Ministers' decision on the applicability of the bridging payment and notice period will have flow-on implications for how these obligations are enforced.

22. Given the limited amount of time remaining for drafting, we seek an in-principle decision on the preferred approach to enforcing the bridging and notice obligations, for each potential option.

23. In cases of insolvency, the scheme will step in and pay the claimant. However, there may be some cases outside of insolvency where employers do not meet their obligations.

Enforcement options if bridging and notice apply to all economically displaced employees

24. If Cabinet determines that the bridging payment and notice period will apply to all economically displaced workers, this could be made a new employment standard. As

such, and as envisaged in the NZII discussion document and July Cabinet paper, the Employment Relations and Employment Standards (ERES) system would be the most appropriate body to enforce the obligation, given the ERES system's responsibility for enforcing other employment standards.

25. There are existing mechanisms for dealing with employment relations breaches, including the ability for employees to raise concerns through the dispute resolution process. This may involve early problem resolution and mediation in the first instance, or the Employment Relations Authority (the Authority) and the Courts where the problem is unable to be resolved. Where it is determined that there has been a breach of employer obligations, the Authority may issue a compliance order or penalty to deal with the breach. Given that these obligations could constitute new employment standards, the Labour Inspectorate could also be empowered to take an enforcement role. The Labour Inspectorate has a range of tools that support enforcement, from education and information through to infringement notices, through to pecuniary penalties.
26. Placing enforcement within the ERES system does not mean that every breach will be enforced or that the policy objectives of the scheme will be met for employees whose employers renege on their bridging and notice period obligations. The ERES system has an operational strategy about where enforcement efforts are focused. The priority would be dealing with egregious employer behaviour, rather than ensuring claimants received their entitlements promptly. The current state of the ERES system also means that action, including determination through the Authority, takes significant time and would be unlikely to get the bridging payment to the claimant within the eight weeks before entry onto the scheme.
27. Further work would be needed to design how the ERES system would enforce these obligations and what penalties would apply, including whether an infringement offence would be appropriate. Placing enforcement within the ERES system will require additional powers and additional resources for implementation and operation. More work is needed on what this would look like.

Enforcement options if bridging and notice apply only to employees eligible for NZII

28. If Cabinet decides that the bridging payment and notice period should only apply to workers who are eligible for the scheme, there are two main pathways for enforcement of the bridging payment and notice period, both of which would require further work to develop and come with limitations.
29. One approach would be for a new offence and penalty regime to be created to address where employers do not pay eligible employees the relevant notice payments or bridging payments, and for this to be administered by ACC. This could circumvent the need for employees to engage with the ERES system and be consistent the (potential) overarching policy position that the bridging and notice periods are scheme deterrents and obligations, rather than broader employment settings. This would, however, be an entirely new function for ACC and would require considerable work to develop. ACC has not factored enforcement of the notice period and bridging payment into its service design and Business Case and this would have additional cost implications which would need to be modelled.

33. An alternative approach would be to mirror sections 97 and 98 of the *Accident Compensation Act 2001* (the AC Act), under which employees are entitled to receive first week compensation for loss of earnings from their employer. Any employer who fails to comply with this commits an offence. Employees are then able to pursue payment of this amount through the ERES system. This essentially channels employees into the ERES system.
34. This approach could be used to enforce bridging payment and notice period obligations. At first sight it would be relatively simple because it could follow the approach in sections 97 and 98 of the AC Act. ACC would not be required to take enforcement action itself and so would avoid additional costs to the scheme caused by employer default. It is consistent with the current legal redress if an employer defaults on their obligations to an employee. However, given that the bridging payment and notice period obligations play an important role in income smoothing, the lack of visibility and ownership over enforcement by ACC through this approach could be an issue. As above, using this pathway for notice period and bridging payment obligations would require additional resources and powers in the ERES system.
35. More work is needed on what offence and penalty regime would be most appropriate to achieve the principles of the scheme and the division of responsibility between the scheme and ERES, if the bridging payment and notice period obligations are limited to scheme claimants.
30. We will provide delegated Ministers with further advice on these options as well as any other areas where there may be intersections with the ERES and NZII, after Cabinet decisions are taken on the first order question of bridging applicability.

Information sharing arrangements

31. Collection and sharing of personal information will be necessary for the operation of the NZII once it commences to:
- maintain accurate levying to ensure equitable sharing of scheme costs
 - ensure accessibility by minimising the information provision requirements on businesses and customers
 - ensure customer eligibility for the scheme and manage scheme integrity by accurately paying claim entitlements
 - support correct and full tax collection and entitlement to government benefits to avoid customer government debt accumulation,
 - case management and return to work planning and assistance, and
 - scheme performance monitoring, labour market statistics and scheme policy development.
32. The *Privacy Act 2020* and *Health Information Privacy Code 2020* hold that information should only be used for the purpose for which it is collected, and only shared and used

for another purpose where an express legal authorisation is provided. Several agencies are legislatively authorised to provide personal information to ACC for administering the AC scheme, and ACC is authorised to share information with other agencies for a number of specified regulatory functions.

33. However, information collection and sharing for the new purpose of administering NZII, and sharing NZII information with wider regulatory systems, will need legal provisioning. Legal authorisation for sharing can be provided by legislation or via Approved Information Sharing Agreements (AISA) under part 7 of the *Privacy Act 2020*.
34. A temporary provision to allow agencies to share information with ACC to support system testing for the NZII build was established by the *Income Insurance Scheme (Enabling Development) Act 2022*. This provision is subject to a sunset clause. A legislative instrument is needed to enable information sharing for the purpose of administering the NZII.
35. To be fit for purpose, legal provisioning for information sharing should:
 - be necessary for, and limited to, arrangements required to achieve the legislation's defined purpose and express objectives
 - be transparent and easily understood by individuals and provide for individual agency where appropriate
 - be efficient for ACC and partner agencies to implement – unless there is a compelling reason the provisions should be consistent for the two schemes
 - minimise compliance costs for businesses and workers
 - be feasibly implemented within the timeframe
 - be flexible to support continuous improvement of services, and
 - minimise risks of privacy breaches and misuse of personal information.

Information collection and sharing

36. ACC will be able to obtain some personal information directly from employers and employees through the NZII claims process.
37. However, some information is not feasible to collect directly from employees, or would be inefficient and/or inaccurate for ACC to collect directly from employees, and is already collected from businesses and individuals by other agencies. Duplicating the collection of information already collected by agencies would result in additional administrative costs, compliance costs for businesses and individuals, scheme integrity risks (due to an inability to verify the accuracy of information) and poor scheme accessibility (disproportionately affecting disadvantaged groups including Māori and Pacific peoples).
38. The proposed information sharing model for NZII will be a hybrid model of legislative provisions and authorisation. Some of the information sharing will be based on legislative

provisions in the NZII legislation; some of the information sharing will be based on authorisation of the individual.

Information for levies administration

39. It is proposed that information sharing be enabled between ACC and Inland Revenue to ensure NZII maintains an accurate and equitable levy system.
40. NZII will have essentially the same information requirements for levy setting and levy administration as the Accident Compensation scheme. Cabinet has agreed that levies would be based on taxable wages and salary. ACC would be responsible for ascertaining and collecting levies from employers, and Inland Revenue would be responsible for collecting levies from workers as part of PAYE, as it occurs respectively for the ACC Work and Earners' Accounts.
41. Information sharing between Inland Revenue and ACC is currently legislated for in the *Accident Compensation Act 2001* (AC Act) and the *Tax Administration Act 1994* (TAA). The AC Act allows ACC to request taxpayer information such as contact details, tax agent details and earnings from Inland Revenue subject to an agreement between the agencies (s.246 refers). The legislative provision is characterised as an information matching provision under schedule 3 of the *Privacy Act 2020*, subject to that Act's rules concerning matching provisions. Inland Revenue is enabled to provide confidential taxpayer information to ACC according to a provision in the TAA (schedule 7, cl 42 refers).
42. The current information sharing provisions only apply to the AC scheme, and do not extend to allow for information sharing between ACC and Inland Revenue for NZII purposes.
43. Some form of legal provisioning is required to facilitate information sharing between ACC and Inland Revenue to support a sound levy system across the schemes.
44. The preferred option is legislation to enable ACC and Inland Revenue to share with each other within information categories nominated in a schedule to the legislation, which could be amended over time via Order in Council (refer Annex One). This proposal would effectively expand the current legal provision (section 246 of the AC Act and schedule 7, cl 42 refers) to apply to NZII, enable ACC to also share identity information with Inland Revenue, and would be adaptable to support continuous improvement in the Accident Compensation and NZII schemes over time.
45. The key advantages of this proposal are that it would efficiently enable ACC and Inland Revenue to apply a single agreement and set of protections across the two schemes. It can also be feasibly implemented to support the wider scheme implementation timeframe, and would include additional safeguards compared to current arrangements between ACC and Inland Revenue.
46. Risks associated with this option include poor information management or misuse on the part of one or the other agencies. We propose that these risks be managed by imposing obligations on the Chief Executives of the agencies to vouch for the necessity of information requested, and instituting transparency requirements (e.g. publication of

information sharing agreements and information shared, breaches and mitigations). This is the same approach as in the *Income Insurance Scheme (Enabling Development) Bill*. The legislation would also note that the personal information provided would not be repurposed for other unrelated activities or functions and that there will be restrictions on onward disclosures.

47. A second option considered was to simply replicate the existing legislative provisions for the Accident Compensation scheme to the NZII. This would enable the NZII to operate but according to a two-decade old administrative model, and would foreclose on any administrative improvements. A variant on this option would be to provide for information sharing to enable NZII and Inland Revenue to adopt enhancements. However, the variation between the schemes would create complexity and additional costs for Inland Revenue and ACC.
48. A third option considered but not preferred is to develop and consult on an AISA between ACC, Inland Revenue, and other agencies. Such an agreement could potentially achieve similar outcomes to a legislative approach. However, the process for developing an AISA is likely to extend the timeframe for establishing necessary legal provisions for information sharing required for the scheme. An AISA would need to be developed for consultation following passage of legislation and could take a year or more to establish. According to this timing, an agreement could be established by mid to late-2024. This timing could work for a 2025 scheme go live (yet to be decided) but would introduce considerable cost and additional delivery risk which would not be justified given the opportunity to embed arrangements within legislation.
49. Furthermore, ACC would not be able to use an AISA under the *Privacy Act 2020* to gather business-related information as the *Privacy Act* only deals with personal information, while ACC deals with both personal information relating to individual claimants as well as non-personal information relating to employers and companies.
50. Although an AISA is not the preferred sharing model for the NZII, it is proposed that many of the privacy safeguards that an AISA provides will be built into the information sharing provisions within the legislation.
51. We are currently consulting with the Office of the Privacy Commissioner (OPC) on the preferred legislative authority for the information share to ensure that all privacy implications are being considered and people's privacy will be protected as much as can reasonably be expected.

Information for claims administration

52. We propose that legislated authorisation be established for information collection and sharing arrangements to enable efficient, accurate and accessible claims processes.
53. The NZII eligibility and entitlement assessment information requirements will have some similarities to the AC scheme.
54. There will also be some differences, and therefore additional information collection and sharing will be required for NZII. For instance, the NZII will require additional information

to verify a person has worked six months of the past eighteen months to be eligible to claim.

55. Detailed indicative information sharing requirements for NZII are outlined in **Annex One**. Work is progressing to understand all information sharing requirements for NZII.
56. The proposed information sharing provisions are considered proportionate given the need for the scheme to correctly determine and obligate the payment of levy and provide correct entitlements.
57. Although personal information will be obtained directly from individuals and/or with their authorisation when it is reasonable to do so, legislative authority for information sharing arrangements between agencies is needed.
58. The proposed information sharing model for claims administration will be a hybrid model of legislative provisions and authorisation. The employer will only need to share a minimum amount of information about the worker to notify the scheme and the additional information needed will be sourced directly from the employee on the basis of authorisation.
59. An information share fully based on authorisation would be onerous for claimants, and reduce timeliness of services resulting in:
 - significant compliance costs on businesses and individuals
 - poor scheme accessibility, disproportionately affecting disadvantaged groups including Māori and Pacific peoples, and
 - additional and significant scheme administrative costs due to the resource intensive nature of following up information requests.

Information sharing between NZII and Accident Compensation scheme

60. It is proposed that ACC be legislatively authorised to share certain administrative and personal information collected and generated by the NZII with other agencies, and those agencies be authorised to use that information for the following purposes:
 - facilitating the delivery of NZII functions distributed across agencies
 - facilitating claimant access to other Government benefits and services, such as benefits, working for families and employment and health interventions, and preventing people accumulating Government debt
 - supporting other regulatory systems to operate with correct information, such as the tax system.
61. Information sharing is also proposed to facilitate monitoring of the operation of the scheme, scheme policy development, monitoring labour market trends relevant to the scheme, and otherwise contributing to labour market data. However, in these instances, information would be appropriately de-identified.

62. ACC is already legislatively authorised to share information for some of the above purposes. For instance, the AC Act allows ACC to provide information to MSD to verify the eligibility and amount eligible for a person for any benefit (s.281 refers) and allows ACC to provide information to MBIE for enforcement of employment law (s.286 refers).
63. However, again, the legal provisioning does not extend to the new NZII, nor does it provide sufficient scope for the interaction of NZII with other Government systems, such as Inland Revenue or Veterans' Affairs. **Annex One** outlines the indicative NZII information sharing.

Use of information within ACC

64. It is proposed that legislation would enable ACC's information sharing agreements with agencies to be consolidated across the schemes, so that accountability and technical provisioning can be simplified for ACC and the agencies concerned. Through using the NZII Bill as an omnibus Bill, there is an opportunity to modernise the AC Act provisions in line with the modern NZII provisions so that they serve people well across the two schemes in the same way.
65. This is in keeping with an important reason for situating delivery of the NZII within ACC, namely to achieve administrative synergies between the schemes. In practice ACC would have, for instance, a single data share arrangement with an agency, covering information required to administer both schemes. Back office and some levy and case management functions will be shared between the schemes and utilise the same datasets received from partner agencies.
66. However, claim details will be managed separately between the schemes for the most part, given differing claims lodgement processes, eligibility and entitlement assessments, and obligations. The key exceptions will be where an individual is a claimant of both schemes (e.g. a person with lifetime cover under the AC scheme for a birth injury), or the case could prospectively be eligible for one or the other schemes (e.g. certain Health Condition Disability (HCD) claims). The personal information shared should be the minimum required to carry out the function of each scheme. Moreover, the information sharing arrangement should be undertaken in a manner that is transparent to the claimant.
67. More work is needed on what consolidation of both schemes would look like, what the privacy implications would be and what privacy safeguards need to be put in place. We will consult with relevant stakeholders on this.

Information sharing provisions should be robust and adaptable

68. We propose that the Bill include an information sharing framework modelled on the *Income Insurance Scheme (Enabling Development) Act 2022*, where practicable, with broad and adaptable information sharing provisions, and appropriate privacy provisions and safeguards.
69. It is proposed that the legislated information sharing provisions would be subject to the following safeguards:

- agency memoranda of understanding could only be entered into between ACC and an agency named, for information within the scope of an information category, in the legislation, and
- ACC must have a reasonable belief that the information to be shared under an agreement is necessary for ACC to carry out an NZII function and that the authorised purpose could not be met by using non-personal information (the necessity test).

70. It is also proposed that provisions be included in the legislation to allow for some flexibility:

- the scope of agencies and information categories could be altered over time as operational requirements change over time, subject to a Cabinet agreed Order in Council
- ACC would also be able to request specified agencies to provide information that is not within one of the categories described in the legislated schedule subject to consultation with the Privacy Commissioner; and that the necessity test is met.

71. An alternative option would be to not include provision to adapt the legislated scope for information sharing, and instead rely on AISA over time. This is not a preferred approach at the outset, but the legislation could incorporate provision for legislated information sharing provisions to be built upon by AISAs as an alternative approach to altering the legislative scope. This approach, however, would present significant limitations. The *Privacy Act 2020* only deals with personal information, while ACC deals with both personal information relating to individual claimants as well as non-personal information relating to employers and companies. ACC would not be able to use an AISA under the *Privacy Act* to gather business-related information.

Consultation with interested parties is taking place

72. Consultation about the proposed information sharing provisions is taking place.

Consultation with Iwi Leaders Group

73. We are working with the Iwi Leaders Group (ILG) to identify its priorities regarding information sharing and the implications for Māori. ILG has expressed support for information collection and sharing, including of personal information, for the scheme to be accessible for Māori. Officials will continue to address Māori data sovereignty consistently with government practice as this develops. Many of the issues in this regard will be non-legislative and will be able to be addressed through the operationalisation of the scheme.

Consultation with the Office of the Privacy Commissioner

74. We are working closely with the OPC to address its recommendations and ensure that our preferred legislative authority for the information sharing of the NZII follows good privacy practices and protects people's privacy as much as reasonably can be expected.

Comment from the Office of the Privacy Commissioner

75. The Privacy Commissioner acknowledges the policy intent of NZII, and the ambition of the Government to implement the scheme by 2025. The OPC worked closely with agencies in the setup of the enabling legislation for the scheme. This enabling legislation permitted a broader scope of personal information collection, use and sharing, to support agencies in designing and testing NZII.
76. As all agencies agreed during the drafting of the enabling legislation, there was a clear expectation that further analysis would be done of the specific ways in which:
- a. personal information would be collected, used and shared by participating agencies
 - b. that agencies would consult with the Privacy Commissioner on this analysis, and
 - c. that it would inform the final design of the scheme and its empowering legislation.
77. The Privacy Commissioner has not been provided with this analysis, and without this, does not support the recommended proposal of broad information-sharing provisions in legislation that would override the important protections of the *Privacy Act*. The Commissioner recommends that agencies share their analysis with his Office, so the options for information-sharing and overall use of personal information in the scheme can be appropriately considered. The OPC is ready to support those discussions in a timely way, so timeframes for implementation of the scheme can be met.

Minor and technical policy decisions

78. **Annex Two** sets out policy recommendations and accompanying rationale for a set of 15 minor and technical NZII policy issues. The policy issues cover details around entitlements, eligibility, and process, for example how long applicants have to lodge a claim and whether employees are eligible for NZII if they work overseas.
79. Decisions are needed on the second-order policy issues as soon as possible to inform drafting of the Bill. Officials are available to discuss the policy recommendations with you in more detail.

Consultation

80. ACC, the Ministry of Social Development, and Inland Revenue were consulted. Veterans' Affairs New Zealand (VANZ) was consulted on policy recommendations relating to interactions between NZII and VANZ income compensation payments.
81. The Pou Tangata Skills and Employment Iwi Leaders Group (ILG) was also consulted. The ILG raised no concerns. Broadly, the ILG commented that it will be important to ensure that both the policy, implementation and operation of the scheme Confidentiality [REDACTED] to ensure a good experience for people and that individuals, whanau, and communities are aware of and understand the scheme, including entitlements and interactions with other systems.
82. The New Zealand Council of Trade Unions (CTU) was consulted and did not provide feedback on the proposals. Business New Zealand was consulted and raised no concerns.

Next steps

83. Your decisions on this briefing will be used to instruct Parliamentary Counsel Office on drafting the NZII Bill.

84. It is likely that further second order policy issues will arise as the drafting process continues. We will seek your decisions on any further issues that arise as needed.

Annexes

Annex One – Indicative personal information sharing for NZII

Annex Two – Recommendations on minor and technical policy issues

Annex One: Indicative personal information sharing for NZII

NZII administration requirements	Personal information required	Agency	Is this information already shared with ACC?
Verify/validate identity	identity validation	DIA	No
Levy Administration	Employer details Total employee remuneration paid in a given period	IR	Yes
Verify/validate claims eligibility	Work history in the last 18 months identify any basis for disentitlement: <ul style="list-style-type: none"> • imprisonment • being overseas for >28 days • Immigration visa status 	IR Corrections Customs MBIE	No Yes No No
Accurately assess and pay claimant entitlements	Historic taxable earnings	IR	Yes
Manage entitlements through the course of a claim	Change in taxable earnings for abatement Notification of death	IR DIA	Yes No
Support correct and full tax administration and government benefits	Worker identity and contact details Entitlement assessment	IR MSD Veterans' Affairs	No Yes No
Co-ordination of about market or health initiatives with other relevant agencies (eg. case management, employment interventions)	Worker identity and contact details Return to work planning	MSD MBIE TEC TPK Health NZ	No No No No No

NZII administration requirements	Personal information required	Agency	Is this information already shared with ACC?
Maintain up to date tax records for levy setting	Employer contact details Tax agent details	IR	No
NZII Scheme Performance Monitoring	De-identified claims details e.g. Incidence, durations, entitlement, demographics, about market interventions	StatsNZ	No
Employment regulation	Claims details Policy development	MBIE	Yes

Annex Two: Minor and technical policy decisions

Policy Issue	Recommendation	Rationale
1. Claims lodgement timeframe and retrospective payments		
<p><i>How long does an applicant have to lodge a claim for their NZII entitlement?</i></p>	<p>A claim for insurance must be lodged within 40 working days (in effect, 2 months) of the required notification date (when the employer is required to advise the scheme of the employee's ED or HCD).</p> <p>Claims not lodged within this period will expire, unless there are extenuating circumstances for the delay. Where ACC is satisfied that an extenuating circumstance exists, retrospective payments will be subject to standard abatement and include an interest component.</p>	<p>A key purpose of the scheme is to provide income smoothing, so we expect most to claim their entitlement promptly. This should be encouraged so that return-to-work obligations and support can be used to support people to find or return to good work. Further, leaving claim periods open-ended creates an uncertainty about outstanding liabilities that would not support optimal fund management.</p> <p>However, allowing for approval of claims lodged after 40 working days in 'extenuating circumstances', provides for retrospective payments to be made should the situation justify it. Payment of interest in these situations is not an acknowledgement of ACC fault, just recognition of the claimant's situation. Circumstances likely to be considered 'extenuating' may be:</p> <ul style="list-style-type: none"> • serious illness or accident, or severe psychological impairment • critical personal circumstances involving family • events that are unforeseen or beyond control (e.g., natural disaster). <p>Where ACC is satisfied that an extenuating circumstance exists:</p> <ul style="list-style-type: none"> • any income earned during the entitlement period will be abated according to standard income abatement rules, as if the entitlement was progressed as it should have been • the applicable interest rate mirrors an AC Act provision for late weekly compensation payments (but goes beyond that provision, in paying interest even when the delay was not caused by ACC) and only paid where the payment is more than one month later than it should have been (this mirrors the AC Act provision), as if the entitlement had progressed as it should have. <p>Paying interest in this situation is inconsistent with accident compensation practice, will require a manual process (additional cost), and may lead to some gaming behaviour. However, the interest rate is not high and situations of extenuating circumstances are likely to be low.</p>

Policy Issue	Recommendation	Rationale
2. Treatment of payments from private income protection insurance schemes		
<i>Will payments from private income protection insurance abate a claimant's NZII payments?</i>	Private income protection insurance payments are not considered 'personal exertion' income, and therefore do not abate NZII payments.	<p>Private income protection insurance payments are analogous to redundancy payments: they are both a prior arrangement for compensation in cases of job loss. While people shouldn't be able to benefit from the scheme in terms of gaining "more" than before the trigger event, people have "purchased" the benefit and cannot choose to opt-out of NZII.</p> <p>NZII provides some good basic protections, but where people choose to purchase more comprehensive income insurance to protect themselves or their family, they should not be penalised for doing so.</p> <p>There is not a high take-up of income insurance in New Zealand, and current take-up may drop with the introduction of NZII, so this will not be a common situation. We would also expect that private providers will modify their insurance policies over time to complement NZII.</p>
3. Eligibility for overseas workers		
<i>Is an employee eligible for NZII if they work overseas?</i>	<p>An overseas employee is eligible for NZII entitlements if they meet the standard eligibility criteria (requirements around residency, job type and contributions history) and:</p> <ul style="list-style-type: none"> • they are liable pay to New Zealand income tax and NZII levies in relation to the income from their overseas role, and • their employer is subject to New Zealand employment-related legislation, including the NZII Act and the employer levies and obligations therein. 	<p>Providing eligibility to overseas employees who pay New Zealand income tax in relation to their role ensures that the employment arrangement is connected to the NZ labour market and our economy.</p> <p>Ensuring that the employer is subject to the New Zealand employment laws ensures they have the employer obligations integral to the viability of NZII – being levy contribution, scheme notifications, initial economic displacement support (notice period, bridging payment) and HCD support (sick leave provisions, attempt to keep job open).</p>
4. Eligibility before employment commences		
<i>Is an employee eligible for NZII if their prospective employment is terminated before they start, or they lose work capacity before they start?</i>	An employee impacted by economic displacement or loss of work capacity before they start a new role is only eligible to make an NZII claim if their trigger event is within 12 weeks prior to the start date of their prospective employment.	<p>A person who has accepted an offer of employment is considered 'a person intending to work' and deemed to be an "employee" under the <i>Employment Relations Act 2000</i>. Employers have the same obligations to them as they do to a current employee.</p> <ul style="list-style-type: none"> • If a job offer is rescinded, the 'person intending to work' has experienced displacement and is currently entitled to the agreed notice. By extension, under NZII, they should receive their income replacement entitlement if they are still unemployed once the notice period expires and the one week

Policy Issue	Recommendation	Rationale
	<p>Any NZII entitlements would be calculated based on the person's prospective employment arrangement.</p>	<p>bridging payment made (as per Cabinet agreement to pro-rata, one week bridging payment for less than three months).</p> <ul style="list-style-type: none"> If a person loses work capacity due to HCD before their employment commences, an employer must currently make appropriate accommodations. By extension, under NZII, a person should receive their income top-up or replacement entitlement if their work capacity is still reduced at their start date (once sick leave, if any, is used). <p>The 12-week period exceeds the maximum notice period and bridging payment provisions by 4 weeks, providing some extended cover for unknowable situations (due to lack of labour market data on advance hiring practices, pre-start terminations and timed breaks between jobs), but does set a different treatment between existing and prospective employees.</p> <p>Calculating entitlement based on prospective income is based on the rationale of replacing the income associated with the job that has actually been lost. However, this is a departure from any income treatment under the <i>AC Act</i>, will require a manual process (additional cost) and presents some risks of gaming behaviour where people collude to create 'ghost jobs'. While the approach can't be automated, employer obligations to pay the full notice and bridging payments for permanent employees (even in this situation) will mitigate some of the gaming risk. The number of affected people is likely to be small and the circumstances justify a unique approach.</p>
<p><i>In the circumstance set out above, should the bridging payment and notice period still apply?</i></p>	<p>Yes, claimants who are eligible for NZII entitlements are also eligible for the bridging payment and notice period (pro-rated as appropriate for non-standard workers), even if they have not yet started work.</p>	<p>As set out above, a person who has accepted an offer of employment is considered 'a person intending to work' and deemed to be an "employee" under the <i>Employment Relations Act 2000</i>. Employers have the same obligations to them as they do to an existing employee.</p> <p>Furthermore, bridging payments and notice periods should apply in these instances as they add tension to the NZII system to counter the risk of unnecessary and spurious redundancies, or collusion between an employer and employee.</p>

Policy Issue	Recommendation	Rationale
5. Is there a minimum age for NZII?		
<i>Is there a minimum age requirement for NZII?</i>	No age requirement for NZII.	<p>There is no minimum working age in New Zealand.</p> <p>There is a good case for including those aged 16 and over, as some have left school are in full-time employment, whilst a small group of young people's incomes are an important contribution to their families' income.</p> <p>There is a less strong case for including those aged under 16, particularly as this group are highly unlikely to claim income insurance (due to the contribution history requirement and lack of triggering events). However, excluding them from the scheme (and levy) would be administratively burdensome, and would prevent them from building a contribution history. We therefore recommend that there is no age limit for NZII.</p>
6. Calculating the bridging payment and NZII entitlements		
<i>What are the precise rules for calculating prior income for the purposes of NZII entitlements and bridging payments?</i>	<p>The bridging payment is based on 80 percent of the employee's income from that employer, based on income earned over the number of weeks worked within the four weeks prior to the notice period. If no income was earned during this period, this would be backdated to when the employee has earned income.</p> <p>NZII will be based on 80 percent of prior income from that employer over the past six months (see further detail below), prior to:</p> <ul style="list-style-type: none"> • provision of a notice period • from reduction of work capacity due to an HCD (up to a limit of 12 months) • prior to entering parental leave • the end of the previous season (for seasonal workers, up to a limit of 12 months). <p>For permanent and fixed term employees, ACC will consider the number of weeks worked with that employer over the past six</p>	<p>For NZII entitlements, we propose a six-month calculation period. This ensures variations in a person's pay are taken into account and aligns with NZII's contribution requirements. A shorter calculation period is proposed for the bridging payment to reduce compliance costs for employers. A six month calculation period is different to the Accident Compensation scheme but is more appropriate for a shorter-term scheme.</p> <p>The various 'start dates' for calculating income capture scenarios where a person's most recent income does not fairly reflect their reasonably expected income.</p> <p>ACC currently have different rules for permanent and non-permanent employees to ensure entitlements reflect their pattern of earnings. We consider that these should be broadly replicated, however entitlements for fixed term workers should align with permanent employees, as fixed-term workers entitlement length is limited to the period of their contract and could be shorter than the usual six-month entitlement.</p>

Policy Issue	Recommendation	Rationale
	<p>months. This ensures entitlements reflect income from that employer and that people are not disadvantaged if they have not worked for the full six months.</p> <p>For non-standard workers (e.g., casual workers who work regularly, but not weekly), ACC will consider the number of weeks since the employee began working with that employers. This ensures that their entitlement reflects their pattern of earnings.</p>	
7. Exiting entitlements		
<p><i>What are the 'exit' rules for NZII (e.g., if a claimant enters full-time employment)?</i></p>	<p>Within the six-month entitlement period, claimants may choose to:</p> <ul style="list-style-type: none"> • return to NZII after they have fully abated their entitlement (e.g., they took up a short, fixed term contract) • continue to receive NZII income top-up whilst in full-time employment (where the claimant has taken up work with a lower income than their previous work) • return to NZII if their work capacity decreases. 	<p>Domestic and international literature is clear that 'cliff-faces', where entitlements suddenly end, can disincentivise claimants from entering work. We therefore recommend a relatively flexible six-month entitlement period. This flexibility ensures that claimants are not disincentivised to enter, or return to, work.</p> <p>Any weeks a claimant receives an NZII payment would count towards their limit on subsequent claims (claimants can only claim six months of entitlements within an 18-month period). Weeks without an NZII payment would not count towards this limit.</p>
8. Entitlements if a claimant goes to prison		

Policy Issue	Recommendation	Rationale
<i>What happens to entitlements if a claimant goes to prison?</i>	A claimant's entitlements would be suspended if they are subject to imprisonment. Where a claimant is released from prison within the original period entitlements are available following acceptance of the claim, the entitlement can be reinstated, but not backdated. In the event the prison sentence extends beyond the original period of entitlement, the claimant would not receive further entitlements.	The proposed approach aligns with the suspension of earnings-related compensation under the Accident Compensation scheme for claimants that are sentenced to imprisonment. It is consistent with the approach adopted to the provision of benefits available through the Ministry of Social Development. It also ensures equitable treatment of NZII claimants and workers in employment who are subject to imprisonment. While the approach would limit prisoner access to financial and case management support under the NZII scheme, prisoners can access specialised employment support services provided by the Department of Corrections.
9. NZII entitlement for the deceased		
<i>Should the (estates of the) deceased still be entitled to their income insurance payments?</i>	Entitlement will cease at death (or as soon as ACC is informed).	Continuing payments after a claimant is deceased would be inconsistent with the objectives of the NZII scheme (as it is not intended to cover death). If stopping payments on the day after ACC is informed of the death causes hardship for some families, dependants could be eligible for assistance from MSD, or ACC if death was caused by an accident. This recommendation also recognises that people in work who pass away are unlikely to receive additional salary beyond their death (outside of holiday pay etc.).
10. Bridging payment entitlement for the deceased		
<i>Should claimants who pass away while receiving the bridging payment be entitled to the full four weeks bridging payment?</i>	Yes, if a claimant passes away while receiving the bridging payment, their estate would be entitled to the remainder of the four-week bridging entitlement.	The purpose of the bridging payment is to mitigate against unnecessary redundancies by ensuring employers are faced with a cost of making someone redundant and to provide financial assistance during the initial period of unemployment. A person is entitled to the four-week bridging payment as soon as their notice period regarding the redundancy ends. A person is eligible for bridging even if they find a job within the four-week period. Therefore, it makes sense that if a person passes away, their estate would be entitled to the remainder of the bridging payment.
11. ACC weekly compensation and levies for NZII		
<i>Should ACC weekly compensation be subject to</i>	ACC weekly compensation will not be subject to NZII levies.	The NZII scheme's intention is that only income that is insured by the scheme is subject to the levy. ACC weekly compensation is not income insured by the scheme.

Policy Issue	Recommendation	Rationale
<i>levies for the purposes of NZII?</i>		<p>There are also many circumstances where charging an NZII levy on ACC weekly compensation would not connect a claimant to the NZII scheme. For example, someone who is medically retired, someone whose weekly entitlement ceases because they have gained vocational independence, or claimants who are seriously injured with no prospect of working again.</p> <p>Charging a NZII levy would also cause ACC to absorb the employer share of the levy, which would have implications for the ACC levy itself, and generally be inconsistent with the purposes of the AC scheme.</p> <p>Consequently, the period on earnings related compensation will not count towards the injured employee's contribution history for eligibility purposes.</p> <p>Note: Ministers agreed that NZII weekly payments would be subject to ACC levies on the basis that a) ACC levies apply to all PAYE payments (incl. ACC weekly comp), and b) claimants would still be able to access ACC support whilst in receipt of NZII payments. Therefore, NZII payments will extend a person's earner status so they would be eligible to ACC weekly compensation if they become injured while on NZII (which will require an amendment to the AC Act).</p>
12. Abating NZII and ACC when the claimant is entitled to both schemes		
<i>If a claimant is receiving both ACC and NZII for two different income losses, which scheme abates first when the claimant gradually returns to work?</i>	NZII will abate first, and then ACC entitlement will abate once NZII is eroded.	Entitlement to ACC weekly compensation can end when the claimant gains vocational independence, not when they have found a new role. In some cases, a claimant could receive ACC compensation indefinitely if they continue to be incapacitated. NZII is time limited to six months, so abating NZII before ACC will generally advantage claimants.
13. Interactions between NZII and weekly compensation payments from Veteran's Affairs NZ		
<i>If a claimant is receiving both income compensation under the Veterans' Support Act 2014 from Veteran's Affairs NZ (VANZ) and NZII for two different income losses, should VANZ compensation be treated as</i>	<p>Redundancy/laid off If a veteran is made redundant:</p> <ul style="list-style-type: none"> • a veteran <u>will not</u> be eligible for VANZ Weekly Income Compensation or VANZ Weekly Compensation • NZII <u>will</u> be paid. <p>A health condition or disability</p>	<p>Provision will be made in the <i>Veterans' Support Act 2014</i> for the extent to which a veteran is entitled to income compensation to be limited to the difference between the income compensation payable under the <i>Veterans' Support Act</i> and the amount of NZII paid, where the rate of VANZ income compensation is higher.</p> <p>These principles, alongside VANZ's abatement rules, mean that <i>generally</i> veterans will not be better off than their pre-injury and displacement income but could access both payments where eligible for both.</p> <p>There may be some circumstances where veterans receive more than 100% of their pre-injury and displacement income. However, in these circumstances,</p>

Policy Issue	Recommendation	Rationale
<p><i>income for NZII abatement purposes?</i></p>	<p>If a veteran has a non service-related condition that prevents them working full-time:</p> <ul style="list-style-type: none"> • a Scheme One* veteran <u>will</u> be eligible for VANZ Weekly Income Compensation (covers any health condition) • NZII <u>will</u> be paid. VANZ may top up. <p>• a Scheme Two* veteran <u>will not</u> be eligible for VANZ Weekly Compensation (only covers service-related conditions).</p> <ul style="list-style-type: none"> • NZII <u>will</u> be paid. <p>Accepted service-related condition If a veteran has a service-related condition that prevents them working full-time:</p> <ul style="list-style-type: none"> • a Scheme One veteran <u>will</u> be eligible for VANZ Weekly Income Compensation • NZII <u>will</u> be paid. VANZ may top up. <p>• a Scheme Two veteran <u>will</u> be eligible for VANZ Weekly Compensation.</p> <ul style="list-style-type: none"> • NZII <u>will</u> be paid. VANZ will top up. <p>Essentially, in each situation NZII will be paid. Where a veteran is eligible for VANZ income compensation, VANZ will pay a top-up if the amount VANZ pays is higher than NZII. Once NZII payments end, a veteran will receive VANZ income compensation.</p>	<p>the VANZ amount exceeding 100% of prior earnings will not be treated as income for NZII abatement purposes. The number of claimants in these circumstances is expected to be extremely small, if any. This interaction aligns with when a claimant independently qualifies for ACC weekly compensation and NZII for separate events.</p> <p>*Scheme One applies to veterans who served before 1 April 1974 or in Viet Nam.</p> <p>*Scheme Two applies to veterans who served after 31 March 1974 on Qualifying Operational Service.</p>

14. Coverage of shareholder employees

Policy Issue	Recommendation	Rationale
<p><i>Should shareholder-employees* be eligible for NZII?</i></p> <p><i>*A shareholder-employee is an employee of a business who also owns shares in the company.</i></p>	<p>Not where they have a significant influence on business decisions. Shareholder-employees of close companies* would not be eligible for NZII and would not be liable for levies (regardless of whether they receive earnings via PAYE, a non-PAYE end of year shareholder salary, or a combination of both). However, people who hold shares in larger publicly listed companies they work within are eligible for NZII.</p> <p>*A close company is a company with five or fewer natural persons who either hold voting interests or hold market value interests in the company of more than 50 percent (ITA definition).</p>	<p>Shareholder-employees of close companies pose similar moral hazard risks to the scheme as self-employed workers, in that they (generally) have more control over their working arrangements and income than employees (i.e., the ability to make themselves redundant and manipulate their income to receive more in NZII entitlements).</p> <p>Given that Cabinet is proposing to exclude self-employed workers from NZII (at least initially), it makes sense to apply this same treatment to shareholder-employees.</p> <p>Limiting the exclusion to shareholder-employees of close companies, will help to ensure that this carve-out is targeted at those shareholder-employees who are most likely to hold material influence over the affairs of the business. It would not impact, for example, an employee who has privately purchased listed shares in the firm they work for.</p> <p>This proposal does, however, mean that an employee of close company with a very small number of shares in that company (and thus limited influence) would be excluded from NZII. However, we expect that the number of employees in this position would be very small.</p> <p>Operationalising this policy will mean relying on people self-identifying to IR whether they are liable to pay a levy.</p>
15. Treatment of technical redundancy		
<p><i>Should technical redundancies be covered by NZII?</i></p>	<p>No, employees experiencing a technical redundancy would not meet the definition of economic displacement for NZII eligibility. This exclusion would apply whether a person accepted the new offer of employment or not.</p> <p>* A technical redundancy refers to a situation where a business is sold, and the employees are offered employment by the</p>	<p>Cabinet agreed that for the purposes of NZII, 'economic displacement' would be defined as a loss of work due to the disestablishment of a position, which would be expected to arise in two broad situations:</p> <ul style="list-style-type: none"> • 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. • Where the firm ceases to operate, and all positions are therefore disestablished. <p>Technical redundancy does not meet either of these criteria as no jobs have been lost in real terms. We judge therefore that technical redundancy should be excluded from cover under NZII, whether a person accepts the new offer of</p>

Policy Issue	Recommendation	Rationale
	<p>buyer on substantially the same terms and conditions.</p>	<p>employment (on the same or substantially similar terms and conditions) or not, as suitable work is available.</p> <p>To provide otherwise would be inconsistent with the scheme’s objectives of supporting people to return to good jobs and (particularly for HCD) avoiding job loss in the first place. Under NZII, claimants will be required to accept offers of suitable employment, that 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.</p> <p>Furthermore, this position aligns with current employment practices, whereby employment agreements providing redundancy compensation usually include a clause to say that the employee will not be entitled to compensation if they choose not to transfer their employment in a technical redundancy situation.</p> <p>NZII <i>does</i> cover voluntary redundancy, but we judge that this is fundamentally different to a technical redundancy scenario. In the former, positions have been disestablished in real terms. With technical redundancy, even when an employee opts not to accept a job offer (on the same or substantially similar terms and conditions), this is a personal choice – the job itself still exists.</p>