Submission on the NZ social insurance scheme discussion document

Introductory infomation

Submitter:
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I make this submission in my capacity as an academic with expertise in the area of vocational rehabilitation. My PhD was in vocational rehabilitation, and my areas of research focus on rehabilitation, disabilty and work-ability. I am the course leader for the postgraduate course in vocational rehabilitation offered at AUT University which is delivered within the postgraduate education requirements of vocational rehabilitation providers under the ACC scheme. I have also led specific research funded by ACC and MSD focused on work-ability and vocational rehabilitation.

Additional resources that may be of interest:
A summary of a report relevant to the vocational rehabiltion provisions in this discussion document submitted to MSD in 2020 on support to obtain paid work for people with long-term conditions can be found on this link, with the full report available on request: https://cpcr.aut.ac.nz/__data/assets/pdf_file/0006/376071/Summary_LTC_GainWork.pdf
I was also part of a team that worked on the development a standardised assessment of vocational rehabilitation needs that may be of interest, information and standardised tool available here: https://cpcr.aut.ac.nz/findings/resources/wss-work-ability-support-scale

Specific feedback

Introduction of the scheme:

- I was impressed at the scope of this document and the consideration give to the wide range of issues. I thought it was carefully considered, in line with current evidence and well written. In general I support the introduction of a social insurance scheme of the nature outlined in this discussion document.

Honouring Te Tiriti O Waitangi:

- Governance needs to be more than high-level representation. Māori organisations with knowledge of their own communities need to be authentically involved in the governance of the scheme and entitlements in order to ensure equal access.
- ACC has a very poor track record of responsiveness to Māori and ensuring equal access so I find the proposal to manage through ACC concerning on this front. What would be done to ensure the problems of ACC are not replicated in this scheme?
- See also specific points below under the relevant headings.

Definitions of displacement – eligibility

- What is the place of opt-in redundancy in terms of entitlement to insurance? For example, it is a reasonably common practice for a large organisation to offer opt-in redundancy when reducing staff numbers – people who take these options are more likely to be those who were intending retirement. It is still redundancy becuase the employer is disestablishing the positions, but it seems that in this situation people who opt-in would not be the intended recipients based on the scheme's purpose.

Complete loss of job

- I think it is extremely important that the scheme should cover part-time jobs, including where the person has more than one part time job, and I think the 20% threshold is reasonable.
- I think the scheme should also cover reduction in hours, but only a very dramatic reduction that is involuntary. This scenario is is keeping with the scheme's intention to support people who need to find new work or retrain. A dramatic reduction in hours of 40% or more becuase of reduced need for the role is equivilent to redundancy-type job loss for many people, but if the job is still available the person is not eligible for insurance payment. I believe this would be discriminatory. If it only covered reduction in hours of 40% or greater, then it would still exclude the administrative burden associated with small claims.

Non-standard employment

- I agree with the coverage and the stated principles.

Seasonal employees

- I agree with the stated definitions, although I also think more work is needed in establishing what might be considered 'expected' – especially in cases where an employee has a pattern of moving through seasonal work with different employers during the year.

Casual workers

- I agree with the approach to covering casual workers.
- The ability to show a regular pattern of work is a significant risk here, with certain types of people more likely to be able to provide evidence (e.g. literate, system-savvy people). I think some planning needs to go into how to establish an accessible system of evidencing for a wide range of people. Involvement of organisations that represent marginalised groups (such as disabled people, homeless people) and groups who can speak to culturally-appropriate / accessible approaches (e.g. for Māori and Pasifika) are vital in the set-up of the scheme so it doesn't unintentionally exclude people becuase of the way the 'pattern of work' evidencing is set up.

Self-employed workers

- I think that the most appropriate option would be to inlude everybody, including all self-employed workers and to calculate the levvy in the same way that is currently done for ACC.
- My reasoning is that people who own businesses are not that different to employees when it comes to their genuine needs in the event of their work becoming unavailable, so it would be problematic to exclude them given the intent of the scheme is focused on helping people transition between jobs or types of work. If someone is earning their income from a business that closes, even if they are the business owner, they may face the same issues as others in terms of transitioning to new work – either a new business or becoming an employee.
- It is important that, like ACC, the cover is based on wage-type income. But I think this is covered elsewhere.

Minimum contribution period

- I agree that the proposal of minimum 6-months contribution over 18-month is a good balance of mitigating against possible discrimination while ensuring that there is a contribution to the scheme in order to become entitled to payout.

Limit on subsequent claims

- I agree that a limit is necessary
- I was suprised at the 18 month proposal – seems generous. I don't really have an expert view on the people who might be adversely affected by it being longer though.

Coverage for residents and citizens

- I agree that residents and citizens should both contribute and be covered according to the conditions specified.
- I also agree that temporary visa workers should not be covered but to mitigate possible discrimination to NZ workers, they should still have to contribute.
- I wondered if there could be a claim-back process for people leaving the country where they can claim back what they paid as an employee (where they apply for it after leaving). This is similar to what is offered in some countries where non-residents can apply to be paid back the personal contributions they made to compulsory superannuation schemes they will not be able to use.

Entitlements for displaced workers

- I agree with all the preferred options, and particularly support the notion that this should match the ACC scheme. As well as matching what has been considered to be appropriate for injuries, it reduces the entitlement-related risks that may arise if there was too much discrepency between the two schemes (see later points on this).
- Regarding reciept of NZ Superannuation, I believe that the social insurance should be available under the same conditions even when someone is eligible for NZ super. That is, that they are able to access the insurance insurance provided that they fit within the purpose of the scheme – that is, it is a work transition, not part of an intended retirement. I think it is important not to discriminate based on age, but also that people are encouraged to be honest when they are actually retiring.
- I agree that income insurance and Paid Parental Leave could be accessed sequentially but not at the same time.
- I agree that claimants should be able receive both ACC weekly compensation and income insurance at the same time for differing income loss subject to independently meeting the eligibility criteria for both. However, I think that in the context of this occurring, the discussion about which scheme is responsible for what should occur behind the scenes and not delay a person's eligibility for payments.
- I agree with the proposed base entitlement period.
- See below for my contribution on vocational rehabilitation and training.
- I agree with the proposed notice period.
- I agree with the proposals for bridging payments.

Extensions for vocational rehabilitation and training

- I think that there should be a provision for extensions that accommodate needs for vocational rehabilitation and training
- The extension approved should be clearly linked to the particular rehabilitation or training needs, identified early. As such ideally the extension time would be assessed and agreed as soon as the need is identified, rather than having incremental extensions that introduce uncertainty for the recipient. They should be case-specific, rather than generic extension timeframes.
- Assessors need to be informed about the different needs associated with different labour market issues and health conditions (including mental health), be informed about the range of appropriate rehabilitation options, and take into account options that may include a work component - like apprenticeship models or supported employment where the training and rehabilitation occurs in work.

Coverage and entitlements for loss of work due to disability and health conditions

- 49: I agree there should be no restrictions on the types of health conditions covered by the scheme.
- 50: I agree that all work arrangements should be covered (assuming other eligibility criteria are met).
- 51-2: I agree that the scheme cover partial loss of earnings due to a health condition or disability reducing work capacity and that claimants should have at least a 50 percent reduction of capacity to work caused by a health condition or disability and that reduction is expected to last for at least four working weeks.
- 53: I agree that in many situations it makes sense for a health practitioner that the claimant knows to be the person that provides and assessment of the impact of a health condition on their work capacity. However, it is well documented (and acknowledged in the discussion document) that there are knowledge and conflict of interest issues that make the GP poorly placed to make this assessment in some cases. Ideally, there would be an opportunity for this to be inter-disciplinary, and involve a professional trained in vocational rehabilitation in cases where there is any complexity – weighting that person's expertise appropriately in the decision making.
- 54: I agree that the input of the employer about the workplace and the job is vital information for a work capacity assessment in many cases. This should be incorporated wherever safe and practicable.
- 55: I agree that the current provisions are sufficient.
- 56: Employers need support to understand the health conditions of their employees so they feel informed about what to expect and how to support them appropriately to return to work. This often needs to extend to education and support of direct colleagues. Where there is an expectation that the return to work will be complex, or that the working capacity of the employee may be affected long-term or decline over time, ideally there would be involvement of a vocational rehabilitation professional to work with the employer and employee to plan for the immediate and medium-term future.
- 57-8: I do think employers should be expected to keep a job open and help with vocational rehabilitation where a reasonable prognosis is made of return to work within six months, fitting with the requirements of reasonable conduct within the ACC scheme, but that it should remain and expectation and practices be monitored.

- 59: I agree that employers should only pay a bridging payment to employees leaving work because of a health condition or disability when the employment is terminated by the employer.

Insurance claimants' obligations

- 60-64: I agree with the proposed general obligations.
- 65-66: I agree with the proposed obligations for health and disability payments.
- In addition to the above, I want to recommend that there is an intention within the scheme to build capacity in vocational rehabilitation options for people with long-term health conditions. The short-term vocational rehabilitation workforce in NZ is largely built around ACC contracts, and as a result of this, there is not sufficient expertise in this sector in working with people in complex needs and planning for and experience with the needs of people with long-term conditions (this expertise does exist, but it is limited). The most developed workforce in the longer-term space is in mental health with Individual Placement and Support (IPS), but there is little in the lower intensity space. I think that there is opportunity for collaboration between the workforce that deliver IPS-type rehabilitation and the workforce that currently rely heavily on ACC contracts to develop vocational rehabilitation programmes suited to the needs of e.g. people with long-term health conditions who are still able to work, but need support, advocacy and accommodations to maintain that work. Without *appropriate* vocational rehabilitation for the person's condition and needs, the requirement to engage in vocational rehabilitation can quickly become a disempowering experience, which would be counter-productive to the purpose of the scheme. Trauma (or re-traumatisation) associated with the loss of control that is sometimes experienced with requirements for participation in inappropriate rehabilitation programmes is a significant issue, and can exacerbate disability.
- 67-69: I agree with the proposal that financial penalties should be an option, but only as a last resort – for obvious and serious non-compliance. If the use of financial penalties is normalised it can become a strategy used by scheme administrators to exert power over claimants in order to meet perceived performance indicators, which is counter to the purpose of the scheme.

Delivering income insurance

- In general, I support the proposal to have the scheme delivered by ACC as there is significant experience and infrastructure within ACC to make this a cost-effective option.
- However, I have significant concerns about the risk that certain cultural aspects of ACC would be infused within the new scheme. In particular, ACC have a poor record in terms of equitable access for Māori, women and other marginalised groups. There has also been a move away from operating as a social insurance model (which it was set up as) toward more private insurer structure and behaviours – including financial imperatives driving operational decisions about cover and access to rehabilitation that is person-centred.
- I really support the intent communicated in this discussion document where options and issues are clearly considered, and proposals are focused on equitable access and good governance. I would hope that *this* is the culture that is infused into the setup

of the social insurance scheme, not the problematic aspects of ACC culture. I think the approach would have to be very intentional for this to be achieved.

- In terms of governance, I think we need to do more that bring in 'perspectives' from Māori – there needs to be clear Māori involvement in governance.
- With the above in mind, I would question whether the current ACC board are the best overseers of the setup of the new scheme. Could the makeup of ACC board be revisited to consider more diverse representation?
- 74-76: Practical support should be tailored to the person because, as the discussion document points out, the needs will vary considerably. Case management is a useful approach if the case managers are sufficiently trained in the issues associated with the different situations that people will face. Case managers also need to have caseloads that are small enough allow them to get to know enough about the people they are assisting. The current MSD caseload is much too high for this purpose. I agree that a tiered approach can be useful – with high-intensity case managers working with people with complex needs having smaller caseloads that low-intensity case managers who are mainly ensuring that people are connected to the appropriate services. Many people will be able to self-manage, but there does need to be a triage process initially to get people into the right level of support, and also opportunities to step-up the level of support down the track if things change.
- 77: The return-to-work plan needs to be specific about the current needs and a clear and specific layout how those needs are planned to be met, including timeframes. Determining needs requires consideration of the circumstances of displacement, current labour market, transferrable skills, and rehabilitation needs in the case of health and disability claims.
- I agree with the discussion around the vocational rehabilitation needs in the context of health and disability claimants. This is consistent with current evidence, and I think there is a slow transition within NZ health and social care sectors towards an attitude that supports people to work rather than assuming that people with health conditions or those who experience disability cannot work until they are 'better'.
- 78-79: See my point about vocational rehabilitation under Insurance Claimants Obligations. I do think there is a need to develop the workforce in this space. I also think it is important to acknowledge where condition-specific, culture-specific and/or locality-specific expertise already exists and consider how to incorporate these specialists into the scheme provision. The current ACC limited supplier model has reduced diversity (and therefore available expertise) in this regard because of the need for small, specialist providers to contract to the larger ones that hold the contracts – in some cases the larger companies are not aware of (or interested in) the expertise offered by these smaller providers who have often spent considerable energy and investment getting to know their populations and their needs, and/or it is not financially viable for the smaller suppliers to be sub-contractors.
- 80: I believe the case management requirements may be similar to above, but it is expected that a greater proportion of health and disability claimants will need case management as opposed to self-management in order to develop a clear return to work plan and navigate the available supports. It may be worth considering specialist case managers for this group – see my point earlier about the importance of condition-specific needs being acknowledged and addressed.

- 81-82: The 4-step dispute resolution process seems reasonable. However, I am aware that the 'independence' of third-party reviewers used for the ACC scheme has been questioned by groups like the ACC Futures Coalition – both with regard to legal issues and medical assessment. I would suggest these issues are reviewed before the new scheme replicates these processes.
- 83: It seems reasonable to have these provisions.
- 84: I strongly support the sharing of information between agencies for the purposes of administering the scheme fairly and ensuring that claimants are well supported across relevant agencies.

I have elected not to comment on the details of funding because this is well outside my areas of knowledge. However, I agree with the proposal to use levys.