

Submission to: (or Additional supporting information to support our submission)

The Ministry of Business, Innovation and Employment

## Submissions of Talk – Meet – Resolve to MBIE on A New Zealand Income Insurance Scheme.

*A focus on the proposed schemes dispute  
resolution process.*

From:

Talk-Meet-Resolve (Service of Clayton & Associates Limited)

0800 119 221

[info@talkmeetresolve.co.nz](mailto:info@talkmeetresolve.co.nz)

Level 2, Fraser House

160-162 Willis St

Wellington

## Executive Summary

Talk – Meet – Resolve provides dispute resolution services to ACC and its clients. We are ACC’s preferred provider of consensus-based dispute resolution services. Our vision is to transform the way people experience disputes in Aotearoa.

We strongly support the provision of a dispute resolution process in the scheme to ensure **effective access to justice for people**.<sup>1</sup>

The focus of our submission is on Dispute Resolution question 81 and 82 of the submission template. We **support the proposed four-step dispute resolution process** and, in our view, this approach provides an opportunity to provide effective access to justice for people in the new proposed scheme.

## Introduction

We provide dispute resolution services using a conciliation model and we operate this service under the name “Talk – Meet – Resolve” in two dispute resolution systems:

the accident compensation system<sup>2</sup> and

the tertiary education system.<sup>3</sup>

We also provide an adjudicative based service (Listen – Decide<sup>4</sup>) and resolve individual disputes on a commercial basis. Our service is designed to allow clients to request our service at any stage in their dispute resolution journey.<sup>5</sup> It is delivered in a person-centred way and includes a focus on systemic learning.



<sup>1</sup> United Nations Convention on the Rights of Persons with Disabilities, Art 13.

<sup>2</sup> <https://talkmeetresolve.co.nz>

<sup>3</sup> <https://tedr.org.nz/talk-meet-resolve>

<sup>4</sup> <https://tedr.org.nz/listen-decide>

<sup>5</sup> We can provide services prior to an adverse decision by ACC, after the decision and before a review application, after a review application and before a review hearing, or during the appeal process. The only conditions to use our service is that a claim has been lodged with ACC, there is an issue to be resolved, and there is agreement between the person and ACC to use our service.

We worked with the Government Centre for Dispute Resolution<sup>6</sup> in the development and pilot stages of the GCDR standards and best practice and maturity improvement framework<sup>7</sup>. These involve nine standards and a number of key capability areas, and these are set out at Annex A to this submission. We raise these as many of the capability areas require specific consideration should be reflected in the dispute resolution model in the proposed income insurance scheme.

These include:

- Requirements to give effect to Te Tiriti (Standard 1)
- Early Resolution requirements (7.1)
- Facilitating access to our service, and understanding barriers and removing these (2.2)
- Ensuring equitable access (2.3)
- Mechanisms to identify and share insight, trends and systemic learnings (7.2),
- Coordination and collaboration with the sector (7.3)

## Submission to Question 81

### Do you agree with the proposed four-step dispute resolution process for the scheme?

The discussion document 'A New Zealand Income Insurance Scheme' sets out a four-step process that has a focus on timely dispute resolution.

We submit that the four-step model needs to:

- ✓ ensure equity
- ✓ minimise the impacts of any inequity
- ✓ mature the scheme
- ✓ promote system level change to improve access to justice

The four-step process is an appropriate model and can work effectively and efficiently when there is concentration immediately in the dispute on internal resolution and consensus-based dispute resolution.

This four-step process in our opinion adheres to the GCDR Standards. Standard 2 of the GCDR Standards, requires the scheme to build awareness, facilitate access and ensure equitable access through the provision of support and assistance. Standard 6 requires that this be done in a timely manner. Access to justice does not just mean access to Court<sup>8</sup>. Access to justice goes beyond courts and lawyers. It incorporates everything people do to try to resolve the disputes they have, including accessing information and support to prevent, identify and resolve disputes. This broad view of access to justice recognises that many people resolve disputes without going to court and sometimes without seeking professional assistance. Access to justice means making sure that people are aware and have choice to use conciliation.

---

<sup>6</sup> <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/>

<sup>7</sup> <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/aotearoa-best-practice-dispute-resolution-framework/>

<sup>8</sup> The idea of access to justice: reflections on New Zealand's accident compensation (or personal injury) system. Mijatov et al. 2016, <https://wyaj.uwindsor.ca/index.php/wyaj/article/view/4852>

Currently in the ACC dispute resolution scheme there is an internal review process and then there are two pathways: consensus-based dispute resolution (conciliation) and review. The four-step model is not currently a model of ACC as conciliation is not the second-step in the process. Currently, after ACC undertakes its own internal dispute resolution (similar to the proposed step 1) most disputes flow through the review pathway not conciliation. There are both internal process reasons for this and legislative reasons, where legislatively there is no alternative dispute resolution (ADR) prescribed step.

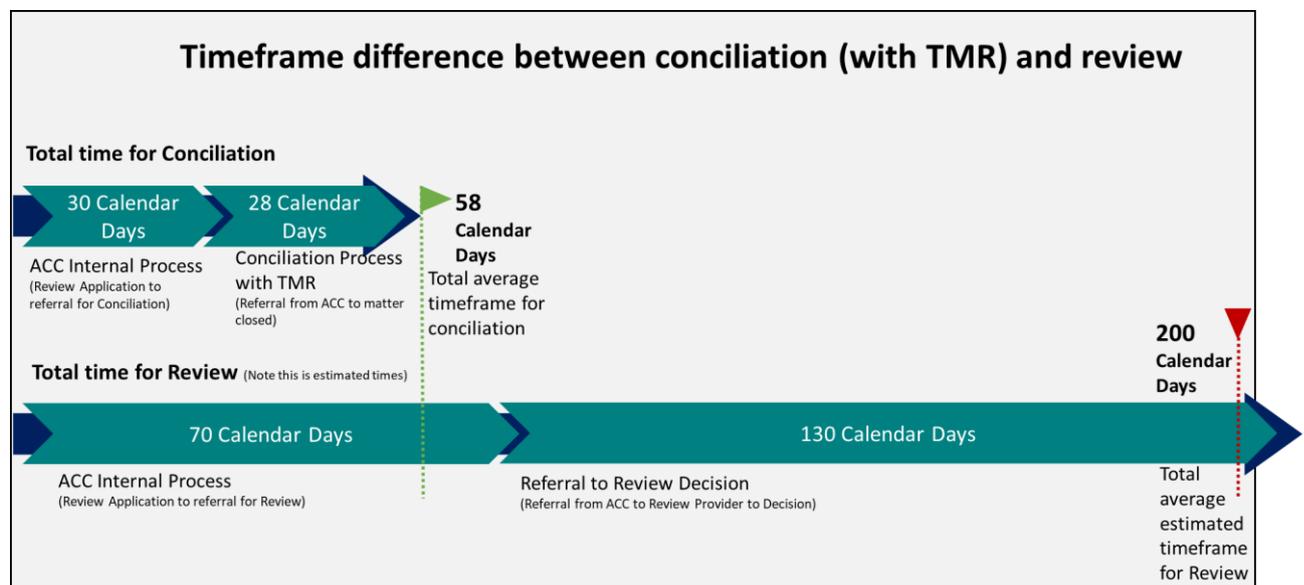
Our data shows that conciliation has a proven track record of timely resolution of review applications. Conciliation should be the preferred first steps in the process.

This proposed model will also allow Standard 7 of the GCDR Framework to be met in the proposed scheme by promoting early resolution.

Timeframes for resolving disputes are a critical part of a successful dispute resolution pathway. Our professional experience is that the longer disputes continue, the more entrenched and exponentially protracted they become. We agree that in the proposed new scheme time is of the essence and therefore with a concentration on consensus-based dispute resolution, the more efficient the scheme will be and the quicker people can get an outcome.

We submit that consensus-based dispute resolution is far more efficient. Our data demonstrates the time difference between conciliation and the ACC review process. Currently conciliation resolution timeframes in **calendar days** take 58 days from lodgement of review to resolution. Our understanding is that current Review resolution timeframes in **calendar days** take approximately 200 days from lodgement of review to issuing a review decision.

ADR therefore takes, on average, one quarter of the time to reach resolution compared to the review process.



We submit that while we endorse internal resolution, this also needs to occur very quickly as we demonstrate in the above diagram ACC's internal timeframes impact significantly on referral times. We have seen significant barriers to peoples' access to conciliation caused by the internal process timeframes.

We submit that the conciliation step should not be impinged upon by formal review. Conciliation should occur first and then if no agreement is reached, the review pathway should occur. There is good reason to have short and well prescribed timeframes for review to ensure the integrity of that

process. We also therefore submit caution in ‘blending’ of any of the timeframes in the model for conciliation and formal review. They are separate approaches and should be treated as such.

## Submission to Question 82

### Are there specific aspects to the scheme’s dispute resolution you think should be considered?

While we submit that timeliness is important, it is not the only barrier for people accessing conciliation. We submit that the proposed new scheme needs to consider strategic learnings to remove barriers and address why disputes occur. This provides transparency and will maintain public trust and confidence in the scheme. We also submit that the scheme should publicly report on issues and learnings from the dispute resolution space. We note that this approach will also allow the scheme to meet the requirements under the GCDR frameworks and improve maturity of the scheme.

We therefore fully support your statement in the discussion document:

*To reduce disputes, ACC, in consultation with representatives of workers, Māori and business, could develop guidance on interpretation of the matters most likely to lead to disputes. This would be updated in view of relevant dispute decisions.*

We survey our customers and on average 13% tell us that they had access issues to come to us. This percentage is made up of those people that do in fact ‘get to conciliation’, there are still the many others that ‘can’t get to conciliation’. The Reasons given are:

- they were not informed about conciliation by ACC
- they had to initiate with ACC that conciliation was an option
- ACC didn’t agree to conciliation

Access to TMR is through a referral from ACC after ACC and the claimant agree to use conciliation. ACC agreeing to conciliation is marginal. ACC receives around 500 to 800 review applications per month. What comes to TMR is dramatically variable averaging 25-60 referrals per month.

There is significant variance in ethnicity and access to conciliation. Our data shows that Māori, Pasifika, and Asian people are least likely to access conciliation.

Table 1: Ethnicity and access to conciliation

European	81%
Māori	10%
Pasifika	3%
Asian	2%
Other	3%

There is also significant variance in age and access. Our data shows that those under the age of 40 are least likely to access conciliation. We have also seen that people of female gender are less likely to use conciliation than males.

People who have formal representation (advocate or legal representative) are more likely to access conciliation with TMR.

TMR has collaborated with ACC and demonstrated the benefits of conciliation. While there is always a place for determinative dispute resolution, the benefits of conciliation make your proposed four-step model advantageous. Some of the benefits that we have shown are:

- Efficiency

Provides a very timely resolution for claimants without the need for case conferences, review hearing dates or waiting for a review decision, meaning that claimants are living in conflict for less time. If a customer is continuing their journey with ACC as a claimant, it means we can 'get back on track' and focus on their rehabilitation sooner. Our average time for claimants to have a resolution outcome is 28 days (less than a month). The average time for reviews is 130 days. A quicker timeframe reduces the cost impacts for ACC and the claimant.

*Our average time for resolution is 28 days.*

- Effectiveness

Outcomes reached through our service permeate wider than what would be achieved through a review decision. Conciliation allows everyone to be heard with an independent third party to assist in finding solutions – conciliators are experts in ACC and ACC law. Their experience, combined with their independence from ACC, is a trustworthy source of guidance

*98% of claimants are very satisfied with the conciliation process at*

for both the claimants and ACC. Conciliation promotes collaboration between ACC and claimants – we are working together to find the right solution instead of providing opposing views or “arguments” to a third party. It humanises the situation and shows that we are committed to resolving issues. Feedback

we receive is that conciliation has provided an opportunity to be heard, in an environment where people are comfortable in a way that addresses the actual problem. There is also no win-lose outcome as there is an agreed solution meaning it's a win-win for both parties. Currently over 90% of our outcomes reach a resolution.

*80% of conciliation resolution agreements have the review*

Despite the benefits, the barriers to access remain.

We submit that overcoming accessibility barriers will need adherence to consensus-based dispute resolution as the first steps and strategic learnings are undertaken.

- Equity

Conciliation can address equity in access to justice, far better than formal review particularly because collaboration can occur without impinging on the integrity of the review process. This

can occur from an individual claimant level to systemic level changes. Conciliation enables collaboration and transparency, which in turn provide strategic learnings for improvement.

Further benefits of conciliation that we submit from our own services are:

- ✓ It better aligns with te ao Māori and tikanga based models than the existing review processes and this will assist in improving equity of access to justice and outcomes.
- ✓ It is provided in a person-centred way (rather than a “reviewer” centred way) and this improves agency and allows people to take an active part in the resolution of their dispute.
- ✓ The service is timely allowing cases to be resolved within, on average, 28 calendar days from referral to resolution.
- ✓ It is voluntary and agreement based, so those who are unable to reach agreement can still continue to access the review process.
- ✓ It has very high levels of satisfaction and maintains a net promotor score (NPS) of over +80.

We draw attention to other schemes, such as the tertiary education dispute resolution rules<sup>9</sup>, that have adopted models where consensus-based resolution occurs first before the determinative approach.

*“The DRS operator must offer to use consensual methods unless, in the circumstances of the case unless there are good reasons not to offer to use them.”*

Part 1, 13(2) Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

The State of Victoria in Australia has made changes to improve their workplace injury scheme where Minister for Workplace Safety Ingrid Stitt, stated: *“These reforms put workers at the centre of the dispute resolution process – empowering them to choose the best way to advance their claim to reach a fast and fair outcome and making sure no one falls through the cracks.”*

We submit the scheme needs to consider costs associated with the dispute for:

- **The user of the scheme (customer and their formal or informal representative in the dispute)**

Customers of the scheme and their representatives will both incur administration costs. This can impact on their decision to continue to conciliation or formal review. We have had people express that they ‘can’t do this anymore’ (continue with the dispute), ACC has all the resources, and we can’t compete with them. These statements are not new and are well recognised when one party is more fully resourced than another. The impacts of inadequate reimbursement or no reimbursement, have more far-reaching consequences, psychologically, emotionally, and socio-economically. When someone’s income is lost this will be even more significant. Costs and decisions around costs should not impinge on a person’s access to justice.

---

<sup>9</sup> *“The DRS operator must offer to use consensual methods unless, in the circumstances of the case, there are good reasons not to offer to use them.”* Part 1, 13(2) Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

<https://www.legislation.govt.nz/regulation/public/2021/0369/latest/whole.html#LMS563134>

- **The complexity of the dispute**

Complex cases come with more costs for everyone and potentially, and can leave people considerably out of pocket, if this is not factored into cost reimbursement in the scheme. Conciliation can address many issues (including a relationship between parties), where review will address only the substantive matter. For this reason, costs can be more for a conciliation and we submit that the new scheme needs to be factored this into its cost structure.

Complex cases come with more costs for everyone and potentially, in the current system, leave people considerably out of pocket. Cases often take representatives more time to prepare the matter for conciliation and they are at a considerable disadvantage both at the outset and then if complexity of the case increases.

We submit that the scheme will need to make a decision about how costs are set. This is currently getting looked at in the ACC space with a recent discussion document from MBIE released on this.

A decision needs to be made about whether costs are set as a tariff (this is what people can expect to get regardless of the factors of the case) or a scale which sets out the type of representative.

A scale would consider:

- the type of cases (simple, standard and complex) and
- the tasks undertaken by the representative (lodging application, reading file, legal research,
- the preparation of case and client for the meeting).

If a scale is required, we consider that we have a role in the sector to collaborate on the development of this. We would be willing to work with stakeholders to produce a scale for consensus-based processes, based on these or other factors.

If a cap with a scale or a tariff is put in place, it is essential that complex cases provide flexibility for costs.

We submit the scheme needs to consider other costs such as costs associated with how the meeting is conducted. Prior to March 2020, we conducted the majority of our services face to face. We regularly travelled to regional areas to meet with clients at locations that are convenient to them as this improves the likelihood of them being able to put their best case forward.

Often people in rural communities incur costs in relation to travel. Travel costs for people using their own transport should be available.

We also consider it would assist people if clear indications were given in relation to cultural, accessibility or peer support and how this would be funded under this heading.

We submit that the costs should be reviewed annually to provide for annual inflation.

## Conclusion

This discussion paper has asked us to comment specifically on dispute resolution specifically:

- *Do you agree with the proposed four-step dispute resolution process for the scheme?*
- *Are there specific aspects to the scheme's dispute resolution you think should be considered?*

We have sought to provide you with insights based on our current services in the dispute resolution schemes we operate within.

We support the four-step dispute resolution process and believe this is an appropriate juncture to expressly imbed consensus-based dispute resolution into the proposed new scheme.

Over the past three years our service has proven a model whereby ACC clients and ACC have been able to achieve a client focussed, timely, equitable, efficient and cost-effective pathway for resolving disputes. The survey feedback from ACC clients and ACC staff has been overwhelmingly positive about the place and model of consensus-based dispute resolution service such that you can be confident in making it a second step, after internal resolution in the proposed new scheme.

Building trust and confidence with the clients in the proposed scheme will be critical to ensuring the ability to be successful in delivering its services.

Our responses to this discussion paper are intended to allow you to understand the factors that can bring the proposed scheme in to line with the GCDR standards, provide better access to justice and improve and maintain engagement with clients.

We would be happy to discuss these points further with you should you require.

## Annex A

### GCDR standards and capability areas – a framework for improving maturity

#### Standard 1: Consistent with Te Tiriti o Waitangi/ Treaty of Waitangi

- 1.1 Dispute Resolution Processes (Capability Area)
  - 1.1.1 Awareness of Māori approaches to dispute resolution, incorporation of Te Ao Māori/Tikanga into DR processes
  - 1.1.2 Consideration of Māori access in service design and delivery
  - 1.1.3 Staff cultural capability and knowledge of Te Ao Māori
  - 1.1.4 Processes to improve and retain cultural capability and knowledge of Te Ao Māori and tikanga Māori
  - 1.1.5 Ensuring cultural safety of parties, participants, practitioners, and staff
- 1.2 Relationships with Māori (Capability Area)
  - 1.2.1 Relationships and engagement with Māori/ Māori organisations to better their services for Māori users
  - 1.2.2 Responsiveness of points of contact for Māori
  - 1.2.3 Procurement - level of consideration of Māori in government procurement
- 1.3 Equitable outcomes (capability area)
  - 1.3.1 Awareness of/ actions taken to address institutional racism/ structural discrimination and its impact upon affected groups
  - 1.3.2 Action to mitigate/ address institutional racism/ structural discrimination and its impacts
  - 1.3.3 Measurement activities are undertaken to understand effectiveness of services for Māori
  - 1.3.4 Addressing disparities of access and outcomes for Māori
- 1.4 Māori-Crown relationship and Te Tiriti o Waitangi (capability area)
  - 1.4.1 Understanding the importance of the Māori-Crown relationship and Te Tiriti o Waitangi
  - 1.4.2 Understanding of their schemes relationship or obligations to the Te Tiriti o Waitangi and Māori-Crown relationship
  - 1.4.3 Building and retaining organisational knowledge of Te Tiriti o Waitangi and Māori-Crown relationship

## Standard 2: Accessible to all potential users

- 2.1 Build awareness (Capability area)
  - 2.1.1 The extent to which & the ways in which the scheme engages in promotion/ awareness-raising activities.
  - 2.1.2 The extent to which the scheme engages in the assessment of awareness of their scheme.
  - 2.1.3 The extent to which & the ways in which the scheme provides information and resources
- 2.2 Facilitate access (capability area)
  - 2.2.1 The extent to which the scheme understands the barriers to entry & provides support or resources to assist users to enter the scheme
  - 2.2.2 To what extent are the application barriers addressed in scheme design
  - 2.2.3 The extent to which the scheme ensures that users are directed to the correct place
  - 2.2.4 The extent to which the scheme entry points are simplified & meet user needs
- 2.3 Equitable access (capability area)
  - 2.3.1 The extent to which the scheme is aware of who is accessing it
  - 2.3.2 The ways in which (if any) the scheme is ensuring equal access for different groups
- 2.4 Support and assistance (capability area)
  - 2.4.1 Accommodating user needs in service design and delivery
  - 2.4.2 Flexibility and responsiveness of service offerings e.g. online mediation, tikanga-based DR, etc.
  - 2.4.3 Level of staff competency and training in relation to different user needs, and the systems in place to assess and support staff competency

## Standard 3 – Impartial

- 3.1 Perceptions of users (capability area)
  - 3.1.1 Understanding of users' views of impartiality
  - 3.1.2 How feedback on users' views of impartiality is collected
  - 3.1.3 How feedback on users' views of impartiality is used
- 3.2 Processes (capability area)
  - 3.2.1 Publishing processes
  - 3.2.2 Extent to which meeting procedural fairness requirements
  - 3.2.3 Reasons provided for decisions

- 3.2.4 Assistance provided to parties
- 3.2.5 Quality controls
- 3.2.6 Availability of escalation pathways
- 3.3 Staff and practitioners (capability area)
  - 3.3.1 Documented expectations of impartiality
  - 3.3.2 Availability of training on impartiality
  - 3.3.3 Availability of complaints processes

#### Standard 4 – Independent

- 4.1 Perceptions of users (capability area)
  - 4.1.1 How feedback on users' views of independence is collected
  - 4.1.2 Understanding of users' views of independence
  - 4.1.3 How feedback on users' views of independence is used
- 4.2 Funding and Governance (capability area)
  - 4.2.1 Independence of funding arrangements
  - 4.2.2 Independence of governance arrangements
- 4.3 Processes (capability area)
  - 4.3.1 Independence in the design and operation of processes
  - 4.3.2 Cultural responsiveness of processes
- 4.4 Staff and Practitioners (capability area)
  - 4.4.1 Process for selecting staff
  - 4.4.2 Assignment of work
  - 4.4.3 Policies and processes to protect staff
- 4.5 Conflicts of interest (capability area)
  - 4.5.1 Policies and processes on conflict of interest

#### Standard 5 – Information about parties and disputes is used appropriately

- 5.1 Confidentiality (capability area)
  - 5.1.1 Policies and practices on confidentiality
  - 5.1.2 Transparency of policies and practices on confidentiality
- 5.2 Privacy (capability area)

- 5.2.1 Policies and practices on privacy
- 5.2.2 Transparency of policies and practices on confidentiality
- 5.3 Official Information Act (capability area)
  - 5.3.1 Application of the Official Information Act 1982 (OIA)

## Standard 6 – Timely

- 6.1 Consideration of timeliness in design and operation (capability area)
  - 6.1.1 Consideration of timeliness in design
  - 6.1.2 Consideration of timeliness in operation
- 6.2 Reducing delays (capability area)
  - 6.2.1 Reducing preventable delays
- 6.3 Reasonable timeframes/limits (capability area)
  - 6.3.1 Setting of timeframes/limits
  - 6.3.2 Flexibility of timeframes/limits
  - 6.3.3 Publication of timeframes/limits
- 6.4 Information about progress (capability area)
  - 6.4.1 Systems of tracking progress
  - 6.4.2 Access to information about progress
- 6.5 Monitoring, evaluation and reporting (capability area)
  - 6.5.1 Collection of data on timeliness
  - 6.5.2 Analysis of data on timeliness
  - 6.5.3 Reporting of data on timeliness

## Standard 7 – Promotes early resolution and supports prevention

- 7.1 Supporting early resolution (capability area)
  - 7.1.1 Provision of information, resources or support to assist people to resolve disputes early and the extent to which these are being assessed
  - 7.1.2 Processes in place to support early resolution of disputes
- 7.2 Data and Monitoring (capability area)
  - 7.2.1 Data collection and monitoring practices
  - 7.2.2 Mechanisms to identify trends, system issues or root causes and extent to which insights from these is shared

- 7.3 Sector Coordination (capability area)
  - 7.3.1 Coordination and collaboration with relevant sector actors
  - 7.3.2 Practices in place to gather and share insights with sector actors

#### Standard 8 – Properly resourced to carry out the service

- 8.1 Funding model (capability area)
  - 8.1.1 Rationale for the funding model
  - 8.1.2 Transparency of the funding arrangements
- 8.2 Allocation and Level of Funding (capability area)
  - 8.2.1 Setting funding level
  - 8.2.2 Allocation decisions
- 8.3 Competence (capability area)
  - 8.3.1 Level of competence
  - 8.3.2 Understanding competence requirements
  - 8.3.3 Growing competence
- 8.4 Capacity Building (capability area)
  - 8.4.1 Understanding of current capacity
  - 8.4.2 Planning for future capacity
- 8.5 Growing Maturity (capability area)
  - 8.5.1 Understanding of current maturity
  - 8.5.2 Planning to maintain and grow maturity

#### Standard 9 – Accountable through monitoring and data stewardship

- 9.1 Data capability and data practices (capability area)
  - 9.1.1 Resourcing - Roles
  - 9.1.2 Data Collection, Storage
  - 9.1.3 Use of Data to Support Decision-making
  - 9.1.4 Maintenance of Datasets and Data Assets
  - 9.1.5 Organisational Data Governance and Stewardship
  - 9.1.6 Measuring performance
- 9.2 Availability, accessibility, and openness of data (capability area)

9.2.1 Data sharing/ access protocols

9.3 Trust - Partnership, Participation and Protection (capability area)

9.3.1 Partnership with Tāngata Whenua

9.3.2 Partnership with all

9.3.3 Engendering Te Ao Māori in data practices

9.3.4 Design of Data Systems

9.3.5 Privacy

9.3.6 Māori Data Sovereignty

9.3.7 Transparency of data practices - communicating to others

9.3.8 Measuring Trust – Assurance

# Submission template

---

## A New Zealand Income Insurance Scheme

This is the submission template for the discussion document, *A New Zealand Income Insurance Scheme*.

The Ministry of Business, Innovation and Employment (MBIE), on behalf of the Government, Business New Zealand and the New Zealand Council of Trade Unions, seeks your written submission on the matters raised in the discussion document by **5pm on 26 April 2022**.

## Your submission could be made public

The information provided in submissions will be used to inform policy development on the proposed income insurance scheme, including how it could be improved and how it could affect different groups. We may contact submitters directly if we require clarification of any matters in submissions.

The *Privacy Act 2020* applies to submissions and responses. Any personal information you supply to MBIE in making a submission will only be used for the purpose of assisting in the development of policy advice as part of this review. When businesses or organisations make a submission, we will consider that you have consented to the content being included in any summary of submissions unless you clearly state otherwise. If your submission contains any information that is confidential or that you do not want published, you can say this in your submission. Please clearly indicate in your cover letter or email with your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that may be published.

Submissions and responses may be subject to requests for information under the *Official Information Act 1982*. Please clearly indicate in your cover letter or email with your submission if you have any objection to the release of any information in your submission, and which parts you consider should be withheld, together with the reasons for withholding the information. Your views will be taken into account when responding to requests under the *Official Information Act 1982*. Any decision to withhold information requested under the *Official Information Act 1982* can be reviewed by the Ombudsman.

## How to make a submission

Please send your written submission on the options and questions in this consultation document by **5pm on 26 April 2022**. You can make your submission (preferably using this submission template) as follows:

1. Include your name, the name of your organisation (if applicable), and contact details. We may contact submitters directly if we require clarification of any matters in submissions.
2. Your submission may respond to any or all of the questions in the consultation paper. Where possible, please include information or evidence to support your views. We also encourage your input on any other relevant aspects of the income insurance scheme in the "Other comments" section.
3. Sending your submission:
  - a. Attach as a Microsoft Word document or searchable PDF and email to:

[incomeinsurance@mbie.govt.nz](mailto:incomeinsurance@mbie.govt.nz) (preferred), or

b. Mail your submission to:

Social Unemployment Insurance Tripartite Working Group  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6145

If you have any questions on the submissions process, please contact [incomeinsurance@mbie.govt.nz](mailto:incomeinsurance@mbie.govt.nz).

# Submission on A New Zealand Income Insurance Scheme

## Your name and organisation

<b>Name</b>	Jess Plachecki
<b>Organisation (if applicable)</b>	Talk-Meet-Resolve (Service of Clayton & Associates Limited)
<b>Contact details</b>	0800 119 221

## Responses to consultation document questions

### Chapter 4 – How a new income insurance scheme could achieve our objectives (Pg 30-48)

The Forum considers the benefits of income insurance for job loss due to displacement or health conditions would outweigh its costs.

1 *Do you agree New Zealand should introduce an income insurance scheme for displacement and loss of work due to health conditions or disabilities?*

Please see our attached submissions on dispute resolution.

### Chapter 5 – Honouring Te Tiriti o Waitangi (Pg 49-51)

Kawanatanga – Good governance and partnership

2 *How can we ensure the proposed income insurance scheme honours Te Tiriti o Waitangi?*

Please see our attached submissions on dispute resolution.

3 *What are the opportunities for partnership and Māori representation in the proposed income insurance scheme's governance and operations?*

Please see our attached submissions on dispute resolution.

4 *How can we ensure equity of access, participation, and outcomes for Māori in the proposed income insurance scheme?*

Please see our attached submissions on dispute resolution.

5 *How can we reflect and embed te ao Māori in the proposed income insurance scheme's design?*

Please see our attached submissions on dispute resolution.

## Chapter 6 – Coverage for displaced workers (Pg 53-72)

### Displacement and standard employment (full- and part-time permanent employees)

6 *Do you agree with defining displacement as the involuntary loss of work due to the disestablishment of a job?*

Please see our attached submissions on dispute resolution.

7 *Do you agree with excluding poor performance and gross misconduct as reasons for claiming insurance?*

Please see our attached submissions on dispute resolution.

8 *Do you agree with excluding resignation as a reason for claiming insurance?*

Please see our attached submissions on dispute resolution.

### Coverage provided for complete job loss only

9 *Do you agree that income insurance should cover only the complete loss of a job, and cover situations where a person loses only one of several jobs that they hold?*

Please see our attached submissions on dispute resolution.

10 *Do you agree that insurance would be payable only where income loss was greater than a minimum threshold, such as a 20 percent loss of total earnings, counting income from all of their jobs?*

Please see our attached submissions on dispute resolution.

### Displacement and non-standard employment – a principle-based approach

11 *Do you agree that it is important to provide income insurance coverage to non-standard workers, where practical?*

Please see our attached submissions on dispute resolution.

12 *Do you agree that income insurance should cover the 'loss of reasonably anticipated income'?*

Please see our attached submissions on dispute resolution.

13 *Do you agree that income insurance entitlements should be based on an 'established pattern of work'?*

Please see our attached submissions on dispute resolution.

#### Coverage provided for fixed-term and seasonal employees

14 *Do you agree that income insurance should cover fixed-term and seasonal employees if they are displaced before the end of an employment agreement, with the duration of the payment running to the scheduled end of the employment agreement, or the maximum insurance entitlement duration, whichever is shorter?*

Please see our attached submissions on dispute resolution.

15 *Do you agree that income insurance should cover fixed-term and seasonal employees, where their employment agreements are not renewed, and they can show a regular pattern of work and reasonable expectation of future income?*

Please see our attached submissions on dispute resolution.

Coverage provided for casual employees

#### age provided for casual employees

16 *Do you agree that income insurance should cover casual employees who can show a regular pattern of work with an employer and a reasonable expectation of future income?*

Please see our attached submissions on dispute resolution.

17

*How would these design choices work in practice? What risks can you see with the approach to establishing a regular pattern of work?*

### Coverage for self-employed workers

18

*What risks do you see with covering, or not covering, people in self-employment?*

Please see our attached submissions on dispute resolution.

19

*Are there some groups of self-employed who should and should not be covered?*

Please see our attached submissions on dispute resolution.

20

*How can we practically distinguish between contractors who resemble employees, and those with a high degree of independence?*

Please see our attached submissions on dispute resolution.

21

*Because a self-employed person cannot technically be made redundant, what types of events would be appropriate 'triggers' for insurance payments?*

Please see our attached submissions on dispute resolution.

22

*How do you think the levy should be collected from self-employed workers?*

Please see our attached submissions on dispute resolution.

### A modest minimum contribution period

23

*Do you agree with the proposed minimum contribution period of six months over a period of 18 months preceding the claim?*

Please see our attached submissions on dispute resolution.

## Limits on subsequent claims

24 *Do you agree limits should be placed on the number claims people can make?*

Please see our attached submissions on dispute resolution.

25 *Do you agree with limiting claims to a total of six months within an 18-month period?*

Please see our attached submissions on dispute resolution.

26 *Could the risks associated with a low contribution history be managed in other ways?*

Please see our attached submissions on dispute resolution.

## Coverage for New Zealand citizens and residents

27

*Do you agree with limiting coverage of the proposed income insurance scheme to New Zealand citizens and residents?*

Please see our attached submissions on dispute resolution.

28

*To ensure New Zealand workers are not disadvantaged by lower cost international workers, do you agree that working holiday makers, international students and temporary work visa holders – and their employers – should contribute to the proposed income insurance scheme’s costs?*

Please see our attached submissions on dispute resolution.

## Chapter 7 – Entitlements for displaced workers (Pg 73-95)

### Income caps and income replacement rates that match the accident compensation scheme

29

*Do you agree with a replacement rate set at 80 percent?*

Please see our attached submissions on dispute resolution.

30

*Do you agree with a cap on insurable (and leviable) income set at the same rate as the accident compensation scheme (currently \$130,911)?*

Please see our attached submissions on dispute resolution.

### Only personal exertion income would abate (reduce) insurance entitlements

31

*Do you agree that only the insurance claimant’s personal exertion income should affect their insurance entitlements?*

Please see our attached submissions on dispute resolution.

32

*Do you agree that income insurance should have individualised entitlement, meaning a partner’s income would not affect the rate payable?*

Please see our attached submissions on dispute resolution.

### Abatement rates would ensure a claimant is not financially better off as a result of their loss of work

33

*Do you agree that someone should be able to earn some income from paid employment before it affects their entitlements to income insurance?*

Please see our attached submissions on dispute resolution.

34

*Do you agree that insurance should abate 'dollar for dollar' when earned income and insurance combined reach 100 percent of previous income?*

Please see our attached submissions on dispute resolution.

### **Insurance would generally be treated as income, to determine eligibility for welfare and student support**

35

*Do you agree that insurance should be treated as income for assessing eligibility for income support such as main benefits and Working for Families tax credits and student support?*

Please see our attached submissions on dispute resolution.

36

*Given the purpose of the In-Work Tax Credit and Minimum Family Tax Credit in encouraging people into employment and helping with in-work costs, do you agree that income insurance claimants would not be eligible for these tax credits?*

Please see our attached submissions on dispute resolution.

### **Insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension**

37

*Do you agree that income insurance claimants could also receive New Zealand Superannuation or the Veteran's Pension?*

Please see our attached submissions on dispute resolution.

38

*Do you think a limit should be placed on the amount of time someone can receive New Zealand Superannuation or the Veteran's pension and income insurance?*

Please see our attached submissions on dispute resolution.

### **Where eligible, insurance claimants could choose whether to access Paid Parental Leave or income insurance and may receive both sequentially**

39

*Do you agree that income insurance and Paid Parental Leave could be accessed sequentially but not at the same time?*

Please see our attached submissions on dispute resolution.

**Insurance claimants could also receive ACC weekly compensation where it covers a different income loss**

40 *Do you 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?*

Please see our attached submissions on dispute resolution.

**A sufficient base entitlement period**

41 *Do you agree with a base insurance entitlement length of six months, plus a four-week bridging payment paid by the employer?*

Please see our attached submissions on dispute resolution.

42 *Would you support a longer or shorter length of base insurance entitlement?*

Please see our attached submissions on dispute resolution.

**Extending the maximum period in specified circumstances**

43 *Do you think the scheme should allow extensions to the base period of income insurance entitlements for training or vocational rehabilitation?*

Please see our attached submissions on dispute resolution.

**Enhancing the income insurance scheme with notice periods**

44 *Do you agree that employers should give at least four weeks' notice to employees, and the insurer, before redundancy takes effect?*

Please see our attached submissions on dispute resolution.

## Avoiding unnecessary redundancies

45

*Do you agree that employers should pay former workers for the initial period of unemployment for four weeks?*

Please see our attached submissions on dispute resolution.

46

*Should bridging payments be applied to all workers, including those not eligible for income insurance?*

Please see our attached submissions on dispute resolution.

47

*Should the income insurance scheme finance bridging payments in circumstances where the payments are not forthcoming from employers, and refund employers for bridging payments if workers find work within this period?*

Please see our attached submissions on dispute resolution.

48

*Do you consider that stronger integrity measures are necessary to manage the risk of spurious claims to the income insurance scheme?*

Please see our attached submissions on dispute resolution.

## Chapter 8 – Coverage and entitlements for loss of work due to health conditions or disabilities (Pg 96-112)

### No restrictions on the types of conditions covered by the income insurance scheme

49

*Do you agree there should be no restrictions on the types of conditions covered by the scheme?*

Please see our attached submissions on dispute resolution.

### No restrictions on the working arrangements covered by the scheme

50

*Do you agree that all work arrangements should be covered (assuming other eligibility criteria are met)?*

Please see our attached submissions on dispute resolution.

**Coverage for loss of at least 50 percent of capacity to work, for at least four weeks**

51

*Should the scheme cover partial loss of earnings due to a health condition or disability reducing work capacity?*

Please see our attached submissions on dispute resolution.

52

*If partial loss is to be covered, do you agree 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?*

Please see our attached submissions on dispute resolution.

**Claimants' medical practitioners would assess work capacity, with final eligibility assessed by the scheme administrator**

53

*Do you agree that the claimants' health practitioner should be main the assessor of work capacity?*

Please see our attached submissions on dispute resolution.

54

*Do you agree that, where appropriate, employers could provide supporting information to inform the claimant's work capacity assessment process?*

Please see our attached submissions on dispute resolution.

**Employers would remain responsible for taking reasonable steps to support an employee to continue working**

55

*Are the current requirements on employers to make workplace changes sufficient to allow health condition and disability claimants to return to their regular employment (or alternative work)?*

Please see our attached submissions on dispute resolution.

56

*How could employers be supported to help workers with health conditions or disabilities to remain in or return to work?*

Please see our attached submissions on dispute resolution.

**Employers would be expected to make reasonable efforts to keep a job open where a return to work within six months is likely**

57 *Where an employee must stop work entirely because of a health condition or disability, do you 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?*

Please see our attached submissions on dispute resolution.

58 *Should this be a statutory requirement placed on employers or an expectation?*

Please see our attached submissions on dispute resolution.

**The scheme would generally meet the full cost of income replacement once a claim is accepted**

59 *Do you 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?*

Please see our attached submissions on dispute resolution.

**Chapter 9 – Insurance claimants’ obligations (Pg 113-120)**

**Reasonable obligations for people receiving income insurance payments**

60 *Do you agree claimants should be obligated to look for work or prepare to return to work while receiving insurance?*

Please see our attached submissions on dispute resolution.

61 *Do you agree that claimants would not be expected or required to accept offers of employment that provide lower wages or conditions?*

Please see our attached submissions on dispute resolution.

62 *Do you agree the insurer could waive obligations partially or fully where a claimant is unable to meet those obligations?*

Please see our attached submissions on dispute resolution.

63

*Do you agree claimants should be obligated to remain in New Zealand to remain eligible for income insurance?*

Please see our attached submissions on dispute resolution.

64

*Do you think a period of time, such as 28 days, should be allowed for travel overseas, for example, to support ill family?*

Please see our attached submissions on dispute resolution.

### Specific obligations for claimants with a health condition or disability

65

*Should claimants with health conditions or disabilities be subject to obligations to participate in rehabilitative programmes and other support, where appropriate?*

Please see our attached submissions on dispute resolution.

66

*Should claimants with health conditions and disabilities be subject to obligations to search for work or undertaking training where they are able to?*

Please see our attached submissions on dispute resolution.

### Consequences for non-compliance

67

*Do you think financial penalties should be in place for people who do not meet their obligations while receiving insurance payments?*

Please see our attached submissions on dispute resolution.

68

*Do you agree that payments could be fully suspended in cases of serious, intentional non-compliance with obligations?*

Please see our attached submissions on dispute resolution.

*Do you think any other consequences should be in place for people repeatedly not meeting their obligations, such as permanent suspension of entitlements?*

---

Please see our attached submissions on dispute resolution.

---

## Chapter 10 – Delivering income insurance (Pg 121-134)

### Independent and effective delivery

70 *Do you think it is best for ACC to deliver the income insurance scheme alongside the accident compensation scheme?*

Please see our attached submissions on dispute resolution.

71 *Would the income insurance scheme be better delivered by a government department or a new entity?*

Please see our attached submissions on dispute resolution.

### Accountable and effective governance

72 *How could employer and worker perspectives best be incorporated to strengthen the income insurance scheme's delivery for New Zealanders?*

Please see our attached submissions on dispute resolution.

73 *How could Māori perspectives best be incorporated to ensure the income insurance scheme is delivered equitably and with aspiration?*

Please see our attached submissions on dispute resolution.

### Displaced workers: Getting back to good jobs

74 *What practical support should be available to insurance claimants to return to work?*

Please see our attached submissions on dispute resolution.

75 *Who should provide that return-to-work support?*

Please see our attached submissions on dispute resolution.

Please see our attached submissions on dispute resolution.

**76** *What type of claimants would need an employment case manager, and who could self-manage?*

Please see our attached submissions on dispute resolution.

**77** *What do you think a 'return-to-work plan' should include?*

Please see our attached submissions on dispute resolution.

### **Health condition and disability claimants: Getting back to good jobs**

**78** *What practical support should be available to income insurance claimants with a health condition or disability to return to work?*

Please see our attached submissions on dispute resolution.

**79** *Who should provide that support to return to work?*

Please see our attached submissions on dispute resolution.

**80** *What type of claimants would need a case manager, and who could self-manage?*

Please see our attached submissions on dispute resolution.

### **Dispute resolution**

**81** *Do you agree with the proposed four-step dispute resolution process for the scheme?*

Please see our attached submissions on dispute resolution.

**82** *Are there specific aspects to the scheme's dispute resolution you think should be considered?*

Please see our attached submissions on dispute resolution.

### **Scheme integrity and enforcement**

83

*Do you agree with the proposal to establish an effective offences and penalties framework to protect the scheme's integrity?*

---

Please see our attached submissions on dispute resolution.

#### Information collection and sharing

84

*Do you agree with the proposal to develop information sharing agreements and sharing arrangements with employers, other agencies and service providers?*

---

Please see our attached submissions on dispute resolution.

## Chapter 11 – Funding income insurance (Pg 135-144)

### Most funding would come from compulsory levy payments on income

85 *Do you agree the income insurance scheme should be funded from compulsory levies on the income that is insured, rather than from general taxation?*

Please see our attached submissions on dispute resolution.

### Levy payments would be shared by employers and workers

86 *Do you agree that levy contributions should be equally split between the employee and employer?*

Please see our attached submissions on dispute resolution.

87 *Do you agree that levies for health conditions and disabilities and for redundancy should be set separately?*

Please see our attached submissions on dispute resolution.

### Both the employee and employer would be charged at a flat rate

88 *Do you agree that employees should be levied at a flat rate on income below \$130,911?*

Please see our attached submissions on dispute resolution.

89 *Do you have any other suggestions for how the employee levy should be structured?*

Please see our attached submissions on dispute resolution.

90 *Do you agree that experience rating would not be an appropriate design setting for the employer levy?*

Please see our attached submissions on dispute resolution.

### Levies would adjust smoothly over time, with independent fund management

91

*Do you agree that an independent fund with a stable levy-setting system should be established to finance the income insurance scheme?*

Please see our attached submissions on dispute resolution.

92

*Do you favour a Pay As You Go or Save As You Go funding approach?*

Please see our attached submissions on dispute resolution.

### **Building in scheme adaptability, while protecting levy sustainability**

93

*Do you agree that the legislation for the income insurance scheme should provide the flexibility to vary entitlements and eligibility in times of crisis, over and above the proposed income insurance scheme?*

Please see our attached submissions on dispute resolution.

94

*Does such flexibility create risks that require additional mitigations?*

Please see our attached submissions on dispute resolution.

### **Other comments**

Please see our attached submissions on dispute resolution.