

Chair
Cabinet Social Wellbeing Committee

CONSULTATION ON A WAGE SUPPLEMENT APPROACH TO REPLACE MINIMUM WAGE EXEMPTION PERMITS

Proposal

- 1 This paper seeks agreement to consult with the disability sector on the proposed design of a wage supplement approach, which would support the removal of the Minimum Wage Exemption (MWE).

Executive summary

- 2 Approximately 900 disabled people in New Zealand are currently paid less than the minimum wage. Although this is enabled by legislation, it is discriminatory as only disabled people are subject to the MWE.
- 3 In line with one of the actions in the Disability Action Plan, officials worked with a reference group from the disability sector to consider and shape alternatives to the MWE. This identified a wage supplement as the option most likely to address the issues identified with the MWE, while also protecting existing job opportunities.
- 4 Key components of a wage supplement approach include that:
 - it would be accessible by the same group that is currently accessing the MWE, and those who would be eligible for it in the future
 - the government will meet the cost of paying the wage supplement
 - it would be paid to employers with respect to eligible employees, and employers would then pay their disabled staff minimum wage
 - the application process would include a criteria check to ensure it is not being used to subsidise wage costs for a broader group than intended
 - 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
- 5 While modelling suggests that most disabled people with a MWE would be the same or better off financially under a wage supplement model, any negative financial impact on disabled people could be prevented by applying section 66A of the Social Security Act. The purpose of a section 66A is to provide an incentive for severely disabled people to work by ensuring they are better off financially because they are in employment. Using section 66A would mean that some or all of the disabled person's earned income would be exempt and not counted when calculating whether earned income reduces the rate of a person's benefit. This would ensure that people are not made worse off under a wage supplement approach.

6 s 9(2)(f)(iv)

- 7 We propose to seek feedback from the disability sector on the design of the wage supplement approach, including the methods of calculating and paying the wage supplement. Consultation will help identify the level of support for change to the MWE and a wage supplement approach. Assuming a wage supplement approach is supported, the feedback we receive on the design will be used to further refine the proposed approach and ensure it is fit for purpose.
- 8 While the consultation process would not commit the government to a specific course of action, it is expected to be viewed very positively by the disability community. A number of people from the disability community have already expressed interest in helping to develop the design of an alternative approach to the MWE, and this would provide that opportunity.
- 9 Consultation could take place in early 2019, to enable the design of the wage supplement approach to be finalised ahead of the 2019/20 financial year.

Background

- 10 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), where they did not have the same employment rights as people employed elsewhere (including rights to earn at least minimum wage, holiday pay and sick leave entitlements).
- 11 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. Unlike the previous sheltered workshops, employees with a MWE have the same employment rights and protections as other employees, except to receive the minimum wage.
- 12 There are approximately 900 MWE permits in place in New Zealand. 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 an MWE permit have only one employee with a MWE.
- 13 The Disability Action Plan¹ agreed to by Cabinet in December 2015 contains a commitment to improve employment outcomes for disabled people, by identifying better alternatives so that the MWE process can be removed [SOC-15-Min-0077 refers]. It was included in the Disability Action Plan at the request of Disabled People’s Organisations (DPOs) which have argued for some time now for an end to this discrimination against some disabled people.
- 14 Responsibility for the action is shared across the Ministry for Business, Innovation and Employment (MBIE) and MSD. This is because MBIE is responsible for the Minimum Wage Act 1983, and MSD is responsible for other disability employment supports.

¹ The Disability Action Plan sets out priorities for action that promote disabled people’s participation and contribution in society. It is jointly governed by Disabled People’s Organisations and government agencies.

Officials worked with a group of stakeholders from the disability sector to identify possible alternatives to the MWE

- 15 In 2016 officials worked with representatives² 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 (UNCPRD), because disabled people with a MWE do not have the same right to earn minimum wage as other people.
 - The assessment process is focused on what the disabled person cannot do, or cannot do as quickly or as well as a non-disabled person, and the resulting wage rate reflects this, 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. The Labour Inspectorate's view is that the function of reviewing an employer's wage assessment (productivity assessment), and deciding if it is reasonable to grant a permit on this basis, would sit better with another agency with more expertise in disability issues.
 - Employees (and in some cases their families) accept or request low wages so that their benefit is not reduced as a result of earnings.
- 16 This work with stakeholders also highlighted the importance of protecting existing job opportunities for disabled people working with a MWE.

A wage supplement was identified as the option most likely to address the issues identified with the MWE, while also protecting existing job opportunities

- 17 It was quickly identified that simply repealing the MWE legislation with no supports in place for either employers or disabled people currently with a MWE permit was not an option. It would likely result in the loss of jobs currently held by people with MWE permits.
- 18 Business Enterprise providers had also previously told officials that the only way they could afford to pay disabled employees with a MWE minimum wage was if the government provided the top up³. Without that, Business Enterprise providers believed they would not be sustainable. An underlying principle of the work to identify alternatives to the MWE was that no disabled person should be made worse off as a result of any change. If Business Enterprises cannot afford to remain open a significant number of disabled people would lose their existing jobs.
- 19 Based on advice from officials that a wage supplement was the most likely alternative to address the issues with the MWE, while also protecting existing job opportunities, we directed officials to develop a detailed design for a wage supplement approach.
- 20 Key components of the wage supplement approach would include that:

² 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.

³ This was at a meeting of Business Enterprise providers hosted by Inclusive New Zealand in 2015

- it would be accessible by the same group that is currently accessing the MWE, and those who would be eligible for it in the future
- the government will meet the cost of paying the wage supplement
- it would be paid to employers in respect of eligible employees, and employers would then pay their disabled staff minimum wage, rather than disabled people needing to individually claim this from the government⁴
- the application process would include a criteria check to ensure it is not being used to subsidise wage costs for a broader group than intended
- 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.

A wage supplement approach would increase the net earnings of most disabled people on a MWE permit

- 21 Most employees with a MWE permit rely on income from the Supported Living Payment (SLP), as the income they earn from working is not sufficient to live on. Under a wage supplement approach disabled people would earn more from their work, pay more income tax, and it is possible that the increase in income from the wage supplement could result in the abatement of other financial assistance that the disabled person is receiving.
- 22 Officials modelled a number of scenarios using characteristics common amongst the group of disabled people who we expect would be eligible for a wage supplement. This identified that in the scenarios modelled, disabled people were all either the same or better off financially under a wage supplement model than they are under the MWE, even after abatement to benefits and increased income tax and other social policy obligations have been met.
- 23 However, the modelling also identified that if a person was receiving a significant amount of hardship assistance, the financial assistance they receive could be abated by more than they receive from a wage supplement. While this is considered very unlikely⁵ it would be possible to mitigate this risk by applying an income exemption under section 66A of the Social Security Act⁶. The purpose of a section 66A income exemption is to provide an incentive for severely disabled people to work by ensuring they are better off financially because they are in employment. Using section 66A would mean that some or all of the disabled person's earned income would be exempt and not counted when calculating whether earned income reduces the rate of a person's benefit. This would ensure that people are not made worse off. Most people with a MWE will already have an income exemption under section 66A. The rate of income exemption is calculated on an individual basis, and takes account of each individual's situation including housing costs and health costs (including whether increased income will make them ineligible for a Community Services Card).
- 24 An example of how payment of a wage supplement could impact on a person's earnings is set out on the following page:

Examples: Comparison of earnings under the MWE and a wage supplement approach

Example 1

Jeremy has a MWE. He works 28 hours per week at \$5 per hour. He has a full income exemption for his earnings from Work and Income and receives a single rate of Supported Living Payment, 18

⁴ As per its existing role, the Labour Inspectorate would ensure that employers are paying staff at least minimum wage

⁵ A random check of clients working in Business Enterprises; who are most representative of the group that would be eligible for a wage supplement, did not identify any clients receiving hardship assistance

⁶ Under section 66A of the Social Security Act, 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.

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 \$303.40 from SLP, \$12 DA and \$140 from working (total 455.40)
 - PAYE⁷ deduction is \$64.90
 - Student Loan repayment is \$16.80
 - KiwiSaver contribution (3%)⁸ is \$4.20
 - Total deductions (\$85.90)
- **Net income after deductions is \$369.50 per week**

Under a wage supplement approach, Jeremy would earn \$16.50 per hour. If we assume he continues to receive a full income exemption for his SLP, and his other financial obligations remain, each week he would now receive:

- Gross weekly income is \$303.40 from SLP, \$12 DA and \$462 from work (total \$777.40)
 - PAYE deduction is \$125.73
 - Student Loan repayment is \$55.24
 - KiwiSaver contribution (3%) is \$13.86
 - Total deductions (\$194.83)
- **Net income after deductions is \$582.57**

The net benefit of Jeremy receiving a wage supplement is \$213.07 per week (\$11,079.64 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.

Example 2

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 \$288.40⁹ 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.

⁷ This does not include DA, as DA is a non-taxable allowance

⁸ Note KiwiSaver contributions are only paid in respect of earnings, not benefits

⁹ 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

A wage supplement will require new funding

- 25 Establishing a government-funded wage supplement would result in a new cost for the government. The cost to government will depend on how payment of the wage supplement is calculated. Options include:
- developing a government mandated wage assessment process to determine a person's wage rate, and topping each eligible individual's wage rate up to minimum wage; or
 - agreeing a generic rate of supplement that is paid in respect of everyone with a wage supplement, and which employers manage across their staff with wage supplements, ensuring all are paid minimum wage; or
 - using either of the above approaches, but setting the rate that disabled people should be paid at the living wage¹⁰, rather than the minimum wage.
- 26 s 9(2)(f)(iv)
- 27 The signalled increase to the minimum wage to \$20 by 2021 will increase the cost to government of the wage supplement, unless a decision is made to require employers to meet the cost of increases to minimum wage¹³. In addition, any changes to the abatement regime through the welfare overhaul may also impact on the net cost of the wage supplement to government, if this results in a change to when benefits are abated by earned income. This impact will not be known until the welfare overhaul work has been completed.
- 28 Under section 5(6D) of the GST Act 1985, employers will be required to pay GST on the wage supplement. In line with other wage subsidies administered by MSD, we propose to include GST on the payment of the wage supplement. Employers would then return the GST received to the Government, making this component fiscally neutral.

There are also some potential challenges with a wage supplement approach

- 29 Currently employers can use any tool they choose to assess the wage rate for people subject to a MWE. Anecdotal evidence suggests that some employers are using tools that result in very low wage rates. Developing a government-mandated wage assessment process would ensure that all disabled people eligible for a wage supplement are assessed using the same wage assessment tool. It would be designed to address issues of inconsistency and unreliability of resulting wage rates¹⁴ However, it could result in some employers having to pay higher or lower wages to some employees than they currently do. In particular, it may

¹⁰ The living wage is calculated as the income necessary to provide workers and their families with the basic necessities of living. The living wage in New Zealand is currently \$20.55 per hour (\$4.05 higher than the current minimum wage).

s 9(2)(f)(iv)

¹³ Currently MWE rates are indexed to the minimum wage and employers are required to meet the additional wage cost when the minimum wage is increased, but in most cases that is only a small percentage of the minimum wage, not the cost of the full wage increase.

¹⁴ Development of a wage assessment tool would need to be contracted outside of MSD and MBIE to somewhere with more expertise in this area. There would be a cost associated with this.

impact on those employers who have been relying on individual wage assessment tools that produce very low wage rates (note this is not a challenge with a generic rate of supplement).

- 30 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 (this is not a challenge if the approach uses a wage assessment tool to individually assess people's wage rates). However, in order to be eligible for the supplement, disabled people will still need to meet the criteria for the wage supplement, namely that they are permanently and severely disabled.
- 31 Some disabled people may be less inclined to take on additional responsibilities at work if everyone will earn minimum wage regardless of their role. Business Enterprise providers have advised us that supervisory roles are generally already remunerated at minimum wage. As employees who are already earning minimum wage would not be eligible for the wage supplement it means that if employers want to maintain relativity between roles, they would need to meet the additional wage costs of higher paid roles.
- 32 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 (eg highly variable hours), due to the administration this could create when needing to claim the supplement.
- 33 It is possible that some employers may see the wage supplement as a way to subsidise their wage costs at the government's expense. However, we think the risk of this happening is limited, for the following reasons:
 - 33.1 Business Enterprise providers will be restricted by their existing capacity contracts, meaning they cannot receive the subsidy for more employees than they are contracted to deliver Business Enterprise services
 - 33.2 The higher supervision needs of the group eligible for the supplement would mean that businesses in the open labour market would need to dedicate significant staff resource to supervision, which ultimately would cost employers more than they would gain from a wage supplement.

We propose targeted consultation with the disability sector

- 34 We propose to seek feedback from the disability sector on the design of the wage supplement approach, including the methods of calculating and paying the wage supplement. Consultation will help identify the level of support for change to the MWE and a wage supplement approach. Assuming a wage supplement approach is supported, the feedback received on the design will be used to further refine the proposed approach and ensure it is fit for purpose.
- 35 The wage supplement idea was developed by the disability sector. Further and wider consultation with the disability sector is necessary to determine the level of support for a wage supplement approach, and to consider some key design questions.
- 36 We propose to seek feedback from key stakeholders rather than a public consultation process. This will mean the consultation process can be completed in a shorter timeframe. Key stakeholders include:
 - employers of disabled people, and in particular Business Enterprise providers
 - disabled people, including but not limited to, disabled people currently working with a MWE permit
 - family and whānau of disabled people

- unions and employer associations
- DPOs.

37 Disabled people with a learning disability are a particular group we want to hear from, as most people with a MWE have a learning disability. Officials will contract with a disability organisation that focuses on people with learning to gather their feedback on the proposal.

38 While the consultation process would not commit the government to a specific course of action, it is expected to be viewed very positively by the disability community. A number of people from the disability community have already expressed interest in helping to develop the design of an alternative approach to the MWE, and this would provide that opportunity.

39 A draft discussion document has been prepared and is attached to this paper. Subject to Cabinet approval to consult, this document will be translated into an easy-read format for people with a learning disability so the consultation process is accessible to them.

40 s 9(2)(f)(iv)

Timeframes

41 Subject to agreement to consult, the consultation could take place in early 2019 so that the design of the wage supplement can be finalised ahead of the 2019/20 financial year.

Consultation

42 This paper was written by the Ministries of Social Development and Business, Innovation and Employment. The Ministries of Health, Education, Justice, Women, Pacific Peoples, Inland Revenue, Te Puni Kokiri, the Department of Internal Affairs, the Accident Compensation Corporation, Treasury and the Department of Prime Minister and Cabinet were consulted. Their views have been incorporated into the paper.

Financial implications

43 The cost of the proposed consultation will be met from within baseline funding in the MSD.

44 A wage supplement will require new funding, regardless of how it is designed. s 9(2)(f)(iv)

Human rights implications

45 There are no human rights implications from the proposals in this paper, however, the proposals may contribute to further meeting obligations under New Zealand human rights legislation. In particular it will address discrimination against people with disabilities in employment, in line with sections 21, 22 and 29 of the Human Rights Act 1993. It will also ensure freedom from discrimination in line with section 19 of the New Zealand Bill of Rights Act 1990

46 If progressed, a wage supplement approach would remove the discriminatory effect of the current MWE legislation, and all disabled people could earn at least minimum wage. It would be viewed positive by the United Nations Committee on the Rights of Persons with Disabilities, which in 2014 recommended that New Zealand examine alternatives to MWE permits in the employment of disabled people. It would also contribute to meeting our obligations under the United Nations Convention on the Rights of Persons with Disabilities more generally, in particular Article 27 which relates to equal remuneration for work of equal value.

Legislative implications

47 There are no legislative implications arising from this paper.

48 A wage supplement would ensure that section 8 of the Minimum Wage Act 1983 stops being utilised. It would also ensure that no disabled people will lose their jobs, and no businesses will be disadvantaged, in the event this provision is repealed. § 9(2)(f)(iv)

Regulatory impact and compliance cost statement

49 A regulatory impact and compliance cost statement is not required at this stage.

Gender implications

50 There are no specific gender implications.

Disability perspective

51 The wage supplement approach that we propose to consult on seeks to enhance the rights of a discrete group of disabled people who are disadvantaged in employment compared with others. The consultation process will also explicitly target the views of disabled people.

52 The wage supplement approach appears to endorse the Business Enterprise model. As a model of segregated employment, the Business Enterprise model is contrary to the United Nations Convention on the Rights of Persons with Disabilities.

Publicity

53 A communications plan will be developed prior to targeted consultation.

Proactive release

54 The Ministers for Disability Issues and Workplace Relations and Safety will release this paper proactively, subject to any redactions as appropriate under the Official Information Act 1982.

Recommendations

55 It is recommended that the Committee:

- 1 Note that the Disability Action Plan agreed to by Cabinet in December 2015 contains a commitment to improve employment outcomes for disabled people, by identifying better alternatives so that the minimum wage exemption process can be removed

- 2 Note that work undertaken with key stakeholders from the disability sector in 2016 identified a wage supplement as the approach most likely to address the issues with the minimum wage exemption while also protecting existing employment opportunities for disabled people
- 3 Note that the proposed design for a wage supplement approach will require new funding to implement s 9(2)(f)(iv)
- 4 Direct MSD and MBIE to consult with targeted disability sector stakeholders to identify the level of support for replacing the minimum wage exemption with a wage supplement approach
- 5 Agree that the attached discussion document be used to support consultation with the disability sector
- 6 Authorise the Ministers of Social Development and Disability Issues, and Workplace Relations and Safety to make minor changes to the discussion document, as needed to finalise the document
- 7 Note what is learned from the consultation process will inform the final design of the wage supplement approach, s 9(2)(f)(iv)
- 8 Invite the Minister for Social Development, Minister for Disability Issues, and the Minister for Workplace Relations and Safety to report back to Cabinet on the design of the wage supplement approach following consultation.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development
Minister for Disability Issues

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety