

Joint Report

Date: 17 April 2020 **Security Level:** IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development
Hon Grant Robertson, Minister of Finance
Hon Iain Lees Galloway, Minister of Workplace Relations and Safety
Hon Phil Twyford, Minister for Economic Development
Hon Stuart Nash, Minister of Revenue

CC Hon Dr Megan Woods, Minister of Research, Science and Innovation

Clarification on eligibility for the current COVID-19 wage subsidy and leave schemes (the Schemes) and the implementation approach

Purpose and summary of the report

1. This paper seeks your guidance on the eligibility to the current Schemes, for: some state sector employers; and 'pre-revenue' firms that are adversely impacted by COVID-19.
2. This paper also provides a consolidated picture of the decisions and operational arrangements that allow implementation of the current Schemes, including:
 - a record of key decisions and related operational interpretations (Appendix A)
 - an outline of the audit and assurance processes (Appendix B)
 - an update on emerging issues and how they have been resolved (Appendix C).
3. Please note separate advice is being developed on next steps for the wage subsidy and leave schemes, whereas this paper clarifies and proposes immediate refinements to the current Schemes.

Recommended actions

It is recommended that you:

1. **note** that the COVID-19 wage subsidy and leave Schemes were stood up at pace and the details evolved swiftly in the context of fast evolving public health and international responses to COVID-19
2. **note** that there has been continuous clarification and improvement of the operational approaches to the Schemes to address emerging issues raised by all stakeholders

3. **note** that Cabinet has delegated authority to approve minor policy matters and operational details to Joint Ministers (CAB-20-MIN-0105), (CAB-20-MIN-0108) and (CAB-20-MIN-0130)

State sector eligibility for the Schemes

4. **note** that Joint Ministers agreed on 16 March 2020 that the following state sector organisations would not be eligible for the Schemes:
 - Public service (government departments)
 - Non-public service departments (e.g. New Zealand Police and Parliamentary Services)
 - Statutory and independent Crown entities and
 - Crown Research Institutes
5. **note** that a range of state sector organisations, including Tertiary Education Institutions, State Owned Enterprises and Mixed Ownership Model Companies were not excluded from the scheme under the 16 March 2020 decision
6. **note** that operationally, all state sector organisations listed in the State Services Commission (SSC) Guide to Central Government Agencies (Appendix D) have been treated as ineligible for the Schemes
7. **note** that changing the operational approach to the scheme will increase the fiscal costs of the scheme and will require recommunication of eligibility criteria for certain state sector organisations to clarify their eligibility
8. **note** the decisions for excluding certain state sector organisations from the Schemes were taken prior to the Level 4 shut-down
9. **note** that some state sector organisations have experienced significant reductions in commercial revenues as a result of COVID-19 and that some commercially-focused state sector organisations were excluded from accessing the schemes as per the March 16 decision, such as Crown Research Institutes
10. **consider** the following three options:

Option 1:

- 10.1 **agree** to change the operational approach to implementing the schemes to reflect decisions on state sector eligibility from 16 March (as outlined at paragraph 3), which will enable the following state sector organisational types to access the Schemes:
 - State Owned Enterprises
 - Mixed Ownership Model Companies
 - Other Crown Entity Companies, such as Television New Zealand Limited
 - Other Crown Entity Subsidiaries (approx. 150)
 - Public Finance Act Schedule 4A Companies

- Public Finance Schedule 4 Organisations including Fish and Game Councils, Reserve Boards, Trusts, Other (Bodies Corporate) and Other (Unincorporated)
- Tertiary Education Institutions and Crown Entity Subsidiaries of New Zealand Institute of Skills and Technology
- School Boards of Trustees
- Reserve Bank of New Zealand
- Offices of Parliament

agree/disagree

10.2 **note** the fiscal cost of agreeing to recommendation 10.1 is estimated at up to approximately \$500 million (assuming 100% uptake)

10.3 **agree** to reverse the 16 March decision to exclude Crown Research Institutes(CRIs) from accessing the Schemes to enable CRIs to access the schemes

agree/disagree

10.4 **note** the estimated fiscal cost of agreeing to recommendation 10.3 is up to approximately \$30 million, assuming all CRIs take up the scheme.

OR

Option 2:

10.5 **agree** to officials' recommended option to include all state sector organisations, subject to the proposed additional eligibility criteria set out at 10.6, with the exception of:

- Public Service Departments
- Non-Public Service Departments
- Tertiary Education Institutions
- Subsidiaries of the New Zealand Institute of Skills and Technology (NZIST)

agree/disagree

10.6 **agree** to the following eligibility criteria for state sector organisations not excluded at 10.5, to allow state sector organisations that meet the following criteria to access the schemes:

- require financial support to retain employees;
- have experienced a 30% reduction in total revenue, which is attributable to COVID-19 and is driven by reductions in third party or commercial revenues
- have not received and do not expect to receive funding from the Crown in recognition of COVID-19-related reductions in revenues

agree/disagree

10.7 **note** the fiscal cost of agreeing to recommendation 10.5 and 10.6 is up to approximately \$280 million assuming 100% uptake

OR

Option 3:

10.8 **agree** to continue with the status quo operational approach of excluding all state sector organisations from accessing the schemes

agree/disagree

10.9 **note** that without access to the schemes, some state sector organisations may require additional support to maintain employees, and/or to remain solvent

Pre-revenue (start-up) businesses eligibility for Schemes

11. **note** that pre-revenue research and development ('start-up') businesses are ineligible for the Scheme because they rely on a mix of venture capital investment and grant funding that is not defined as revenue and there is a risk that many may fail or make researchers redundant as they are not able to raise capital during the COVID-19 Alert Level shutdowns

12. **note** there are fiscal implications of allowing pre-revenue 'start-up' businesses to access the Schemes, with the maximum cost estimated at between \$20M and \$40M

13. **note** that access to the schemes may not provide sufficient support to prevent failures of start-up firms, which could increase the deadweight loss of the schemes

14. **note** that the Ministry of Business, Innovation and Employment is preparing advice for the Minister of Research, Science and Innovation on other possible support measures for Research and Development businesses, even if they become eligible for the Schemes

15. **agree** either:

to continue with the current operational approach which excludes employers that cannot demonstrate a 30 percent revenue loss due to COVID-19 from the wage subsidy scheme

agree/disagree

or

officials preferred approach that, for pre-revenue 'start-up' businesses that are 'seed' or 'venture' backed, or are Callaghan Innovation affiliated as of 17 March 2020, which have no other revenue other than government support and seed or venture capital, the definition of a revenue loss be amended to include a fall in projected capital income of 30 percent for the purposes of the Schemes' 30 percent revenue loss qualifying rule

agree/disagree

16. **note** that if you agree to extend the Schemes to pre-revenue ('start-up') businesses then we will amend the guidance for applicants to reflect the rules applicable to pre-revenue firms and MSD may, as part of any audit of such firms, consult with Callaghan Innovation to confirm whether recipients were legitimate Research and Development 'start-up' business

Overall implementation approach

17. **note** that a consolidated record of decisions establishing the Schemes made through Cabinet and Joint Ministers are summarised in Appendix A attached

18. **note** that internal and independent audit, assurance and review processes have been developed by the Ministry of Social Development (MSD) in consultation with Treasury to complement the 'high-trust' approach for implementing the Schemes and these are outlined in Appendix B attached

Financial Recommendations

19. **note** that agreeing to 10.1 and 10.3 will incur expenses of up to approximately \$535 million against the existing Business Support Subsidy Covid-19 appropriation
20. **note** that agreeing to 10.5 will incur expenses of up to approximately \$280 million against the existing Business Support Subsidy Covid-19 appropriation
21. **note** that agreeing to 16 will incur expenses of approximately \$20-\$40 million against the existing Business Support Subsidy Covid-19 appropriation.
22. **note** that the original Wage Subsidy Scheme costings of \$8-12 billion made assumptions that the majority of state sector organisations would be eligible
23. **note** that at this stage, our estimated fiscal cost of the scheme remains unchanged
24. **note** that no appropriation changes are required at this stage, because the original appropriation was made at the upper bound of (\$12 billion)
25. **note** that agreeing to 10.1 and 10.3 will incur expenses of up to approximately \$535 million against the existing Business Support Subsidy Covid-19 appropriation
26. **note** that agreeing to 10.5 will incur expenses of up to approximately \$280 million against the existing Business Support Subsidy Covid-19 appropriation
27. **note** that agreeing to 16 will incur expenses of approximately \$20-\$40 million against the existing Business Support Subsidy Covid-19 appropriation
28. **agree** to include Crown Research Institutes and Pre-revenue Start-Up Businesses in scope of eligibility for the schemes, and incur additional associated fiscal costs within the existing Business Support Subsidy appropriation
- agree/disagree
29. **note** that decisions taken to increase access to the schemes will push the likely final cost towards the upper bound of the estimate (\$12 billion)

Justine Cornwall
General Manager, Employment and Housing
Policy, The Ministry of Social Development

Hon Carmel Sepuloni
Minister for Social Development

s 9(2)(a)

Date

Date 17/4/20

s 9(2)(a)

Manager, Welfare and Oranga Tamariki, The
Treasury

Hon Grant Robertson
Minister of Finance

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Date

Date 17/4/20

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Manager Innovation Policy,
Science Innovation International Branch,
Labour Science Enterprise, The Ministry of
Business, Innovation and Employment

Hon Iain Lees Galloway
Minister of Workplace Relations and Safety

Agreed by email

Date

Date 17/4/20

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Manager, Investment Policy, The Ministry of
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Hon Phil Twyford
Minister for Economic Development

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Policy Lead, Policy and Strategy, Inland Revenue

Hon Stuart Nash
Minister for Revenue

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Date 17/4/20

Date

Context: Decisions to establish the wage subsidy and leave schemes

The economic response to COVID-19 supports the public health response

4. On 16 March Cabinet agreed to an 'economic package' of measures to address the immediate public health risks of COVID-19, maintain confidence, cushion the impact of the economic shock and support the economic recovery (CAB-20-MIN-0108 refers).
5. The economic package included wage subsidy and leave measures to support incentives for self-isolation and support businesses and workers most affected by COVID-19.
6. The COVID-19 Alert Levels 3 and 4 created the need for the Schemes to enable firms that needed to shut down to support employees to maintain an employment connection, and to avoid incentivising unnecessary economic activity which may intensify or prolong the pandemic. This was in-addition to supporting firms that can continue to operate (either through working from home or as essential services) but with a revenue loss attributable to COVID-19.

The details of the wage subsidy and leave schemes evolved swiftly

7. On 17 March 2020 the initial wage subsidy and leave schemes were announced with a cap of \$150,000 per firm. On 23 March 2020 Cabinet lifted this cap to support workers in medium and large sized firms (CAB-20-MIN-134). On 27 March 2020, Ministers agreed to simplify the system by collapsing the leave scheme into the wage subsidy to prevent double dipping and on 29 March administrative modifications were agreed to help prevent job losses and ensure income reaches employees during Alert Level 4. On 1 April, a COVID-19 Essential Worker Leave Support Scheme was announced. A consolidated record of the key decisions to establish the Schemes are outlined in Appendix A.
8. For each of the policy developments described above the resulting operational changes were implemented by MSD within a few days.

Emerging issues that may require further clarification and decisions

State sector organisations are currently treated as ineligible for the Scheme

9. The following state sector organisations were explicitly excluded from accessing the Schemes, in a 16 March Joint Ministers decision (Joint Report T2020/669 refers):
 - The Public Service (government departments)
 - Non-public service departments (e.g. New Zealand Police and parliamentary services)
 - Statutory and Independent Crown Entities
 - Crown Research Institutes.
10. Operationally, all state sector organisations have been excluded from the scheme to allow time to confirm Ministers' intentions on state sector eligibility (Table 1 refers).

Table 1 –Operational approach to state sector organisations and related eligibility for the Schemes

State sector	
Group A – Excluded by 16 March decision, <i>treated as ineligible</i>	Group B Not excluded by 16 March decision, <i>treated as ineligible</i>
<p>Government departments, departmental agencies and non-public service departments (such as Ministries, the Cancer Control Agency and the Defence Force)</p> <p>Crown Entities and Statutory Entities including</p> <ul style="list-style-type: none"> • Crown Agents (such as the Accident Compensation Corporation and District Health Boards) • Autonomous Crown Entities (such as the New Zealand Lotteries Commission) • Independent Crown Entities (such as The Electoral Commission) <p>Certain Crown Entity Companies, including:</p> <ul style="list-style-type: none"> • Crown Research Institutes 	<p>Other Crown Entity Companies, including:</p> <ul style="list-style-type: none"> • Other Companies such as TVNZ Ltd • Other Crown Entity Subsidiaries (approx. 150) <p>Public Finance Act Schedule 4A Companies, such as City Rail Link Ltd</p> <p>State Owned Enterprises, such as New Zealand Post Ltd</p> <p>Mixed Ownership Model Companies, such as Genesis Energy Limited</p> <p>Tertiary Education Institutions (Universities, Polytechnics and Wananga) and Crown Entity Subsidiaries of NZIST</p> <p>Public Finance Act Schedule 4 Companies, including:</p> <ul style="list-style-type: none"> • Fish and Game Councils • Reserves Boards <p>Trusts and Other (Bodies Corporate and Unincorporated)</p> <p>Certain Crown Entity Companies, including:</p> <ul style="list-style-type: none"> • School Boards of Trustees <p>The Reserve Bank of New Zealand</p> <p>Offices of Parliament</p>
Outside the state sector – <i>treated as eligible</i>	
<ul style="list-style-type: none"> • Local Government such as Regional, City and District councils and Council Owned Organisations • Kindergartens and Early Childhood Centres • Non-Government organisations funded by the Government • Businesses contracted to provide services to state sector employers (e.g. cleaning, security etc). 	

11. Amendments to the operational approach are required to give effect to the 16 March decision, such that state sector organisations in Group B are treated as eligible. These organisations include those most heavily reliant on commercial revenues, which are likely to be eligible for the scheme, particularly State Owned Enterprises, Mixed Ownership Model Companies, Other Companies such as Radio New Zealand Ltd and Other Crown Entity Subsidiaries. This group also includes state sector organisations that we would not expect to access the scheme, such as the Reserve Bank of New Zealand, Offices of Parliament and School Boards of Trustees as these organisations are unlikely to incur a 30% reduction in revenues.
12. We consider that providing access to the wage subsidy scheme to be a relatively efficient means of supporting commercially-exposed state sector organisations. Providing access to the schemes will provide a timely cash injection for eligible organisations, which may prevent future failures, or reduce the depth of financial issues in the medium term. There would be additional costs to the Crown if the state sector incurs liquidity or insolvency

challenges, or makes significant redundancies, due to additional support required, or the loss of capital if state sector organisations were to fail.

13. If the operational approach is amended based on the 16 March decision, tertiary education institutions (TEIs) would become eligible. We have not received applications from the tertiary education sector as the State Services Commission and Tertiary Education Commission have communicated their ineligibility. Changing the operational approach to the scheme will require recommunication to TEIs and other state sector organisations to clarify their eligibility.
14. The fiscal impacts of including TEIs are estimated to be up to approximately \$255 million based on 100% uptake of the scheme for all staff of TEIs. However, the Tertiary Education Commission has provided a guarantee of 2020 funding to TEIs to mitigate the financial impacts of potential reductions in enrolments, as such, many TEIs are unlikely to experience a 30% reduction in revenues. However, we cannot be certain that there will not be cases where TEIs become eligible before the end of the current scheme on 9 June 2020. Some international student-focused TEIs will be in significant financial hardship with extended border closures, and may be eligible for the schemes, but we do not expect the wage subsidy to be sufficient to ensure the viability of these organisations.
15. Amending the operational approach will increase the fiscal costs of the scheme, however we note that the eligible state sector organisations were included in the original scheme costings. We estimate that by including the organisations eligible as per the 16 March decision, through a change in the operational approach would cost up to a maximum of \$503 million, assuming 100% uptake for all employees in eligible organisations. The majority of this, (approximately \$255 million is for Tertiary Education Institutions).
16. Uptake for the schemes is nearing the \$12 billion total appropriation. At the time of writing, \$9.9 billion in wage subsidies has been paid by MSD. We expect private sector uptake to slow, with most small and medium firms already having availed of the scheme. Around 40% of large businesses (over 100 employees) have received wage subsidies, with the majority of future uptake expected to be larger businesses. If operational changes are made to include state sector organisations, this could result in the appropriation becoming exhausted faster, requiring additional funding to be appropriated.
17. In addition to amending the operational approach, there may be cause to refine the terms of the schemes to include additional state sector organisations, such as Crown Research Institutes, which were excluded through the 16 March decision. We propose to create additional eligibility criteria for state sector organisations to ensure that only those experiencing reductions in third party or commercial revenues access the schemes. Options to amend the scheme are provided below.

Reconsidering the scope of eligible state sector organisations

Crown Research Institutes

18. Crown Research Institutes (CRIs) are currently excluded from the schemes. This was on the basis that funding arrangements were under review, and that it would be easier to bring

them into scope if required than to remove them. The exclusion was also made prior to moving to Alert Level 4.

19. CRIs are highly dependent on third-party revenue, with some receiving up to 60 per cent of total revenue from commercial sources. There have been significant reductions in the commercial revenues to several CRIs as a result of Alert Level 4 shut downs, primarily Plant and Food Research and AgResearch Limited.
20. Officials understand that some Crown Research Institutes are considering options to reduce costs and avoid liquidity issues, including potential reductions of critical science capability, due to the impacts of COVID-19.
21. There are seven CRIs, and we expect 3-6 to meet the 30% reduction in revenue criteria. If the terms of the scheme were amended to allow these organisations to be eligible for the wage subsidy, we estimate the fiscal implications to be around \$32 million at 100% uptake for all employees of CRIs.
22. We note that a review of CRIs (including their financial viability and funding model) was underway prior to the onset of COVID-19. Officials will report back to shareholding Ministers separately regarding other entity viability issues (such as short-term liquidity issues related to COVID-19) and long term systemic funding related issues. In the interim, we consider that accessing the wage subsidy scheme would provide a stop-gap to reduce the risk of redundancies in CRIs while more sustainable funding arrangements are considered.

Other State Sector Organisations

23. Amending the schemes to facilitate access for one type of organisation (CRIs) may not be consistent with a principle-based approach. In addition, since the 16 March decision to exclude certain state sector organisations from the schemes, economic circumstances have changed significantly. There is a risk that additional state sector organisations will be experiencing financial difficulties, including some organisations listed in Group A such as Autonomous Crown Entities (eg Museum of Te Papa Tongarewa Board).
24. The initial rationale to exclude certain state-sector organisations from the wage subsidy scheme asserted that these organisations could be directed to continue to pay wages costs. This may no longer be valid given the general constraints on revenues for commercially-exposed state sector organisations at Alert Level 4.
25. Official's preferred approach is to amend the current wage subsidy and leave schemes to allow access to all state sector organisations, subject to additional eligibility criteria. This would ensure that state sector organisations that need additional support can access it, with limited interference with the state sector directive to continue paying employees. We propose the following additional eligibility criteria, to enable access to the schemes to state sector organisations that:
 - require financial support to retain employees
 - have experienced a 30% reduction in revenue, which is attributable to COVID-19 and is driven by reductions in third party or commercial revenues
 - have not received and do not expect to receive funding from the Crown in recognition of COVID-19-related reductions in revenues.

26. We are hesitant to specify a bright line test for commercial revenue dependency, as there is a vast range between state sector organisations. We consider that most state sector organisations will act in good faith, and will test eligibility with relevant monitoring agencies where they are unsure of eligibility.

Table 2 –options for supporting state sector organisations adversely impacted by COVID-19

Pros	Cons	Estimated Costs
Option A. Status Quo – continue with the operational approach to exclude all state sector organisations from accessing the schemes		
<ul style="list-style-type: none"> Provides control over fiscal costs of any support provided to the state sector. Would enable assessment of each entity’s viability, with any Crown support tailored to specific needs. Would allow strategic decision making in line with broader economic response on how to provide support and how much support to provide. 	<ul style="list-style-type: none"> Analysis and consultation will take some time. Some organisations may require more immediate cash injections. May lead to differential treatment of state sector organisations compared with similar private sector organisations, particularly the more commercially-facing state sector organisations. Would continue to exclude Crown Research Institutes which require additional funding There may be other state sector entities requiring additional support that would not usually receive direct Crown funding, or it may not be appropriate for the Crown to provide direct support. 	<p>No additional costs of schemes, but additional costs may occur if alternate support is provided.</p>
Option B. Amend the operational approach to allow eligibility of those State sector organisations identified in Group B of Table 1		
<ul style="list-style-type: none"> As at Option A, and: Allows eligibility of the majority of commercially-exposed state sector organisations (particularly State Owned Enterprises and Mixed Ownership Model companies). 	<ul style="list-style-type: none"> As at Option A, and: Increases the fiscal costs of the Scheme compared with the current operational approach, however original costings included relevant state sector organisations (consistent with March 16 exclusions). May allow some large organisations to receive the wage subsidy despite having received Crown support in recognition of COVID19related revenue constraints (eg Universities) Would result in some Crown Entity Subsidiaries being eligible, but the parent organisation (Crown Entity) being ineligible. 	<p>Up to approximately \$503 million at 100% uptake for all eligible state sector entities, including all universities, with a margin of error of \$83 million.</p> <p>The majority of these costs are due to the inclusion of universities, which are large employers (Up to approximately \$255 million based on 100% uptake, with a margin of error of \$42 million) however, many TEIs are likely to be ineligible due to Crown support already provided.</p>

Pros	Cons	Estimated Costs
	<ul style="list-style-type: none"> Requires recommunication of eligibility to Group B organisations. 	
Option C. Allow <u>all</u> state sector organisations to access the schemes (Groups A and B of Table 1) subject to additional eligibility criteria		
<ul style="list-style-type: none"> Efficient provision of financial assistance to support ongoing workforce attachment in eligible state sector organisations. Equitable treatment of state-owned commercial businesses and privately owned businesses. Provides a stopgap to allow development of more sustainable funding approaches for those organisations that will require additional Crown assistance. Maintains incentives for restructure or realignment of operations to respond to changes in market conditions, s because the subsidy will likely be lower than the loss of revenue and related challenges for meeting ongoing operating costs. Simple to implement operationally, as there will be no excluded organisational types. 	<ul style="list-style-type: none"> Increases the fiscal costs of the Scheme. Increases operational burden on MSD. Support may not be sufficient to avoid significant redundancies. Additional support to some state sector organisations may still be required. Risks associated with including universities, as they are large employers. 	<p>Up to approximately \$535 million (as at Option B, plus \$32 million to include CRIs) noting that other small organisations that were previously excluded (ie under Option B) may become eligible, but are not expected to have a significant impact on total scheme costs.</p>
Option D. Include <u>specifically identified</u> organisational types (e.g. subsets of Groups A and B of Table 1)		
<ul style="list-style-type: none"> Allows targeted eligibility to more commercially-oriented organisations (eg Other Crown Entity Subsidiaries). Allows exclusion of specific organisational types in recognition of other assistance provided. Could also include additional eligibility for these organisations based on reliance on commercial revenues. 	<ul style="list-style-type: none"> Ineligible state sector organisations may require additional support through other means. May lead to unintended exclusion of some organisations, based on organisational type, rather than need. If excluded, some organisations such as xxx will be without support as direct Crown funding may not be an appropriate alternative. Additional operational complexity involved to cross-check organisational types in addition to other eligibility criteria. 	<p>Up to approximately \$280 million with a margin of error of \$46 million.</p> <p>This assumes ineligibility of public service and non-public service departments, TEIs and subsidiaries of NZIST, and is based on 100% uptake for organisations likely to meet the 30% reduction in revenue criteria.</p>

27. Estimates of costs are based on 100% uptake for all employees of state sector organisations known to receive commercial or third party revenues. We have made assumptions to convert FTE counts to employee numbers. There may be additional organisations not included in these estimates, however these are not expected to have significant impact on costs, as they would be relatively small employers.
28. The most significant risk of Option C is including Tertiary Education Institutions, which are large employers. Given that the Tertiary Education Commission has provided a funding guarantee for 2020 enrolments to TEIs, they are not considered to be at risk of failure, with the exception of international student-focused TEIs. There is a risk that some universities with significant commercial revenues would be eligible for the wage subsidy scheme under Option C, significantly increasing the fiscal costs of the scheme. To remove this risk, we consider Option D to be the most appropriate approach, noting that tailored support could be provided to TEIs on a case-by-case basis, in addition to the funding guarantee.
29. We recommend Option D, to include all state sector organisations, subject to additional eligibility criteria set out at 44 above, with the exception of:
- Public Service Departments;
 - Non-Public Service Departments;
 - Tertiary Education Institutions; and
 - Subsidiaries of NZIST.
30. We consider Option D is a means of controlling the fiscal risks of providing wage subsidies to universities in addition to the funding guarantee already provided, while enabling those state sector organisations experiencing a significant reduction in revenues as a result of commercial activities, to support ongoing employment of their employees, and to reduce the risks of state sector organisations' failures.

Considering access to the Schemes for pre-revenue research and development 'start ups'

31. A 'start-up' firm is an innovative, high tech firm with high growth potential. New Zealand has around 1,500 of these firms and an estimated 800 of these are 'pre-revenue'. These firms include high-technology science, engineering, health technology and research and development intensive companies¹ that will be crucial for our economic recovery.
32. Start up firms have been excluded through a relatively blunt eligibility test (the definition of revenue under the 30% reduction in revenue criteria) and as such, we consider that the scheme could be amended to reduce as many unintended distortions on the economy as possible. Allowing firms that do not fit into the revenue test due to their youth and their particular financial structure (e.g. venture and seed capital backed firms) will reduce that distortion.

¹ Examples of the types of firms include: a start-up which turns industrial waste into valuable mineral and chemical materials using innovating chemistry, advanced materials, and process design; and a start-up that is developing diagnostic platforms which can be used to diagnose multiple diseases from a single small blood sample.

33. It has been brought to officials' attention that many of these firms do not currently qualify for the wage subsidy as they have no actual or projected revenue. Instead, their only source of 'income' is by capital injection (either private Seed or Venture Capital² or government funds).
34. A lack of additional support for start-up firms may result in job losses of highly skilled personnel, as well as a discontinuation of their research and development projects, and firm failures. This would also result in loss of previous government investments in those firms (as many of these firms receive government grants and additional support through Callaghan Innovation), impact negatively on the development of a pipeline of innovative early stage businesses, and their ability to achieve key milestones important for unlock further private funding.
35. Options to support or consider pre-revenue start-up firms are set out in Table 3 below.

Table 3 –options for supporting pre-revenue firms adversely impacted by COVID-19

Option	Pros	Cons	Costs
a) Retain the status quo and continue to exclude start-ups from being eligible for the Schemes.	No fiscal or operational impact on MSD delivery	Some start-ups may make employees redundant or fail, resulting in loss of government investment and may hinder the innovation environment in New Zealand	Nil
b) Provide other support for start-up firms rather than the wage subsidy or leave payment. MBIE is providing further advice to the Minister of Research Science and Innovation on further support options	No operational impact on MSD delivery	A delay in receiving the support required. Some start-ups require the injection of cash into their businesses quickly to avoid redundancies.	To be determined
c) Include start-up firms in the schemes by clarifying the 30 percent revenue loss rule so that seed or venture backed or Callaghan Innovation affiliated firms with no other revenue sources (other than government support and investment capital to be verified) only, can count a fall in projected capital income of 30 percent will fall within the definition of revenue and count as a fall in revenue for the purposes of qualifying for the wage subsidy.	Eligible firms would be enabled to maintain a connection with their employees, and it would provide timely support for those businesses during the level 3 and 4 lockdowns	This support may not be enough for these types of firms, and it may only delay their failure (although MBIE is looking for other options) It will be disruptive of MSD implementation of the Schemes which are under significant strain from the cumulative effect of numerous rule changes.	The fiscal impact is discussed below. It is anticipated to be met from within the existing appropriation.

² Seed and Venture Capital is a form of private equity financing that is provided by Angel Investors and Venture capital firms or funds to start-ups (e.g .through Angel Investors) and emerging companies that have been deemed to have (or demonstrated) high growth potential (in terms of number of employees and/or annual revenue). Venture backed companies are not your typical firms who can access debt (limited collateral) and are unable to loan money from banks or friends and families. Venture backed firms have a unique business model and are generally high tech; they also tend to perform complex research and development.

36. As there are no immediately available public data on the number of private capital transactions, we cannot estimate the fiscal impact of Option C with certainty. However, we estimate we have approximately 800 pre-revenue start-ups averaging 4-7 employees, with a much smaller number of this set of firms suffering from disruption to capital raising activities. The upper bound of the total fiscal impact of this recommendation is therefore up to around \$32 million, although we expect actual costs to be lower.
37. If Ministers would like to include pre-revenue 'start-up' firms in the Schemes, officials will work with Callaghan Innovation to develop an effective verification mechanism.

Implementing the Schemes required swift development of operational approaches

Operational decisions were made consistent with the purpose and intent

38. The Schemes are delivered through Work and Income in cooperation with Inland Revenue (IR) and the Ministry of Business, Innovation and Employment (MBIE). To stand up the Schemes in a timely and efficient way a broad range of operational determinations were made collaboratively, drawing on expertise across the relevant agencies. The resulting operational rules and systems are informed by the broad policy directions outlined in the various Cabinet minutes and Joint Minister decisions. Officials would like to draw Ministers attention to the following key elements of the implementation approach.

'A high trust approach was adopted for implementing the Schemes

39. A key component of the Schemes' implementation is a declaration that employers sign to confirm their eligibility and obligations. § 9(2)(k) [REDACTED]
40. The high trust approach allows the Schemes to pay funds efficiently, but also inherently contains fiscal and integrity risks, § 9(2)(k) [REDACTED] of support going to those who do not need it. To address these risks officials have developed the audit and assurance processes which will be continuously checked, tested and strengthened with the assistance of internal and external experts. Appendix B outlines the key internal and external audit and assurance processes.

Emerging issues have been resolved with flexibility and cross government cooperation

41. Some queries raised with officials have revealed policy gaps which have been addressed through the continuous development and improvement of operational guidance. This has been important to ensure a consistent and fair implementation of the Schemes and consistent advice across agencies. A list of the types of issues raised, and the approach we have adopted to date is provided in Appendix C. The two most commonly raised queries outlined below are also being addressed in advice on the Essential Workers Scheme that MBIE is providing to Ministers later this week:
- **Flexibility in assessing a 30 percent revenue loss:** While the agreed revenue loss assessment methods work for the majority of circumstances, Cabinet did not appear to intend for it to be interpreted narrowly if this excludes businesses that were

envisioned to be included (e.g. in the fiscal cost estimates) consistent with the purposes of the Schemes. It has also become clear that there are a range of circumstances where technical determinations are required to establish how best to ascertain a 30 percent loss. For example, for a business with multiple arms some which make a loss and some which don't.

- **Confusion about the ongoing the application of employment law:** There have been a number of queries about the employer/employee relationship and how employment arrangements can be changed. In particular, whether or not employees can be instructed to take leave and how a reduction in their wage might be agreed. MSD and MBIE have consistently communicated that employers are required to meet all their normal obligations under employment law and people have been directed to existing employment law resources.

We may bring additional matters to your attention if they require decisions

42. There has not yet been many emerging operational issues surfaced for the Essential Workers Leave Scheme as it went live recently on 6 April 2020. It is possible new issues will be raised about either Scheme that require a significant change to the operational approach adopted to date. If this occurs Ministerial guidance will be sought.

Appendix A: Consolidated record of decisions establishing the COVID-19 wage subsidy and leave schemes

For the sake of brevity this summary is not comprehensive, and where a subsequent decision further clarified a particular matter, the later decision is quoted. It is also not organised entirely chronologically and presented according to content.

Decisions to develop wage subsidy and leave-payment schemes

1. On 9 March 2020, Cabinet directed officials to develop a targeted wage subsidy scheme for workers in the most adversely affected sectors (including possible financial support for leave requested by employees as a result of public health directions) (CAB-20-MIN-90).
2. On 16 March 2020 Cabinet agreed to implement a temporary COVID-19 wage subsidy scheme to help affected employees and businesses to adjust to the impact of COVID-19, not to support businesses for the duration of that impact (CAB-20-MIN-0108).
3. On 16 March 2020, Cabinet agreed to design and implement a new scheme to provide financial assistance to incentivise and support those in self isolation or on sick leave due to COVID-19 (CAB-20-MIN-105).
4. On 23 March 2020, Cabinet invited the Minister of Finance and the Minister of Social Development to report on detailed design parameters for the transition to a 'furloughed worker wage subsidy scheme' (CAB-20-MIN-134).
5. On 27 March 2020, Ministers with Power to Act agreed to simplify the system by collapsing the Leave Scheme into the wage subsidy to prevent double dipping (Minute of Decisions by Ministers with Power to Act, 28 March 2020).

Applications for the initial wage subsidy scheme and COVID-19 leave payment scheme closed at 3pm on Friday 27 March 2020. Firms have been able to apply for the modified wage subsidy scheme since 4pm Friday 27.

6. On 1 April, the Cabinet Business Committee (CBC) agreed to create a COVID-19 essential worker leave support scheme to essential business employees to take leave from work to comply with public health guidance (CBC-20-MIN-0020).

Decisions on the key design elements of the wage subsidy and leave schemes

Available to all businesses and sectors adversely impacted by COVID-19

7. On 23 March 2020, Cabinet agreed and clarified that the wage subsidy scheme is available to all businesses (including the self-employed, contractors and sole traders), registered charities, incorporated societies and post settlement governance entities, that are adversely affected by COVID-19 (CAB-20-MIN-0134 refers).
8. State sector organisations are an exception and are treated as not eligible for the Schemes as agreed in a 16 March Joint Ministers decision (Joint Report T2020/669 refers).

To qualify for the wage subsidy scheme applicants must experience a 30 percent or more reduction in revenue due to COVID-19:

9. On 16 March 2020, Cabinet noted that the required revenue loss assessment will be based on a period of at least one month, and the loss of revenue will be at least 30 percent lower than the equivalent period one year ago.
10. It was also noted by Cabinet that the loss can be for any month from January 2020 through to the end of the scheme (CAB-20-MIN-0108).
11. Joint Ministers agreed on 16 March that firms that have experienced a 30% decline in revenue compared to the year before, or who can expect to experience a 30% decline within the duration of the scheme should be eligible for the wage subsidy scheme (Joint Report T2020/669 refers).
12. On 23 March, 2020 Cabinet noted that the application of this revenue loss assessment means that some businesses are inadvertently excluded from the scheme and agreed to further appropriate loss assessment methods (CAB-20-MIN-134) as follows:
 - 12.1 new businesses (i.e. where they are less than a year old) are also eligible where they can demonstrate the revenue loss assessment against a similar time period (ie, 30 percent loss of income attributable to COVID-19 comparing January 2020 to March 2020)
 - 12.2 high growth firms (e.g. ones that have had significant increase in revenue) are eligible where they can demonstrate the revenue loss assessment against a similar time period (i.e., 30 percent loss of income attributable to COVID-19 comparing January 2020 to March 2020)
 - 12.3 self-employed people with variable monthly incomes are eligible if they can demonstrate the revenue loss assessment against the previous years' monthly average (i.e. 30 percent loss of income attributable to COVID-19 comparing March 2020 to the average monthly income in the period March 2019 to March 2020).

Other qualifying criteria

13. On 16 March Cabinet noted that to be eligible for the Schemes a business must be registered and operating in New Zealand. It also agreed that the COVID-19 wage subsidy will only be payable to employers who have taken active steps to mitigate the impact of COVID-19 on their business activities (such as engaged with their bank, Chamber of Commerce, industry association or the Regional Business Partner programme) (CAB-20-MIN-0108).
14. On 16 March, Joint Ministers agreed that only employees legally working in New Zealand should be eligible for the wage subsidy (Joint Report T2020/669 refers).

The quantum of subsidy or leave payments are standard regardless of business type

15. All the various Cabinet agreements consistently approached the quantum of subsidy across all the COVID-19 related schemes as follows. The subsidy will be payable to the employer as a lump sum, at a flat rate of:

- 15.1 \$585.80 (gross, before tax) for each full-time employee, where they usually worked greater than or equal to 20 hours before COVID 19 impacted (similar to the maximum rate of paid parental leave)
- 15.2 \$350.00 (gross, before tax) for each part-time employee, where they usually worked fewer than 20 hours before COVID 19 impacted.
- 16. Cabinet agreed on 16 March 2020 that for the wage subsidy scheme the lump sum will be for 12 weeks per employee.
- 17. CBC agreed on 1 April 2020 that for the Essential Workers Leave Scheme the lump sum payment will be for 4 weeks per employee, with the option for organisations to re-apply for those same workers (CBC-20-MIN-002).

Employer recipients are obligated to pass on the wage subsidies, retain their staff and endeavour to pay at least 80 percent of previous wages

- 18. Cabinet agreed on 16 March 2020 that employers will need to make a declaration setting out their commitment, on best endeavours, to retain employees identified in the declaration as subject to the targeted wage subsidy in employment on at least 80 percent of their regular income for the period of the subsidy.
- 19. On 29 March 2020 Ministers with the Power to Act announced various administrative modifications to the wage subsidy scheme to help prevent job losses and ensure income reaches employees during Alert Level 4 (at the same time as the leave scheme was collapsed into the wage subsidy scheme). The related decisions are contained in a 'Minute of Decisions by Ministers with Power to Act, 28 March 2020', they included agreeing:
 - 19.1 to retain the existing criteria that employers must make best endeavours to pay employees 80% of their normal income
 - 19.2 that in all cases, regardless of hours worked, the entire subsidy must be passed on to employees, including where it is not possible to meet the best endeavours test
 - 19.3 that employees must stay in employment for the 12-week period of the subsidy, unless the employee voluntarily ends the employment relationship
 - 19.4 that the requirement to stay in employment will be kept under review to ensure it is not acting as a barrier to employers entering the scheme
- 20. At this time Ministers with the Power to Act also noted that:
 - 20.1 nothing in the scheme overrides an employer's employment law obligations, including to pay for any work completed at the wage rate agreed between employer and employee, the obligation to pay at least the minimum wage for any actual hours of work completed and that no employer may unlawfully compel employees to take annual leave
 - 20.2 employers will, regardless of hours worked, pass on to the employee at least the full subsidy rate, except where the employee's normal income before the impact of

COVID-19 was below the rate of the relevant subsidy, in which case they will pay them their normal income

20.3 in some cases where a business is not operating it is still desirable to maintain a connection between employer and employee even if they can not be paid at 80 percent of their normal income.

21. With regards to the Essential Workers Leave Scheme CBC agreed on 1 April that employers must use any surplus funding from the leave payments to fund essential business workers' wages where possible (CBC-20-MIN-0020).

Decisions on the administration of the Schemes

22. On 16 March 2020, Cabinet agreed:

22.1 that the COVID-19 wage subsidy will be administered by the Ministry of Social Development (MSD) with support as required from Inland Revenue

22.2 that employers will need to make a declaration setting out their commitment, on best endeavours, to retain employees identified in the declaration as subject to the targeted wage subsidy in employment on at least 80 percent of their regular income for the period of the subsidy

22.3 to administer the scheme at pace using a high trust model

23. Cabinet noted that MSD intends to administer the scheme in the following way:

23.1 employers will make applications in relation to affected employees

23.2 employers will have to declare that:

- they meet all of the eligibility criteria;
- they have discussed the application with named employees, who consent sharing information in the application and for the purposes of verification;
- the employer consents to the details in the application may be verified with other agencies, and that this information may be published;
- the employer is aware that they may be audited and prosecuted for fraud if they have provided false information;
- the employer will notify the Ministry of Social Development if circumstances change that affect their eligibility;
- the employer will repay any amount which they are not entitled to.

24. Also on 16 March 2020 Cabinet noted that standard justice processes are available to respond to any cases of fraudulent declarations that may be identified and Joint Ministers noted the authority to publish the names of businesses receiving the wage subsidy will be included in the disclaimer employers will sign when applying for the wage subsidy. (Joint Report T2020/669 refers),

25. Ministers agreed in various meetings to review the wage subsidy and essential leave schemes after 8 weeks of operation, to ascertain levels of uptake and future need.

Decisions on qualifying for the Essential Workers Leave Support scheme post 6 April

26. The Cabinet Business Committee (CBC) agreed on 1 April 2020 that there are three groups of essential business workers that employers will be eligible to apply for under the scheme, who may otherwise feel pressured to work against public health advice and who are unable to work from home, and that these include workers in essential businesses who:
- 26.1 are deemed at higher risk if they contract COVID-19, in accordance with public health guidance from the Ministry of Health, and as such should self-isolate for the duration of the lockdown (and potentially longer);
 - 26.2 come into contact with someone who has contracted the virus (or have contracted the virus themselves) and, in accordance with Public Health guidance, are required to self-isolate
 - 26.3 have household members who are deemed at higher risk if they contract COVID-19, in accordance with public health guidance from the Ministry of Health and need to stay away from work for the duration of the lockdown (and potentially longer) to reduce the risk of transmitting the virus to that household member (CBC-20-MIN-0020).
27. Subsequently Joint Ministers agreed that the revised Ministry of Health Public Health Guidelines, will form the basis of determining whether an essential worker is deemed to be “at higher risk of severe illness if they contract COVID-19 (2881 19-20 HR 20200573 refers).
28. CBC noted that nothing in the scheme overrides an employer’s legal obligations, including to pay for any work completed at the wage rated agreed between employer and worker; the obligation to pay at least the minimum wage for any actual hours of work completed; and that no employer may unlawfully compel workers to take annual leave.
29. CBC agreed to various employer obligations and eligibility requirements that are similar to the wage subsidy scheme including that:
- 29.1 that essential business organisations (or self-employed essential businesses) should only be eligible to receive this support for paying employees to take leave where:
 - the organisation has experienced a 30 percent revenue loss attributable to COVID-19, or
 - have had their ability to support employees who are at higher risk if they contract COVID-19 that need to take leave negatively impacted by the COVID-19 public health restrictions
 - 29.2 employers must retain workers for the 4-week duration of the subsidy, unless the worker voluntarily ends the employment relationship
 - 29.3 if the employment relationship ends, the employer will not be entitled to further subsidies in relation to the specified worker (CBC-20-MIN-0020).

Avoiding overlap between the essential workers scheme and the wage subsidy scheme

30. CBC agreed that employers should not be able to claim this leave subsidy at the same time as receiving the wage subsidy or original leave subsidy for the same employee, or where they are simultaneously receiving any other government funding to cover any of the situations in this leave payment scheme.

31. CBC also agreed that if an essential business does experience a 30 percent reduction in revenue, then they should apply for the wage subsidy rather than the COVID-19 essential worker leave support (CBC-20-MIN-0020).

Delegated authority to approve minor policy matters and operational details

32. On Monday 16 March, Cabinet agreed to the COVID-19 Leave Payment Scheme to compensate and incentivise workers to self-isolate to help manage the spread of COVID-19 virus in New Zealand [CAB-20-Min-0105], and delegated authority to the Minister of Finance, Minister of Social Development, and Minister of Workplace Relations and Safety to approve other policy matters and operational details
33. On Monday 16 March, Cabinet agreed to implement a temporary COVID-19 wage subsidy scheme to help affected employees and businesses to adjust to the impact of COVID-19 [CAB-20-MIN-0108] and delegated authority to the Minister of Finance, Minister of Economic Development and the Minister of Social Development to make technical design changes and minor policy decisions about the subsidy
34. On 1 April, Ministers with Power to Act agree to implement an essential workers leave support scheme to for essential businesses workers to support essential business employees to take leave from work to comply with public health guidance and agreed that any further decisions required to implement these modifications will be reported to the CVD Committee as soon as possible, including updated changes to appropriations.

Appendix B: Audit and risk assurance processes

Internal operational audit and risk assurance processes include the following:

1. **Pre-payment checks:** To ensure we are only paying genuine businesses and employees and to prevent duplicate or multiple applications, the following checks take place prior to an application being approved:
 - information matching with Inland Revenue (IR), to check the:
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
2. **Large employer checks:** MSD is reconciling employee data with IR and having a conversation with the employer prior to any grant where an employer has 80+ employees, to make sure employers are aware of the eligibility criteria and their obligations.
3. **Publishing the names of grant recipient:** Applicants consent to their business names (as registered with IR) being published on a website when they make their application. Publishing names will ensure transparency about who has been granted assistance and facilitate employees or other interested parties raising concerns about employers who may be breaching their obligations. The names of self-employed recipients have not been published as they have no employees to check, however this decision is under review.
4. **Audit and enforcement processes:** MSD has an audit process to identify cases that may require investigation. Random audits are being undertaken, as well as targeted audits based on data mining, focused on:
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
 - s 9(2)(k) [REDACTED]
5. **Complaints / allegations:** MSD is receiving complaints / allegations of misuse of the subsidy, as are IR and MBIE. The three agencies have agreed a process where employees want to make a complaint about employers not meeting their obligations under the Scheme.
 - from Monday 6 April complaints where the employer has not passed on the subsidy will be directed to MBIE in the first instance
 - communications associated with the publishing of employer names will reinforce this.
 - These complaints are triaged to determine the extent to which MSD / IR need to be involved in addressing the complaint/ allegation.

s 9(2)(f)(iv)

MSD will pursue enforcement where necessary

49. If MSD finds adverse findings from audits, allegations or complaints, it will pursue these as appropriate, and in consultation with Crown Law. To qualify for the Schemes applicants signed declarations, where they agreed to repay the subsidy, or any part of the subsidy paid to them if they:
- fail to meet any of the obligations about how they must use the subsidy
 - were not, or stop being, eligible for the subsidy or any part of the subsidy
 - provide false or misleading information in the application
 - receive insurance such as business interruption insurance for any costs covered by the subsidy.
50. The declaration also makes it clear that if they weren't eligible or are breaching their obligations, they may be subject to civil proceedings for the recovery of any amount they receive and/or to prosecution for offences under the Crimes Act 1961. The criminal offences that a person may have committed include obtaining a pecuniary advantage by deception.

The labour inspectorate will also play a role in enforcing the Schemes

51. The Labour Inspectorate is focused on responding to COVID-19 related employment complaints and assisting the Police in other COVID-19 matters. Their process is to ensure employers have the right information to make informed decisions on employment matters. To do this they will continue to:
- engage directly with CEOs of larger businesses
 - offer mediation services
 - use the Early Resolution team to guide smaller employers through their obligations
 - record those who are refusing to comply with employment standards for follow-up action once the Labour Inspectorate are able to safely go out into the field again
 - refer complaints, potential breaches or fraud related to the wage subsidy or leave schemes (such as where an employer has failed to pass on the subsidy or has made staff redundant) to MSD to investigate and enforce.

Appendix C: Summary of emerging issues and current operational approach

Queries and issues have been drawn to the attention of officials via many sources including enquiries to Work and Income, Inland Revenue, MBIE and other Government agencies, Members of Parliament, National Crisis Management Centre, employer and employee representative organisations and the media.

Issue	Current response	Comments
<p>The interaction between the wage subsidy and employment law.</p> <p>This issue has generated a lot of public debate and questions. MBIE and MSD have received queries relating to the wage subsidy and employment law from employers, employees, industry bodies and consultancies. For example:</p> <ul style="list-style-type: none"> • Can employers make employees redundant after/before receiving the subsidy? • Can an employer force employees to take leave? • Can an employer reduce rates of pay when employees are still working from home? • How should 'normal pay' be calculated, for example where workers have variable hours or earn a combination of base pay and commission? 	<p>MSD and MBIE have clarified in responses and public facing material that the wage subsidy scheme does not change employment obligations for both the employer and employee.</p> <p>People have been directed to existing employment law resources. Employers' obligations under the wage subsidy scheme do not change employment law obligations, but breach of the scheme's obligations triggers an obligation to repay all or part of the subsidy.</p> <p>Whatever approach the employer uses regarding for example 'Normal Pay' or 'using leaving entitlements' should be principle-based and applied consistently to all employees, and should involve worker engagement and ensure that good faith underpins these calculations</p>	<p>Employment obligations are very dependent on individual circumstances and it would be inappropriate for MBIE and MSD to provide detailed advice in most cases.</p> <p>MSD and MBIE intend to continue to reiterate the obligations employers have under the wage subsidy scheme and refer to appropriate employment obligation resources.</p> <p>Issues include: Normal pay -There has been particular concern and questions about calculating "normal pay", as it is not defined for the purposes of the wage subsidy or the leave payment scheme (the scheme requires that employers endeavour to pay employees at least 80% of their normal pay).</p> <p>Annual leave can only be used by agreement, or if agreement can't be reached, when a series of legal standards are met. Sick leave can only be used when the employee (or their partner or dependent) is sick or injured. Long-service leave is not a legislated entitlement, and is only governed by contractual arrangements. Employers must act in good faith when making their decisions and engaging with employees.</p>
<p>Definition of 'best endeavours' to pay 80%</p> <p>Agencies have received queries relating to the definition of 'best endeavours'. For example:</p> <ul style="list-style-type: none"> • What are the criteria for best endeavours? • What if a business knows (before it applies for the subsidy) that it won't be able to pay 80% of wages even if it receives the subsidy? 	<p>Officials cannot give firm advice on what constitutes 'best endeavours' for each business.</p> <p>We have reiterated the steps businesses should take to mitigate the impact of COVID-19 in the eligibility criteria also apply using best endeavours (e.g. engaging with your bank, drawing on your cash reserves as appropriate, making an insurance claim).</p>	<p>This issue has generated less public debate, but has been raised by employers and consultancies. Again, it is difficult to provide firm guidance except to encourage businesses to explore their options.</p> <p>The review and audit process will consider whether employers have used their best endeavours to pay at least 80% § 9(2)(k)</p>

Issue	Current response	Comments
	<p>We have confirmed with employers that knowing that they will not be able to pay 80% at the time of application does not prevent them from applying. We accept that some employers' best endeavours will not be sufficient to pay 80%.</p> <p>MSD and MBIE have worked directly with some large employers to explore what 'best endeavours' means for their business</p>	<p>One issue that has come up is the payment of dividends while the business is receiving the wage subsidy.</p> <p>Payment of a dividend shouldn't automatically make a company ineligible for the wage subsidy (and in some cases the payment of a dividend could help to ensure that other companies in the chain are able to continue their operations), but if a company were to pay a dividend and then say they are unable to pay 80% of normal wages to their employees, it might be difficult to say best endeavours had truly been undertaken.</p>
<p>Drawing an income from investments</p> <p>A common question is 'can a landlord/Airbnb owner claim the subsidy when they lose a tenant?'</p> <p>Theoretically the issue also extends to people who make a living from other forms of investment, e.g. actively trading in the share market.</p>	<p>It is accepted that some property owners effectively run a business</p> <p>However, officials consider it is inappropriate for owners of effectively passive investments to access the scheme. Officials are working on guidance for when a person can be considered a rental/Airbnb business.</p>	<p>MSD provided scenarios to Minister Sepuloni's office to demonstrate the distinction between a business and a passive investor. These were intended to be obvious examples and officials intend to work on firming the criteria to distinguish between the two.</p> <p>Property rental business: A landlord who owns 20 properties, regularly works on those properties for over 20 hours per week and draws a regular income for that work (not just receiving rent to pay the mortgages) is running a business. A landlord in this situation can apply for the wage subsidy at the full-time rate, assuming they meet the other eligibility criteria including a 30% reduction in revenue and are proactively engaging with their bank.</p> <p>Passive investment: A landlord who owns a couple of investment properties but simply receives the rental income into their account without doing any active work is not drawing an income for that work and cannot apply for the subsidy in respect of any loss in rental income. They may be able to access other relief in relation to their mortgage and should speak to their bank.</p> <p>Airbnbs: Some Airbnbs (and other short-term rental arrangements) may fall into the scenarios outlined above but many would not – where the property is only rented out on a partial basis (e.g. part-time, or one room in a house). Even if work is undertaken by the owner, there is an element of private benefit which should not be compensated by the wage subsidy scheme.</p>

Issue	Current response	Comments
<p>Applying existing criteria for charities</p> <ul style="list-style-type: none"> Does revenue include grants and donations? In religious organisations, there might not be a typical employer-employee relationship. This could occur with clergy for example. Are they considered an employee for the purposes of the wage subsidy? 	<p>A slightly broader view of the eligibility criteria should be used for charities to give effect to Cabinet’s intent.</p> <p>“Revenue” should be taken for charities so that donations and grants can be counted for the purpose of the 30% revenue loss test.</p> <p>The wage subsidy is only available in relation to employees, but in religious organisations they may not be classified as such. Clergy would be covered, but the relevant information is still required (e.g. IRD numbers).</p>	<p>Revenue is defined as meaning money earned from normal business activities, but not all charities will have a trading arm. In the context of charities, revenue should also include donations and grants.</p> <p>There could be a concern that high wealth individuals with personal charitable trusts could benefit from this.</p> <p>If a charity applies for the wage subsidy, they still need to determine whether they have taken steps to mitigate the impact (e.g. including looking at their cash reserves and activating a business continuity plan).</p>
<p>Employers with different branches and calculating a 30% reduction</p> <p>Some companies may have separate branches which have been impacted differently by COVID-19. E.g. one branch is forced to shutdown and is suffering a 80% decline in revenue while another is an essential service and has no decline in revenue.</p>	<p>The scheme applies to employers and it is not open to them to distinguish separate parts of their business experiencing lower revenue levels.</p> <p>For example, consider a scenario with 3 separate store locations. All 3 stores are owned by XYZ limited. XYZ would be the business.</p> <p>Contrast this with a structure where instead each store is held by a different company – store 1 is owned by X limited, store 2 is owned by Y limited and store 3 is owned by Z limited. These three companies are all subsidiaries of another company or owned by the same person. In this case, each separate company is a separate business for the purposes of the wage subsidy.</p>	<p>Cabinet’s decision is clear that the 30% reduction relates to employers. Subsidiary companies can apply in respect of employees employed directly by them when they experience a 30% reduction.</p> <p>By contrast, where a single legal entity has different branches being affected differently it creates an ‘all or nothing’ problem. Businesses that experience more than a 30% overall reduction are eligible and theoretically receive the subsidy for all staff. Businesses who do not experience a 30% overall reduction are not eligible, despite one branch experiencing a greater than 30% reduction. This may result in large businesses disestablishing the affected parts of the business and making staff redundant.</p> <p>s 9(2)(k)</p>
<p>Issues relating to foreign owned businesses</p> <ul style="list-style-type: none"> Branches of foreign companies operating in New Zealand: are they eligible? And how should the revenue test be calculated? 	<p>Branches of foreign companies are eligible if they are registered to operate in New Zealand. The branch would not be legally separate from the foreign company, but for the purposes of the 30% revenue loss, you would look at revenue connected to the New Zealand branch.</p>	<p>A foreign business operating in New Zealand should be eligible regardless of whether they have used a subsidiary or branch structure, if other requirements are met.</p> <p>In this branch situation, it would be inappropriate to look at the revenue of the whole company as it could be unconnected to business carried out in New Zealand.</p>

Issue	Current response	Comments
<ul style="list-style-type: none"> New Zealand subsidiaries of foreign companies where the subsidiary itself does not necessarily experience a decrease in revenue: The New Zealand subsidiary employs New Zealand workers, but revenue in the traditional sense is not earned by the New Zealand subsidiary. Instead the foreign company pays the New Zealand company for example on a “cost plus” basis. This means that the New Zealand subsidiary will not have a 30% decrease in revenue. Practitioners have asked if instead the revenue test could look at the revenue derived by the foreign company. 	<p>For New Zealand subsidiaries of foreign companies, only the revenue of the New Zealand subsidiary should be looked at, not the foreign parent company.</p> <p>In some cases, the 30% revenue loss requirement might still be met, but it would not be appropriate to offer a concession for this structure.</p>	<p>The structure described where the subsidiary is paid by the foreign parent is used to manage risks in New Zealand and to limit the amount of profit that is attributed to the New Zealand business (and therefore is able to be taxed in New Zealand).</p> <p>While the treatment of these workers could be seen as unfair, this is a consequence of the structure used by a foreign company to manage risk and tax affairs when operating in New Zealand.</p>
<p>Employers that experience significant revenue fluctuation across different years.</p> <p>The horticulture sector for example can be subject to significant revenue fluctuation each year due to factors such as weather and international prices. They asked to average their earnings over several years to make a fairer comparison with current profits or predicted profits.</p>	<p>Longstanding businesses are required to declare a 30% loss or predicted loss based on a comparison with a previous year.</p> <p>Officials are concerned that widening the criteria may open the door for a considerably wider range of businesses in other sectors as fluctuating revenue is not uncommon, and hard to attribute to one factor.</p>	<p>This may be an issue for a wide range of food producers that are finding it difficult to get their food to new markets (with restaurants etc being closed). However, food producers are mostly essential services and demand could be maintained globally as well as locally, albeit with some innovation in practices.</p>
<p>Applicability of the wage subsidy scheme to labour-hire businesses</p> <p>An industry body has approached MSD and the Minister of Finance’s office for clarity on how the scheme applies to labour-hire type businesses.</p> <p>Separate queries have highlighted labour-hire employees left without income. This has occurred where:</p>	<p>Labour-hire and similar businesses who employ people to work in other businesses are eligible to apply for the wage subsidy for those employees.</p> <p>MBIE will be engaging with the industry body to clarify how the scheme applies.</p> <p>The casual nature of the employment agreement between these businesses and their employees likely means that when the business cannot or</p>	<p>While the treatment of these workers appears unfair, the situation is similar to other businesses that do not experience a 30% reduction in revenue and are therefore not eligible. The main difference will be the terms of employment.</p> <p>Labour-hire type businesses are characterised by highly variable hours and casual labour agreements, i.e. it is a weak employment relationship that is designed to flex with the health of the business. There are few incentives on these employers to maintain an employment connection during the lockdown if they feel they are unlikely to use that labour in the near future.</p>

Issue	Current response	Comments
<ul style="list-style-type: none"> The labour-hire business provides workers to essential and non-essential services The business has not experienced a 30% decline in revenue <p>The staff that were assigned to non-essential services are not required to work and the casual nature of their employment agreement means the labour-hire company is not required to pay them</p>	<p>does not apply for the subsidy they are not obliged to pay those employees.</p>	
<p>Employees overseas at the time of application</p> <ul style="list-style-type: none"> Some businesses have employees normally employed in New Zealand stuck overseas due to lockdown restrictions. Some New Zealand based businesses employ people to work overseas 	<p>The employees named in the wage subsidy application must be legally employed in New Zealand.</p> <p>Employees who are currently overseas are eligible to be named as an employee in the COVID-19 wage subsidy application if:</p> <ul style="list-style-type: none"> They were legally working in New Zealand prior leaving Their absence was intended to be temporary (e.g. a holiday/business trip) They maintained their employment status and intended to return to work 	<p>The current approach is consistent with Cabinet’s decision to support businesses registered and operating in New Zealand.</p> <p>Ministers have received some correspondence asking that the scheme be extended to people employed by New Zealand workers overseas.</p>

Appendix D -State Services Commission Guidelines

Available at URL: <https://ssc.govt.nz/assets/Guide to NZSSC.pdf>