



BRIEFING

Income Insurance Scheme Confidentiality and policy issues

Date:	16 December 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-2225

Action sought		
	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to policy decisions on the Income Insurance Scheme Enabling Bill (the enabling Bill) to inform legislation drafting Confidentiality	26 January 2022
Hon Carmel Sepuloni Minister of Employment and Social Development Hon Michael Wood Minister of Workplace Relations and Safety	Note the contents of this briefing.	

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Jivan Grewal	Director, Employment, Skills and Immigration Policy	Privacy of natural persons	✓
Andrew Marshall	Principal Policy Advisor, Social Unemployment Insurance		

The following departments/agencies have been consulted
ACC

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Income Insurance Scheme **Confidentiality** and policy issues

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Purpose

This briefing seeks:

- Agreement to additional detailed policy decisions on the Income Insurance Scheme Enabling Bill (the enabling Bill) being drafted to enable ACC to develop the operational infrastructure to deliver the New Zealand Income Insurance Scheme.
- An indication of your preferred timing and approach for the introduction and enactment of the enabling Bill.
- Confidentiality **[REDACTED]**

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that Cabinet agreed to the Parliamentary Counsel Office (PCO) drafting a Bill to enable ACC to develop operational requirements for a new income insurance scheme (the enabling Bill) [CAB-21-MIN-0397 refers].
- Noted*
- b **Note** that Cabinet authorised the Minister of Finance to make decisions and approve matters of detail, consistent with the policy proposals, on any issues that arise in the course of drafting the Bill.
- Noted*
- c **Note** that initial drafting instructions have been provided to the PCO and officials have identified policy issues, namely the form of the Bill, and the inclusion of Treaty of Waitangi and information sharing provisions.
- Noted*
- d **Agree** that the Bill be drafted as a standalone Bill, rather than an amendment to the Accident Compensation Act as noted by Cabinet [DEV-21-MIN-0198 refers].
- Agree / Disagree*
- e **Agree** to include in the enabling Bill a Treaty of Waitangi provision.
- Agree / Disagree*
- f **Agree** to include in the enabling Bill information sharing and matching provisions that authorise ACC to use information it receives from Inland Revenue and other Government agencies for the purpose of setting up the systems and processes for the establishment of an income insurance scheme, and to request and receive additional information from agencies for that purpose.
- Agree / Disagree*
- g Confidentiality [Redacted]
- Noted*
- h Confidentiality [Redacted]
- Yes / No*

Privacy of natural persons

Jivan Grewal
Director
Employment, Skills and Immigration Policy,
MBIE

16 /12 / 2021

Hon Grant Robertson
Minister of Finance

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

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Hon Michael Wood
Minister of Workplace Relations and Safety

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Background

1. On 4 October, Cabinet agreed to undertake public consultation on the proposal to introduce a social income insurance scheme in New Zealand [CAB-21-MIN-0397 refers].
2. The proposal is that ACC will administer the scheme. A significant programme of work is required to enable ACC to be ready to operate the scheme by December 2023 and that work needs to begin as soon as funding becomes available in 2022/23.
3. Legislation is needed for ACC to begin implementation work, as the Income Insurance Scheme is outside the scope of ACC's current functions as set out in s 262 of the Accident Compensation Act 2001 (AC Act).
4. Cabinet agreed to draft legislation to enable ACC to develop operational requirements for the scheme, Confidentiality [REDACTED]
5. Cabinet delegated authority to you to make decisions and approve matters of detail on the Bill, consistent with the policy proposal, on any issues that arise in the course of drafting the Bill [CAB-21-MIN-0397 refers].
6. We provided initial drafting instructions to PCO for an enabling Bill in early November on your behalf and envisage the Bill will be able to be introduced and enacted to coincide with policy decisions on the SU1 scheme in June 2022.
7. A number of policy matters have emerged through the initial implementation planning and drafting process, on which we are seeking your agreement to inform the completion of the draft legislation. Timing for introducing and enacting the enabling legislation also needs to be resolved, Confidentiality [REDACTED]

Additional policy issues for the enabling Bill

Approach to the Bill

8. It is proposed that the enabling Bill be developed as standalone legislation, rather than an amendment to the AC Act 2001 as was noted by Cabinet [DEV-21-MIN-0198 refers].
9. To allow ACC to begin implementing the income insurance scheme, initial thinking was that it would be comparatively straightforward to amend the AC Act. However, early into drafting it was identified that the better approach would be to form a standalone Bill as this will:
 - a. minimise any disruption to the AC Act (e.g. its purpose statement), to avoid confusion with the public, and unintended consequences
 - b. be more consistent with the design of the substantive legislation, which will establish the income insurance scheme to operate independently of the Accident Compensation Scheme.
10. There are potential downsides of a standalone Bill. For instance, challenges could arise where there is conflict between what ACC is required to do under the AC Act, and under the enabling act, but officials are working on provisions to specifically address such a scenario.
11. MBIE has been working with ACC officials on the design and content of this legislation. ACC supports the standalone Bill model.

Information sharing provision

12. It is proposed that the Bill include information sharing and matching provisions to test systems and establish levy invoicing to be issued at the scheme's commencement.
13. ACC has identified that it will need to obtain or match personal information from a number of agencies, including Inland Revenue, Immigration New Zealand, and the Ministries of Social Development and Health, at least six months before the SUI scheme commences to be confident that it can deliver a fit for purpose system.
14. Authorisation to obtain or request and use personal information (and authorisation for agencies to provide that information to ACC) is particularly important for the enabling Bill in that ACC will not have established relationships with levy payers or claimants. This situation will differ once the scheme goes live, and therefore some of the information sharing provisions may differ in the substantive Bill (e.g. ACC will be able to seek authorisation from individuals to access some personal information at claim submission).
15. ACC already has information sharing arrangements with agencies for some of the information required. This includes sharing mechanisms, and controls on access and use of information and mitigations for breaches. Nonetheless, a SUI scheme would need its own legal authorisation to use and manage this information.
16. There are no viable non-legislative options. Relying on the Privacy Act provisions (e.g. s.30) does not provide a sufficient legal basis for enabling the sharing of Inland Revenue sourced information. More generally, the process for establishing an Approved Information Sharing Agreement could take upwards of 12 months and would be subject to significant uncertainty.
17. Information sharing provisions are considered proportionate given the need for the scheme to correctly determine and obligate the payment of levy and provide correct entitlements.
18. It is envisaged the legislated provisions in the enabling Bill would include:
 - a. Authorisation for ACC to use information it can obtain for the purpose of establishing the SUI scheme (e.g. Inland Revenue). This may require consequential amendments to other legislation, such as the Tax Administration Act.
 - b. An ability to request and use information or match information with other systems (e.g. Immigration NZ) and authority for those agencies to provide the information.
 - c. Obligations to manage any information in a way commensurate with the sensitivity of the information.
 - d. Recourse measures, for instance authorising action by the Privacy Commissioner under the Privacy Act.

Treaty of Waitangi clause

19. It is proposed that the Bill include a Treaty of Waitangi clause in the enabling Bill, given that the way a SUI scheme is operationalised will have implications for scheme outcomes, including for Māori individuals and whanau.
20. There is ample evidence that implementation matters for Māori outcomes (e.g. refer health and disability review points on equity of Māori health outcomes).¹ We consider that Māori engagement is critical to the development of a scheme that works for Māori.

¹ Health and Disability System Review. 2020. Health and Disability System Review – Final Report – Pūrongo Whakamutunga. Wellington: HDSR. www.systemreview.health.govt.nz/final-report

Confidentiality

Annexes

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