



04 SEP 2020

Dear

On 11 August 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *I am keen to get hold of Emma's report she wrote on the proposed changes to Minimum Wage Exemption Permits (MWEPE). It was probably the report that I have been after all along which discusses the merits of the proposal and potentially the down side and summarises the feedback the Minister received following the consultation process.*

On 14 August 2020, you were contacted by a member of the Ministry's Official and Parliamentary Information team and advised that the reports written on the merits and risks of the proposal to replace MWEPEs do not contain a summary of any feedback received by either the Ministry or the Minister of Social Development. You were advised that advice on the consultation process that took place was provided to Cabinet in late November 2019 and you were asked to clarify which documents you were interested in receiving.

On 14 August 2020, you responded to the email and amended the request to the following:

- *Any reports produced by Emma concerning the merits or otherwise of the proposed changes from 2018 or similar or related documents or reports whether to the Minister of Cabinet or whoever.*

On 18 August 2020, you were contacted and advised that the Ministry could provide a response to the part of your request for the reports produced in 2018, but that the latter part of your request would likely be refused due to the substantial collation and research that would be necessary to identify and locate all relevant documents for release.

On that same day you responded to the Ministry and advised that you were satisfied for the response to focus on the first part of your amended request only.

I am releasing two reports on MWEPE that were co-written by the Ministry and the Ministry of Business, Innovation and Employment that are within scope of your request. The reports are titled as follows:

- Document 1 - Report: (REP/18/4/557): *Minimum Wage Exemption: Possible Direction for Change*, dated 16 April 2018

- Document 2 – Report (*REP/18/9/1282*): *Designing a wage supplement approach as a possible alternative to Minimum Wage Exemption permits*, dated 10 September 2018

Some information is withheld under section 9(2)(f)(iv) of the Act as it is under active consideration. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Please note that the Ministry's work on the MWEP proposal has advanced significantly since the two reports were written, and therefore, the reports may not accurately reflect the current situation regarding this work.

The Ministry has proactively released two Cabinet papers that relate to Minimum Wage Exemption Permits which will provide you with more relevant information on the current status of this work. These Cabinet papers are detailed below and can be found at the corresponding links provided. The links also contain downloadable copies of other documents relevant to your request which relate to the MWEP and the Cabinet papers.

- December 2018: *Consultation on a Wage Supplement Approach to Replace Minimum Wage Exemption Permits* - www.msd.govt.nz/about-msd-and-our-work/newsroom/2019/wage-supplement-consultation-announced.html.
- November 2019: *Report Back on a Wage Supplement Approach to Replace Minimum Wage Exemption Permits* - www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/approach-to-replace-minimum-wage-exemption-permits-report-back/index.html.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response on reports held by the Ministry on the proposed changes to MWEF, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Julia Bergman', with a long horizontal line extending to the right.

Julia Bergman
General Manager
Disability, Seniors and International Policy

Report

Date: 10 September 2018 **Security Level:** IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Disability Issues and Social Development
Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety

Designing a wage supplement approach as a possible alternative to Minimum Wage Exemption permits

Purpose of the report

- 1 This report provides advice on the detailed design for a wage supplement approach, which would support the removal of the Minimum Wage Exemption (MWE), and proposes how unintended impacts of the approach could be addressed. We recommend that you seek the agreement of Cabinet to consult with the disability sector on the proposed approach.

Executive summary

- 2 You have previously agreed that policy work in relation to removing the MWE should focus solely on a wage supplement approach. A wage supplement approach would top up the wage rates of eligible disabled people to the minimum wage, for each hour they work. If implemented, a wage supplement approach would mean that the MWE could be repealed without loss of employment for any disabled person whose employer would otherwise choose not to employ the person on the minimum wage.
- 3 The wage supplement would be accessible by the same group that is able to access the MWE. The application process for a wage supplement would include a criteria check to ensure it is not being used to subsidise wage costs for a broader group than intended.
- 4 The rate of the wage supplement could be determined either through a wage assessment process or through an agreed generic rate of supplement. If a wage assessment process is favoured, we recommend the development of a government mandated tool for employers to use when assessing their disabled employees.
- 5 Most unintended impacts of paying a wage supplement can be addressed by ensuring that clients eligible for a wage supplement receive an income exemption under section 66A of the Social Security Act. This will ensure that social assistance is not abated by more than is gained through the supplement, which will in turn ensure payment of benefits to residential care providers are not affected, and that people eligible for a community services card do not lose this entitlement.
- 6 As income increases with a wage supplement, there may be increased financial obligations for people receiving it, such as higher KiwiSaver contributions, Student Loan repayments and repayment of debt to government, but this is not expected to leave any disabled person worse off financially.

- 7 It is possible that disabled people living in social housing may also be required to pay a higher Income Related Rent as their income increases. If this occurs it is likely to be justifiable and fair, and should not leave the disabled person worse off under a wage supplement than they were under the MWE.
- 8 New funding would be required in order to implement a wage supplement approach. We estimates that the wage supplement could cost around \$15 million per annum, but around \$12 million per annum may return to the government through abatements to social assistance and increased income tax obligations.
- 9 In order to cost the wage supplement accurately, we will require data on eligible people's hourly wages, the hours they work, as well as their Social Welfare Number to link this data to social assistance received.
- 10 The Ministry of Social Development (MSD) has identified it could contract with employers of staff with wage supplements to implement the approach. MSD would pay the wage supplement to employers who would pass this on to staff with their wages. We could also require employers to take further steps, consistent with being a "good employer", to support their disabled employees with wage supplements to progress at work and into open employment, as and where possible. However, employers would likely seek additional financial compensation for providing "good employer" supports.
- 11 Before a decision is made to progress a wage supplement approach, we recommend consulting with key stakeholders in the disability sector. This will identify the level of support there may be for a wage supplement, including whether there is support to retain a wage assessment process or to move to a generic rate of supplement. It will also support us to obtain data to develop a more accurate costing for the approach. If you agree, we will develop a Cabinet paper seeking agreement to consult on the proposed wage supplement approach.

Recommended actions

It is recommended that you:

	<i>Minister for Disability Issues</i>	<i>Minister for Workplace relations and safety</i>
1 note that this paper proposes a detailed design for a wage supplement approach	Noted	Noted
2 Section 9(2)(f)(iv)	Noted	Noted
3 Section 9(2)(f)(iv)		yes / no
4 note that there are two possible approaches for designing a wage supplement: a wage assessment	Noted	Noted

process or a generic rate of supplement

5 **note** that we recommend you consult with the disability sector on the proposed wage supplement

Noted

Noted

6 **agree** that officials should develop a paper for you to take to Cabinet seeking approval to consult with the disability sector on the proposed wage supplement approach.

yes / no


yes / no



James Poskitt
General Manager, Community and Families
Policy
Ministry of Social Development

10/9/18

Date



Gerard Clark
Manager, Employment Standards Policy
Ministry of Business, Innovation and
Employment

10/9/18

Date



Hon Carmel Sepuloni
Minister for Disability Issues

16/9/18

Date

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

Date

Background

- 12 Around 700 disabled people in New Zealand earn less than the minimum wage, under a provision in the Minimum Wage Act 1983. Employers can apply for a Minimum Wage Exemption (MWE) for an employee who is significantly and demonstrably limited by a disability in carrying out his or her work requirements. If granted, the employer is able to pay the employee with the MWE a proportion of the minimum wage based on an assessment of the worker's productivity and competencies, relative to those required by the job.
- 13 Approximately 93 percent of employees with a MWE work in Business Enterprise¹ settings, and most earn \$5 or less per hour of work. Most people with a MWE are reliant on income support payments, as they do not earn enough from their work to live on.
- 14 The MWE policy is discriminatory. You have identified you would like to remove the MWE, provided there are sufficient protections in place to ensure that disabled people are no worse off as a result of any change. This aligns with action 2b of the Disability Action Plan, which is focused on identifying alternatives to the MWE so it can be removed.
- 15 Based on advice we provided in April, You have agreed that policy work in relation to removing the MWE should focus solely on a wage supplement approach as the mechanism to ensure disabled people are not made worse off. You also agreed that officials should do further detailed work on a wage supplement approach and report back to you on the detailed design and how any unintended impacts could be addressed [REP/18/04/557 and MBIE briefing 2962 17-18 refers]. This briefing provides that report back.

What would a wage supplement look like?

- 16 Under a wage supplement approach, employers would be required to pay all staff at least minimum wage. In return, employers would receive a wage supplement from the government to assist with some of the wage costs for eligible disabled employees.
- 17 Eligible disabled people's wage rates would be topped up by the Government to the minimum wage, for each hour they work. The wage supplement would be paid by government to the employer, who would pass the payment directly to the employee (in their wages).

It would be accessible by the same group of disabled people that are eligible for the MWE

- 18 The proposed wage supplement would be accessible by the same group that is currently accessing the MWE, and those who would be eligible for it in the future. Eligibility criteria would include that:
 - employees must be demonstrably limited by a disability, even after the employer has made reasonable accommodations
 - the job needs to provide a real opportunity for the disabled person to contribute and use their abilities and skills (ie not created solely as a means of occupying the disabled person at a rate heavily subsidised by the government).

¹ Organisations whose primary purpose is to provide employment opportunities to disabled people.

19 We also propose some additional criteria to further ensure that the wage supplement is not seen by employers as a means of subsidising their wage costs for disabled staff more generally, including that:

- the disabled person must be aged between 16²-64 years at the time of applying for the supplement³
- the disabled person must meet NZ residence requirements, in line with the requirements to receive a benefit and to be entitled to work in New Zealand
- the disabled person must not have been employed by the same employer at minimum wage or above previously, unless they became disabled by an accident after their employment, and their disability limits their ability to meet the requirements of their job (even after reasonable accommodations have been made).

20 The application process for a wage supplement will include a criteria check to ensure it is not being used to subsidise wage costs for a broader group than intended.

It could be supported by a new, Government-mandated wage assessment tool

21 Under current legislation, employers can use any tool they choose to assess the wage rate for their employees. While Labour Inspectors are required to sign off that the process has been followed correctly, and the MWE wage rate is reasonable in the circumstances, anecdotal evidence suggests that the tools most commonly used by employers are those that produce the lowest wage rates.

22 Having a single, Government-mandated wage assessment tool that employers are required to use for wage supplement assessments would ensure greater consistency in wage rates across all wage supplement applications, than at present.

23 However, there is a risk that any tool that is developed could increase wage costs for employers, particularly those employers who may have been relying on wage assessment tools that produced very low wage rates. The development and transition to any new tool would need to be managed carefully with employers to ensure that it does not result in disabled people losing their jobs.

24 Maintaining a wage assessment tool would also have administrative costs for government. A government agency would need to continue to maintain oversight of the wage assessment process and ensure that employers use the tool correctly. The Labour Inspectorate currently has this role but considers that it is not well-equipped to perform this function, as it is outside the Inspectorate's core business of enforcing minimum employment standards set in legislation. The question of who *should* perform this function will likely depend on the assessment tool that is designed, but it is likely the role may need greater expertise in disability issues than the Labour Inspectorate has.

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

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

- 25 Developing a wage assessment tool would require specialist expertise, outside of MSD and the Ministry of Business, Innovation and Employment (MBIE). It would also require targeted consultation with employers using these tools to ensure that the tool that is developed is fit for purpose. Contracting the development of a wage assessment tool to outside of government may also alleviate potential concerns from employers that the tool is designed to produce wage rates in the Government's favour.⁴
- 26 The cost of developing a wage assessment tool is unlikely to be able to be met from within baseline funding in either MSD or MBIE. The recent experience in Australia, where the High Court found that one of the wage assessment tools most commonly used in Australian Disability Enterprises discriminated against people with learning disabilities, has resulted in the Commonwealth Government investing significant resources to develop a new wage assessment tool. We would look to learn from the Australian experience in the development of a New Zealand tool, but consider that it would require additional funding to do so.
- 27 Section 9(2)(f)(iv) [REDACTED] Decisions on where the oversight function should sit could be made once the tool has been developed and it is clear what is required.

Or we could provide a generic wage supplement rate, based on the average wage paid under the MWE

- 28 An alternative to a wage assessment process is to provide a generic wage supplement rate for all eligible people. A generic rate would be simpler to administer both for employers and for Government. It would also align better with our obligations under the United Nations Convention on the Rights of Persons with Disabilities, as the target group of disabled people would no longer be subject to a wage assessment process.
- 29 Conversely, a generic supplement rate could result in employers choosing to only employ more able disabled people, who would typically be paid at a higher rate under the MWE, at the expense of disabled people who require more assistance and may typically be paid at a lower rate under the MWE.
- 30 It may, however, be possible to try and limit the potential for employers to "cherry pick" more able disabled employees through specific contract requirements aligned to the payments of the wage supplement component to employers.
- 31 A further difficulty may be reaching agreement with employers on a fair generic rate to pay, which is affordable both for the Government and to meet the additional costs employers face when employing disabled staff. We already know that most people with a MWE earn less than \$5 per hour, so a generic rate might reasonably need to be around \$11.50 per hour.
- 32 The table in Appendix One sets out potential risks for a wage supplement approach under both a wage assessment model and a generic rate of supplement, and proposes mitigation strategies.

⁴ There has been concern expressed by some Business Enterprise providers that the work to remove the MWE intends to also make the Business Enterprise model unviable.

It would be designed to ensure that disabled people are no worse off financially

Most people will be better off under a well-designed wage supplement approach

- 33 Most employees with a MWE permit rely on income from the Supported Living Payment, as the income they earn from working is not sufficient to live on. Under a wage supplement approach, it is possible that the increase in income from the wage supplement will result in the abatement of other financial assistance that the disabled person is receiving, and obligations to pay more income tax.
- 34 A key driver behind the work that identified a wage supplement as the approach most likely to achieve the desired aims, was that no disabled person should be worse off as a result of any changes. To ensure this, we tested how the payment of a wage supplement would interact with other social assistance and tax obligations, in order to determine if people would be better off under a wage supplement model. We used a sample of clients working in Business Enterprises to develop a number of scenarios to broadly represent the client group that currently have MWEs. We looked specifically at clients working in a Business Enterprise as these clients generally all have a MWE.
- 35 This revealed that most clients with a MWE are receiving a Supported Living Payment (SLP) at the single rate, around half receive an Accommodation Supplement (AS)⁵ and around half receive a Disability Allowance (DA); although the rates of payment for DA were lower than average across all DA payments. Some clients had an income exemption for severe disablement, meaning that some or all of the income they earn with their MWE is not charged as income against their main benefit for abatement purposes. We did not find anyone receiving Temporary Additional Support (TAS), but we note that it could be possible. Based on this data, we developed the following scenarios to test:
- Person 1: Single, receives SLP only
 - Person 2: Single, receives SLP and AS
 - Person 3: Single, receives SLP, AS and DA
 - Person 4: Single, receives SLP and DA
 - Person 5: Married, receives SLP, AS and DA
- 36 We then applied an effective marginal tax rate (EMTR)⁶ model to these scenarios to identify how the payment of a wage supplement would interact with the support received in each of the scenarios, from one through to forty hours worked per week, and across three wage points (\$1.50, \$6.00, and \$10.50 per hour). This identified the overall impact a wage supplement would have on the disabled person's entitlement to social assistance, and income tax obligations. For a comparison, we also tested how the impacts would change if the person had an income exemption⁷.
- 37 Across all scenarios, people would be better off under the wage supplement approach than they are under the current MWE approach. In some cases the person's benefit would be fully abated and their entitlement to supplementary assistance partially or fully abated, but the additional income from the wage supplement would offset this

⁵ Reasons why some MWE clients may not be getting AS include living at home and not having accommodation costs, or living in residential care and receiving Residential Support Subsidy.

⁶ EMTR models determine the combined effect on overall earnings by working out for each additional dollar earned, how much would be paid in income tax and how much would be deducted from social welfare entitlements

⁷ For this we assumed a full income exemption for the assessed MWE rate only – the wage supplement rate was counted as income

and mean that the person would be better off overall. If the person has an income exemption for severe disablement, they would be better off again, as the increased income they earned from working would not abate their entitlement to a main benefit (eg SLP), AS, DA or TAS.

- 38 We also worked with Inland Revenue to check that the payment of a wage supplement would not leave any disabled person worse off for any social assistance it administers, and confirmed that the payment of a wage supplement would more than offset the impact of paying more income tax, even in conjunction with any abatement to social assistance. The only impact to GST should be through increased spending when people earn more, meaning greater GST returns to Government.

But in rare circumstances, a person may lose more income than they gain but this could be prevented through income exemptions under s66A of the Social Security Act

- 39 Because the scenarios did not create any financial 'losers', we created a further fictional scenario, based on uncommon (but not entirely impossible) characteristics for the group of disabled people that a wage supplement would be targeted to. Unlike the other scenarios, the client in the 'losing' scenario had extremely high disability costs, over and above the maximum amount covered by DA⁸. As a result, they were receiving TAS to top up the additional expense not able to be met by DA. They were also already receiving a comparatively high wage of \$12 per hour⁹ and did not have an income exemption for severe disablement.
- 40 This combination of a high payment of TAS, along with a comparatively high hourly pay rate and no income exemption, means that clients in this situation could be worse off financially, depending on the number of hours they work. This is because TAS is reduced by a dollar for every dollar of additional income this client receives.
- 41 We estimate that the likelihood of a person losing income through a wage supplement approach is very low. This is because the characteristics required are uncommon in the target group for the wage supplement, and the total group of people likely to be accessing a wage supplement is also small, at around 700 people nationwide. That said, it would be possible to ensure no person is made worse off financially if all people eligible for a wage supplement are also considered eligible for an income exemption under section 66A of the Social Security Act.
- 42 Under section 66A, as an incentive for the personal effort of a severely disabled person to participate or continue in employment, discretion can be used to disregard all or part of any income earned from employment as chargeable income for benefit purposes.
- 43 The proposed criteria for a wage supplement – that an employee be demonstrably limited by a disability, even after the employer has made reasonable accommodations – aligns well with the criteria for an income exemption under section 66A of the Social Security Act which requires that the person is severely disabled. Guidelines for determining severe disablement include:
- Does the client have to put in more effort in order to participate in employment?
 - Is the client's capacity to earn the same wage as a person without a severe disability reduced because of their disability?
 - Does the client have additional expenses to undertake employment?

⁸ Only around half of the clients we looked at claimed DA, and most claimed this at a very low rate compared to the average, and much less than the maximum

⁹ Most people on MWEs earn \$5 or less per hour.

- Does the client have difficulties participating in employment or completing their tasks because of their disability?
 - Does the client require assistance from another person to carry out some of their daily tasks?
 - Does the client require the assistance from another person to travel to work or to ensure their physical safety while at work?
 - Any other relevant factors that should be considered.
- 44 Most clients who would be eligible for a wage supplement would likely meet several of the criteria above, so should already be considered for an income exemption.
- 45 The amount of the income exemption would be determined by the client's case manager. In general, income exemptions under section 66A depend on the client's individual circumstances, but advice for case managers is that it should be a reasonable amount to ensure that a severely disabled person is not disadvantaged by participating or continuing in employment.

Other potential implications can also be managed

Implications for people who are living in residential care can also be prevented by an income exemption

- 46 We are aware that some clients working in business enterprises, with MWEs, are living in residential care and are therefore likely to be receiving Residential Support Subsidy (RSS).
- 47 When a client is in residential care, they are required to contribute any main benefit they receive (less a Personal Allowance) to the service provider towards the cost of their care. This is usually done by redirection of benefit; however the client may choose to make their own arrangements to pay the service provider.
- 48 If a client receiving RSS has authorised the redirection of their benefit payment to the residential service provider, the amount paid to the residential service provider would be affected if the rate of benefit is reduced due to income abatement. This would mean that the client may need to pay the outstanding balance direct to the provider. However, this too could be prevented if clients have an income exemption which means that their main benefit is not abated as a result of earned income. Advice could be provided to case managers to disregard all income for clients who are living in residential care. This would mean that their rate of main benefit would not be impacted. At present there are approximately 260 disabled people living in residential care and working in Business Enterprises which this may apply to.

Eligibility for a Community Services Card will not be affected as long as clients continue to receive a main benefit

- 49 Clients receiving a main benefit, including SLP are automatically entitled to a Community Services Card (CSC).
- 50 If clients who are eligible for a wage supplement have an income exemption as recommended in para 42, it will mean that income is not counted in the income testing of their main benefit, and accordingly they will remain eligible for a CSC.
- 51 The CSC can be particularly helpful for disabled clients as it can assist with the costs of health care services and prescriptions.

There may be implications for KiwiSaver contributions and other financial obligations, but overall people should remain better off

- 52 When additional income is earned, it can have implications for KiwiSaver contributions, Student Loan repayments, Child Support payments and debt repayment to government agencies.

- 53 KiwiSaver is the most likely financial obligation to impact on the group of disabled people who would be eligible for a wage supplement. Any increase in contributions would be a proportion of the increase in income only (either 3, 4 or 8 percent, depending on the contribution the disabled person has selected). In conjunction with an income exemption to prevent other assistance from abating, the impact of increased KiwiSaver contributions should not leave anyone worse off financially. Further, it is possible for people to apply for a contributions holiday, which would suspend contributions for a time, or if they are newly employed, for a person to opt out of the KiwiSaver scheme entirely.
- 54 It is highly unlikely that people accessing a wage supplement will have Student Loan obligations. However, we estimate that if they do, the additional income earned will more than offset the additional Student Loan repayments required, even taking into account additional income tax and KiwiSaver obligations. Example calculations are detailed in Appendix Two.
- 55 We know that more than 90 percent of SLP clients¹⁰ do not have dependent children. Given that the group of disabled people who would be eligible for a wage supplement will have high care needs themselves, we think it is unlikely they will have dependent children they are providing for financially. We therefore do not anticipate any negative financial impacts arising as a result of increased child support payments when a wage supplement is paid.
- 56 Lastly, debt repayment obligations to government may increase along with income, but should not have a negative impact on anyone's overall financial position.

An income exemption would increase overall income which may impact on eligibility for social housing and Income Related Rent

- 57 We do not know how many people who would be eligible for a wage supplement may be living in social housing. However, we know that around half of eligible clients are receiving AS, so we can exclude them, as AS is not payable for people living in social housing. This leaves around 350 clients. Many of these 350 clients will live at home with family/whanau. We also know approximately 260 are living in residential care. On this basis, we think the number of people who may be living in social housing is likely to be small.
- 58 All income is taken into account when determining Income Related Rent. This means that the suggested income exemption would have the impact of increasing overall income, and may mean a client is required to pay a higher rent based on that level of income. However, given that the public housing criteria apply to everyone, it may be appropriate and fair to increase the rate of Income Related Rent for any disabled person whose income increases.
- 59 No person should be made ineligible for a social house through a wage supplement approach, as even with a supplement, their income should remain below the threshold for eligibility. Case managers will also take into account impact on social housing when determining how much income to exempt under s66A.

The 15 hour rule would not apply to people with a wage supplement

- 60 We know that many clients with MWEs work more than 15 hours per week. They are able to do this without it affecting their eligibility for SLP as the work is not considered to be in open employment because it is not paid at minimum wage. Payment of a wage supplement would be subject to requirements that are akin to the conditions of a MWE, so these clients would continue to be able to work in excess of 15 hours under a wage supplement approach and retain their eligibility for SLP. Eligibility would only be affected if the client was paid minimum wage in their own right, without a wage supplement.

¹⁰ This refers to SLP clients receiving it for a health condition or disability. It does not include SLP carer clients.

How would a wage supplement be implemented?

It would require new funding

61 Establishing a Government-funded wage supplement would result in a new cost for the Government. We estimate that the cost of the wage supplement may be approximately \$15 million per annum¹¹, but this cost should be offset by abatement to social assistance payments¹², and increased income tax obligations when people's income is increased by the wage supplement. We estimate the net cost of the wage supplement for government will be closer to \$3 million per annum. Section 9(2)(f)(iv)

62 To accurately cost the wage supplement, we would require data on eligible people's hourly wages and the hours they work, as well as their Social Welfare Number (SWN) so we could determine both the gross and net costs of the wage supplement for government. This data could be used to determine costs of a wage assessment model, and a generic supplement rate (which would only require hours worked and an estimate of potential rates). It would be possible to obtain this information from Business Enterprises, which account for around 93 percent of all disabled people who would be eligible for a wage supplement. We have not requested the data from Business Enterprise providers at this stage, for two reasons;

- No decisions or announcements have been made with regard to a wage supplement approach. Requesting this data at this time may create considerable and unnecessary anxiety among contracted Business Enterprise providers with respect to what may change.
- Current wage rate data may not accurately reflect the true cost under a wage supplement approach that uses a Government-mandated wage assessment tool, as the tool may result in employers meeting a higher proportion of wage costs than at present.

63 There will also be costs associated with administering the wage supplement, both for the government and for employers; who will be expected to pass the wage supplement component on to staff with their wages. Section 9(2)(f)(iv)

64 Section 9(2)(f)(iv)

MSD could contract with employers to pass on the wage supplement

65 Around 93 percent of people with a MWE work in a Business Enterprise. We expect that under a wage supplement approach the percentage of eligible people working in

¹¹ This is based on 2016 wage data and what it would cost to top those wages up to minimum wage. A generic supplement rate may have a different cost for the government.

¹² Note the proposed income exemption may not be for the client's full earned income, so some abatement to social assistance may still occur. If a full income exemption is granted then it would mean no abatement to social assistance payments.

a Business Enterprise would be similar. MSD already has contract relationships with Business Enterprise providers, as the primary government funder of these services. It would be possible for MSD to create separate, new contracts with these providers for the purpose of paying a wage supplement. It would also be possible for MSD to create new contract relationships with other employers of staff on wage supplements where there is not an existing contractual relationship.

- 66 Payment of the wage supplement would be made to the employer in arrears, once it is known how many hours each disabled person with a wage supplement has worked. It would be up to employers to provide this information to MSD for each of their employees with a wage supplement, rather than expecting each disabled person to notify the Ministry individually. To support employers to be able to provide flexible working arrangements, this could be done on a monthly basis. While it is likely that employers will be paying staff on a weekly or fortnightly basis, the administrative burden of filing this information more regularly would not be feasible.

The employees would be protected by the legislated minimum employment standards, and MSD could require further "good employer" standards to be met through Business Enterprise contracts

- 67 By creating a wage supplement, and removing the MWE, disabled employees will benefit from all the same rights as other employees in the labour market, including the right to earn no less than the minimum wage.¹³
- 68 The Labour Inspectorate is the regulator responsible for enforcing minimum employment standards and as such would have an ongoing role regardless of how the wage supplement is implemented. The Inspectorate would, however, have an operational decision to make in terms of whether to proactively assess compliance among employers of staff with a wage supplement, or just respond to complaints if/when they arise.
- 69 In addition, as well as paying a wage supplement, MSD's contracts with Business Enterprises could require certain other employment conditions, over and above the minimum legislated requirements that are in place for all employees. This would create an incentive for Business Enterprises to support employees to develop further skills and move into open employment, as payment of the vocational support contract could be tied to the Business Enterprise demonstrating compliance. We have not proposed additional conditions be tied to the contracts for wage supplements, as if the MWE is removed, Business Enterprises would likely be dependent on the Wage Supplement payment for viability. Possible additional standards may include:
- the Business Enterprise must demonstrate they have worked with each employee to create a personal development plan to assist them to progress in the job, as appropriate to their abilities and work aspirations
 - the Business Enterprise must agree to review the disabled person's progress annually
 - the number of wage supplements in place in each Business Enterprise must fit within the existing funded contract capacity (ie if contract capacity is a maximum of 210, that Business Enterprise could have no more than 210 wage supplement agreements, but they could have fewer than 210 if not all staff have a wage supplement or if they are not at capacity)
 - a requirement to demonstrate plans to support a small percentage of staff with wage supplements (2-5 percent) into open employment conditions each year,¹⁴ and to provide evidence of whether they were successful in achieving this. Other

¹³ Currently employers must provide disabled employees with all employment rights, but can be exempt from paying minimum wage if the disabled employee has a MWE permit.

¹⁴ This could be either in their own organisation or with another employer in the open labour market

employers, outside of Business Enterprises, with only one or two staff with a wage supplement could also be encouraged to do this, perhaps over a longer timeframe.

- 70 Business Enterprises would likely seek additional financial compensation for complying with the additional "good employer" conditions. This could be confirmed through consultation with Business Enterprises.

Next steps

- 71 There is considerable interest from the disability support sector in the work to identify alternatives to the MWE. Several Business Enterprise providers in particular have expressed an interest in being a part of this work as it progresses further. We consider that it would be appropriate to consult with the disability sector, including disabled people, families and whānau, employers of disabled people on MWEs, and unions, on the proposed wage supplement approach and how it could operate in practice. In particular, we could test through a consultation process whether there is support to retain a wage assessment process or to move to a generic rate of supplement. We can also test the level of likely commitment to potential good employer requirements, which may have some cost implications for Business Enterprises.
- 72 Identifying the level of public support for a change to a wage supplement approach will assist in making decisions on progressing the approach and accurately costing this out. Section 9(2)(f)(iv)
- 73 A consultation process would require Cabinet agreement. If you agree that we should consult with key stakeholders in the disability sector, we will prepare a Cabinet paper seeking agreement to do this.
- 74 The introduction of a wage supplement would enable the MWE to be repealed. Further advice on this will be prepared if and when it is agreed to introduce a wage supplement.

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MBIE briefing 0919 18-19

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Appendix One: Risks and mitigations for the approach

Potential risk	Proposed mitigation
<p>Section 9(2)(f)(iv)</p>	<ul style="list-style-type: none"> Section 9(2)(f)(iv)
<p>Increased compliance costs for employers result in employers no longer employing disabled employees</p>	<ul style="list-style-type: none"> If disabled people lose existing jobs in favour of non-disabled people, this may engage the anti-discrimination provisions in the Human Rights Act and the Employment Relations Act (depending on the circumstances).
<p>Providers may "cherry pick" disabled employees they perceive to be more productive under a generic rate wage supplement</p>	<ul style="list-style-type: none"> Proposed contract requirements to move a proportion of disabled employees into open employment may help to address this. Existing employees will be protected, to some extent, by unjustified dismissal provisions in employment law.
<p>The cost of the supplement may be seen as prohibitive, or unaffordable with future increases to the Minimum Wage</p>	<ul style="list-style-type: none"> Over time the proposal is expected to move more disabled people into employment, including open employment. Numbers are generally small, and we will look at what other support we can provide to support disabled people into employment generally.
<p>Business Enterprise employers may see the increased compliance obligations as a ploy by government to remove the Business Enterprise model</p>	<ul style="list-style-type: none"> Clear communication will be required through the consultation process and afterwards to assure Business Enterprise providers this is not the case.
<p>Financial risk for employers of needing to pay wages to staff in advance of receiving the wage supplement from government</p>	<ul style="list-style-type: none"> This is a bigger risk for Business Enterprises, who will have many staff to pay. We think it can be offset by paying the wage supplement to employers on a monthly basis. Further, Business Enterprises receive other funding from MSD in advance, so they should have sufficient funding in their accounts to meet wage costs in

	advance.
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Appendix Two: Example calculations

- 75 The example below illustrates the impact of the proposed wage supplement on overall income. It uses a person working 40 hours per week, as this will have the biggest impact on income, and thus the biggest impact on financial obligations.

Example 1. Person working 40 hours per week, at \$5 per hour with full income exemption and receiving single rate of SLP, 18 years+

- Gross weekly income is \$303.40 from SLP and \$200 from working (total 503.40)
 - PAYE deduction is \$76.24
 - Student Loan repayment is \$15.48
 - KiwiSaver contribution (3%) is \$15.10
 - Total deductions (\$105.82)
- Net income after deductions is \$426.58 per week

Under a wage supplement this person would earn \$16.50 per hour. If we continue to assume a full income exemption, the impact would be:

- Gross weekly income is \$303.40 from SLP and \$660 from work (total \$963.40)
 - PAYE deduction is \$168.17
 - Student Loan repayment is \$70.68
 - KiwiSaver contribution (3%) is \$28.90
 - Total deductions (\$267.75)
- Net income after deductions is \$695.65

The net benefit of this person receiving a wage supplement is \$269.07 per week, after paying income tax, Student Loan repayments and KiwiSaver contributions. If the person did not have a Student Loan to repay, the net benefit would be higher again.

Report

Date: 16 April 2018 **Security Level:** IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Disability Issues and Social Development
Hon Iain Less-Galloway, Minister for Workplace Relations and Safety

Minimum Wage Exemption: Possible direction for change

Purpose of the report

- 1 This report sets out work that has been undertaken to identify alternatives to the Minimum Wage Exemption (MWE). It seeks your agreement to commission further work to develop a wage supplement approach (this was partly developed in 2016) which is the only mechanism identified that would allow the repeal of the MWE policy while retaining existing job opportunities.

Executive summary

- 2 The disability sector has identified a range of concerns with the current Minimum Wage Exemption (MWE) approach, including its discriminatory nature, concerns about the reliability of the assessment processes used, and its inconsistency with some of New Zealand's international obligations. The Disability Action Plan 2014-2018 also contains an action to "identify better alternatives so that the minimum wage exemption process can be removed".
- 3 Officials worked with disability sector representatives in 2016 to consider alternative approaches. Of the options identified through this process, the only one to provide an outright alternative to the MWE policy, that could remove the Minimum Wage Exemption process, and protect existing job opportunities for disabled people, was a government-funded wage supplement.
- 4 Using this approach, the difference between the assessed wage rate and the minimum wage would be paid by government, for those who are eligible. Some form of productivity-based wage assessment would need to be retained to determine what proportion of an employee's total hourly wage should reasonably be met by the employer.
- 5 While a wage supplement approach would arguably be a superficial change (in that government funding would simply move from being in the form of a benefit paid directly to an individual to a supplement paid to an employer), it would allow some of the problematic aspects of the current MWE process to be removed – including the repeal of legislation that has been criticised as discriminatory.
- 6 The cost of supplementing employees' wages would be partially offset by a corresponding reduction in the benefits paid to those employees. Based on the current minimum wage of \$16.50 per hour, initial estimates are that this approach would cost the Crown an additional \$2.8m per annum. The planned increases to the adult minimum wage (to \$20 per hour by 2021) would increase this cost further.
- 7 A move to a wage supplement approach would require a change to the eligibility and productivity assessment processes that are currently used within the MWE system.

Redesigning these processes – including potentially moving the oversight function away from the Labour Inspectorate – could also be considered separately to any change in the funding model (ie these changes could be progressed within the current MWE framework).

- 8 A key principle underpinning the design of a wage supplement approach is that no one should be worse off financially as a result of any change. More work is required to fully investigate how receipt of a wage supplement may impact on social policy entitlements and obligations, such as Working for Families support and child support payments, among others. More work is also required to understand the impacts for government, including indirect costs such as administration costs, and the mechanics of how to implement the approach.
- 9 With your agreement, officials will undertake further work to better understand these issues, and report back with advice on the overall approach. This could be used as the basis for consultation to investigate whether there is public support, particularly from disabled people, for the change.

Recommended actions

It is recommended that you:

	<i>Minister for Disability Issues</i>	<i>Minister for Workplace relations and safety</i>
1 note that officials worked with a reference group from the disability sector in 2016 to develop alternatives to the Minimum Wage Exemption process	noted	noted
2 note the only option identified by the reference group that could remove the Minimum Wage Exemption process, and protect existing job opportunities for disabled people, was a wage supplement	noted	noted
3 agree that policy work in relation the Minimum Wage Exemption should, at this stage, focus solely on a wage supplement approach	yes / no	yes / no
4 note further work is required with respect to		
4.1 potential unintended impacts of a wage supplement approach, including impacts on social policy entitlements and obligations (eg Working for Families support, child support payments and student loan repayments), and GST		
4.2 the detailed design of a wage supplement approach, including the mechanics of how this could be implemented	noted	noted

5 **agree** that officials should undertake the further work outlined in recommendation 4 and report back to you in July 2018.

yes / no

yes / no



James Poskitt
General Manager, Community and Families
Policy
Ministry of Social Development

16/4/18

Date



Gerard Clark
Manager, Employment Standards Policy
Ministry of Business, Innovation and
Employment

13/4/18

Date



Hon Carmel Sepuloni
Minister for Disability Issues

17/4/18

Date

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

Date

Background

- 10 The MWE conflicts with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). New Zealand has been criticised by the UN Committee on the Rights of Persons with Disabilities for maintaining the discriminatory practice of MWEs.
- 11 In addition, the Disability Action Plan (DAP) agreed by Cabinet in December 2015 contains a commitment to build on the Ministry of Social Development's (MSD) "long-term work programme to improve employment outcomes for disabled people" by identifying "better alternatives so that the minimum wage exemption process can be removed". It was included at the request of Disabled Person's Organisations (DPOs) which have argued for some time now for an end to this discrimination against some disabled people. The lead on this action is shared across the MSD and the Ministry for Business, Innovation and Employment (MBIE), recognising that while the relevant legislation sits with MBIE, responsibility for other disability employment support levers sits with MSD.

Who gets a minimum wage exemption and how does it work in practice?

- 12 Under section 8 of the Minimum Wage Act 1983, a Labour Inspector can issue a permit to a worker exempting an employer from the requirement to pay them the minimum wage (a Minimum Wage Exemption (MWE) permit), if the inspector is satisfied that the employee is "significantly and demonstrably limited by a disability" in carrying out his or her work requirements.
- 13 Individuals applying for a permit are individually assessed by their employers and this assessment by their employer determines what wage rate the employee will be paid. Labour inspectors provide external oversight of the assessments that have been carried out by employers.
- 14 There are approximately 900 MWE permits in place in New Zealand which is equivalent to 0.2 per cent of all disabled people in either full-time or part-time employment¹. Most people who currently hold MWE permits (93%) are employed at Business Enterprises, organisations whose primary purpose is to provide employment opportunities to disabled people. Of the 7% employed elsewhere, about half are employed by disability organisations. These organisations likely already have additional supervision and support in place as part of the services they provide, and as such they can provide additional support needed for their employees on MWEs. We therefore estimate that the proportion of MWEs in true open employment is around 3-4%.
- 15 Most employees with a MWE permit rely on income support from the Supported Living Payment, as income earned through their work is not sufficient to live on. As at October 2016, over a quarter of people with MWE permits received \$1.99 or less per hour of work, and 70 percent received less than \$4.99 per hour for their work. A breakdown of the number of employees by hourly rate is provided in appendix one, broken down by all employers and by open employment. The MWE employees in open employment are generally paid at the higher end of the pay range².

¹ The 2013 Disability Survey reported that 291,000 disabled people were in full-time employment and 125,000 disabled people were in part-time employment. This is based on self reporting of disability.

² By way of the wage assessment process completed by their employers.

The disability sector has identified several issues with the MWE system

- 16 Under the DAP, officials established a reference group³ from across the disability sector which met several times in 2016 to help identify issues and shape potential alternatives. The main issues that have been identified with the MWE system are:
- a. The legislation allows only disabled people to be paid less than the minimum wage based on the outcome of a productivity assessment. Singling disabled people out as less productive is discriminatory and sends a message devaluing the contribution of disabled people in the workplace.
 - b. The MWE conflicts with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The purpose of UNCRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.
 - c. The assessment and permit process is deficit focused, and is inconsistent with more recent approaches towards supporting disabled people that use a strengths-based approach.
 - d. Employers use a range of productivity assessment tools to assess wage rates. Anecdotal evidence suggests that the tools most commonly used are those that produce the lowest wages. Stakeholders have raised concerns about the validity and reliability of the tools being used.
 - e. Labour Inspectors consider that they are not the right people to verify whether the employers' wage assessments are reasonable. 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.
 - f. Employees (and in some cases their families) have a perverse incentive to accept or request low wages so that their earned income does not cause any benefit abatement.
- 17 The government position has been to acknowledge that MWE permits are discriminatory. However, in terms of the New Zealand Bill of Rights Act 1990, the relevant legislation was assessed as being justified, on the grounds that MWE permits were a proportionate and rational way of maintaining employment opportunities for a group that faces persistent disadvantage in the labour market.

Developments in Australia's approach to supported employment

- 18 In 2012, the High Court of Australia found that one of the wage assessment tools most commonly used in Australian Disability Enterprises (ADEs) discriminated against people with learning disabilities, as compared to workers with other types of disabilities. In response to this finding, the Commonwealth government has invested considerable resources to provide backpay to the affected workers, develop a new wage assessment tool, and support ADEs to transition to higher wage rates.
- 19 The discrimination in this case centred on the application of a wage assessment tool, and in particular, how its competency measures were applied to persons with a learning disability. This contrasts with concerns raised by DPOs in New Zealand around discrimination, which are predominantly focused on the payment of wages below the minimum wage to disabled employees. Disabled employees in ADEs may still lawfully be paid pro rata wage rates that are below the national minimum wage.

³ The reference group included representatives from the two disability provider umbrella groups; Inclusive New Zealand and the New Zealand Disability Support Network (NZDSN), and includes two employers that currently use MWE permits, and representatives from both People First NZ and Blind Citizens NZ.

- 20 The risk of any similar court finding in New Zealand is considered to be low, as there is currently no standard or approved tool for assessing wage rates in New Zealand. If a decision is made to introduce a mandatory approved wage assessment tool in New Zealand, the Australian experience will provide valuable lessons to draw from.

Potential changes to the MWE policy

- 21 The action to identify better alternatives to the MWE so that it can be removed, was included in the Disability Action Plan in response to requests from DPOs which see an end to all forms of discrimination (including MWE permits) as a key objective. At the same time, we understand that for a lot of disabled people who are currently employed with a MWE permit, their job and income security are of paramount importance.
- 22 In light of these concerns, the reference group was directed to only consider policy changes that would protect existing job opportunities for disabled people. This was so as to balance the criticism of the discriminatory approach against the need to have meaningful employment opportunities. A bottom line requirement was that nobody should be worse off as a result of any potential changes to the MWE scheme. Within these parameters, the options for change are limited. Simply repealing the legislation with no supports in place for either employers or disabled people currently with a MWE permit was not an option as it would likely result in the loss of jobs currently held by people with MWE permits.

A possible new approach: government-funded wage supplement

- 23 The only outright alternative to the MWE policy identified by officials (and put forward by the reference group), which could address the sector's concerns and allow the MWE to be repealed, is a government funded wage supplement. Under this approach, individuals who are currently employed subject to MWE permits would become eligible to have their hourly wages 'topped up' by government to the adult minimum wage. The core features of a wage supplement would likely be as follows:
- a. An individual's eligibility for the supplement would be determined by applying criteria. Criteria would include that the employee must be "demonstrably limited by a disability" (even once an employer has made reasonable accommodations) to the point where their workplace productivity is significantly diminished. The job would also need to be one that provides a real opportunity for the person to contribute and use their abilities and skills, not created solely to occupy the individual at a rate subsidised by the government.
 - b. To address concerns about the inconsistent approach different employers take to wage assessments under the current MWE system, a single government-endorsed wage assessment tool would be developed. All employers would be required to use this tool to assess the pre-supplement wages of eligible employees.
 - c. The supplement would be paid to the employer, who would pass the payment directly to the employee (in their wages). Further work will need to be undertaken on the mechanics of doing this, before a wage supplement could be implemented. As the majority of MWEs are for employees in Business Enterprises that the government contracts with, we anticipate that a wage supplement for these employees may be able to be built into existing contract processes. This could mean that only a very small number 3-7% of all MWEs would need a different arrangement.
 - d. A government agency would need to assess eligibility for a wage supplement, and provide oversight of the productivity assessment. In a post-MWE environment there could be limited justification for the Labour Inspectorate to oversee the eligibility or assessment process; however an alternative oversight mechanism could be put in place to provide greater consistency, and minimise the risk of employers gaming the system. Further work would be required to

determine if an alternative oversight mechanism would be better placed to assess eligibility for a wage supplement, and where this function might be better suited.

- 24 A government funded wage-supplement would result in a new cost for government. While abatements to benefits and increases in taxation would partially offset the cost to government, it is not expected that this would entirely cover the additional new cost. The estimated net cost to government, once abatement of benefits and increases in taxation are accounted for, is approximately \$2.8m per annum (based on the current adult minimum wage of \$16.50). The planned increases in the minimum wage to \$20 per hour by 2021 would result in additional costs for government. While employers will be required to meet a proportion of any increase, the additional top up to the minimum wage beyond that would be met through the proposed wage supplement. Further details on these estimates, including the assumptions used, are set out in Appendix 2.
- 25 There are also likely to be some wider implications for taxation. Currently income earned by disabled people from a disabled workshop⁴ (business enterprise) is exempt from being taxed if the average amount of income earned is less than \$50 per week. Under a wage supplement model, this exemption may no longer be needed, as at the current minimum wage rate anyone working more than 3 hours per week will earn over \$50 before tax. Increases in salary and wages may also impact on social policy entitlements and obligations (eg Working for Families support, Temporary Additional Support, child support payments and student loan repayments). Officials from MSD and MBIE will need to work with Inland Revenue to identify if there are any potential tax implications that might arise if a government funded wage-supplement was progressed, and provide advice on whether and how these could be best addressed. This work could also consider the impacts on GST, and in particular whether this may further offset the cost to government under a wage supplement approach.
- 26 Advantages of a wage supplement approach are that:
- a. It would enable the MWE legislation to be repealed, which would remove a discriminatory provision from New Zealand legislation, and arguably improve our alignment with international human rights treaties. (A wage supplement may, however, tend to perpetuate a model of segregated employment, which would be contrary to the intent of the UNCRPD.)
 - b. All disabled people would have all of the same employment rights as non-disabled people, including the right to earn at least the minimum wage. Although it would not allow a complete move away from the productivity assessments that form part of the current system, a new assessment process could be designed (in collaboration with the sector) to mitigate any risk of the process being perceived to retain discriminatory elements. We would look to learn from the Australian experience in this regard.
 - c. It could be designed to ensure individual employees are better off, or no worse off, financially. Assuming that people currently receiving a MWE continue to work the same hours as they do currently⁵, then under a wage supplement model they would all receive either the same gross amount of money as they do currently, or would receive more, even after the abatement of benefits is taken into account.
 - d. The supplement would protect existing employment opportunities for disabled people. A wage supplement model could meet the needs of employees (to

⁴ The term disabled workshop is in the Income Tax Act 2007, and in practice refers to Business Enterprises

⁵ This has been assumed on the basis that most people with a MWE currently work in Business Enterprises which have advised they do not presently have additional capacity to take on more employees or to offer more work to current employees.

continue to participate in the workforce) and employers, as it would allow employers to continue their current operations without relying on MWE permits, and without incurring significant additional wage costs.

- e. Business Enterprise providers that we have spoken to have advised us that a government funded wage supplement model would ensure their organisations can continue to operate as they do currently, and that they would be able to continue to employ the staff they do. Similarly, we do not anticipate the move to a wage supplement system would lead any employers in the open labour market, who currently employ individuals on MWE permits, to change their current employment practices.

27 Potential disadvantages of a wage supplement approach are that:

- a. There may be implications for people receiving income related supplements and supports. Officials will need to work to identify the nature and scale of any impact and how this may be addressed to help inform any future advice on change. From the perspective of income abating benefits, a wage supplement approach should remove the perverse incentive to accept very low wages, or decline increases to wage rates, as the wage rate would be topped up to minimum wage. The design of the wage supplement will be such that disabled people will be either the same or better off financially under a wage supplement approach, however more work is required to identify how the wage supplement approach would impact on other income related supplements, so that we can design it to ensure that disabled people are not worse off financially.
- b. The change may be seen as superficial, given that the employees affected would still need to be assessed and labelled as less productive than other employees.
- c. Supplementing wages up to the minimum wage may minimise the current incentives to take on additional responsibilities at work. Business Enterprises have advised that some supervisory roles within their organisations are already remunerated at the minimum wage or above. Maintaining wage relativity (post the introduction of a wage supplement) would require Business Enterprises to incur additional wage costs for some employees. If relativity is not maintained by Business Enterprises then the incentives for an employee to take on this responsibility are likely to be diminished. There is a small risk that Business Enterprise providers will lobby ministers to meet the cost of maintaining wage relativity. In the past when the Adult Minimum Wage has been increased, some Business Enterprise providers have sought additional funding from MSD to meet the increased cost in wages. MWEs are indexed as a percentage of the Adult Minimum Wage so MWE wage rates increase accordingly when the Minimum Wage rate is adjusted. MSD has not met these requests for additional funding as MSD contracts with Business Enterprise providers have no link to MWE wage rates.
- d. A supplement would be more complex for employers to administer and could lead to some employers being less willing or able to accommodate flexible working arrangements (eg highly variable hours).
- e. There is some risk of employers of disabled people outside Business Enterprises wanting to access the wage supplement for their disabled employees not currently holding a MWE permit. It is further possible that employers of disabled people may choose to take on a disabled employee who is eligible for a wage-supplement over a disabled person who is not eligible. Research in Belgium, however, found that disabled employees with a wage subsidy available to them were no more or less likely to be offered a job than disabled people without a wage subsidy⁶. On this basis we do not anticipate this will be a significant risk.

⁶ Baert, Stijn. *Wage Subsidies and Hiring Chances for the Disabled: Some Causal Evidence* IZA DP No. 8318 found at ftp.iza.org/dp8318.pdf

- 28 We consider that any risk of a supplement being used inappropriately could be mitigated through careful design of the eligibility requirements. For example, whilst a wage supplement would be available to people in open employment (as MWE permits are currently), eligible employees would in practice have supervision and/or support requirements that would be unlikely to be met by employers other than Business Enterprises. Any risk of an unintended shift of disabled people from non-government-supplemented employment to government-supplemented employment could be mitigated by barring any claim for a supplement on productivity grounds where the applicant has previously been employed by the same employer at minimum wage or above.

Enhanced status quo: retaining the MWE, but promoting greater consistency and oversight of the wage assessment process

- 29 If a more incremental change is favoured, there are aspects of the package outlined above that could be progressed as a partial response to the sector's concerns, while retaining the MWE framework. In particular:
- a. developing a single government-endorsed wage assessment tool, and requiring all employers who employ workers on MWE permits to use this tool (also a component of the government funded wage supplement)
 - b. moving the function of issuing permits to an agency with greater expertise in disability issues than the Labour Inspectorate.
- 30 These possible changes could be progressed either individually, or together, as part of an "enhanced status quo" package. Redesigning the assessment process could address the disability sector's concerns about the inconsistent approaches different employers use for the wage assessments required by the MWE permit system. Moving the permit function to an agency with greater expertise in disability could improve government oversight of the wage assessment process.
- 31 A new wage assessment tool could result in some employers having to pay higher wages than they currently do. Such a change would also, in the short term, impose additional compliance costs on those using MWE permits to adapt to the new assessment process, although the assessment process could be designed to minimise compliance costs over the longer term.
- 32 Neither of these changes would address the discriminatory aspects of the current MWE arrangements. Nor would they address concerns raised by the UN Committee on the Rights of Disabled Persons around some disabled people being paid below minimum wage, and would therefore not advance New Zealand's position internationally with regard to the employment of disabled people. We would, however, draw on lessons from the recent Australian experience to ensure that the wage assessment tool does not discriminate in its assessment of productivity or competencies.

Next steps

- 33 Officials and the sector representatives that were engaged in the reference group consider that a wage supplement approach offers the only realistic pathway to allow the MWE to be repealed in the near term, without reducing employment opportunities for the group of disabled people currently targeted by the MWE policy. If the government considers the removal of the MWE policy in the near term to be a priority, we recommend you commission further work on this approach. Officials can undertake further work on:
- potential unintended wider impacts of a wage supplement approach, including impacts on social policy entitlements and obligations (eg Working for Families support, child support payments and student loan repayments), and impacts on GST

- the detailed design of a wage supplement approach, including direct and indirect costs for the government (ie the cost of the supplement itself as well as the costs to government of administering it), and the mechanics of how to implement the approach (ie when and how the payments would be made by government and when and how this payment could be passed on to the disabled employees), and where oversight of the eligibility for a wage supplement should sit.
- 34 If you agree, officials will report back to you in July on a more detailed design for a wage supplement approach. This will include how any wider impacts could be addressed. This could be used to inform your decision on whether to seek Cabinet agreement to consult publicly on this approach. Public consultation would be important to gauge the level of wider public support for change, particularly among those who are directly affected by the MWE policy (including holders of MWE permits).
 - 35 As updates on Disability Action Plan work items are published on the Office for Disability issues website, any agreement to further work will be reflected accordingly. The sector is likely to welcome any progress in this respect.
 - 36 The proposals regarding the wage supplement approach will only resolve issues around the discriminatory provisions of the MWE and the tightly targeted action under the Disability Action Plan. Further work to address the participation of disabled people in meaningful employment opportunities may further advance the position of disabled people.

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Appendix one: breakdown of MWEs by hourly rates and type of employer (as at October 2016)

Table one: MWEs by hourly rate (all employers)

Wage paid to the employee per hour	Number of minimum wage exemptions granted
Less than \$1.00	11
between \$1 - \$1.99	229
between \$2 - \$2.99	126
between \$3 - \$4.99	248
between \$5 - \$9.99	209
over \$10.00	45
Total	868

Table two: MWEs by hourly rate (open employment)

Wage paid to the employee per hour	Number of minimum wage exemptions granted
Less than \$1.00	-
between \$1 - \$1.99	-
between \$2 - \$2.99	1
between \$3 - \$4.99	2
between \$5 - \$9.99	41
over \$10.00	13
Total	57

Appendix two: Estimated costs of a wage supplement approach

Table 3 below compares the estimated annual costs under the current model to the estimated annual costs under a wage supplement model. These early estimates were developed using a sample of data from 355 people with MWEs, in four Business Enterprises across New Zealand. This has been extrapolated out to estimate the cost of supplementing the wages of all people currently receiving MWEs, up to the current adult minimum wage.

Table 3. Comparison of estimated costs

	Current model	Wage supplement model	Increase/(decrease) in costs to government
Government			
Supported Living Payment	\$14,391,703	\$2,330,943	(\$12,060,760)
PAYE	(\$2,526,120)	(\$3,129,623)	(\$603,503)
Wage supplement	0	\$15,509,346	\$15,509,346
Net cost	\$11,865,583	\$14,710,666	\$2,845,083
Employers			
Wages ⁽¹⁾	\$5,416,244	\$5,416,244	0
Net cost	\$5,416,244	\$5,416,244	0

Notes:

- Assumptions of the costings include that:
 - there is no change in behaviour (ie no person decides to work more or fewer hours than currently, and there is no increased take up)
 - the wage rates remain the same under a new productivity assessment system, and the sample of 355 people used to calculate costs is representative of the approximately 800 people receiving MWEs currently. Note, the wage data from Business Enterprises is from 2016 and we assume that because wage rates are indexed to the adult minimum wage that there will be modest increases to wage rates since this time, which would reduce the cost to government. As part of further work on the detailed design, officials will seek updated data on wage rates, to more accurately cost the model.
 - contract funding for Business Enterprises from the government continues, and that the capacity on those contracts does not increase or decrease.
- The validity of the assumption around cost neutrality for employers (the unchanged cost along the bottom of table 1.) would depend on what model of employee assessment is adopted in the future. A universal, government-endorsed assessment tool might produce higher assessed wages, in some cases, than the very low rates being paid (particularly in some Business Enterprises currently).

⁽¹⁾ This is the wage cost Employers (most of which are Business Enterprises).

- 3 The costing does not take into account any increase the government may receive in GST revenue from additional spending that may result from people earning more and spending more, nor does it estimate any savings that may be made from abatements to supplementary forms of assistance such as Accommodation Supplement or Disability Allowance. This will be considered as part of further detailed work on a wage supplement approach.
- 4 Individualising the additional cost works out at an average cost of \$2,964 per person per annum, although in practice some people will receive a higher amount and some a lesser amount, as the amount of wage supplement will depend on the wage rate the individual is assessed at.
- 5 The wage supplement cost would be additional to other MSD funding that individuals can access for vocational services. Around 90-95 per cent of MWEs currently in place are for persons working in Business Enterprises. On average, Business Enterprises are funded around \$4,200 per person per annum by MSD to provide vocational services to disabled people, so most of the recipients of a wage supplement also benefit from this funding⁷. In addition, roughly 15 per cent of all people funded by MSD in Business Enterprises also access at least one other MSD-funded vocational service (ie community participation and/or supported employment services), at an average cost of \$4,500 per placement, per annum. A small number of people access two or more MSD-funded vocational service placements. These costs have not been included in table 3 as they are not expected to change under a wage supplement approach.

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⁷ The payments are made directly to providers, so the disabled person would not receive this directly. Only those disabled people working in open employment would not be accessing the MSD-funding.