



BRIEFING

New Zealand Income Insurance: Ministerial consultation on Enabling Legislation

Date:	21 April 2022	Priority:	High
Security classification:	Budget - Sensitive	Tracking number:	2122-4058

Action sought		
	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to undertake Ministerial consultation on the attached draft Cabinet LEG paper proposing the introduction of legislation to enable ACC to build necessary operational requirements for an Income Insurance Scheme and provide feedback to officials. Approve , subject to any changes that are required from consultation, lodgement of the paper with Cabinet Office.	2 May 2022
Hon Carmel Sepuloni Minister for Social Development and Employment, ACC		6 May 2022
Hon Michael Wood Minister for Workplace Relations and Safety		

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

The following departments/agencies have been consulted
ACC and Crown Law Office were consulted. Treasury was informed.

Minister's office to complete:

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 Withdrawn |

Comments



BRIEFING

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Date:	21 April 2022	Priority:	High
Security classification:	Budget - Sensitive	Tracking number:	2122-4058

Purpose

This paper recommends that you consult Ministers on the attached draft Cabinet LEG paper proposing the introduction of legislation to enable ACC to build necessary operational requirements for an Income Insurance Scheme.

Executive summary

In October 2021 Cabinet agreed (CAB-21-MIN-0397 refers) to legislation being drafted to enable ACC to undertake necessary work to prepare for implementation of an IIS (the enabling Bill).

ACC is currently prevented from undertaking some NZII activities under its current legislation, the Accident Compensation Act 2001. The Bill would enable ACC to undertake work necessary to set up a strong implementation process. The proposed Bill does not commit the Government to proceed with, or to use ACC as the delivery agent for, the scheme, but simply provides ACC with a function relating to the development of the scheme.

You agreed to seek the Leader of the House's approval to include the enabling Bill as part of Budget night urgency. The last available opportunity to obtain Cabinet approval to introduce the Bill to meet this timing is the 12 May Cabinet Legislation Committee (LEG).

It is proposed that you consult Ministers on the attached draft Cabinet LEG paper proposing the introduction of legislation and provide feedback to MBIE on 2 May.

You should note that the Bill includes two potentially controversial provisions:

- Treaty of Waitangi provisions, which requires ACC to engage with Māori and be purposeful in developing a scheme that will work for Māori and
- information sharing provisions that authorise ACC to use information it receives from Government agencies for the purpose of setting up the systems and processes for the establishment of an income insurance scheme.

MBIE has worked closely with Office of the Privacy Commission on the information sharing provisions, and do not expect there to be any significant residual issues.

The consideration to include Treaty provisions in the Bill is a finely balanced one. Constitutional conventions

MBIE considers however, that the aspiration of the proposed Treaty provisions is consistent with the aspiration Ministers and social partners have expressed for the scheme.

Recommended action

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

- a **Agree** to undertake Ministerial consultation on the attached draft Cabinet LEG paper proposing the introduction of the enabling Bill (a draft of which is attached for inclusion in the consultation) and provide officials with feedback on any required changes to the Cabinet paper on 2 May 2022
- Agreed / Not agreed*
- b **Approve**, subject to any changes that are required from Ministerial consultation, to lodge the paper with Cabinet Office on 6 May 2022 for the 12 May Cabinet Legislation Committee meeting

Agreed / Not agreed

Jivan Grewal
**Acting General Manager, Employment, Skills
and Immigration Policy, MBIE**

..... / /

Hon Grant Robertson
Minister of Finance

..... / /

Hon Carmel Sepuloni
**Minister for Social Development and
Employment, ACC**

..... / /

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

..... / /

Background

1. Based on MBIE's 6 April briefing, you have confirmed your instruction to officials to continue to develop initial legislation as agreed by Cabinet (CAB-21-MIN-0397 refers) to enable ACC to undertake work on the NZII (the enabling Bill) and draft a Cabinet paper for consideration in early May 2022 seeking approval to introduce the legislation (BP 2122-3347 refers).
2. This enabling Bill remains necessary despite the longer implementation period agreed by Budget Ministers for ACC to implement the scheme (the details of which are to be worked through by MBIE and ACC). ACC is currently prevented from undertaking some NZII activities under its current legislation, the Accident Compensation Act 2001. The Bill will provide ACC with legal authority to undertake the necessary work to design and system test the scheme's operational specifications, which in turn will better ensure a timely, efficient and robust operationalisation process.
3. The Bill does not commit the Government to proceed with, or to use ACC as the delivery agent for, the scheme, but simply provides ACC with a function relating to the development of the scheme. Officials will provide advice on whether to proceed, and the substantive detail for a scheme to inform the development of substantive legislation, following analysis of public submissions, in late June / early July.
4. As previously noted, MBIE is working towards the enabling Bill being included as part of Budget night urgency, given the relationship between the purpose of the Bill and Budget funding being provided to ACC to advance its preparatory work for implementing a scheme.
5. This paper outlines:
 - Specific policy matters which officials have worked through with agencies, particularly the Treaty of Waitangi and information sharing provisions
 - Process and timing requirements to submit to Cabinet the proposal to introduce the legislation, and

Specific policy matters

6. Cabinet delegated authority to the Minister of Finance to make decisions and approve matters of detail on the Bill, consistent with the policy proposal, on any issues that arise in the course of drafting the Bill (Cabinet CAB-21-MIN-0397 refers). Based on this delegation you have agreed that the Bill:
 - be drafted as a standalone Bill, rather than an amendment to the Accident Compensation Act as noted by Cabinet [CAB-21-MIN-0397 refers]
 - include a Treaty of Waitangi provision, which requires ACC to engage with Māori and be purposeful in developing a scheme that will work for Māori
 - include information sharing provisions that authorise ACC to use information it receives from Government agencies for the purpose of setting up the systems and processes for the establishment of an income insurance scheme.
7. Drafting the Bill as a standalone piece of legislation is pragmatic, and generally uncontroversial. The Treaty of Waitangi and information sharing provisions on the other hand have involved considerable work across agencies.

Inclusion of Treaty of Waitangi provisions

8. A Treaty provision is proposed to be included in the Bill recognising that the way an IIS scheme is operationalised will have implications for scheme outcomes, particularly for Māori.
9. The provision is drafted with the intent that ACC should engage with Māori and be purposeful in developing a scheme that will work for Māori.
10. The proposed provision is in two parts. The initial clause sets out a general Treaty of Waitangi provision recognising the Crown's responsibility under the Treaty of Waitangi in regard to the legislation. It then refers to a later clause which sets out how ACC, as the Crown's agent, will be expected to discharge the Crown's responsibility in performing its function under the legislation.
11. The consideration to include the Treaty provisions in the Bill is a finely balanced one. The Treaty of Waitangi provision poses some risks.
12. Constitutional conventions
[REDACTED] MBIE considers that the aspiration of the proposed Treaty provisions is consistent with the aspiration Ministers and social partners have expressed for the scheme in regard to improving Māori engagement in and outcomes from the scheme. This will be a scheme that is highly important for Māori, based on Māori labour market experiences to date, and it is right that we recognise this from the outset.
13. Free and frank opinions
[REDACTED] A mitigating factor is that the core provision provides ACC with some leeway, in that it must ensure the views of Māori, including iwi, are taken into account and reflected in the design of the systems and processes "as far as reasonably practicable".
14. A more minor risk is that inclusion of the provisions could contribute to ambiguity around where the Crown's Treaty obligations are located and the independence of Crown entities. We consider this risk is negligible as there are longstanding precedents of Treaty provisions applying to Crown Agents (eg. DHBs), and the clauses are drafted in such a way as to recognise that the Treaty obligations sit with the Crown, but insofar as the Bill establishes ACC as the Crown's agent for building the delivery function for the Crown's income insurance policy, specific obligations are conferred to ACC.
15. MBIE has worked with the Iwi Leaders Group (ILG) to co-develop the Treaty clauses for the Bill, and the ILG have expressed broad comfort with the proposed approach, noting that their preference would be for a more aspirational provision. The proposed provisions have also been discussed with Crown Law Office and the Treaty provisions oversight group.
16. MBIE considers that inclusion of the Treaty provisions in the Bill will help the agencies' working relationship with Māori on the scheme, and will help to ensure ACC engages with Māori on the scheme build. Therefore the benefits of including the provisions outweigh the risks.

Inclusion of information sharing provisions

17. The Bill includes information sharing provisions that authorise ACC to use information it receives from Government agencies and other information held by ACC for the purpose of setting up the systems and processes for the establishment of an income insurance scheme (namely for system testing).

18. For the most part ACC already has authorisation to receive and use the information in question for administering the AC scheme. The primary role of the provision is to authorise requests and use of information for the new purpose of establishing the operational requirements of IIS.
19. MBIE has worked closely with the Office of the Privacy Commissioner (OPC), ACC and Inland Revenue to develop information sharing provisions that:
 - are broad enough to enable ACC to build and test systems that will be needed for IIS, ensuring that systems will work as they are intended to avoid unintended consequences. The legislation, for instance, identifies in schedules agencies with which ACC may enter into agreements, and information categories which can be shared according to those agreements.
 - have appropriate mitigations and safeguards in place to ensure that ACC and other agencies minimise the amount of personal information that is used in the process of the system development. The legislation, for instance includes, a (necessity) test that must be met in order to make a request and requirements for consultation with OPC on the sharing of information that is not covered by the schedule.
20. In practice, the provisions will enable ACC to enter into Memoranda of Understanding (MoU) with specified agencies for information to support the development of necessary systems for the NZIIS.
21. The key risk associated with the provisions is that shared information will be incorrectly released. ACC has existing measures in place to prevent this occurring. The Bill also includes a provision that ACC and agencies will need to satisfy a necessity test in undertaking sharing (to minimise sharing) and would need to consult with OPC on the creation of MoU and any changes to them.
22. MBIE is continuing to work on the information sharing provisions with OPC. MBIE will advise you on whether any substantive issues are raised through this process in the week of 26 April.
23. MBIE will continue to work with OPC on information sharing arrangements for the substantive legislation.

Next steps

24. We propose that you undertake Ministerial consultation on the attached draft Cabinet LEG paper proposing the introduction of legislation, and the current draft Bill to enable ACC to build necessary operational requirements for an Income Insurance Scheme, and provide feedback to officials on 2 May 2022.
25. Subject to any changes that are required from consultation, we then propose that you lodge the paper with Cabinet Office on 6 May 2022 for consideration at Cabinet Legislation Committee on 12 May 2022.
26. Subject to Cabinet's agreement to introduce the Bill, it would be introduced on 19 May 2022. Upon its passage into law ACC will be enabled to fully utilise Budget 2022's allocation for ACC's scheme build.

Annexes

Annex 1 – Draft Cabinet paper for Ministerial consultation

Annex 2 – Current draft Income Insurance Scheme Enabling Bill

Annex 3 – Draft Bill Disclosure Statement

Regulatory Impact Statement: Preparatory work to enable a New Zealand Income insurance scheme

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet decisions regarding the introduction of time limited enabling legislation to support preparatory work for the proposed Income insurance scheme (IIS).
Advising agencies:	This RIS has been produced by the Ministry of Business, Innovation & Employment; with input from the Ministry for Social Development, the Inland Revenue Department, the Accident Compensation Commission and Office of the Privacy Commissioner.
Proposing Ministers:	The Ministers of Finance, Social Welfare & Employment, ACC and Workplace Relations & Safety
Date finalised:	
Problem Definition	
<p>A formal decision on whether to proceed with the proposed IIS is expected to be made in late June / early July 2022. ACC is currently the preferred option as delivery entity. It is expected that ACC will be confirmed as the delivery agency, along with other key design decisions for the scheme, at the same time as a decision to proceed. A full RIA for the scheme will accompany the advice on the substantive proposals.</p> <p>ACC needs to carryout preparatory work to ensure these decisions are well informed, and that it is able to undertake the necessary work to implement a scheme should that be decided. However, ACC has limited authority to complete pre-implementation work and is now approaching the limits of what it can do under its current legislation. The substantive work necessary to implement an IIS is outside the scope of ACC’s current functions as set out in s 262 of the Accident Compensation Act 2001 (AC Act).</p> <p>If the enabling legislation is not passed when funding becomes available (on Budget night), and the Government decides to proceed with the scheme, ACC will be unable to expend funding provided, and obliged to put current implementation planning on hold until the passage of the substantial legislation in mid-2023. This could undermine decision making and delay implementation of the scheme and/or put successful implementation at risk.</p>	
Executive Summary	

The Government is concerned with involuntary job loss arising from:

- *economic displacement* from an employer closing, contracting or restructuring, i.e., the disestablishment of a *position* (and excluding job loss due to poor performance, gross misconduct or resignation)
- *health-related job loss*, when the onset of a health condition or disability (HCD), or deterioration in an existing condition, means an employee is unable to fully continue in their current job.

A discussion document has been released to seek public views on the introduction of a IIS. Should the proposal proceed, policy decisions on the design of the scheme will form the basis of enduring legislation to govern the scheme's operation.

While a decision to proceed and confirmation of ACC as the preferred option for delivery entity is yet to occur, in anticipation of these decisions, ACC needs to be able to carry out preparatory work to ensure implementation is well informed. ACC has limited authority to complete pre-implementation work and is now approaching the limits of what it can do under its current legislation.

The options are to:

1. Not introduce enabling legislation, leaving implementation work until substantive legislation has been enacted (status quo)
- or
2. Progress time-limited enabling legislation so that ACC can proceed with preparatory work and contribute to a formal decision to proceed (preferred)

There are consequences of passing or not passing the enabling legislation now. The consequences depend on whether the scheme proceeds or not. A decision to proceed or not is likely to occur in late June / early July 2022. If enabling legislation is not passed now, advice on operational and budgetary implications will be more limited in scope, and ACC will not be able to undertake necessary preparations for implementation until substantive legislation is passed, which is expected in mid-2023.

The proposed enabling legislation will allow ACC the legal clarity to progress pre-implementation work beyond the scope of what the parameters of the existing settings currently afford.

This legislation will also include information sharing provisions to enable the provision of information (including personal information) by specified government agencies (such as IRD and MSD) to ACC and the use of that information, and other information held by ACC, for the purpose of assisting ACC to:

- set up the systems and processes needed for ACC to implement the income insurance scheme; and
- test the systems and processes set up to implement the income insurance scheme; and
- take all other reasonably incidental steps or actions required to implement the income insurance scheme.

These activities would support successful implementation of an IIS; however, implementation would remain dependent on a Cabinet decision to proceed (June/July 2022), further funding being agreed at Budget 2023, and the passage of substantive legislation to govern the scheme in mid-2023.

Limitations and Constraints on Analysis

There is a risk in enabling ACC to do the work in advance of the government deciding to proceed with the scheme and select ACC as the delivery entity. This is mitigated by the short (approximately two month) timeframe between the proposed enabling legislation being enacted and a go/ go no decision being made. The downside risk of passing the legislation and the scheme not proceeding is negligible; further the legislation has a sunset clause that will apply if a no-go decision is made.

The enabling legislation is necessarily flexible to enable ACC to undertake a sufficient breadth of activity to develop operational systems and processes required for a scheme that will function robustly. The flexibility creates some uncertainty as to scope, but this is expected to be minimal, as in many regards the development of scheme IT systems, processes, and settings are likely to either leverage or mirror existing AC scheme systems and processes. In other aspects the scheme design will need to be different to ACC, for example to reflect different client needs.

Any uncertainty about scope of enabling legislation is likely to be mitigated by the ACC Board and Ministers having oversight of ACC's development of operational requirements for the scheme (consistent with the Crown Entities Act).

Ultimately, operational systems and processes developed will reflect substantive legislation which will replace the proposed time-limited enabling legislation.

Responsible Manager(s) (completed by relevant manager)

[Name]

[Position]

[Team]

[Agency]

[Signature]

[Date signed out]

Quality Assurance (completed by QA panel)

Reviewing Agency: MBIE

Panel Assessment & Comment: The MBIE panel reviewing this RIA considers that it meets the RIA quality criteria and that our feedback on earlier drafts of the RIA has been addressed. The proposals for this legislation are clearly defined and limited to those needed for ACC to support the development of the IIS, with clarity over the need for subsequent policy decisions for the detail of policy choices. The costs of proceeding now are clearly articulated and reasonable.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The IIS discussion document was released on 2 February 2022, with submissions due on 26 April 2022. Officials are continuing to develop advice on policy elements of the scheme for Cabinet decisions in late June/early July 2022 on whether to proceed, and on the scheme's policy design detail.

Subject to allocation of funding through Budget 2022, and a decision to proceed with the IIS scheme, agencies had been working towards a 'go-live' in late 2023. A 'go-live' in late 2023 required implementation of the scheme in parallel with the development and passage of substantive legislation on the scheme's design.

It has been proposed that the scheme will be delivered by ACC. The selection of ACC as preferred delivery entity is one of the key design decisions expected to be confirmed in late June/early July 2022.

ACC has limited authority to support the proposed IIS, limited to assessing the implications for ACC and advising on the policy process. Work to implement an Income Insurance Scheme is outside the scope of ACC's current functions as set out in s 262 of the Accident Compensation Act 2001 (AC Act).

ACC's functions are prescribed by the AC Act, and broadly relate to the purposes of the AC scheme (refer sections 3 and 262 of the AC Act). ACC has been able to undertake pre-implementation work insofar as it has constituted consideration or planning to manage the implications of a government policy change, namely the introduction of an IIS delivered by ACC, on the basis that this undertaking is "ancillary to and consistent with" its legislated functions [refer s.262(1)(d)].

To date this legislative authority has enabled ACC to undertake pre-implementation work to understand the implications for ACC for:

- a. technology requirements
- b. key aspects of scheme operation (including claim registration, case management and dispute resolution)
- c. what is required to develop the design features required for the scheme to work well for Māori
- d. its assessment of risks and funding required for implementation.

This work has been integral to much of the development of the discussion document, the budget initiative, and business case.

Cabinet agreed to initial time-limited legislation being drafted to enable ACC to develop operational requirements for the scheme [CAB-21-MIN-0397 refers]. This will be passed as 2022 Budget night legislation, so ACC can expend funding provided at Budget for developing the scheme [BP 2122-2225 refers].

Since the discussion document was released in February 2022, Ministers have decided that should a scheme progress, any implementation would occur much later (2025 not 2023) and would only begin following the passage of substantive legislation. This has mitigated a number of implementation risks as it will allow for more time to carryout implementation planning and preparation before go-live.

The issue is now one of timing of implementation activities. The status quo would mean implementation activities will only occur following enactment of this substantive legislation (mid-2023 at the earliest). This would mean ACC will not be able to begin to undertake necessary preparatory work to identify implications and mitigations associated with delivering the IIS until mid-2023 at the earliest, meaning there will be greater risk to successful implementation.

A 2025 implementation date coupled with enabling legislation now (preferred option) provides an opportunity for a more considered approach to implementation.

What is the policy problem or opportunity?

ACC is approaching the limits of what it can do under its current legislation to prepare for implementation of the IIS. Enabling legislation is required to enable ACC to undertake further work to prepare for implementation of the scheme, in anticipation of that decision being made.

There are consequences of passing or not passing the enabling legislation now. The consequences depend on whether the scheme proceeds or not. A decision to proceed or not is likely to occur in late June / early July 2022. If enabling legislation is not passed now, advice on operational and budgetary implications will be more limited in scope, and ACC will not be able to undertake necessary preparations for implementation until substantive legislation is passed, which is expected in mid-2023.

The amount of work needed for successful implementation in 2025 is challenging, postponing starting it for a year makes it unnecessarily so. Successful implementation is about delivering benefits to workers effectively, and the economy as a whole from better matching without delay and without excessive implementation risks.

The enabling legislation will allow the ACC to continue valuable pre-implementation work on a sound legal basis. The actual implementation of an IIS and confirmation of ACC as delivery agency would remain dependent on Cabinet decisions and the passage of substantive legislation to govern the scheme in mid-2023.

The further work that is required over the coming year to support policy development and implementation. This includes work with IRD and MSD to ensure claimants get all of their entitlements from these agencies. Māori and other partners will need to be the involved in co-design of how the scheme could be delivered to ensure positive customer experience and outcomes and planning the necessary service design and technology activity to set the scheme up for success.

Passing the enabling legislation would remove the current legal ambiguity about the limits of permissible pre-implementation work. It would also avoid ACC standing-down existing project teams or having to defer or restart procurement activity.

The table below shows that impact depend on whether or not the proposed NZISS scheme proceeds

	IIS proceeds	IIS doesn't proceed
No enabling legislation (Status Quo)	Delay in giving ACC legislative authority => delay and/or serious risks with implementation	No regrets
Enabling legislation (Preferred option)	Improved prospects of successful implementation	Some expenditure before 'no go' decision is made

What objectives are sought in relation to the policy problem?

The objective is to successfully implement the IIS scheme with effective use of Crown funding.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

The criteria used to assess the options are:

1. successful implementation – will the option assist with successful implementation and delivery of the proposed IIS
2. effective use of Crown funding – will the option be an effective use of Crown funding

What options are being considered?

Option One – *[Status Quo / Counterfactual]*

No enabling legislation (wait for substantive legislation before further implementation activity occurs)

Option Two – *[Enabling legislation]*

Progress time-limited legislation so that necessary preparatory work can be undertaken ahead of the decision being confirmed (preferred).

How do the options compare to the status quo/counterfactual?

The impact of the options depends on whether the scheme proceeds or not.

	Option One – [No enabling legislation]	Option Two – [Enabling legislation]
Successful implementation	<p>-- if scheme proceeds benefits may be delayed or compromised</p> <p>0 if the scheme does not proceed no impact as legislation is not necessary</p>	<p>++ if the scheme proceeds will prevent delay</p> <p>- if the scheme does not proceed, legislation is arguably unnecessary but subject to sunset clause</p>
Effective use of Crown funding	<p>- if the scheme proceeds as there will be additional costs associated with delay</p> <p>+ if scheme does not proceed as no additional costs will be incurred, and better than the status quo/counterfactual</p>	<p>+ If the scheme proceeds better than doing nothing/the status quo/counterfactual as benefits are less likely to be delayed or compromised</p> <p>- if the scheme does not proceed will be some expenditure ahead of a no-go decision</p>
Overall assessment	<p>Outcomes are almost certainly more negative than with enabling legislation as delays will create significant risk to delivery</p>	<p>The benefits highly likely exceed costs. The possibility of expenditure ahead of a no-go decision is limited by the narrow window of time between passage of enabling legislation and go / no-go decision</p>

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Workers	No costs	No impact	

Government	Costs will be incurred (these will be a sunk cost if no go decision)	Low impact as go / no-go decision will be made approximately two months after enabling legislation enacted	
Employers	No costs	No impact	
Total monetised costs	Expenditure available to ACC prior to go, no-go as sunk cost	Up to \$2.2m	Medium-High
Non-monetised costs	Legislation passed, which is not required; mitigated by sunset clause	Low - medium	High
Additional benefits of the preferred option compared to taking no action			
Workers	Better scheme design and implementation and delays in implementation will mean that workers who would have otherwise been supported by the scheme will not.	Medium – high impact	Low – medium certainty
Government	Less risk to implementation of scheme / and reputation of government arising from implementation issues	Medium – high impact	Medium – high certainty
Employers	Better scheme design and implementation	Medium – high impact	Low – medium certainty
Total monetised benefits	Better preparation reduces uncertainty, and likelihood of project cost overruns	Low – medium impact	Low certainty
Non-monetised benefits	Clarity for ACC, better prospect of successful implementation	Medium – high impact	Medium – high certainty

Section 3: Delivering an option

How will the new arrangements be implemented?

Who will be responsible for delivering the scheme?

ACC is proposed as the delivery agency although this decision will not be confirmed until late June or early July 2022.

When and how will the arrangements come into effect?

Substantive legislation to govern the operation of the scheme is intended to be introduced in late 2022 and enacted in around July 2023. The scheme will take effect in 2025.

Enabling legislation to enable the scheme build

An initial piece of legislation is needed for ACC to develop the operational requirements for the scheme, as developing the new scheme is outside the scope of ACC's current functions as set out in s 262 of the Accident Compensation Act 2001 (AC Act).

The scope of the enabling bill is limited to a small number of provisions to enable and guide ACC in undertaking the work to develop the IIS.

The core provision is to provide an additional function for ACC, effectively authorising ACC to undertake the necessary work to establish the new scheme.

A Treaty clause is included recognising that the design of operational systems and processes has the potential to significantly affect iwi/Māori. The clause imposes a clear expectation on ACC that it is to design the systems and processes in a way that provides fair and equitable access for Māori (consistent with the Crown's Treaty obligations and commitments) and also supports the wider aspirations Māori have for this scheme.

Information sharing arrangements are also included in the bill and are discussed in the next section.

This initial piece of legislation would be time limited, applying for 18-24 months. At IIS go-live, the enabling legislation would be replaced by the substantive piece of legislation governing the IIS (similar to the Accident Compensation Act).

Information sharing is a critical element of the scheme build

ACC has identified that it will need to obtain or match personal information from a number of agencies well before the IIS commences to be confident that it can deliver a fit for purpose system.

Personal information will be of central importance to the operation of the IIS once it commences, namely to:

- Maintain accurate levying, so as to ensure equitable sharing of scheme costs amongst levy payers
- Minimise compliance costs on businesses and claimants (through reduced information provision requirements)
- Ensure the scheme is accessible, particularly to people facing difficult circumstances, by minimising the information provision requirements on claimants

- Manage/verify scheme integrity eg. ensuring claims processes and entitlements management are robust, based on accurate up-to-date information.

Key information sharing processes envisaged for the scheme once it goes live are described in Annex 1.

How will stakeholders or other agencies with a substantive interest in the relevant regulatory system be involved in its implementation and ongoing operation?

Iwi Leaders Group - The enabling legislation includes a Treaty provision out of recognition that the way an IIS is operationalised will have implications for scheme outcomes, particularly for Māori individuals and whanau. The provision is drafted to obligate ACC to engage with Māori and be purposeful in developing a scheme that will work for Māori.

The provision is in two parts. A general Treaty of Waitangi provision recognising the Crown's responsibility under the Treaty of Waitangi in regard to the legislation. It then refers to how ACC, as the Crown's agent, is specifically expected to discharge the Crown's responsibility in performing its function under the legislation.

The Treaty provisions have been co-developed with the Iwi Leaders Group (ILG) and ACC. Both the ILG and ACC have expressed broad comfort with the provision as drafted by PCO.

Public - Public consultation is ongoing. A discussion document has been released to seek public views on the introduction of an IIS. Subject to public consultation feedback that there is being broad support for an IIS and for ACC as implementer, officials will use the public consultation feedback as part of advice on detailed design work and legislation development.

What are the implementation risks? Have any issues been raised through consultation? How will these risks be mitigated?

The proposal aims to enable the IIS to develop better and without delay.

How will the existing stewardship arrangements of the regulatory system support the implementation of this proposal and help to manage implementation risks?

MBIE will have an ongoing role in supporting successful implementation, through ensuring ACC is consulted in all aspects of policy design, and to ensure proposals are administratively feasible.

How will the new arrangements be monitored, evaluated, and reviewed?

ACC and MBIE will have a close and collaborative working relationship through the system build and test phase, and the development of the substantive legislation so 1) policy is not locked in that is not achievable operationally; and 2) operational build is not locked in that does not reflect the final policy. IR and MSD will also be closely involved for these reasons. Having an effective and collaborative process involving all agencies including viewing early drafts of and thinking relating to legislation will ensure the impacts of the draft legislation are monitored.

Annex 1 – Prospective IIS information sharing processes

ACC needs info-sharing to develop the scheme and there will be benefits from them doing so. The processes described below are illustrative but may change to some degree as detailed operational and technical work develops. Figure X outlines the levy process, with the dashed lines depicting additional information collection requirements in the absence of an information sharing arrangement.

Figure X:

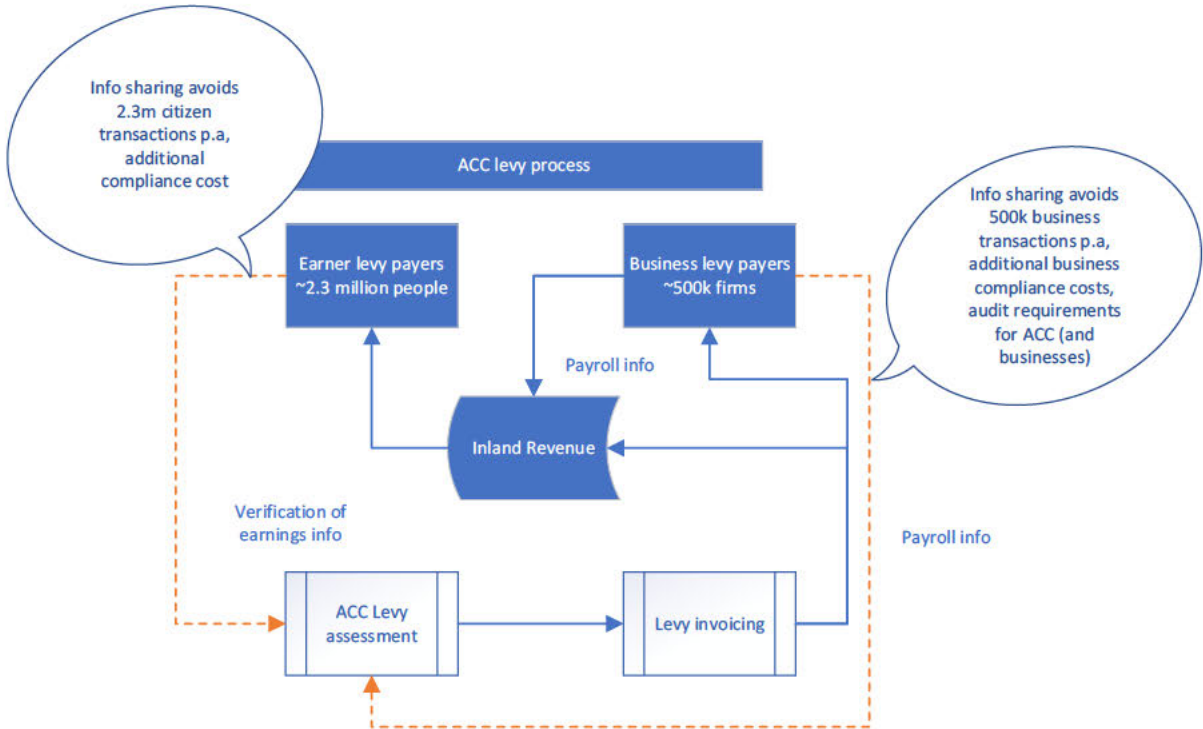
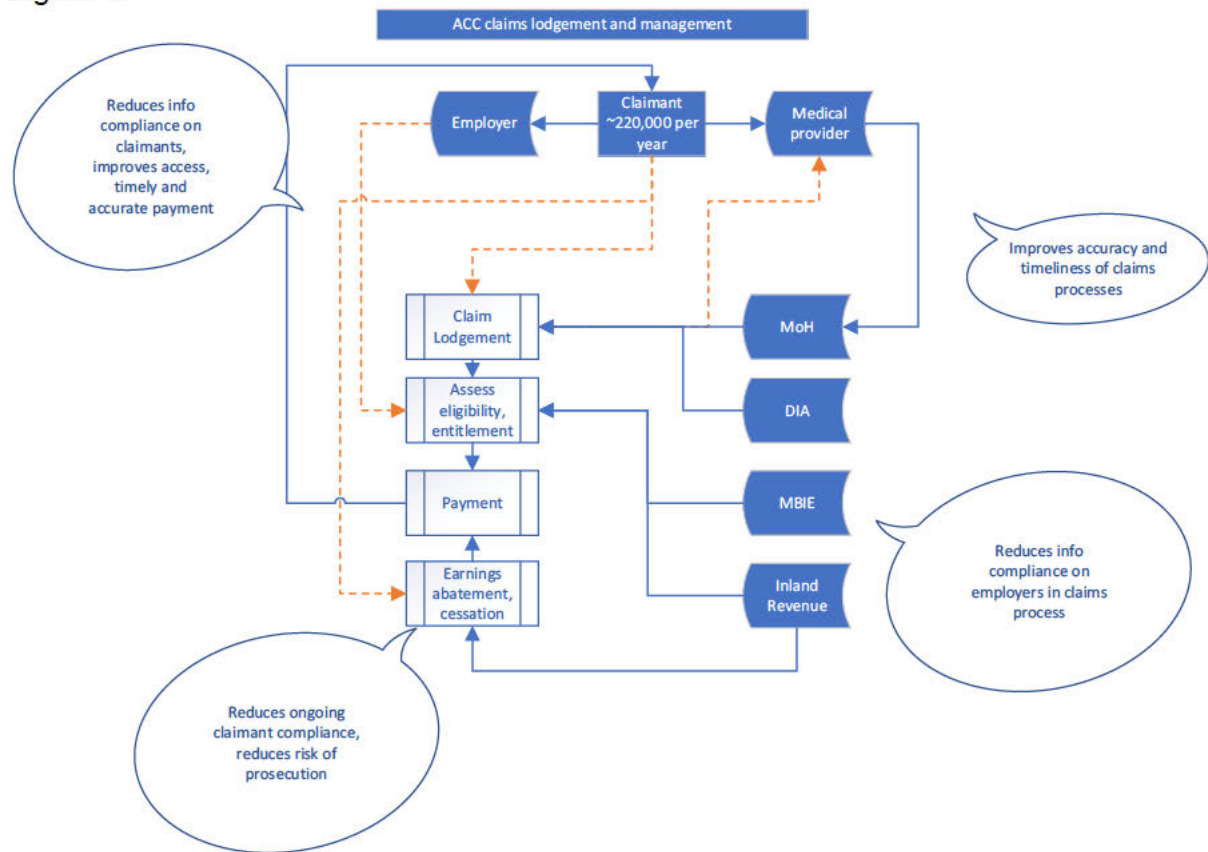


Figure Y outlines the claims process, with the dashed lines depicting additional information collection requirements in the absence of an information sharing arrangement.

Figure Y:



Much of the information required is identical to information that ACC currently has lawful access to via information sharing arrangements for the AC scheme. There is some uncertainty about the precise information sharing requirements, and information management policy and operationalisation that will be developed, as the systems are to be designed. However, there will likely be new information sharing relationships and improvements to existing processes.

Legislation is required to create a legal authority for ACC to use information for the new purpose of developing the IIS scheme. The legislation includes a reasonably flexible provision to allow sharing between specified government agencies and ACC for the purposes of the system development and testing. However, the intention is that real identifiable personal and sensitive information is only shared, and used, where strictly necessary for those purposes. The enabling legislation therefore requires that information sharing arrangements be subject to a necessity test –if there is a reasonable process to test systems that does not require the use of real identifiable personal information (eg. dummy data), then the necessity test would not be met. It is important however, that specified government agencies and ACC can share personal information, if necessary, as thorough testing will be imperative to avoiding implementation failure (eg. Novopay type scenarios).

In keeping with the above charts at figure X, the legislation enables the following information sharing arrangements for the purpose of the system build. Again, the sharing arrangements described below may change to some degree as detailed operational and technical work develops.

Table X:

Agency	Examples of personal information required for sharing or matching	Is this information already shared with ACC?	Examples of how personal information would be used for SUI
Inland Revenue	Worker identity and contact details, historic and ongoing taxable earnings Employer details, taxable payroll	<ul style="list-style-type: none"> • Yes 	<p>Levy processes – ascertain taxable/leviable income of workers, employers' payroll</p> <p>Claims processes - Verify worker identity, eligibility and entitlement for payment (based on contributions history), and any earnings adjustments</p> <p>Risk assurance - Verify employer compliance with levy requirements</p>
Ministry of Health or Health NZ	Claimant NHI number Certifying medical provider details	<ul style="list-style-type: none"> • Yes 	Claims processes, risk assurance - Verify claimant identity, and medical providers providing certification are licenced to do so.
DIA	Identity Verification (Real me)	<ul style="list-style-type: none"> • No 	Claims – enables straight forward identity verification, and scheme access for claimant
Immigration NZ (MBIE)	Visa status	<ul style="list-style-type: none"> • No 	Claims process, risk assurance - Will need to be able to match claimants to visa status to confirm scheme eligibility
MSD, ACC	Claims History	<ul style="list-style-type: none"> • no 	<p>Claims management - IIS will need to be able to share claim details with agencies for joint case management, or case handover (e.g. to MSD or ACC), to ensure claimants receive seamless and optimised service.</p> <p>This includes ensuring that claimants receive all their entitlements from the welfare system (including WFF) as well. This is important for those on lower incomes.</p> <p>Disputation – IIS will need to be able to share claim details with third parties (eg. for mediation).</p>
ACC	Claims history (AC scheme-IIS scheme)	<ul style="list-style-type: none"> • No 	Ability to compare claims between schemes, and match details

The information sharing requirements for the enabling legislation are assessed against the Privacy principles in the below table.

Table X:

Privacy principle	Assessment
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<p>IPP 1: Purpose of collection</p>	<p>The enabling legislation authorises ACC to obtain and use information that ACC or other agencies have lawfully collected. The first step for ACC is to use information to design and build phases for a new scheme. Once operative, information sharing provisions will continue to be necessary for administrative efficiency purposes. Much of the information is from Inland Revenue and is already used for the ACC scheme, so the privacy impacts are largely unchanged from status quo.</p> <p>The legislation also sets out a necessity test for sharing and use beyond the original purpose of collection to protect against excessive use of personal information beyond its original purpose.</p> <p>In respect of the ongoing operational phase, there are legislative limits on the purposes for using personal information. That purpose is for the efficient administration of the new IIS scheme.</p>
<p>IPP 2: Source of personal information</p>	<p>It is expected that information sought from agencies by ACC for system testing and levy establishment will have been collected by those agencies from the people concerned.</p> <p>Once the scheme is operative, ACC will have a direct relationship with claimants and levy payers and will be able to collect some information at source, with the knowledge and consent of the individuals concerned. During the build stage however, this is impractical, and therefore lawful information sharing permissions are appropriate for the design and build stage.</p> <p>The scheme, once operative, will also likely source information from other agencies via information sharing arrangements. It is considered preferable to use information people have already provided to government to minimise the administrative burden and compliance costs on workers and employers, promote access to the scheme, and ensure the scheme delivers services in a timely and accurate manner. The proposal is advantageous to the public in this regard.</p>
<p>IPP 3: Tell people what you're going to do with their information</p>	<p>In general, no additional information collection directly from individuals is contemplated for the scheme build. ACC will however undertake some customer research, based on an opt-in approach and with consent – for the lawful purpose of ACC's new function of preparing for the IIS. In all other instances the sharing will be bulk data used to design and test systems.</p> <p>The status quo setting is that claimants receive explanations about what ACC does with their personal information in both design and build phase in ongoing operations.</p> <p>It is envisaged that the system build will continue to incorporate privacy by design, and therefore the substantive scheme will have measures to ensure transparency. In particular, clients of the scheme will have the intended purpose and scope of information collection explained to them on application.</p>
<p>IPP 4: Manner of collection of personal information</p>	<p>As above. The use of information already collected by ACC would not be considered an unreasonably intrusive, unfair or unlawful method of collection given the strictly time limited duration, the statutory authorisation, and the fact that there will be no consequences for any individual as a result of this use of their information.</p>

IPP 5: Storage and security of personal information	Personal information obtained would be limited to that necessary for the design and build of the IIS (ie. subject to a necessity test). Only approved people will be permitted to see/ use the information for the purpose of the IIS build. Information would be managed securely as per obligations under IPP 5, separately from AC scheme information (to the extent practical), and destroyed once the purpose for its retention has expired. Information would only be retained to the extent it has a purpose linked to continued operational requirements. Bulk data will not be used with customers and will only be used too design and test information, reducing the security and privacy risk.
IPP 6: Access to personal information	The public is within their rights to ask for access to their personal information and access would be provided subject to the application of any withholding grounds, as currently applies to all information held by ACC.
IPP 7: Correction of personal information	As above.
IPP 8: Accuracy of personal information to be checked before use	Accuracy of information is not critical for system testing as development and testing of the system will, by design, have no possible consequences for the individuals concerned, but a core goal of the system build will be to ensure ACC is able to verify information is accurate once the scheme goes live.
IPP 9: Don't keep personal information for longer than necessary	<p>The enabling legislation authorises and requires ACC to delete information when the purpose of collecting and holding it, testing and system building, is complete. Information would only be retained to the extent it has a purpose linked to continued operational requirements. For instance, information obtained for the creation of levy invoicing will need to be retained, but will be updated at each levy juncture.</p> <p>The direct data access agreements will include general safeguards to protect personal information (this includes a section on the retention and disposal requirements, having regard to the provisions of the Public Records Act 2005), including risk, assurance, and continuous improvement processes.</p>
IPP 10: Limits on use of personal information	<p>Information obtained specifically for the scheme build will be ringfenced within ACC from AC scheme uses and only be used for the scheme build. Information for the design and build phase will be anonymised to the extent possible. Some information that was obtained for AC scheme uses (e.g. identifying information about individuals) may be used for developing and testing the system, subject to authorisation from the enabling legislation.</p> <p>As part of system operations, consideration will be given to what is appropriate to share (e.g. to improve claimant service, access), and what needs to be segmented for appropriately considered use across agencies in respect of the IIS scheme.</p>
IPP 11: Limits on disclosure of personal information	This principle will be adhered to with the introduction of an income insurance scheme as disclosures will be in line with a lawful purpose connected with statutorily defined functions and activities of ACC, or otherwise permitted under principle 11 (e.g., to safeguard the integrity of the scheme by detecting, preventing or investigating fraud).

IPP 12: Cross-border disclosure	<p>There will be no need to disclose information overseas except in connection with cloud storage of information, which is not considered to fall within the ambit of IPP 12.</p> <p>If overseas cloud storage is used as part of built systems, appropriate safeguards will be built/agreed to protect the information.</p>
IPP 13: Unique identifiers	ACC will not be assigning unique identifiers created by other agencies. All information is collected carefully and kept secure. ACC has well developed measures and a commitment to transparency and continuous improvement in this area.

Risks associated with substantive scheme information sharing arrangements will be identified and mitigated as settings are established through the development of the substantive scheme arrangements as operationalisation of the scheme proceeds over the next 12-18 months.

There are some minor risks associated with the information sharing arrangements providing for system testing in the enabling legislation. The likelihood of these risks arising (low, medium or high) along with any mitigations are outlined in the below table.

Table Y:

Risks	Likelihood (L/M/H)	Impact (L/M/H)	Mitigations
Poorly thought through sharing within ACC across the schemes could create perception information being used to disadvantage clients	M	H	As part of system design, consideration will be given to what is appropriate to share (eg. to improve claimant service, access), and what needs to be segmented for appropriately considered disclosure across schemes.
Concerns at ACC using information for a purpose for which it does not have consent	L	L	Consent from scheme participants will be obtained once IIS is live.
Inadvertent disclosure of personal information	L	L-H depending on information	Robust ACC procedures for confidentiality and safety of personal information, legislative obligation to only use real personal information where necessary in development and testing of scheme will to a large extent mitigate any inadvertent disclosures.
Unnecessary retention could result in inadvertent disclosure	M	L-H depending on information	The enabling legislation includes a retention provision requiring ACC to dispose of

Risks	Likelihood (L/M/H)	Impact (L/M/H)	Mitigations
			unneeded information upon scheme go live.