



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Adjustments to the Employee Preference Cap under Insolvency Law	Date to be published	7 October 2024

List of documents that have been proactively released

Date	Title	Author
August 2024	Adjustments to the Employee Preference Cap under Insolvency Law	Office of the Minister of Commerce and Consumer Affairs
22 August 2024	Adjustments to the Employee Preference Cap under Insolvency Law LEG-24-MIN-0163 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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Some information has been withheld for the reason of legal professional privilege.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Adjustments to the employee preference cap under insolvency law

Proposal

- 1 This paper seeks approval for two Orders in Council (**Orders**) to be made to adjust the employee preferential claim figure under insolvency law.
- 2 The Orders will have the effect of increasing the maximum employee preferential claim figure in the Companies Act 1993 (**Companies Act**) and the Insolvency Act 2006 (**Insolvency Act**).
- 3 The adjustment is a statutory requirement, and the Orders are required to be made by 30 September 2024 for the Insolvency Act and by 31 October 2024 for the Companies Act. I propose that the Orders be made simultaneously and enter into force on 30 September 2024. This will ensure consistency between the Companies Act and the Insolvency Act.

Policy

- 4 The adjustment to the employee preferential claim figure must be made in accordance with a prescribed formula set out in the Companies Act and the Insolvency Act. No new policy decisions are needed to adjust these amounts.

The employee preferential claim cap

- 5 The employee preferential claim cap is relevant in the event of a corporate or personal insolvency. Clause 1 of Schedule 7 to the Companies Act (corporate insolvency) and section 274 of the Insolvency Act (personal insolvency) define the order in which distributions from a debtor's assets must be made to different classes of creditors. This includes a list of creditors that are given a preference over ordinary unsecured creditors.
- 6 Employees have a preference in relation to unpaid wages and salaries and related unpaid amounts such as holiday pay. The Acts set a maximum amount for the claim for any one employee, to be adjusted every three years. The cap is currently set at \$25,480.
- 7 The adjustment to the preference amount must be made in accordance with the overall percentage increase in average weekly earnings (total, private sector) over the three-year adjustment period, calculated by reference to the last Quarterly Employment Survey (**QES**) published by Statistics New Zealand. Any adjustment is cumulative and must be rounded to the nearest \$20.

Legal professional privilege

8 Legal professional privilege

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Legal professional privilege

10 Legal professional privilege

The amount of the cap

11 The new employee preferential claim cap commencing on 30 September 2024 will be \$31,820.

Timing and 28-day rule

12 I propose the Orders enter into force 30 September 2024 in order to meet the deadlines in the Insolvency Act and comply with the 28-day rule.

Compliance

13 The proposals in this paper are consistent with:

13.1 the principles of the Treaty of Waitangi;

13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

13.3 the principles and guidelines set out in the Privacy Act 2020;

13.4 relevant international standards and obligations; and

13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

IN CONFIDENCE

- 14 The Orders will revoke and replace the Companies (Maximum Priority Amount) Order 2021 and the Insolvency (Maximum Priority Amount) Order 2021.

Regulations Review Committee

- 15 I do not consider there to be any grounds for the Regulations Review Committee to draw the proposed regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 16 The draft regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

- 17 The Ministry for Regulation's Regulatory Impact Analysis team has determined that the proposal to adjust the employee preferential claim figure in the Companies Act 1993 and Insolvency Act 2006 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that the proposal has no or only minor impacts on businesses, individuals and not-for-profit entities.

Publicity

- 18 There is a statutory requirement to notify the changes in the New Zealand Gazette. In addition, the Ministry of Business, Innovation and Employment (**MBIE**) will:

- 18.1 publicise the changes on its website and on www.business.govt.nz;
- 18.2 notify the Recovery, Insolvency and Turnaround Association of New Zealand, Chartered Accountants Australia and New Zealand and CPA Australia.

Proactive release

- 19 I propose that this Cabinet paper be proactively released on MBIE's website within 30 business days, subject to any appropriate redactions.

Consultation

- 20 The Treasury and the Inland Revenue Department were consulted on this Cabinet paper. The Department of the Prime Minister and Cabinet was informed.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Companies Act 1993 and the Insolvency Act 2006 require the employee preferential claim figure to be adjusted every three years, using a prescribed formula;
- 2 **note** that the next adjustments to the employee preferential claim figure must be made by Orders in Council, before 30 September 2024 for the Insolvency Act 2006 and before 31 October 2024 for the Companies Act 1993;
- 3 **note** that the adjusted employee preferential claim figure is \$31,820;

IN CONFIDENCE

- 4 **note** that the Companies (Maximum Priority Amount) Order 2024 and the Insolvency (Maximum Priority Amount) Order 2024 will adjust the employee preferential claim figure in the Companies Act 1993 and the Insolvency Act 2006, by revoking and replacing the Companies (Maximum Priority Amount) Order 2021 and the Insolvency (Maximum Priority Amount) Order 2021;
- 5 **authorise** the submission to the Executive Council of the:
 - 5.1 Companies (Maximum Priority Amount) Order 2024;
 - 5.2 Insolvency (Maximum Priority Amount) Order 2024;
- 6 **note** that both Orders will come into force on 30 September 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs