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Supplementary information on social insurance design issues

Date:	2 August 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2122-0385

Information for Ministers	
	Deadline
Hon Grant Robertson Minister of Finance	4 August 2021
Hon Chris Hipkins Minister of Education	
Hon Carmel Sepuloni Minister for Social Development and Employment	
Hon David Parker Minister of Revenue	
Hon Stuart Nash Minister for Economic and Regional Development	
Hon Michael Wood Minister for Workplace Relations and Safety	

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Jivan Grewal	Policy Director, Employment, Skills and Immigration Policy	Privacy of natural persons	✓
Lee Gerrard	Policy Analyst, Ministry of Social Development	-	-

The following departments/agencies have been consulted

Minister's office to complete:

Noted

Overtaken by Events

Approved

Needs change

See Minister's Notes

Declined

Seen

Withdrawn

Comments



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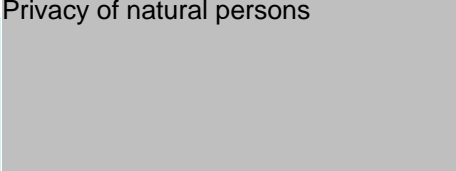
Supplementary information on social insurance design issues

Date:	2 August 2021	Priority:	High
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Purpose

The purpose of this note is to provide Social Unemployment Insurance Governance Group (SUIGG) Ministers with further information on a number of issues for the policy design of social insurance. SUIGG Ministers are meeting on 4 August to discuss these issues as well as issues addressed in previous advice (2122-0152 refers).

Privacy of natural persons



Jivan Grewal
**Policy Director, Employment, Skills and
Immigration Policy**
Labour, Science and Enterprise, MBIE

02 / 08 / 2021

Background

1. The SUIGG met on 5 July. The purpose of this meeting was for the Social Insurance Tripartite Working Group (the working group) to seek Ministers' and the wider SUIGG's agreement to the proposed settings of a Social Unemployment Scheme for the purposes of consulting with the public, and to present a draft discussion document for feedback (2021-4366 refers).
2. At the meeting, the SUIGG directed the working group to report back on a number of issues. Following the meeting, the working group received further feedback from Ministers on a number of issues. SUIGG Ministers are meeting on 4 August to discuss these issues. To support that meeting, the working group provided advice on a number of issues (2122-0152 refers). This note provides supplementary information on outstanding issues where more information was requested by Ministers including:

Coverage and eligibility

- Entry threshold for partial loss of income.
- Interaction between eligibility for ACC weekly compensation and social insurance.

Scheme governance and functions

- Dispute resolution.
- Evidence required when making determinations on conflicts of opinion.
- Case management and support services.
- Funding of the scheme.

Annexes

Annex One: Briefing to the Social Unemployment Insurance Governance Group Ministers.

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To: Social Unemployment Insurance Governance Group Ministers

CC: Richard Wagstaff, President, New Zealand Council of Trade Unions

Kirk Hope, Chief Executive, Business New Zealand

From: Social Unemployment Insurance Working Group

Date: 2 August 2021

Briefing: Supplementary information on social insurance design issues

Purpose

1. The purpose of this note is to provide the Social Unemployment Insurance Governance Group (SUIGG) Ministers with further information on a number of issues for the policy design of social insurance.

Executive Summary

2. The SUIGG met on 5 July to discuss the proposed settings for a social insurance scheme to consult with the public. At the meeting, the SUIGG directed the working group to report back on a number of issues. Following the meeting, the working group received further feedback from Ministers. SUIGG Ministers are meeting on 4 August to discuss these issues. To support that meeting, the working group provided advice, and sought agreement to a preferred position on (2122-0152 refers):

Claimant and employer obligations

- Notice periods and bridging payments.
- Obligations and consequences for non-compliance.

Coverage and eligibility

- Contributions history requirements.
- Coverage of self-employed workers.
- Levying and coverage of visa holders.
- Minimum replacement floor.
- Extensions to the base duration for training or rehabilitation.
- Eligibility for the In-Work Tax Credit.

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3. This note provides supplementary information on outstanding issues where more information was requested by Ministers including:

Coverage and eligibility

- Entry threshold for partial loss of income.
- Interaction between eligibility for ACC weekly compensation and social insurance.

Scheme governance and functions

- Dispute resolution.
- Evidence required when making determinations on conflicts of opinion.
- Case management and support services.
- Funding of the scheme.

Recommendations

The Social Unemployment Insurance Working Group recommends that you:

1. **Note** that this briefing provides further information on matters as requested by Ministers

Noted

2. **Note** that the issues outlined in this paper as well as previous advice (2122-0152) will be discussed at the Ministers meeting on 4 August 2021.

Privacy of natural persons

Noted

Jivan Grewal

Lead, Social Unemployment Insurance Working Group

02 / 08 / 2021

Hon Grant Robertson
Minister of Finance

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Hon Chris Hipkins
Minister of Education

..... / /

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

..... / /

Hon David Parker
Minister of Revenue

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Hon Stuart Nash
**Minister for Economic and Regional
Development**

..... / /

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

.. / /

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Background

4. The Social Unemployment Insurance Governance Group (SUIGG) met on 5 July. The purpose of this meeting was for the Social Insurance Tripartite Working Group (the working group) to seek Ministers' and the wider SUIGG's agreement to the proposed settings of a Social Unemployment Scheme for the purposes of consulting with the public, and to present a draft discussion document for feedback (2021-4366 refers). Ministers were also provided with joint advice from officials, on where views diverge, where officials consider there are significant risks and trade-offs, and alternative options to consider (2021-4319 refers).
5. At the meeting, the SUIGG directed the working group to report back on a number of issues. Following the meeting, the working group received further feedback from Ministers on a number of issues. SUIGG Ministers are meeting on 4 August to discuss these issues. To support that meeting, the working group provided advice on a number of issues (2122-0152 refers). This note provides supplementary information on outstanding issues where more information was requested by Ministers.

Coverage and eligibility

Entry threshold for partial loss of income

6. It has been proposed that as part of the trigger for entry for economic displacement, loss of work must at least account for 20% of total pre-displacement income. Ministers requested further information about how 20% was determined as the threshold for loss for eligibility for economic displacement.
7. It has been proposed that social insurance provide an 80% replacement rate up to an indexed cap (\$130,911 - aligning with ACC) for full loss of employment. While full loss of employment is the proposed requirement for entry for economic displacement, there will still be instances where claimants retain some employment/hours and have eligibility for social insurance. For example, claimants with health conditions or disabilities who meet the 50% entry threshold and multiple job holders who fully lose one of multiple jobs.
8. The working group has previously provided advice on how to apply the 80% replacement rate to partial loss of income for these circumstances (2021-3601 refers). The working group has proposed that social insurance be able to top claimants up to 80% of their previous income, this in turn means no one would be eligible for social insurance until they had lost more than 20% of their income.
9. For example, a multiple job holder earns \$1,000 per week - \$800 from Job A and \$200 from Job B. If this person lost Job A they would have lost 80% of their income, and would qualify for social insurance. Their social insurance entitlement would be able to top them up to a maximum of \$800 as this was 80% of their pre-displacement income. As they have retained \$200 from employment (Job B), they would receive \$600 social insurance to total \$800. However, if this person lost Job B, they would still have 80% of their pre-displacement income so would not qualify for any social insurance.

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10. Replacing up to 80% but not above helps to maintain a financial incentive for claimants to work. This threshold also helps to reduce the potential administrative cost associated with a number of small claims.

Interaction between eligibility for ACC weekly compensation and social insurance

11. The working group proposed that social insurance and ACC weekly compensation could be received at the same time, but only where there was independent qualifying events. Ministers expressed interest in receiving further information on when and why social insurance and ACC weekly compensation could be received at the same time.
12. There may be circumstances where someone qualifies for both Accident Compensation and social insurance at the same time for two independent events. This is most likely to be for multiple job holders who could, for example, lose one job because of an accident and another through redundancy. This could also occur when someone is receiving ACC weekly compensation, but is still attached to their employer and is then subsequently made redundant.
13. The working group consider that two key principles apply for the interaction between ACC and social insurance:
 - Social insurance should not top you up to more than 80% of your previous income (inclusive of any ACC weekly compensation being received).
 - Social insurance and ACC could be received at the same time for independent qualifying events but only where they cover a different loss of income.
14. These principles alongside ACC's abatement rules mean that claimants will not be better off than their pre injury/displacement income but are able to access both payments where they are eligible for both for differing income loss. It also means that social insurance does not cover lost income already covered by weekly compensation (or vice versa).
15. In cases where they are eligible for both for the same income loss (e.g. those who are receiving ACC weekly compensation while still attached to their employer who are subsequently made redundant), it is proposed that the claimant could either opt to continue to receive ACC or opt to receive social insurance instead. Should the claimant remain on ACC weekly compensation, they could claim any remaining social insurance entitlement should their ACC weekly compensation end during the base duration entitlement for social insurance.
16. Allowing claimants to access both ACC and social insurance at the same time in certain circumstances acknowledges the levies paid as well as supporting the objectives of both schemes to provide compensation for loss and reduce pressure to find work should claimants face a loss of employment.

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Scheme governance and functions

Dispute resolution

17. The working group proposed a multiple step dispute resolution process. Ministers requested more advice on what this dispute resolution process may entail.
18. Any scheme with defined entitlements will give rise to disputes. Based on overseas experience, it is likely that social insurance disputes will tend mostly to relate to:
 - determinations of eligibility based on how a person became unemployed, and whether they have met work history requirements or other requirements
 - compliance with scheme obligations, such as the requirement to search for work.
19. The health conditions and disability scheme may additionally see disputes relating to clinical assessments of work incapacity.
20. The working group's proposal is that the dispute resolution process be aligned with ACC's current process, which is considered to be accessible, timely, and accountable. ACC disputes are managed in stages, with the aim of resolving disputes in as timely a manner as possible:
 - Internal review– ACC undertakes an internal review of a review application, which may result in the original decision being overturned. Nearly a third of all review requests are resolved by ACC without a review provider being engaged to the formal review hearing.
 - Conciliation– for those reviews which are unable to be resolved internally, conciliation is offered to most clients as an alternative dispute resolution tool (used prior to engaging with a review provider and hearing).
 - Formal review– Unresolved disputes are referred to an independent, third party reviewer for a legislatively defined formal review. Around two fifths of cases that are referred are withdrawn or settled prior to a review hearing taking place. Claims that go to formal review take on average 98 days to resolve. Of those claims that go through review, most are in favour of ACC (~71%).
 - Appeal to the courts– A review decision is appealable to the District Court, and from there to the High Court.
21. As with ACC's current process, where a dispute exists over eligibility, it is proposed that the claimant will not receive unemployment insurance payments until the dispute is resolved. ACC currently has a process in place with the Ministry of Social Development where an applicant may apply and be granted a benefit (if eligible) until entitlement can be determined.
22. The working group considered whether to allow unemployment insurance payments to be made while eligibility is established. However, given any income replacement payments made would need to be repaid if the requestor is determined to not be

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eligible, such an approach could generate significant debt for the scheme and individuals.

23. One of the key principles underpinning the dispute resolution process will be that timeframes must take account of the time-limited nature of the unemployment insurance payments. We envisage that clear and expedited timeframes will be established for the completion of each stage of disputation, and necessary resources will be allocated to achieve these timeframes.

Evidence required when making determinations on conflicts of opinion

24. Ministers requested further information on the evidence required for claimants with health conditions or disabilities, and how determinations will be made in the cases of differing opinions.
25. In assessing eligibility for social insurance for a loss of work capacity due to a health or disability, the scheme will rely on medical certificates provided by the claimant's health practitioner. This approach is common internationally and in New Zealand in both ACC and the welfare system. Assessors who are not the claimant's health practitioner will be used when second opinions are required.
26. We note that while the scheme will rely on medical information provided, it will also have regard to other information (such as the employer's certification about its ability to accommodate the worker within that workplace). Most jurisdictions recognise a wide range of factors influence work capacity calling for integrated and interdisciplinary solutions to assessment and support. However the cost and complexity of undertaking such assessments mean medical factors and the use of the claimant's health practitioner still prevail.¹
27. While this means there is a risk that the health practitioners will certify that person meets the scheme entry criteria when they do not, this can be mitigated by strengthening certification monitoring and advice.² In the proposed scheme the delivery agency will need to have expertise to make eligibility decisions based on this information, and to determine when a second opinion is required. The use of second opinions is likely to be where:
 - the scheme does not support the health practitioner's assessment (e.g. the health practitioner's recommendation falls outside the guidelines for particular conditions)
 - where monitoring of health practitioner practice indicates a pattern of anomalies

¹ Sengers, J., Abma, F., Ståhl, C., & Brouwer., S. (2020) Work capacity assessments and efforts to achieve a job match for claimants in a social security setting: an international inventory, *Disability and Rehabilitation* <https://www.tandfonline.com/doi/full/10.1080/09638288.2020.1810787>

² Palme, M. & Persson, M. (2020) Sick Pay Insurance and Sickness Absence: Some European cross-country observations and a review of previous research. *Journal of Economic Surveys*, 34 (1). <https://onlinelibrary.wiley.com/doi/abs/10.1111/joes.12351>

Liebert, H. (2019) Does external medical review reduce disability insurance inflow? *Journal of Health Economics*, Vol. 64. [2101.03117.pdf \(arxiv.org\)](https://arxiv.org/abs/2101.03117)

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- where the claimant is not engaging in recommended rehabilitation activities to support return to work
 - where the recommended rehabilitation activities to support return to work are not working.
28. Independent medical assessment can provide some greater assurance of claimant need for a health and disability benefit but there are trade-offs:
- The use of independent assessors comes at significant cost and impacts on workforce demand.³ For this reason schemes typically deploy independent assessors in more limited circumstances.
 - Independent assessors are not always seen as independent of the scheme by users. The use of independent assessments has sometimes been associated with greater claimant stress and delays in claims being granted.⁴
 - Independent assessors have been criticised for not knowing the claimant's whole situation and not taking a holistic approach to assessing work capacity. There is a tendency to focus on medical factors. For example a person may be assessed as fit for work without taking into account the availability of work that accommodates their remaining work capacity or what supports are needed to return someone to work. The assessment process in these situations can be seen as tool for denying access to benefits.
29. Given the various benefits and trade-offs, it is proposed that the independent medical assessment provide additional evidence that the scheme could take into account as part of its overall assessment of a claim. The scheme will still be required to exercise its best judgement about a person's eligibility or compliance based on all of the evidence it has available.

Case management and support services

30. The working group proposed that case management be funded through levies with the intensity differing for claimants depending on need. Ministers requested further information about how resource intensive the case management would be and how this case management would interplay with existing systems, most notably the Ministry of Social Development.
31. The insurance scheme will need a comprehensive case management system that ensures claimants receive:
- correct financial entitlements,
 - relevant and timely employment support that helps them to return to work that minimises wage scars, and

³ ACC experience is that the supply of medical practitioners willing to undertake independent assessments is limited for the purpose of determining insurance entitlement, contributing to increased cost.

⁴ Collie A, Beck D, Gray SE, et al. (2020) Impact of legislative reform on benefit access and disability duration in workers' compensation: an interrupted time series study. *Occup Environ Med*;77: 32–39.

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- referral to training and rehabilitation services to support return to work, where this is appropriate.
32. Support from a case manager can be one part of an overall case management system.
 33. Ensuring correct financial entitlements can be largely automated, and driven by the scheme's policy settings. Ensuring relevant and timely employment, training and rehabilitation support will require a more nuanced approach.
 34. Internationally, return to work support is an integral part of how social insurance schemes support workers who have lost employment, either due to displacement or a health condition or a disability. Active Labour Market Programmes (ALMPs) can include education and training, job subsidies and job search assistance. Workers with health conditions and disabilities additionally may need vocational rehabilitation⁵ services to return to work.
 35. The need for employment, training and rehabilitation services will vary between individuals and under different labour market conditions. Claimants with highly-demanded skills, and who are confident navigating the labour market, will need very little help to find work. These claimants could self-manage, or may choose to engage the help of a private recruitment agency.
 36. Claimants who need to change careers or retrain, and who are less confident navigating the education and training system and/or the labour market, will need more help to find work.
 37. The scheme will need the capability to promptly identify those claimants who can self-manage, and those who need direct assistance and who is best placed to deliver it. This capability will evolve, as the characteristics of claimants become known.
 38. A dedicated employment case manager will need to be assigned to those claimants with higher needs, once those needs have been identified. Professional employment case managers can help claimants to identify career choices, training options, and employment opportunities (job brokerage).
 39. While the ACC will have overall responsibility for the scheme, the Ministry of Social Development (MSD) is the lead provider of public employment services. MSD and the ACC could explore the purchase of specialised health conditions and disability Case Manager support and/or more general work-focussed Employment Case Manager support currently provided by MSD.
 40. Case managers will develop tailored return-to-work plans with claimants, and encourage and motivate them to return to work. For some claimants, these plans could be very "light-touch", where others could be more intensive with more regular contact and support.
 41. The proportion of claimants who need case management, and the intensity of case management required, will become clearer once the scheme is operating. This may

⁵ Vocational rehabilitation includes a range of measures to help people return to work, including mainstream ALMPs, counselling, training, healthcare or supported employment. There is a strong evidence base for aspects of vocational rehabilitation, especially work-focused healthcare and accommodating workplaces.

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lead to adjustments to the levy to meet the case management costs. Both the ACC and MSD currently operate a tiered approach to case management, with only a small proportion of claimants receiving the most intensive services. The same approach will be appropriate for the new scheme.

42. Where useful, case managers will connect claimants with services and products provided by MSD. These could include wage subsidies, employment placement (through Work Brokers), and help to apply for jobs, along with services to support claimants with health conditions and disabilities return to work. MSD will also continue to respond to larger-scale redundancy events with its Rapid Response Teams. These are services that are currently available for both beneficiaries and non-beneficiaries. This is likely to mean an additional demand for MSD's services, and additional cost for Vote Social Development and Employment.
43. More broadly, over time, it may be desirable for the ACC to purchase a wider range of services, from a range of providers. This could lead to better employment and wellbeing outcomes for recipients and for communities. While this would cost more, effective employment services could also reduce the time people spend receiving insurance, reducing overall scheme costs.

Funding of the scheme

44. The working group proposed that the scheme be fully funded to meet its annual liabilities with the Crown as funder/lender of last resort. Ministers requested more information about whether the scheme would look to be a longer term fund rather than one focused on annual liabilities.
45. 'Pay as you go' (PAYGO) and 'save as you go' (SAYGO) offer two approaches for funding the scheme.
46. PAYGO approaches entail collecting enough revenue (levies) in the current year to pay that year's costs, with little financial buffer for changing costs. This means the fund manager may need to increase or decrease levies depending on the situation (for example, levies may need to increase in a recession). In some situations, the Government may need to provide support when there is a shortfall in the fund.
47. SAYGO approaches entail collecting a greater amount of revenue to pay for future cost increases which may avoid the need for regular adjustments to the levy.
48. Given the short term nature of the scheme, most of the schemes liabilities should be able to be met from the annual levies collected. However, unforeseen economic downturns may mean that the liabilities for a given year may exceed the levy collection. As such, the working group has recommended the establishment of a small reserve fund. This approach has the advantage offered by a SAYGO approach of allowing some financial buffer to account for the cyclical nature of the economy, while being a largely PAYGO approach.
49. Current work is modelling the liabilities on a ten year cycle. That means the reserve is likely to be able to meet the liabilities caused by a one in ten year economic downturn.

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In the case of extreme and unforeseeable events (such as the onset of the COVID-19 pandemic), the Government may need to act as a lender-of-last-resort.

50. At first, a reserve fund would require slightly higher levy rates while it is built up or an initial Government contribution.