

# Departmental Disclosure Statement

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Income Insurance Scheme (Enabling Development) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Andrew Marshall, Principal Advisor, Income Insurance Policy, Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 May 2022

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## **Part One: General Policy Statement**

This Bill enables the Accident Compensation Corporation (ACC) to carry out work to bring an income insurance scheme into operation, should it be established under subsequent legislation. Nothing in the Bill is intended to limit or affect the scope or design of any scheme that may be provided for under such legislation.

That work will assist ACC to create a stronger and more efficient implementation platform for a scheme. The Bill includes a provision that recognises the Crown's commitment to the Treaty of Waitangi/te Tiriti o Waitangi principles. This includes partnering with, supporting, and empowering Māori to improve their lives. The Bill requires ACC to engage with employers, workers and Māori, and to be purposeful in developing a scheme platform that will contribute to improving Māori economic and labour market outcomes. The Bill enables information sharing with other government agencies. This mirrors information access that ACC already has for the Accident Compensation scheme. The provisions are necessary to enable ACC to create and test systems and processes to ensure a scheme platform can be developed to be administratively efficient, provide timely and accurate service to clients, and have robust protection in place for personal information. Personal information can only be requested and used when absolutely necessary and ACC remains accountable under the Privacy Act 2020 to keep such information secure.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><i>The Bill does not give effect to an Income Insurance Scheme, but simply enables ACC to undertake work to develop the operational requirements should the Government decide to proceed with a scheme.</i></p> <p><i>Work to develop a scheme is informed by a number of reports and recommendations for New Zealand to consider instituting such a scheme, as follows:</i></p> <p><i>Back to Work: New Zealand: Improving the Re-employment Prospects of Displaced Workers, OECD 2017, <a href="https://www.oecd.org/newzealand/back-to-work-new-zealand-9789264264434-en.htm">https://www.oecd.org/newzealand/back-to-work-new-zealand-9789264264434-en.htm</a></i></p> <p><i>Technological Change and the Future of Work, Productivity Commission, final report, 2020, <a href="https://www.productivity.govt.nz/inquiries/technology-and-the-future-of-work/final-report/">https://www.productivity.govt.nz/inquiries/technology-and-the-future-of-work/final-report/</a></i></p> <p><i>Involuntary Job Loss, Welfare Effects, Earning Impacts and Policy Options, Motu, April 2021, <a href="https://motu-www.motu.org.nz/wpapers/21_06.pdf">https://motu-www.motu.org.nz/wpapers/21_06.pdf</a></i></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
N/A	
<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
N/A	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>A public discussion document has been issued, and was structured as a consultation Regulatory Impact Statement: A New Zealand Income Insurance Scheme: A discussion document, Tripartite Unemployment Insurance Working Group, 2 February 2022, <a href="https://www.mbie.govt.nz/have-your-say/income-insurance/">https://www.mbie.govt.nz/have-your-say/income-insurance/</a></i></p> <p><i>A RIS has been drafted to support consideration of the specific proposal embodied in the Bill: Regulatory Impact Statement: Preparatory work to enable a New Zealand Income insurance scheme, MBIE</i></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p><i>The RIS did not meet the threshold for RIA Team assessment but was assessed by MBIE.</i></p> <p><i>The MBIE panel reviewing this RIA considers that it meets the RIA quality criteria and that our feedback on earlier drafts of the RIA has been addressed. The proposals for this legislation are clearly defined and limited to those needed for ACC to support the development of the NZII scheme, with clarity over the need for subsequent policy decisions for the detail of policy choices. The costs of proceeding now are clearly articulated and reasonable.</i></p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
N/A	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
N/A	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p><i>The most up-to-date information on these matters is outlined in the RIS: Preparatory work to enable a New Zealand Income Insurance Scheme, MBIE.</i></p> <p><i>There are no costs arising for workers or employers from the legislation. The Bill would result in sunk costs for Government of up to \$2.2m if the scheme is not implemented.</i></p> <p><i>The Bill will enable additional Government funding to be expended if the scheme does proceed, but this would confer a number of benefits for scheme stakeholders, including better scheme design and implementation and avoiding delays in implementation, meaning that workers can benefit from support offered by the scheme. It would also lessen risk to implementation of scheme / and adverse impacts on the reputation of government arising from implementation issues.</i></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
N/A	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

*New Zealand is not subject to any international obligation that requires an income insurance scheme to be put in place.*

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

*MBIE's policy and ACC's operationalisation processes incorporate a commitment for the proposed scheme to work well for Māori.*

*This commitment is reflected in the Bill with the inclusion of obligations for ACC to engage with Māori in developing the scheme.*

*The provision has been discussed with the Iwi Leaders Group, the Te Arawhiti convened Treaty Provisions Oversight Group and ACC to ensure it is appropriate.*

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

NO

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

NO

N/A

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

NO

N/A

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p><i>The Bill includes provisions for information sharing between agencies, which are necessary for enabling ACC to test and establish the necessary systems for a scheme, and ensure they have integrity, including for upholding the privacy of personal information once the scheme goes live.</i></p> <p><i>The provisions are largely based on ACC's existing information sharing arrangements, including protections.</i></p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p><i>The provisions in the Bill have been developed in consultation with the Office of the Privacy Commissioner (OPC).</i></p> <p><i>MBIE engaged early with OPC prior to information sharing provisions being drafted. OPC was also consulted on an initial and final set of information sharing provisions. The Bill includes obligations on ACC to consult the Privacy Commissioner in relation to information requests to agencies or its use of information it holds for ACC purposes.</i></p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p><i>The Bill has not been publicly consulted on as it is largely technical in nature, and is Budget sensitive as it relates to appropriations being provided to ACC. The Bill is also preparatory in effect, because it only allows ACC to take steps to prepare for the implementation of an income insurance scheme, and does not extend to giving effect to an income insurance scheme.</i></p> <p><i>Its policy and Treaty provisions have however, been subject to consultation with the Iwi Leaders Group.</i></p> <p><i>The broader policy relating to the design of a potential income insurance scheme has also been publicly consulted on, but a decision to proceed with a scheme is yet to come, and will require subsequent substantive legislation to establish and govern a scheme.</i></p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p><i>ACC is expected to be the implementation agency for a scheme should it be established. ACC have been closely involved with the development of the legislation, and have reviewed and provided feedback on a several versions of the draft legislation to ensure that the Bill is both workable and complete.</i></p> <p><i>OPC, in also having a role in the legislation, have been closely involved with the development of the legislation to ensure that the Bill is both workable and complete.</i></p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
N/A	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
N/A	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
N/A	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
N/A	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
N/A	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
N/A	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p><i>The Bill provides authorisation for ACC to request personal information from agencies specified in the Bill (refer clause 11), authorisation for those agencies to grant those requests (refer clause 12), and ACC to use the information granted (refer clauses 13 and 14).</i></p> <p><i>Given the Bill's purpose is to enable ACC to develop operational requirements for a scheme, an undertaking that entails some uncertainty, it is necessary for the Bill to provide for flexibility. The Bill therefore provides that the list of agencies specified in Schedule 2 of the Bill can be amended by an Order in Council, which is secondary legislation (refer clause 18). Before the Minister can recommend the making of an Order in Council for this purpose, the Minister must:</i></p> <ul style="list-style-type: none"> <li>• <i>consult the Privacy Commissioner, and</i></li> <li>• <i>be satisfied that:</i> <ul style="list-style-type: none"> <li>○ <i>the provision of information by the agency to be added is necessary for the authorised purpose, and</i></li> <li>○ <i>if the information may include personal information, the authorised purpose could not be met by using non-personal information.</i></li> </ul> </li> </ul> <p><i>The information sharing provisions that a newly-added agency would be subject to are also subject to safeguards, a necessity test (refer clause 11) and a requirement for ACC to disclose to the Privacy Commissioner when a specified government agency provides information provided for under the Bill.</i></p> <p><i>The provisions have been consulted with the Office of the Privacy Commissioner.</i></p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
N/A	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
N/A	

