

Discussion document

A wage supplement as an alternative to
Minimum Wage Exemption permits

2019



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

New Zealand Government

This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/nz/>. Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981. Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

Published February 2019
Ministry of Social Development

PO Box 1556
Wellington 6140
New Zealand
Telephone: +64 4 916 3300
Facsimile: +64 4 918 0099

Email: info@msd.govt.nz
Web: www.msd.govt.nz

ISBN: 978-1-98-854159-4 (online)

Foreword

New Zealanders are known around the world for their work ethic. Kiwis take pride in their jobs and work hard to earn a decent living.

We know being employed matters to New Zealanders. And we know income through employment contributes to our material well-being and overall quality of life.

Participating in the labour market is one way that people are able to contribute to their communities and develop their skills and abilities.

For most people, paid employment also provides the opportunity to earn sufficient income to live independently, enjoy a good standard of living, and pursue their goals in life.

Yet, many disabled people in work are currently prevented from earning a minimum wage through Minimum Wage Exemptions (MWE).

Depending on the job, some disabled people earn much less than the adult minimum wage. This affects approximately 900 disabled workers in New Zealand every year.

As Ministers for Disability Issues and Workplace Relations and Safety we would like to see this discriminatory and unfair practice against disabled people end. The disability community should expect a fair day's wage for a fair day's work like all other New Zealanders.

This commitment is also demonstrated in the Disability Action Plan, which seeks to identify alternatives so that the MWE can be removed.

The wage supplement approach proposed in this discussion document could provide an alternative to MWE permits, and see disabled people guaranteed the same right as non-disabled people, to earn at least the minimum wage.

It was developed in conjunction with people from the disability sector including workers, and is the Government's proposal to address the known issues with the MWE, treat disabled people fairly, and protect existing job opportunities for disabled people.

The feedback received on the wage supplement approach from disabled people, employers, unions and the wider disability sector will assist the Government to design an approach that can meet the needs of all who may be impacted.

We look forward to being able to progress this important work with your assistance, and reaffirming the Government's commitment to valuing the lives of disabled people.



Hon Carmel Sepuloni
Minister for Disability Issues



Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

Contents

Foreword	iii
Your views on a wage supplement approach	2
What is a MWE permit?	3
Who is affected by the MWE scheme, and how?	4
Why are we looking to replace the MWE?	5
Questions 1 and 2	6
Why are we proposing a wage supplement to replace the MWE?	7
How would a wage supplement approach work?	8
Questions 3 and 4.....	11
How would the rate of the wage supplement be determined?	12
A new, government-mandated, wage-assessment tool	13
A single rate for all who are eligible for a wage supplement.....	14
Questions 5, 6 and 7	16
Advantages of a wage supplement approach	18
Potential challenges of a wage supplement approach	19
Questions 8, 9, 10 and 11.....	20
Question 12.....	21
Demographic questions (optional).....	22

Your views on a wage supplement approach

1. We are seeking feedback from disabled people, families, Disabled People's Organisations, providers, employers and unions on a wage supplement, which could replace Minimum Wage Exemption (MWE) permits.
2. This document provides background information on the MWE, including issues with the MWE and its implementation. It also sets out a potential design for a wage supplement approach.
3. We are interested in hearing your views on the design of a wage supplement, whether you think it is better than the MWE, and any other points that you think are important for the government to consider.

How you can provide feedback

4. You can provide your views either:
 - Directly online at:
<https://www.msd.govt.nz/about-msd-and-our-work/newsroom/wage-supplement-consultation-announced.html>
 - By post:
PO Box 406, Rangiora 7440.
 - By email:
wage_supplement_consultation@msd.govt.nz
5. **We need to hear back from you by Sunday 14 April 2019.**

Next steps

6. Your feedback in this document will be collated and analysed along with other responses, and used to inform whether and how a wage supplement approach may be progressed.
7. Updates on this work will be available on the Office for Disability Issues website at:
<http://www.odl.govt.nz/what-we-do/ministerial-committee-on-disability-issues/disability-action-plan/2015-actions-implementation/02-b-alternatives-to-the-minimum-wage-exemption.html>

Your submission may be made public

8. All submissions received by the government will be subject to the Official Information Act 1982.
9. Question 12 asks what you would like to do with information if it is requested under an OIA.
10. Please set out clearly in your submission if you object to the release of any information in the submission, and in particular, which part (or parts) you consider should be withheld, together with your reasons for withholding the information. The Ministries of Social Development and Business Innovation and Employment will take such objections into account when responding to requests under the Official Information Act 1982.

What is a MWE permit?

11. The MWE scheme has been in place since 2007. It was put in place after the Disabled Persons Employment Promotion (DPEP) Act was repealed. The DPEP Act allowed for disabled people to be employed in segregated workplaces (sheltered workshops) and to have fewer employment rights than people employed elsewhere. For example, people working in sheltered workshops did not have to be paid minimum wage, and they did not receive sick pay or holiday pay entitlements.
12. Section 8 of the Minimum Wage Act 1983 allows Labour Inspectors to issue MWE permits to individual workers. This means the employer can pay those workers less than the minimum wage, if the Inspector is satisfied that the employee is “significantly and demonstrably limited by a disability” in carrying out his or her work requirements. The key difference between section 8 of the Minimum Wage Act 1983 and the DPEP Act is that employees with a MWE issued under the Minimum Wage Act 1983 have the same employment rights and protections as other employees, except to receive the minimum wage.
13. Prospective employees applying for a permit are individually assessed by their employers. This assessment determines what wage rate the employee will be paid. The rate needs to be agreed between both employer and employee. Labour Inspectors provide a check that the assessments have been carried out by employers as they should be.
14. MWEs are for a set period – usually two years – and need to be renewed (via an application) or the minimum wage (or higher) paid on expiry of the permit.

Who is affected by the MWE scheme, and how?

15. There are approximately 900 MWE permits in place in New Zealand. Compared to the number of disabled people in employment generally, this number is very small. The 2013 Disability Survey reported that 291,000 disabled people were in full-time employment and 125,000 disabled people were in part-time employment.
16. Most people with MWE permits are employed at Business Enterprises. Business Enterprises are organisations that receive a funding contribution from the Ministry of Social Development (MSD), and whose primary purpose is to provide employment opportunities to disabled people. A minority of people with MWE permits (3–4%) are working outside of Business Enterprises or disability support organisations. Most businesses in the open labour market that employ someone with a MWE permit have only one employee with a MWE.
17. Most employees with a MWE rely on income support in the form of the Supported Living Payment, as income earned through their work is not sufficient to support them financially. Over a quarter of people with a MWE receive \$1.99 or less per hour of work (before tax), and around 70% receive less than \$4.99 per hour of work (before tax). About 5% of MWE permit holders earn over \$10 per hour of work (before tax). The current adult minimum wage rate is \$16.50 per hour (before tax).

Why are we looking to replace the MWE?

18. As part of the Disability Action Plan, which was jointly developed between government agencies and Disabled People's Organisations, an action was included to identify "better alternatives so that the minimum wage exemption process can be removed".
19. The lead agencies for this work are MSD and the Ministry for Business, Innovation and Employment (MBIE), recognising that the legislation is the responsibility of MBIE, and employment support for disabled people the responsibility of MSD.
20. In 2016 MSD and MBIE worked with representatives¹ from across the disability sector to help identify the issues with the MWE and shape potential alternatives. The main issues that were identified are that:
 - Only disabled people may be subject to the MWE.
 - The MWE conflicts with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), because disabled people with a MWE do not have the same right to earn minimum wage as other people.
 - The assessment process is subjective and the resulting wage rate is focused on what the disabled person cannot do or cannot do as quickly or as well as a non-disabled person, rather than being strengths based and focussing on what the disabled person can do.
 - Wage assessment tools are variable and there are concerns that the tools might not assess disabled people equitably.
 - Labour inspectors do not think they have enough knowledge or expertise in disability to verify that employers' wage assessments are reasonable in the circumstances.
 - Employees (and in some cases their families) may accept or request low wages so that their benefit is not reduced as a result of earnings.

¹ Including from the two disability provider umbrella groups; Inclusive New Zealand and the New Zealand Disability Support Network (NZDSN), as well as People First NZ and Blind Citizens NZ.

Questions 1 and 2

1. Do you think that there needs to be a change to the Minimum Wage Exemption?

Yes

No

2. If yes, what do you think is wrong with the current MWE scheme? (please select all that you agree with, and provide as many other options as you think are relevant)

- a. It discriminates against disabled people
- b. It conflicts with the United Nations Convention on the Rights of Persons with Disabilities
- c. The assessment process focuses on what the disabled person cannot do
- d. The wage assessment tools that are used may not assess disabled people equitably
- e. I don't think there should be a wage assessment process
- f. Other (please specify all other things you think need to change – there is no limit)

Why are we proposing a wage supplement to replace the MWE?

21. For many people, an end to all forms of discrimination (including MWE permits) remains a key objective. At the same time, we understand that for a lot of disabled people who are currently employed with a MWE permit, the job, workplace and income security are important.
22. When we were considering alternatives to the MWE scheme, we were mindful of the need to ensure the protection of all job opportunities that the current scheme provides for disabled people. A “bottom line” requirement for government is that nobody should be worse off as a result of any changes to the MWE scheme.
23. Through the work with disability sector representatives, we identified that a wage supplement would both protect existing employment opportunities for disabled people with a MWE, and would mean that those employees could be paid minimum wage.

How would a wage supplement approach work?

24. Under a wage supplement approach, employers would be required to pay all staff, including all disabled staff, at least minimum wage. In return, employers would be able to receive a wage supplement from the government to assist with some of the wage costs for disabled employees who are eligible for a wage supplement.
25. It is envisaged that a wage supplement be accessible by the same group that is currently accessing the MWE, and those who would be eligible for it in the future. Eligibility criteria for the wage supplement would include that:
 - employees must be demonstrably limited by a disability, even after their employer has made reasonable accommodations
 - the job needs to provide a real opportunity for the disabled person to contribute and use their abilities and skills (i.e. not created solely as a means of occupying the disabled person at a rate heavily subsidised by the government).
26. In addition, we are proposing some additional criteria to further ensure that the wage supplement is not able to be used by employers as a means of subsidising their wage costs for disabled staff more generally, including that:
 - the disabled person must be aged between 16²–64 years at the time of applying for the supplement³
 - the disabled person must meet New Zealand residence requirements, in line with the requirements to receive a benefit and to be entitled to work in New Zealand
 - the disabled person must not have been employed by the same employer at minimum wage or above previously, unless they became disabled by an injury or medical condition after their employment, and their disability limits their ability to meet the requirements of their job (even after reasonable accommodations have been made).
27. The application process for a wage supplement will include a criteria check to ensure it is not used to subsidise wage costs for a broader group than intended.
28. Unlike other employment supports, a wage supplement would not be for a set period of time, but would continue for as long as the disabled person is assessed as eligible.

2 16–19 year olds could be paid the starting out minimum wage rate for the first six months of work, at which point they would need to be paid at least the adult minimum wage, in line with existing legislation. As most young disabled people continue their schooling to age 21, we estimate there would be very few people who may be eligible for the starting out rate and a wage supplement.

3 A wage supplement could continue to be paid at age 65 and beyond, providing that it was applied for and approved before the person turns 65. Currently the age of eligibility for NZ Superannuation is 65. When a client turns 65 and is on a main benefit, they move from that benefit to NZ Superannuation. As NZ Superannuation is not income or asset tested, there would be no return to government from the increased expenditure on a wage supplement once a person turns 65.

29. A wage supplement would increase the earnings of the disabled person who receives it. Correspondingly, this may reduce any benefit payments the disabled person receives and/or increase financial obligations such as KiwiSaver deductions, and Student Loan repayments or child support payments, if applicable.
30. We have modelled a number of scenarios and determined that most people would be better off under a wage supplement approach than they are under the MWE. In rare circumstances, if a person would be worse off as a result of increases in financial obligations from earning more, this could be offset by applying an income exemption under the Social Security Regulations.
31. Under Schedule 8 Part 25 clause 44 of the Social Security Regulations, it is possible to disregard all or part of the income earned by a severely disabled person in employment as chargeable income for benefit purposes. This means that the income that is exempt is not counted when calculating whether earned income will reduce the rate of a person's benefit. Some people with a MWE may already have an income exemption.

Example:

Comparison of earnings under the MWE and a wage supplement approach

Gina works 10 hours per week at a local Business Enterprise. She receives \$1.50 per hour she works and has an income exemption from Work and Income for the earnings she gets from the Business Enterprise, which covers the cost of her bus travel to and from the Business Enterprise. She receives a single rate of Supported Living Payment, 18 years+. She lives at home with her parents and younger siblings and does not pay board. She does not contribute to KiwiSaver. Each week she receives:

- Gross weekly income is \$303.40 from SLP and \$15 from working (total \$318.40)
 - PAYE deduction is \$41.29
- Net income is \$277.11 per week

Under a wage supplement approach, Gina would earn \$16.50 per hour. If we assume she continues to get an income exemption for the \$1.50 per hour that she previously had, each week she will now receive:

- Gross weekly income is \$288.40⁴ from SLP and \$165 from working (total \$453.40)
 - PAYE deduction is \$66.79
- Net income is \$386.61 per week

The net benefit of Gina receiving a wage supplement is \$109.50 per week or \$5,694 over a year/52 weeks. This is after paying additional income tax and abatement of her SLP.

4 Gina's full rate of SLP is abated by \$15 because of \$150 earnings (\$15 of the \$165 she earns are exempt), reducing SLP to \$288.40.

Jeremy has a MWE. He works 28 hours per week at \$5 per hour. He receives a single rate of Supported Living Payment, 18 years+. He lives at home with his parents and does not pay any board. He receives \$12 per week Disability Allowance (DA) from Work and Income for ongoing costs related to his disability. In addition, he is paying back a Student Loan from a course he undertook after leaving school a few years ago. He also contributes 3% of his before tax income to KiwiSaver. Each week he receives:

- Gross weekly income is \$291.40 from SLP⁵, \$12 DA and \$140 from working (total \$443.40)
 - PAYE⁶ deduction is \$62.53
 - Student Loan repayment is \$16.80
 - KiwiSaver contribution (3%)⁷ is \$4.20
 - Total deductions (\$83.53)
- **Net income after deductions is \$359.87 per week**

Under a wage supplement approach, Jeremy would earn \$16.50 per hour. If we assume his financial obligations remain, each week he would now receive:

- Gross weekly income is \$90.40 from SLP (after abatement through earned income), \$12 DA and \$462 from work (total \$564.40)
 - PAYE deduction is \$98.01
 - Student Loan repayment is \$55.44
 - KiwiSaver contribution (3%) is \$13.86
 - Total deductions (\$167.31)
- **Net income after deductions is \$397.52**

The net benefit of Jeremy receiving a wage supplement is \$37.65 per week (\$1,957.80 over a year/52 weeks). This is after paying additional income tax, Student Loan repayments and KiwiSaver contributions. If Jeremy did not have a Student Loan to repay, the net benefit would be higher again. Under a wage supplement approach Jeremy will be able to pay off his Student Loan earlier.

5 This is less than the full rate of SLP as Jeremy's \$140 earnings are considered chargeable income and mean his SLP is abated by \$12 per week.

6 This does not include DA, as DA is a non-taxable allowance.

7 Note KiwiSaver contributions are only paid in respect of earnings, not benefits.

Questions 3 and 4

3. Do you think that a wage supplement approach would be better than the MWE?

Yes

No

4. What things (criteria) do you think should determine whether an individual should be able to get a wage supplement?

How would the rate of the wage supplement be determined?

32. There are two options for determining the rate of a wage supplement:

- a new, government mandated wage assessment tool
- a single rate for all who are eligible for a wage supplement.

A new, government-mandated, wage-assessment tool

33. Currently employers can use any tool they choose to assess the wage rate for their employees. One of the issues identified with the MWE is that current wage assessment tools are variable and there are concerns that not all of the tools used assess disabled people equitably.
34. If there is support to continue with a wage-assessment process, then a new, government-mandated, wage-assessment tool could be developed to ensure that all disabled people eligible for a wage supplement are assessed using the same wage assessment tool. All employers would be required to use this tool for their wage supplement assessments. This would address the issues around variability and equity of the wage rates produced when different tools are used. The government would then pay the difference between the assessed wage rate determined by the newly developed tool, and the minimum wage.
35. There is a risk that the wage-assessment tool could increase wage costs for employers who are already employing disabled people with a MWE, particularly those employers who may have been relying on wage assessment tools that produced very low wage rates. The development and transition to a new tool would need to be managed carefully with employers to ensure that it does not result in disabled people losing their jobs.
36. A government agency would need to continue to maintain oversight of the wage assessment process and ensure that employers use the tool correctly. The Labour Inspectorate currently has this role but considers that it is not well-equipped to perform this function, as it is outside the Inspectorate's core business of enforcing minimum employment standards set in legislation.
37. Developing a wage-assessment tool would require specialist expertise, outside of government. It would also require targeted consultation with employers using these tools to ensure that the tool that is developed is fit for purpose.

A single rate for all who are eligible for a wage supplement

38. A single rate would mean that employers receive the same rate of supplement for all employees who are eligible for a wage supplement. For some people the rate of supplement paid to the employer may be more than they would receive under a wage assessment model, whereas for others it may be less. Employees would not be subject to a wage assessment process and employers would be expected to manage the wage supplement payments they receive across their employees and pay all employees minimum wage.
39. A single rate would be simpler to administer both for employers and for government. It would also align with our obligations under the United Nations Convention on the Rights of Persons with Disabilities, as disabled people would no longer be subject to a wage assessment process.
40. However, a single supplement rate could result in employers choosing to only employ more 'able' disabled people, who would typically be paid at a higher rate under the MWE. This would be at the expense of disabled people who require more assistance and may typically be paid at a lower rate under the MWE.
41. It may also be difficult to reach agreement with employers as to what is a fair rate to pay, which is affordable both for the government and to meet the additional costs employers face when employing disabled staff. The single rate may need to be adjusted in response to increases to the minimum wage.

A new, government mandated wage-assessment tool:	A single rate for all who are eligible for a wage supplement:
<p>Advantages</p> <ul style="list-style-type: none"> • will meet the actual cost of increasing the wages of eligible disabled people to minimum wage • a new tool would be developed to address concerns raised with the current process that allows employers to use any tool they choose. 	<ul style="list-style-type: none"> • administratively simple, for both employers and government • no disabled people would be wage assessed.
<p>Disadvantages</p> <ul style="list-style-type: none"> • may increase wage costs for some providers (although it may also be reasonable and fair) • will continue to wage assess disabled people, when non-disabled are not wage assessed • more administration will be required to undertake the wage assessments and oversee the process • will require a new tool to be developed, which may mean the wage supplement approach cannot be implemented as quickly. 	<ul style="list-style-type: none"> • employers may decide to employ more productive employees at the expense of less productive employees • may be a higher cost for government.

Questions 5, 6 and 7

5. Do you think disabled people eligible for a wage supplement should be assessed to determine what rate of supplement is paid to the employer by the government?

Yes

No

6. If yes:

a. What things should be considered when determining how much an employer should contribute to the worker's wage, and how much should be paid by the government?

b. Who do you think should assess individual employees' productivity and/or their skills and abilities? (e.g. government, employer, someone else – please give as much detail as possible)

c. What kind of government oversight should be applied to employers making use of a wage supplement? Which government agency or agencies do you think should fulfil this role?

If no:

- 7. Do you think the government should pay the employer a single rate of wage supplement for all the disabled employees who are eligible, and avoid an assessment of their work abilities?**

Yes

No

Advantages of a wage supplement approach

42. A wage supplement approach would mean that the MWE could be repealed.
43. All disabled people would have the same employment rights as non-disabled people, including the right to earn at least minimum wage.
44. Those eligible for the wage supplement would receive either the same gross (or before tax and deductions) amount of money as they do currently, or would receive more.
45. The supplement should protect existing employment opportunities for disabled people as the additional cost would be met by government so wage costs for employers should not change significantly.
46. Under an approach that pays a single rate of supplement, disabled people would no longer be subject to wage assessments.

Potential challenges of a wage supplement approach

47. A government-mandated, wage-assessment tool could result in some employers having to pay higher or lower wages to some employees than they currently do (note this is not a challenge with a generic rate of supplement).
48. A single rate of supplement could result in employers only choosing to employ more 'able' disabled people at the expense of more highly disabled people (note this is not a challenge if the approach uses a wage assessment tool to individually assess people's wage rates).
49. Some disabled people may be less inclined to take on additional responsibilities at work if everyone will earn minimum wage regardless of their role. If employers want to maintain relativity between roles, they would need to meet the additional wage costs of higher paid roles.
50. A supplement could be complex for employers to administer and may lead to some employers being less willing or able to accommodate flexible working arrangements (e.g. highly variable hours).

Questions 8, 9, 10 and 11

8. What do you like about a wage supplement approach?

9. What do you think are the downsides or risks of a wage supplement approach?

10. Do you prefer:

- a. a wage supplement (to replace the MWE)
- b. no change
- c. something else – please specify in as much detail as possible the alternative mechanism you would prefer.

11. Any there any other comments/feedback you would like to make?

Question 12

12. If information on submissions is requested under the OIA, are there any parts you would not want released (note we will not release your personal information)?

Please advise what parts you would not want released and why (if submissions are requested we will take this into account when we consider the public interest in releasing information).

Demographic questions (optional)

To help us put your feedback into context, please tell us a little bit about yourself. These questions are voluntary.

1. In what capacity have you completed your feedback?

- a. I am a disabled person / I have an impairment
- I have a MWE currently or have had one in the past
 - I have not had a MWE
 - I don't know / prefer not to say if I have or have had a MWE
- b. I am a family member or friend of a disabled person
- My disabled family member / friend has a MWE or has had in the past
 - My disabled family member / friend has not had a MWE
 - I don't know / prefer not to say if my disabled family member / friend has or has had a MWE
- c. I am an employer
- I employ people with MWEs in my business enterprise
 - I employ people with MWEs
 - I do not currently employ anyone with a MWE
 - I don't know / prefer not to say if I employ anyone with a MWE
- d. I am from a disability organisation
- e. I am none of the above

2. What is your ethnic group?

(Please select all ethnic groups you identify as)

- Māori
- NZ European
- Australian
- Other European
- Samoan
- Cook Island Māori
- Tongan
- Niuean

- Tokelauan
 - Fijian
 - Other Pacific Peoples
 - Southeast Asian
 - Korean
 - Chinese
 - Indian
 - Other Asian
 - Middle Eastern
 - Latin American
 - African
 - Other ethnicity
-

3. What is your age group?

- Under 15
- 15–24
- 25–34
- 35–44
- 45–54
- 55–64
- 65 or older

4. What is your gender?

- Male
- Female
- Gender diverse

