Experts shut out of **govt income and health insurance** design

The scheme will be compulsory for all workers and employers, regardless of whether they already have private income protection and health cover

Jenni McManus

Insurers have castigated the government for failing to involve them at the outset when planning and designing its controversial income insurance scheme to cover employees who cannot work because of illness or disability, or who are made redundant.

If introduced as it stands, the $3.54 billion-a-year scheme will be compulsory for all workers and employers, regardless of whether they already have private income protection and health cover. At present, there are no opt-in or opt-out provisions for these two million New Zealanders who will effectively be paying twice for their insurance.

The government says the scheme will be funded by contributions from employers and employees through a levy of 2.77% of wages and salaries, half of which (1.39%) would be paid by each party.

Within MBIE, the scheme is being described as the most significant policy change in the past 30-40 years. As proposed, it will be run by ACC, making it the biggest insurer in the country, with an estimated 100,000 workers a year getting health, disability or redundancy payouts.

Submissions on the proposals closed on Tuesday. If all goes to plan, the government hopes to introduce legislation later this year and have the scheme in place in 2023.

Few people spoken to by *LawNews* are happy with the scheme as it stands, including the ADLS Employment Law Committee which filed a submission asking for the redundancy provisions to be scrapped because of the potential for abuse.

Most critical, however, is the insurance sector which is unhappy that the government failed to involve its members – the industry experts – before the consultation paper was put together.

Rushed scheme

Richard Klipin, CEO of the Financial Services Council which represents insurers and financial advisers, says while the FSC welcomes the focus on helping New Zealanders think about risk, its members are very concerned about several aspects of the proposal.

"To say this is rushed would be an understatement," he says, "and what we know is when you have rushed policy development, you have rushed thinking and you end up in a whole number of places that have serious unintended consequences.

"We are really concerned as a sector about the rush that this process has delivered. Not enough time has been taken to work with the sector that knows and understands this area best, because that's our day-to-day bread and butter – things like claims and assessing people and getting them back to work and managing the complexities .... of people having ill health and accidents."

By way of comparison, Klipin cites the chaos that has ensued from the ill-fated amendments to the Credit Control and Consumer Finance Act (CCCFA) which has seen hitherto acceptable borrowers locked out of the mortgage market.

"When you rush policy development and you don't know what your drivers are, you're going to end up like the CCCFA, in places you didn't intend and, in the end, New Zealanders deserve better," Klipin says.

Katrina Shanks, CEO of Financial Advice New Zealand, says her members are also disappointed that more work wasn't done at the initial stages of the scheme, rather than giving stakeholders a consultation paper and telling them it contained the only options available.

Instead, the insurance sector and other stakeholders should have been given the opportunity to give feedback and put forward other options. "It's a very big policy change for the country and it needs the correct amount of time [for everyone] to be able to understand the implications and how it would be delivered," she says.

For example, if the government wanted to cushion for six months the economic shock for a fulltime worker facing serious illness or redundancy, it might want to consider what Shanks calls "step changes" to its welfare benefits rather than trying to introduce another universal insurance scheme.

Shanks (like the ADLS Employment Law Committee) is particularly concerned about the proposed redundancy cover, saying her members are keen to see how claims by the 100,000 affected workers will be split between redundancy, and health and disability. The government has estimated the annual costs for redundancy (which it calls 'displacement') will be $1.8b, with the health cover costing $1.73b.

"Redundancy [cover] is a product that hasn't been very successful in the past," Shanks says. The reason?

Continued on page 07

Continued from page 06

It's easy to rort the system. The government should be exploring this, Shanks says. Few, if any, private insurers offer redundancy insurance nowadays.

Like Klipin, Shanks is concerned that her members are getting the chance to comment on the proposals at such a late stage in their development. The scheme, she says, "needs to be integrated with feedback from stakeholders across New Zealand as opposed to simply providing us with options within a consultation process".

Redundancy provisions

The ADLS submission, signed off by Employment Law Committee convenor Catherine Stewart, says it welcomes, in principle, the introduction of an insurance scheme for employees who are unable to work because illness or disability, which is independently certified through a medical practitioner.

But the committee has significant concerns about the scheme's application to redundancy. It wants to see the redundancy provisions scrapped or significantly tightened to remove any prospect of them being used for non-genuine redundancies.

"Redundancy has been the subject of significant common law precedent over the last few years, which has developed in the direction of preserving employees' rights to ensure redundancies are not only genuine but have sufficient evidence to justify the rationale of the redundancy," the committee says.

"This has had the effect of making it more difficult for employers to implement sham redundancies where they simply get rid of employees for reasons such as poor performance, misconduct, incompatibility or personality issues.

"The introduction of the insurance scheme for redundancies would, in our view, be a major step backwards in terms of providing employers with an opportunity to use redundancies for non-genuine reasons. We do not think that the 28-day bridging payment would act as a sufficient deterrent for employers not to use redundancies in this way.

"Employees may also feel under pressure to agree to being made redundant in order to access the scheme if they might not otherwise be entitled to redundancy compensation. "

If the provisions are retained, the committee suggests it should be made clear that employers are still required to justify redundancies in the usual way in accordance with common law and must follow a process before reaching any redundancy decision.

It also needs to be made clear that employees who receive redundancy insurance still have the right to bring claims pursuant to the Employment Relations Act and the Human Rights Act.

Redundancy insurance is a product that hasn't been very successful in the past

Some committee members raised concerns about the timing of the scheme's introduction, where employers are already under significant financial pressure from the pandemic and the effect of the war in Ukraine. "Others felt that no time was a good time and that there should not be too much emphasis on the current context," the committee said. An alternative was to have a longer lead-in time so the scheme would not take effect until 2025.

Scoping creep

Klipin says the scheme has evolved significantly since it was first mooted.

"There's been significant scope creep in the proposal," he says. "What started life as a redundancy-style piece has become a whole lot larger, particularly around health insurance, and as the scope creep has grown, so too has the complexity which is now massive. We have great concerns around that."

These complexities haven't been properly thought through by the designers of the scheme, Klipin says. One example is group insurance schemes.

"There is a whole world of group insurance plans out there where employers have tailored really effective programs for their staff. Again, employers and employees are going to have to pay again. So, what's the future of those?" People won't pay twice for cover, he says.

At the micro level, a big concern for the private insurance sector is cover for mental health issues.

Because it is not specifically excluded, mental illness will presumably be covered by the government's proposed income insurance scheme, even pre-existing and chronic conditions. But private healthcare policies in New Zealand cover, with very limited exceptions, only physical conditions. Importantly, they offer cover for unexpected events that are yet to occur, rather than chronic or known pre-existing conditions.

Most private insurers state explicitly in their policy documents that mental health conditions will not be covered though some offer reimbursement for limited psychiatric treatment if required after surgery.

Nor is a mental health option generally available as an add-on to policies, such as dental or optical cover. The exceptions are Southern Cross and nib, which recently began offering holders of gold-level policies limited cover (about $2500 a year) for psychiatric or psychologist consultations.

Private income protection insurance, however, does pay out for mental illness but not for pre-existing conditions. Premiums are high and the underwriting (vetting of applications) is stringent. Again, this is because the cover is open to abuse.

Klipin says the insurance industry "stands at the ready" to be constructive and to participate in the debate. The outcome, he says, must be right. "There's no other option."

What this scheme will require, he says, is the creation of the largest life insurance business in the country in terms of its capability, skills, systems and processes. But he wonders if ACC is up for it.

Once the government's proposal is "right", an idea that might work is a public-private arrangement like KiwiSaver where the government sets the framework and then goes to the market to find providers.

"There's a great opportunity here to think much more laterally and much more effectively about how you actually pool the capability and resources in New Zealand to solve a problem," Klipin says. "But let's just make sure we're all agreeing on what problem we need to solve." ■