



## NEW ZEALAND INCOME INSURANCE – service model and automated decision making

### Purpose:

- Through the ongoing operational design of NZII, two issues have been raised that require further policy advice and possible provisions in legislation. These are (1) NZII service model enablement; and (2) Legislative provision for automated decision-making (ADM).
- This paper sets out possible approaches that we can provide further advice on in January 2023.
- Given that timeframes in the new year are tight for any additions to the Bill at that stage, we seek direction from Ministers on which of the options they would like further advice on, in particular any options that require additions to the Bill (as we will begin drafting the provisions so Ministers can consider the provisions at the same time as receiving further policy advice).

### Service model design

- In July Cabinet agreed that the NZII Scheme should be administered by ACC and that ACC would be responsible for a range of functions including collection of employer levies, management of scheme funding, debt recovery, claims administration, case management, facilitating dispute resolution, compliance monitoring and enforcement, information sharing, data collection and reporting on NZII performance, and any additional functions in keeping with NZII purposes (CAB-22-MIN-0250.02 refers)
- ACC has developed a Business Case which signals a service model that aims to distribute service delivery, resources and decision-making to the local level. This is intended to enhance ACC's service delivery options and better meet the needs of Māori and other priority groups by improving equity of access and scheme outcomes. The Business case indicates that the model could involve "community providers delivering claims and case management to their community members." At this stage ACC does not have a preferred view on the extent of claims management that could be undertaken by third party providers. The Business Case will be considered by Cabinet in the New Year.
- As ACC's work has progressed on the service model it has become apparent that the emerging service design approach requires further policy advice. This is because the vision for the model to have equity at the centre may be best achieved by having some service functions, beyond case management, being undertaken by service providers, not ACC, and for those service providers to have delegated decision-making authority within defined parameters.
- Cabinet decisions and the current drafting of the Bill focus solely focus on ACC as the administrator of the Scheme. For this reason, to enable ACC's emerging preferred service design model we would need agreement by Ministers and Cabinet to provide wider delegation of ACC's decision-making powers in the legislation.

### Options

- This A3 canvases four possible service model options. We seek direction on which of these you would like us to progress:
  - **Option 1:** NZII Crown administration and delivery by ACC
  - **Option 2:** NZII Crown administration by ACC with scope for third party service support
  - **Option 3:** NZII Crown administration by ACC with scope for third party service delivery and some decision-making
  - **Option 4:** NZII Crown Administration by ACC with scope for third party service delivery and full decision-making
- We have also considered and discounted an option that focused on risk sharing between ACC and third-party providers. This option would enable ACC, as the Scheme Administrator, to enter into risk-sharing arrangements with accredited TTPs who assume claims liability risks within established financial and performance parameters and be responsible for scheme delivery. This was discounted because it does not align with scheme parameters previously agreed with Ministers and social partners.

### Enabling Legislation

- Options 1 and 2 do not require enabling legislation.
- Options 3 and 4 require enabling legislation. This would establish a broad enabling provision in the Bill, with parameters set out in Regulations. Subject to Ministerial preference we can instruct PCO to draft provisions if required, for Cabinet approval.

### Automated decision-making (ADM)

- ADM is the process of making a decision by automated means without any human involvement.
- ACC intends to use ADM to make assessments of eligibility and entitlement for NZII claims. ADM can be beneficial for processing claims in a timely and cost-effective manner, reducing potential bias, and ensuring NZII claimants receive their correct entitlement. Legal professional privilege
- MBIE and ACC are working through the best approach for providing the legal authority for ACC to use ADM in the NZII context.
- This process includes consideration of previous Crown Law advice on the use of ADM and is being worked through in the context of existing principles and frameworks applying to the use of ADM in NZ (such as the Algorithm Charter for Aotearoa New Zealand, the principles for safe and effective use of data and analytics principles developed by the Privacy Commissioner and the Government Chief Data Steward, and MSD's ADM standard approved in February 2022).
- Currently the Bill provides for decisions to be made by 'the Corporation.' Based on Legal professional privilege we recommend a legislative provision is included to enable decision making by a computer programme (a non-person).
- Key considerations when enabling the use of ADM include:
  - The level of discretion to be exercised and/or value judgements to be made.
  - The level of effectiveness ADM has on supporting scheme objectives.
  - The impact of ADM on the individual - whether or not ADM improves the claimant experience.

### Options

- A broad deeming provision can be included in the NZII Bill before introduction in February. We seek direction on which of these you would like us to progress:
  - **Option 1:** A broad deeming provision and principles in the Bill. MBIE considers that including a set of guiding principles in primary legislation would provide users with transparency and certainty about what is expected of ACC in considering when, why, and how to use ADM.
  - **Option 2:** A broad enabling provision legislation to be included in the legislation.

### Service Model Options Analysis Conclusions:

Option 1 is a viable low risk approach but presents significant constraints on Scheme Administration and service delivery. Options 2 - 4 present differing risk and reward profiles with progressively greater benefits (particularly in achieving Te Tiriti obligations and equity outcomes in the longer term) as we move from Option 2 to 4, in return for accepting and addressing the additional risks and costs associated with them. Option 2 is consistent with existing ACC and government delivery agent practice and legislation is not needed to enable it. It presents a relatively low risk starting point for scheme establishment. If greater certainty about introduction of the Bill in February and implementation of the scheme is the main consideration, this is the best option.

If Ministers wish to secure the potential benefits for equity and flexibility associated with Options 3 and 4 over time, provision could be made in the draft Bill to enable ACC to delegate selected service delivery and decision-making functions within established parameters that would be further defined in regulation. The Bill's provisions could then be activated enabling ACC to phase in more flexible delivery taking into account performance benchmarks based on the Corporation's early experience managing the scheme. The functionality - flagged in the Better Business Case - that ACC is proposing to design into its systems to enable service delivery partnership arrangements that include delegated decision-making would only be activated by enabling regulation. ACC's preference is to have an enabling ability within the legislation now, to enable design for the future.

### If Ministers are not able to provide direction ahead of the end of year break, we will continue to progress with the option 2 for the service model design, and option 1 for ADM through the NZII Bill.

- 18 Jan Provide drafting instructions to PCO to make legislative provision for Service Model and ADM in the draft Bill, subject to Ministers' agreement in principle
- 24 Jan Provide Briefing Paper assessing options and providing rationale for proposed approach to Service Delivery and ADM
- 24 Jan Provide consultation draft Cabinet Paper to Ministers seeking agreement to introduce the Bill, including agreement to Service Model and ADM
- 16 Feb Final Cabinet Paper and Bill considered at DEV
- 20 Feb Cabinet Paper and Bill considered by Cabinet

**Note:** There are risks with adding additional complexity to the Bill at this stage, which will need to be subject to further consultation and advice.

Any late additions to the Bill could complicate already tight timeframes. This could impact the quality of any late additions, as officials are unlikely to have adequate time to fully test them with agencies and stakeholders.

## Annex 1 – NZII Service Delivery Model Options Assessment

	<i>Option 1: Crown Administration &amp; Delivery</i>	<i>Option 2: Crown Administration by ACC with scope for Third Party Service Support</i>	<i>Option 3: NZII Crown Administration by ACC with scope for Third Party Service Delivery &amp; some Decision-making</i>	<i>Option 4: NZII Crown Administration by ACC with scope for Third Party Service Delivery &amp; full decision-making</i>
<i>Description:</i>	ACC is the Scheme Administrator responsible for all scheme functions, decisions and service provision (with the exception of selected services provided by IR and MSD).	ACC is the Scheme Administrator responsible for all scheme functions and material decisions, but may contract Third Party Providers (TPP) to deliver particular services to complement its own service delivery capability where such arrangements are determined by ACC to enhance equity of access or improve scheme outcomes.  Decisions relating to claimant eligibility, entitlements, and sanctions would remain with ACC.  TPP would need to meet eligibility criteria, operate in accord with agreed performance standards, and be subject to ACC performance monitoring, reporting and audit requirements.  This approach replicates the existing approach to contracting services to support the Accident Compensation Scheme, so ACC has existing expertise in this area.	ACC is the Scheme Administrator responsible for all scheme functions, with the power to delegate some decision-making authority and service provision to TPP within parameters established in regulation on a contractual basis to complement its own service delivery capability, including where such arrangements are determined by ACC to enhance equity of access or improve scheme outcomes for priority populations.  Functions that may be contracted include case management (including development and acceptance of RTW plans, facilitating access to RTW services, claimant compliance monitoring, decisions on deferral and waivers of obligations).  Functions that may not be contracted are: Initial eligibility and entitlement decisions; Payment calculations; and, decisions relating to suspension and/or cessation of entitlements (This reduces performance management and information sharing risks)  TPP would need to meet eligibility criteria, operate in accord with agreed performance standards, and be subject to ACC performance monitoring, reporting and audit requirements. Claimant review and appeal rights apply.	ACC is the Scheme Administrator responsible for all scheme functions, with the power to delegate all decision-making authority and service provision to TPP within parameters established in regulation on a contractual basis to complement its own service delivery capability, including where such arrangements are determined by ACC to enhance equity of access or improve scheme outcomes for priority populations.  Functions that may be contracted include: <ul style="list-style-type: none"> <li>• Claims administration (incl. eligibility &amp; entitlement decisions)</li> <li>• Case management (including development and acceptance of RTW plans, facilitating access to RTW services, claimant compliance monitoring, and sanctions).</li> </ul> TPP would need to meet eligibility criteria, operate in accord with agreed performance standards, and be subject to ACC performance monitoring, reporting and audit requirements. Claimant review and appeal rights apply.
<i>Criteria - Effectiveness: (including equity)</i>	0 Meets core delivery objectives but limits approach to achieving equity & Te Tiriti.	+ Enhances ACC's ability to achieve scheme outcomes through fit for purpose service delivery	+ Enhances ACC's ability to achieve scheme outcomes for priority populations through fit for purpose service delivery & decision-making	+ / ++ Further enhances ACC's ability to achieve scheme outcomes for priority populations through fit for purpose service delivery & decision-making
<i>Criteria - Te Tiriti obligations</i>	0 Limited scope for partnership	0/+ Enables Iwi/Māori involvement in service delivery	+ Enables greater Iwi/Māori involvement in service delivery & some decisions	++ Enables partnership approach to service delivery & decision-making, with greater self-determination for Māori
<i>Criteria - Proportionality</i>	0 Low risk/low return model	+ The benefits of a more flexible approach to service support, outweigh the additional administrative risks and costs	0/+ The benefits of delegated decision-making and service support, may outweigh the additional administrative risks and costs	0 The benefits of greater delegated decision-making and service support, may not outweigh the additional administrative risks & costs. Further work is needed
<i>Criteria – Certainty (including Accountability)</i>	0 Certainty and accountability. ACC sole administrator and provider	0/+ Some risk of variability in service provision but key decisions still made by ACC	- Risk of variability in service provision and decisions with multiple providers. More complexity for employers who may need to deal with multiple TPPs (primarily an issue with HCD claims where ongoing employer involvement)	-- Greater risk of variability in service provision and decisions with multiple providers. More complexity for employers who may need to deal with multiple TPPs (ED & HCD claims)
<i>Criteria – Flexibility &amp; Durability</i>	0 Limited flexibility & durability. One size fits all.	+ Some flexibility for ACC, and some choice for claimants. May enhance scheme durability by enabling ACC to respond to identified differences in claimant needs and changing circumstances.	++ More flexibility for ACC, and greater choice for claimants. Enables scheme delivery to evolve in response to claimant needs, changing circumstances or new information on system performance	++ Even greater flexibility for ACC, and greater choice for claimants. Enables scheme delivery to evolve in response to claimant needs, changing circumstances or new information on system performance
<i>Criteria – Implementation Risk</i>	0 Very low risk	0/- Some risks particularly in start-up phase, but ones the ACC Board should reasonably assess and manage	-- Significant risks implementing an untested model still in the co-design phase without Scheme baseline performance data. Adds complexity to legislative drafting. Information sharing arrangements with TPP would need to be addressed and OPC engaged.	-- Significant risks implementing an untested model still in the co-design phase without Scheme baseline performance data. Adds significant complexity to legislative drafting and operational design. Requires information sharing (including IR information) with TPP. Significant OPC engagement required.
<i>Summary Assessment</i>	0 This option provides a notional 'status quo' benchmark for assessing the other options. It would enable the delivery of the scheme in accord with the legislative parameters established in the current draft NZII Bill.	++ This option offers ACC some flexibility and the potential to improve scheme access and outcomes. The Bill as drafted already enables this option. It is consistent with established practise in ACC and other agencies such as MSD. There are some risks in the start-up phase given the inherent uncertainties and lack of baseline performance data. This may make agreeing contractual arrangements, establishing performance expectations and performance management arrangements challenging. The risks are ones that can be appropriately assessed and managed by the ACC Board. <b>On balance the benefits outweigh the costs and risks. This is a viable start up option.</b>	+ This option offers ACC greater flexibility and the potential to further improve scheme access and outcomes for priority populations if well designed and delivered. There are, however, greater risks associated with implementation of this model given the inherent uncertainties and lack of performance benchmarks in the scheme's start-up phase. There are challenges and risks with designing appropriate contractual and performance management arrangements, particularly in the scheme's start-up phase. A broad enabling provision in the Bill may raise questions about what is intended, which is still being worked through by ACC. We would expect this to be a focus of feedback through Select Committee. <b>If this option is preferred we would recommend it was piloted or phased in and informed by ACC's early experience of managing the scheme.</b>	0/+ This option offers ACC the maximum flexibility and potential to improve scheme access and outcomes for priority populations if well designed and delivered. It provides the greatest scope to meet Te Tiriti principles by enabling a meaningful partnership. There are, however, even greater risks associated with wider delegation of decision-making given the uncertainties and lack of performance benchmarks in the start-up phase, and the information and privacy provisions that would need to enable sharing with TPPs. A broad enabling provision in the Bill may raise questions about its intent as with option 3. <b>There are significant challenges and risks, which suggest this option may be a better medium-term aspiration rather than a Day 1 starting point.</b>

## Annex 2 – High level options for providing legislative authority for ACC to use ADM

<p><b>Option one: (principles in primary legislation)</b></p> <p>Set out a broad deeming provision in primary legislation that deems decisions made by the automated system as decisions made by ACC and include guiding principles.</p> <p>The principles would be split into 2 sections. The first would ensure the intent for using ADM is right. The second would ensure the appropriate accountability mechanisms/obligations are placed on ACC.</p>	<p><b>Option two: (principles not in primary legislation)</b></p> <p>Set out a broad deeming provision in primary legislation that deems decisions made by the automated system as decisions made by ACC and include a requirement for ACC to consider existing frameworks that guide ADM in NZ. Wording could be included in primary legislation to require ACC to consider existing frameworks that guide the use of ADM in NZ such as; the NZ Algorithm Charter, the principles for safe and effective use of data and analytics developed by the Privacy Commissioner and the Government Chief Data Steward.</p>
<p><b>Initial comment</b></p> <p>MBIE's current preference is for principles to be included in primary legislation to allow for <b>transparency and certainty</b> of what is expected of ACC when applying ADM.</p>	<p><b>Initial comment</b></p> <p>ACC's current preference is for a broad enabling provision legislation to be included in the legislation (without principles), so they have <b>flexibility</b> about the application of ADM.</p>