

s 9(2)(ba)(i)

**Submission to the
Ministry of Social Development Discussion
Document:**

**A wage supplement as an alternative to
Minimum Wage Exemption permits.**

April 2019

s 9(2)(a), s 9(2)(ba)(i) is a not for profit organisation that is based in s 9(2)(a) and was established in s . We trade under the name s 9(2)(ba)(i) though our legal title is s 9(2)(ba)(i) . The vision of the organisation has always been to provide employment, occupation and social connection opportunities for people with a disability. We provide a local solution to issues faced by disabled people in our local communities.

We hold a Ministry of Social Development/MSD, Business Enterprise contract with a target of s individuals and we hold individual Ministry of Health Day Programme contracts for s . We offer people with a disability; employment, work orientated occupation, ⁹⁽²⁾ day programme supports and volunteer and community participation opportunities so that they can engage in everyday activities in everyday places. s 9(2)(a)

As a not for profit disability enterprise all income made from this work is returned directly back into our operations. We must also fundraise to help cover our overhead costs, fund projects and maintain our property and plant assesses so that we can remain solvent and operational so to achieve our social goals.

We employ s 9(2)(a) people with a disability as our s 9(2)(a) and another s 9(2) people are supported in voluntary activity. s employees are on minimum wage rates and s 9(2)(a) are assessed under the Minimum Wage Exemption/MWE scheme and receive wages equivalent to their assessed rates of productivity.

I have read the discussion document, considered the issues it raises and reflected on our history and that of the sector in relation to the employment of people with disability, especially those with an intellectual disability as they are the people most affected by this.

Much of the drive to do away with MWE and replace them with a Wage Subsidy looks to be an attempt to placate a small group of people who have spent many years denigrating grouped and workshop style supports because of their personal ideological stance yet have not come up with any successfully workable alternatives themselves. I am convinced that this same group will not be accepting of the Wage Supplement ideas suggested as alternatives either, so their drive for change will still go on.

I found the Foreword of the document to be somewhat misleading. People with disability are not "prevented" for earning full wage under MWE it is simply a fair way of ensuring people with disability, and in particular an intellectual or similar disability, can engage in work. The system gives evidence as to what their pay scale should be in relation to their peers and to others employed in open industry workplaces. People we employ under a MWE are all welcome and encouraged to explore work options in open employment should they wish to or work to level of productivity where they earn a minimum wage or better in their current employment.

Response to points

15 & 16

Some 96% of the 900 people on MWE are employed in Disability Enterprises under MSD Business Enterprise contract and there is good reason for this. Disability Enterprises grew out of sheltered workshops which predominately catered for people with an Intellectual Disability or similar disability and therefore were always benevolent and social welfare driven in their vision, goals, work and nature. Business Enterprise contract holders have a good understanding of what it means to engage and employ people with an Intellectual disability and what supports best meet the needs of this particular group of people.

s 9(2)(ba)(i) [REDACTED] never intended to become fully commercial business needing to operate in a competitive, capitalist, free market environment. However we are now forced to do so more and more and we struggle to do so successfully. This is because we employ some of the most disadvantaged people, from the least employed group of people, in our society. Their low level of employment is primarily due to the fact that they struggle to be independent, self-directed and productive in the workplace. Providing work styled day programmes and occupation to people with an intellectual disability or similar is the whole intent and purpose of our existence. We are orchestrated in our attempts to create a supported workplace that mimics workplaces found in the wider commercial community but we do not and cannot place anywhere near the same expectations on the staff working here nor expect outcomes equal to truly commercial undertakings. We offer our supports solely so people with an Intellectual or similar disability can experience the benefits of work. These benefits include enhanced self-esteem, social connections, sense of purpose and achievement and an opportunity earn some extra money to supplement their benefits.

To be diagnosed with an Intellectual Disability a person must have an IQ of approximately 70 or below, show significant deficits in intellectual functions such as in reasoning, problem solving, planning, abstract thinking, judgment, communication skills, academic learning and learning from experience. These must all be evident prior to age 18. They also have heightened levels of naivety making them very gullible and are easily influenced and taken advantage of by others. These features make this population extremely vulnerable with poor coping skills and they are dependent on others for varying degrees of support to navigate life in the community. We know that these features will be with them for life therefore will need supports lifelong. There is no recuperation nor is there rehabilitation for them, once in adulthood there will most likely be no more clearly noticeable strides in their development to allow them greater or true independence. There is also evidence that people with an intellectual disability will go into dementia at an earlier age than the general populace. These facts can too often get lost or forgotten when people talk about developing or providing supports using the generalised terms for "disabled people" or "people with disabilities" as if they are a whole singular group with similar needs and therefore require a similar response. People with an intellectual disability need to be recognised as a unique and distinct group or collective within the disability community and require services and supports purpose designed to meet their particular needs.

Their ability to be competitive in the open employment market is greatly diminished hence such a large number are in receipt of the MWE as compared to people with other causes of disability. Therefore people with an intellectual disability as a group are at the fore of this issue. If other employment focused programmes introduced over the years had of had any good deal of success in finding people with an intellectual disability "real work for real pay" then workplaces such as s 9(2)(a) would no longer exist. We are still here because in general people with an intellectual disability cannot compete on merit in the open employment marketplace and also we provide what many of them want in their lives. There is also a great number of people with an intellectual disability that are unemployable in the usual commercial sense of the word and will remain totally dependent on MSD benefits and other funded supports lifelong. Rather than engaging in employment type activities they will often have day programs in place to bring them some activities and interest in their lives. So we in fact work with the more able and capable of people with an intellectual disability.

The 2013 statistics stating that 291000 disabled people are in full employment and 125000 in part-time is not broken down into any distinct groups and there is no definition of disability given. From experience I believe this number includes people who wear prescription glasses and hearing aids right through to people with more marked physical and sensory disability and mental health issues. I would be interested to know how many in these numbers are people with an intellectual disability but not in receipt of MWE permits. I suspect very few indeed.

Disabled people, without an ID or similar issue such as acquired brain damage, all have the cognitive abilities so to be able comprehend concepts, instructions, plan, organise and problem solve. Once any recuperation or rehabilitation have been gone through and/or modifications put in place to circumvent barriers presented then they are able to be independent and self-directed in their workplace. People with an intellectual disability do not have this ability in their lives. They will always need someone to provide them with varying degrees of supervision, guidance, oversight, planning, managing and care in the workplace.

20.

The idea that MWE conflict with NZ's obligations under the UN Convention is a moot point. It is some people's personal opinion but others have an equally valid opposing view. To me it seems that this opinion has been handed on and repeated with too few putting time into a critical analysis of what the UN Convention actually states and the intent of its stance. It is not a legal judgment so should not have been presented in the document as if it is fact. Doing so is misleading and could well influence people's feed-back by automatically believing it to be true.

It also says that the MWE assessment process is subjective. All assessments are subjective, they are not scientific measurement so this is the nature of all assessments and MWE are not an exception. The alternatives suggested to replace MWE there will still be some form of assessment required and these will still be subjective.

For Ministry of Business Innovation and Employment/MBIE to now say that they do not have enough knowledge or expertise in disability to manage the assessments is simply a cop out. I

find it astonishing and insulting to people under MWE that a Government Ministry that has been tasked with managing the system for so long can now make such a statement. They have had many years of experience in this so should have the skills and capacity to do the job they are tasked with. MBIE needs to either fully train their current Inspectors or employ people with the experience. MWE Permits are the responsibility of MBIE, it needs to step up and do the job correctly.

Questions 1 & 2

This is confused and misleading. I do not understand how the Yes and No answers and points a. to f. will be broken down and collated. It seems to be leading people to give an answer desired rather than letting people give their views.

As explained in this submission we believe the MWE should remain however we do see room for improvements made to the current system.

I could not find Questions 3 & 4 in the booklet.

21.

If MWE are indeed a form of discrimination then it is "positive" discrimination in the form of affirmative action to assist people into employment activities.

The UN Convention says, to the effect, that member states parties should; promote the employment of people with disability in the private sector through appropriate policies and measures which may include, affirmative action programmes, incentives and other measures. Subsidies, Minimum Wage Exemption Permits and other employer enticements are just such affirmative action programmes and measures. The MWE still looks to be the most successful of the incentive programs on offer in getting people with an intellectual disability into paid employment and therefore a vital tool. I also believe that it is the only bit of evidence based work currently done in New Zealand that gives proof of what works in the employment of people with an intellectual disability.

With any wage supplement system people will still not get paid a full, true and real, Minimum Wage for full and real work. It is just a play on words and adds another tier of money and the administration of this money into the equation. I do wonder how many people will come off the Supported Living benefit, if not then they will still be hit with the abetments once earning over \$100 extra per week so be no better off.

How is this going to impact on people who do come off MSD benefits? Will it exclude them from all the other MSD funded supports and add-ons that they are currently entitled to?

23.

Entry level wage for support work in the disability sector sits at the \$17-\$19 range. The minimum wage increased to \$17.70 April 2019 and will rise to \$18.90 on April 1, 2020 and then \$20 in April 2021.

By introducing a Wage Supplement system to take all disabled workers up to Minimum Wage we will have the situation where people with an intellectual disability who are in highly supported and subsidised work will be earning the same amount as the people employed to supervise, train, oversee and care for them. The same will go for people in wage subsidised work in the open workforce, they will earn the same as their co-workers who are expected by their employers to be independent and do a full days' worth of self-directed work for their income. Employer in an open workplace will be hesitant to employ people with a disability on a Wage Supplement to work alongside their other workers without one. They won't want to risk the backlash from their other staff who have to show initiative and independence, be self-responsible for their work and outcomes so to be fully productive to be able to earn their Minimum Wage.

25.

I believe that near if not all disabled people employed in jobs under MSD Business Enterprises contracts are in jobs that are solely created as a means of giving them occupation, these jobs are all subsidised to various degree. It is an artificial environment designed primarily to offer employment activities and opportunities to people with an intellectual disability. That is why s 9(2)(ba)(i) started up and how we operated but various changes such as in Employment Law meant we now need to become full employers. We do not deny that people have a right to be treated fairly in their employment but what we offer was never intended to be employment as it is recognised in the commercial world. We are benevolent in our intent of giving disabled people occupation and activities and remunerating them equitably for this. That has now turned into people being under full employment conditions on an equal footing with any other employee yet we cannot have the same expectations on them to work at a productive rate.

Our poor funding level and lack of increases for well over a decade does more to damage disabled peoples chances in participation in employment activities than anything else does yet as far as I am aware there is no work being done to address and rectify this.

26.

Bullet point 3. I have s staff on full wages who I believe would not achieve this level of productivity should they now be assessed for MWE. These s people work reduced hours as should they work a full week the cost of this to us as a business would be one we could not sustain. They deserve the right to be considered for a MWE Permit or Supplement should this be introduced.

31.

Is this ever done and in an ongoing way as would be needed by someone with an Intellectual Disability? I queried it some time ago on behalf of some of my staff and was given the distinct impression it would only ever actioned for a short, discrete time periods.

33.

If MBIE and MSD works with the organisations working under MSD Business Enterprise contracts to co-design an assessment tool or process then we can have a fair and robust system. If this is sorted and MWE were continued we would have an improved, just and equitable scheme that is proven to actually work in getting intellectually disabled people into employment activities.

38.

So no matter how productive or not, all disabled people under the scheme will get the exact same wage as everyone else in the scheme. Is this not discriminatory in itself? It gives absolutely no incentive for anyone to be productive in their work or show good work ethics. How, as an employer, am I going to be able to expect a worker to put effort into their work if there is absolutely no reward incentive for employees to do so?

39.

The UN Convention is just red herring as it is still just opinion. A Wage Supplement scheme aligns to the UN Convention no more than a MWE does. At least with the MWE people get remunerated equivalently for doing work of equal value which the UN Convention does expect from member states.

40.

All employers in the commercial world aim to employ the most productive workers and the best fit for their workplace. In the open employment market place there is a whole industry around the recruitment and screening of the best staff for the position and then in the performance managing of them. Yet we employ the least able and least employed members of our society so to give them some of the benefits of employment and are somehow expected to still operate in a competitive, capitalist and free and open market place. It is an impossibility to do. We already employ the most able of people with an intellectual disability as they must all be able to manage their own self cares, able and willing to take direction from Supervisory staff, self-managing in their mobility and transportation so to be here with minimal supervision and support. A large number of people with an intellectual disability require a greater intensity of support to manage their day to day needs so cannot be employed in the usual sense of the word. We must be pragmatic as a business if we are to survive and provide our supports to people with a disability. We are well planned and orchestrated to mimic a typical workplace to give people with an intellectual disability the wider benefits of being in employment. We do not hold them to the normal/usual responsibilities and expectations of full and open employment as we know they cannot compete or cope if on an equal footing with the general public.

43.

It does not mean they have the same rights any more than a MWE does. It is still a contrived scheme that it primarily just for people with an intellectual disability. They still do not truly earn a Minimum Wage, the only difference is that they will be given a taxpayer funded wage

supplement rather than be given a taxpayer funded benefit as now happens. I also suspect many people with a disability other than intellectual, will now want to jump on board so that they can earn a minimum wage without needing to put in the same amount of effort that is normally expected in open workplaces. Rights are normally balanced with responsibilities yet this is being overlooked in this situation.

45.

Firstly, their employment is not currently in jeopardy so they do not need protecting. What about the new, extra administration costs to employers? Is MSD intending to fully meet these costs? There will be a whole new tier of money coming in and back out of the employer's accounts that needs managing and tracking.

49.

Relativity to other workers is a huge issue. Business Enterprise staff were not included in the MSD Pay Equity settlement, so now the people they oversee, train and provide varying degrees of care and support to will be on the same wage bracket as they are. The same holds true to many of the staff who look after our Workshop Floor Staff in their out of work hours.

Some further questions, thoughts on the issues and ideas needing considering.

I and others I speak with have found the booklet a confusing document which is understandable because of the size and complexity of issues involved. I have had families looking for advice on how to complete theirs as they found it too difficult. I have also had some of our Workshop Floor Staff return their documents to me to send off. For one in particular it is glaringly obvious that the answers are those of their support staff /caregiver and not their own yet the demographic section claims it is from the disabled person themselves. There is nowhere for people to put their name and address and sign off in the answers section or in the Demographic section. Are you accepting anonymous submissions? Should not the hand written responses in the Discussion Document be tracked to an identified individual for collating and final analysis?

Currently someone accessing employment at s 9(2)(ba)(i) tends to make enough money to give them some added discretionary income. As our work fluctuates their income also fluctuates and this variation can be on a day by day basis or with seasonal influences.

A lot of the work we do gets exported, the businesses we contract with operate on the international as well as in the NZ market and are at the mercy of usual business whims, trends, spikes, troughs and seasonal fluctuations. Any variances in sales are passed directly onto us, as in how much work they want us to do at a particular time. The variance of an international trend or business decisions made, may be immediate or have a delayed trickle down impact on us. For example, should a firm lose an export contract then we would notice this

immediately. If there is a poor agricultural season in South America, then this could mean their farmers buy less of a particular item which in turn might not flow onto us for six months or more. A recent example is where we lost a s 9(2)(a) contract without warning. The items we s 9(2)(a) were sent from s 9(2)(a) along with printed material to go with them and we packaged them up together in our workshop. The s 9(2)(a) did a deal with the NZ firm where they offered to do all the s 9(2)(a), for free, is they could add their own logo to show that they did the printing. No firm is going to turn down such a money saving idea, so we lost work and therefore much needed income overnight without warning.

Few firms want to tie up money on having to hold stock on shelves in warehouses. They produce or buy in products once a purchase order comes from a customer and then the items are either in and out of their warehouse within days or sent directly from producer to customer. This impacts hugely on us as we can get either a glut of work that needs doing urgently or a shortage that leaves us working under capacity. We cannot forecast or control this. Due to these influences on our business, on any given day we may work a full busy day or be forced to stop paying our staff as there is no work. Then there are situations where some of our s 9(2)(a) Staff can only do one or two steps of a particular process or a few select jobs due to their individual level of ability. We divide the work out so that everyone has jobs to do so to keep everyone occupied as much as possible. If the work that the less able staff can do is not available on a given day but other work is, then they may be out of work while others in the workshop are busy with more complex tasks. However we always do our best to keep everyone engaged in tasks and gainfully occupied for as much of the week as possible as that is our core purpose. This is contrary to all good business practices but if we did not operate like this then these people would not be employed.

These are the business realities of us needing to work and try and compete in the open free market New Zealand has yet we are purpose designed so to offer employment, volunteer and community participation opportunities to the people who rarely get offered employment opportunities elsewhere. We basically provide day activity programme, caregiving and social work supports that are dressed up as employment so that intellectually disabled people have some purposeful occupation in their week that brings meaning to their lives. Our supports are provided with kindness and out of benevolent to people, who history has repeatedly shown do not to cope in general society without care and support. No real world commercial business can or would do this on the scale we do and still be competitive and profitable.

Taking time off work for illness, holidays or other reasons also impacts on people's weekly wage. For any days over and above their contracted sick or annual leave allowance we let people take time off on a casual basis as leave without pay. This is not an uncommon occurrence for a number of our staff who like to take various days off or may have breaks throughout the year. We allow this with far greater leniency than any other employer does as we understand that our purpose is to enhance their lives so we provide them with a lifestyle job, not true or real employment as the general population must work to.

Currently the fluctuations in their hours of work has little effect on their income as their main income is a MSD Supported Living Benefit. Any fluctuation from our work typically impacts

on their discretionary spending money only. However this is important money to many of them and has a positive impact on their quality of life.

With fluctuation in people work hours there will be the extra hours of input needed from MSD Case Managers or staff should a Wage Supplement system be implemented. If working part time, as most of my staff do, then they will need to inform their Case Managers each week of their hours for that particular week. The CM or someone within MSD will need to calculate their benefit and/or the supplement amount in relation to this and then calculate the employer's reimbursement and ensure this gets paid. Then the employer will need to track the reimbursements to ensure that they are correct. It looks to be creating a huge amount of extra administration work for everyone but with no greater practical outcome for anyone.

With a supplement system we as employers will no doubt be reimbursed in arrears. If so, then we will always need to carry capital to cover this cost until MSD reimburses us. Is the reimbursement going to be weekly, monthly, quarterly or? Will we receive added funding to cover the added admin and Payroll costs that we are going to incur? Due to our size we contract out our Payroll to an accountancy firm that specialises in Payroll for various businesses locally. For our business it will mean a huge amount of extra contact with and input needed from our Payroll. Our s [REDACTED] Day Programme Supervisors came under the Ministry of Health's Pay Equity settlement. The impact of the extra work our Payroll needs to do for these s [REDACTED] employees increased our payroll costs significantly. If this is replicated in us managing a Wage Supplement scheme for all ours 9(2)(a) [REDACTED] Staff then we will be looking at a huge increase in our overheads. This does not even touch the added hours of admin we would need to put in to manage it from our end.

Coming under Ministry of Health Pay Equity Settlement we have found ourselves hugely out of pocket. The percentage uplift added to our contract supposedly to reimburse us the costs of wages increases, comes nowhere near reimbursing the real costs of Day Programme Supervisors wage increases on us and it is causing us serious cash flow problems while we wait for a "bespoke" transition funding arrangement be put into place. On top of this the MoH is still "clawing back" overpayments they made to us in their Pay Equity settlement Advanced Interim Payments for financial year 2018. This combined with the fact our current MSD contract has not been increased since 2007 and staff working under Business Enterprise contracts were left out of MSD's Pay Equity settlement leaves me with little confidence that MSD will treat us and our sector any better or fairer when it comes to reimbursing us the true costs of a Wage Supplement system on us.

People living independently or in Supported Living will need to manage this for themselves. History has shown us that many of the people we employ who come into this category have great difficulty in understanding and managing their financial dealings and benefit obligations. It is likely that many will get confused and into financial difficulties due to this. Families too will be forced to manage this fluctuation in income for their family member that they support.

Should a wage supplement be introduced we may well not be able to give as much tolerance and benevolent leeway to peoples work practices as we currently do. We are the model that has proven to successfully provide the employment styled supports that so many people with

an intellectual disability require, enjoy and benefit from but we are being forced to be more and more, real world commercially competitive in the open market. Yet it is the real world, highly competitive and successfully commercial businesses that people with an intellectual disability have always struggled to gain and maintain employment in. It is a social issue that needs a social welfare, not commercial, response and answers to.

Our recommendations are:

- Survey and listen to the disabled people who are actually employed with a Minimum Wage Exemption permit and to their supports and their employers. Give credence and respect to the people it actually impacts on rather than bowing to pressure from idealists and well placed, vocal lobbyists.
- Retain the Minimum Wage Exemption permit scheme but review and revamp it to ensure that it is fair and equitable and easier to manage for all involved.
- Uplift the Business Enterprise contract funding to a realistic rate so that disability enterprises can provide their employment style of disability supports to all of their contract target number and can be financially confident as they head forward.

s 9(2)(a)

s 9(2)(ba)(i)

Emails s 9(2)(k)

Ph: s 9(2)(k)

Submission of the Moreable Network

To the

Ministry of Social Development

on the

Discussion Document

Wage Supplement Consultation

April 2019.

Note: This submission is made on behalf of the following Business Enterprise organisations; South Waikato Achievement Centre, Kilmarnock Enterprises, Abilities Incorporated, Attainable Trust, Altus Enterprises, Southland Disability Enterprises, Cargills and Achievement House, herein referred to as "Moreable".

It should also be noted that this submission has the full support and endorsement of Inclusive NZ.

1. Executive Summary

- 1.1 Moreable are committed to being part of the solution to the challenge of replacing the Minimum Wage Exception Permit (MWE). However, there are a number of issues associated with replacing the MWE with a wage supplement system that require the necessary time and resource to fully explore and understand before any change is implemented.
- 1.2 For example, there is a potential unintended consequence that some disabled people will be worse off as result of benefit eligibility criteria. This is particularly the case with supplementary benefits.
- 1.3 Researching the efficacy of other policy instruments such as social procurement and tax incentives as mechanisms to support the growth and sustainability of Business Enterprise organisations.
- 1.4 With significant financial pressures brought to bear on Business Enterprises (through increased wage costs and chronic underfunding from the Ministry of Social Development for the support component of their work) there is the potential for people to lose their jobs and therefore become financially worse off and more socially isolated. Therefore, the level of Ministry of Social Development funding must urgently be addressed as part of the wider process relating to the proposed changes to the MWE.
- 1.5 There is going to be considerable time and cost in developing a standardised assessment process, together with developing an on-going monitoring system, including who would administer this. A possibility is a pilot project to ensure the best possible processes are developed. This would also assist in determining what extra on-going administration costs may result.
- 1.6 There is also the issue of pay relativity. With all employees being paid minimum wage or above those in supervisory roles will need to have a wage adjustment to ensure there is an appropriate level of relativity in pay. This will introduce extra cost into the system.
- 1.7 In terms of the drivers for this change it is not clear to Moreable exactly what these are. Whilst we acknowledge The Disability Action Plan agreed to by Cabinet in December 2015 (which is correlated to the UNCRPD) has a focus on improving employment outcomes for disabled people (and people with an intellectual disability, who are the least employed group of disabled people), we believe the removal of MWE permits is not directly correlated to improving employment outcomes.
- 1.8 There is an opportunity to test some new ways of working that would see changes and adaptations to the business model of Business Enterprises, together with some wider government policy initiatives that would be a natural extension of the systems transformation already underway.

2. Background

2.1 The Minimum Wage Exception Permit scheme (MWEP) has been in place since 2007 and has helped to ensure that approximately 900 intellectually disabled people have maintained meaningful employment over this time. Moreover, people have enjoyed many of the social benefits that come from being employed including social activities, developing friendships and access to a range of supports that mainstreaming does and will not offer. Families of employees are welcomed as a part of the wider social fabric of Business Enterprise organisations, which adds to the family type atmosphere that characterises such organisations.

2.2 Many of the Moreable organisations have been involved in discussions with various government agencies and MP's over a significant period of time regarding alternatives to the MWEP scheme. A number of these discussions were carried out under the umbrella of Inclusive New Zealand and New Zealand Disability Support Network (NZDSN), who have worked proactively to look into the alternative policy instruments available to government. This has included looking at the implementation of such schemes in other jurisdictions and the resulting issues. The primary concerns of the Moreable are focused on the fact that a wage supplement scheme will disadvantage some employees due largely to anomalies within the benefit system, which would see some people worse off if they were paid the minimum wage.

2.3 Overseas experience indicates that the extra financial pressure brought to bear on Business Enterprise type organisations has put many out of business. This has seen employment options reduce for people with intellectual disabilities. This outcome is highly likely in the New Zealand context, as the employment support funding Business Enterprise organisations receive via the Ministry of Social Development, has not increased for nearly 15 years. This has brought significant pressure to bear across the disability sector. Indeed, the underfunding that MSD funded disability services have been subject to is really starting to have an impact, as the cumulative effect of no increases year on year has pushed a number of organisations to the brink. This issue requires urgent attention.

2.4 The position of Moreable is that before a wage supplement scheme could be considered the impact (including the unintended consequences) of such a scheme must be carefully considered and possible solutions mapped out. This process will invariably take time as there are a number of issues to navigate through. There is no question Moreable remains committed to working with government agencies to work through the complex issues associated with this process to look at what options there may be to develop an alternative to the MWEP, which will ensure no disabled people are worse off.

2.5 In terms of the drivers for this change it is not clear to Moreable exactly what these are. Whilst we acknowledge The Disability Action Plan agreed to by Cabinet in December 2015 has a focus on improving employment outcomes for disabled people (and people with an intellectual disability, who are the least employed group of disabled people), we believe the removal of MWE permits as advocated by Disabled People's Organisations is not directly correlated to improving employment outcomes for people with an intellectual disability. Furthermore, we believe the view

that MWE permits are in contravention of the UN Convention on the Rights of Persons with Disability is open to debate.

2.6 The purpose of this submission is to outline the key issues and offer some initial thoughts on the best way forward. A way forward that recognises the complexity of this situation and the need for a collaborative and considered approach taking into account the unintended consequences of replacing the MWE with a wage supplement. Moreover, this submission highlights other policy instruments and initiatives that should be explored to ensure more employment opportunities are created for people with an intellectual disability within a vibrant and sustainable Business Enterprise sector.

2.7 We want to ensure open and honest dialogue with government on this matter as we are committed to the well-being and quality of life of intellectually disabled people.

3. Role of Business Enterprises – “Supportive Employers”.

3.1 First and foremost, Business Enterprises are employers. This means that people who wish to take up employment at a Business Enterprise need to go through a recruitment process. This usually involves an interview process and, in most cases, a pre employment “hands on” check, in order for the person to see if they like the work and for the Business Enterprise to better understand the individual’s skills, employment goals, and any workplace accommodations that will be required to find the most appropriate job match. An Employment contract is offered at the end of this process if all agree.

3.2 Central to being a supportive employer is the notion of “reasonable accommodations”. The most common workplace accommodations that are utilised include adaptive workplaces, personal supports and flexible hours. In most cases the person negotiates the hours that they are able to work, taking into account the nature of their disability, including the impact of medication, and other circumstances.

3.3 Being a supportive employer is integral to the ethos Business Enterprise organisations operate from. However, this can at times be somewhat demanding and time consuming and is not adequately recognised under the current funding regime. This work can require “social work” type support and input as supervisors assist people in working through a raft of issues, many of which are non-work related.

3.4 All employees have individual employment plans to ensure that the Business Enterprise understands their employment goals and aspirations, areas for development and the best job or task match for each individual. Individual plans are reviewed as part of a person’s regular employment appraisal, which often coincides with review of their MWE.

3.5 Many Business Enterprises offer opportunities for skills development and training, including literacy and numeracy, industry-related unit standards and apprenticeships. Some also support people to transition into ‘open’ employment by finding them jobs and supporting them in the new workplace. This is part and parcel with the employment support contracted by MSD to provide employment supports for employees in Business Enterprises.

3.6 Current contracts require Business Enterprises to support people with disabilities to address barriers to employment, or where they require assistance in addition to that provided by the Ministry's mainstream services. These unique initiatives and supports offered by Business Enterprises are typically not extended to people with intellectual disability in the open labour market. Moreover, those people with more severe intellectual disability can be made to feel very lonely, isolated and at times worthless in open employment because there are by definition very few employees in open employment who they can relate to.

3.7 Further, there is evidence to suggest many employers in the open labour market do not employ people with significant intellectual impairment based largely on financial reasons. That is to say, the nature of their disability is such that productivity is very low and employers can not sustain this.

4. Summary of Three Types of Employee Focused Wage Supplement Schemes

4.1 Below is a summary of three different types of wage supplement schemes:

Option 1: Top up pro-rata wage to minimum wage of employees

Option 2: Tiered support banding of individual employees

Option 3: Averaged employee subsidy (one government subsidy rate for every employee).

4.2 Option 1: Top up pro-rata wage to minimum wage of employee

a. Summary

This would be individually assessed and therefore would reflect the unique situation of each and every individual. It may encourage the employment of a diverse range of people and would be relatively easy for the person to manage income declaration. This option will require the development of a standardised assessment method. It is the most similar to the current system where the SLR effectively provides a wage top-up.

b. Challenges

There are a number of challenges associated with this option. Firstly, there is the time and cost of developing a standardised assessment process. However, this would be a one-off cost. The Network would be prepared to actively participate in the development of such a process. Indeed, this could be a project overseen by an umbrella group such as Inclusive New Zealand. There is also the issue of administration costs associated with the assessment process, this would need to be factored in and compensated for.

The next issue to consider is who would be the most appropriate third party to administer the process, including the verification of the assessment. It would appear that Labour Inspectors who currently administer the system do not think they have enough knowledge and expertise in disability to verify. This requires further exploring.

There is also the issue of pay relativity. With all employees being paid minimum wage or above, those in supervisory roles will need to have a wage adjustment to ensure there is an appropriate level of relativity in pay. There is some financial modelling required in order to establish a fair and equitable relativity gap between shop floor staff and their supervisors.

A top-up system also removes any monetary incentive for staff to improve performance. Currently (for PWD that have a basic level of money) there is an effective mechanism to encourage improvement.

4.3 Option 2: Tiered support banding of individual employees

a. Summary

This would also be individually assessed but would not reflect the unique situation of each individual as with the above option. Through the assessment process an individual would be assigned a low, medium or high rating. This would assist in determining the level of wage supplement, together with the level of employment support the individual may require. This would be similar to the SLI rating assigned to a job seeker through the current Employment Support contracts.

b. Challenges

There are a number of challenges associated with this option also. As with the above option there is the time and cost of developing a standardised assessment process. There are also the issues of pay relativity, administration costs, together with the on-going administration and oversight of the process.

4.4 Option 3: Averaged employee subsidy (one government subsidy rate for every employee).

a. Summary

This would be a simpler approach compared to the other two options outlined above. An averaged supplement paid to employees would decrease the administration costs and would enable a fixed cost to government.

b. Challenges

There are a number of significant challenges associated with this option. First and foremost, this type of system is not tailored to the individual. It would incentivise employment of people above the average subsidy. Accordingly, there would be fewer employment opportunities for all disabled people, particularly those with more significant disabilities. This would in turn potentially create more cost for Business Enterprises and could well result in people being made redundant. There is also the issue of pay relativity with this option as well.

5. Wage Supplement Schemes and Systems Transformation – Key learnings

5.1 A brief scan of the research literature, together with information from other jurisdictions highlights a number of challenges with the design and implementation of a wage subsidy scheme for employees with a disability. Particularly within the wider context of a transformation of the overarching disability support system. There are a number of factors to be considered in designing a wage supplement system that works well for both employers and employees.

5.2 Belgium has a long history of wage subsidy schemes for disabled people beginning in the 1950s (Samoy & Waterplas, 2012). From this time up until 1990, subsidies were time limited and

capped at 50% of the minimum wage and the regulations did not specify the types of evidence to be used in the assessment process. Furthermore, there were no standardised tools for measuring productivity. The key points here are the need for a standardised assessment process (including clarity on the evidence to be sought), more flexibility with the percentage of subsidy, together with the ability for subsidies to be on-going. It is important such schemes meet the needs of the employer and employee (Samoy & Waterplas, 2012).

5.3 From the mid 1990's the Belgium government sought to address these issues with limited success. Changes that were made included broadening the target group, basing the subsidy on a percentage of actual wage costs (and not the minimum wage) and enabling subsidies to be repeatedly renewed (Samoy & Waterplas, 2012). However, the onerous and expensive administration process remained, as did the involvement of government inspectors.

5.4 In 2013, the Dutch government, employers and trade unions agreed that 125,000 additional jobs would be created for people with disabilities. This group was defined as people who are not able to earn to the minimum wage by themselves (Oostveen, 2018). In order to encourage employers to employ disabled people and to ensure disabled workers are paid the equivalent of the minimum wage, the various municipalities (local government) could administer a wage subsidy system that comprises the following components:

- The productivity of the disabled worker (their "earning capacity") is measured in the workplace by a certified professional. This earning capacity is expressed as a percentage of the minimum wage.
- The employer pays at least the minimum wage
- The employer is reimbursed for the gap between the earning capacity and the minimum wage up to 70% of the minimum wage. Furthermore, the wage subsidy also covers social insurance payments, for example pension.
- If the employee does not generate sufficient income from work, the municipality supplements this up to the social assistance level.

5.5 Whilst there are still administrative costs with this system it would appear there is a targeted focus to ensure disabled people are no worse off. This is also a good example of the role local government can play in such schemes.

5.6 The Australian Government have implemented significant changes within the disability support sector there since the introduction of the National Disability Insurance Scheme Act 2013 (NDIS Act).

Objectives of the scheme outlined in the *NDIS Act* include:

- supporting the independence, social and economic participation of people with disability
- providing reasonable and necessary supports, including early intervention supports, for participants
- enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports

- facilitating the development of a nationally consistent approach to access, and the planning and funding of, supports for people with disability and
- promoting the provision of high quality and innovative supports to people with disability.

5.7 There would appear to be considerable assistance from the Australian Government in supporting Australian Disability Enterprises (ADE), (the equivalent of Business Enterprises) to adapt to the new system. The Australian Government acknowledges the important and valuable role ADE's play in providing employment opportunities for people with a disability across Australia. Furthermore, the Department of Social Services state they are committed to supporting high quality, durable employment outcomes for people with disability and a vibrant and sustainable ADE sector.

5.8 To assist with this transition the Australian Government is investing \$180 million on a range of initiatives to support ADEs to adjust to the changing environment, including investing in business development to support ADE business viability and provide stability for workers with a disability. Specific initiatives include:

- NDIS Transition Consultancy grants
- Development and distribution of a business viability assessment tool
- Wage supplementation to provide financial assistance to ADEs as they adjust to new wage arrangements for employees
- Case management grants to assist supported employees with limited work capacity who want to explore non-employment options
- Strategic governance workshops for Boards and senior managers

5.9 The key points here are that The Australian Government:

- Sees the inherent value of ADEs.
- Is providing a significant amount of resource to support ADEs through the transition to NDIS.
- Is seeking a solution to paying disabled people the minimum wage through the wider systems transformation process.

6. Case Studies – Negative Impact on Benefit Eligibility

6.1 Inclusive New Zealand carried out a piece of work a few years ago which resulted in a number of case studies that illustrate how disabled people will be worse off with the implementation of a wage supplement. This arises from anomalies within the benefit system that disadvantage some people when their wages increase. From what we understand this largely relates to people no longer being eligible for supplementary benefits such as accommodation allowance. It is important to look at this issue from as many angles as possible to ensure a way forward that will work best for all stakeholders.

THESE WILL FOLLOW ONCE WE SEEK PERMISSION FROM INCLUSIVE NEW ZEALAND TO SHARE THEM

7. Systems Transformation, Social Procurement and Business Enterprises.

7.1 The Ministry of Health lead systems transformation process that is underway in the Mid-Central DHB region is fundamentally about disabled people, who have more power and control over their lives. It is intended to:

- provide disabled people and whānau with more flexible support options
- give disabled people and whānau greater decision making over their support and lives
- improve outcomes for disabled people and whānau
- create a cost-effective disability support system.

7.2 A “try, learn and adjust” approach is being taken with the prototype. Disabled people, whānau, providers, workforce, government agencies, and staff will have input and provide feedback on what’s working and further opportunities to improve the disability support system.

7.3 The systems transformation is intended to create more options for disabled people to have better quality of life and one that reflects the eight core principles of Enabling Good Lives. Central to success of this initiative is the creation of innovative opportunities for disabled people within the disability provider sector, including Business Enterprises. Such opportunities should be focused around the gaps within the current system for people with intellectual disabilities, namely training and employment. Furthermore, these opportunities should reflect the core principles of Enabling Good Lives, in particular self-determination, beginning early, person centred, mana enhancing and relationship building.

7.4 There is clear evidence of the need for more tailored approaches to increase and enhance employment outcomes through training and education for people with an intellectual disability. Reports from both Statistics New Zealand and the Ministry of Health show there is vast improvements required to lift employment outcomes for disabled New Zealanders. In Statistics New Zealand’s report: *Disability and the labour market : findings from the 2013 Disability Survey*, they found when compared with non-disabled people, disabled people have lower rates of labour force participation, higher rates of unemployment, poorer representation in high-skilled occupations, and lower incomes.

7.5 The Ministry of Health in the *Disability Support Services Strategic Plan 2014-2018* sets out a vision for disabled New Zealanders to have a better quality of life. As discussed, this includes transforming the disability support system to create improved services and improve both education and employment outcomes. There is a clear expectation that more disabled people will access and participate in a range of opportunities.

7.6 To date there has been limited opportunities for providers to test new and innovative ideas that will enhance the current options and provide more opportunities for training and employment for people with intellectual disability. Therefore, in the spirit of “try, learn and adjust” an opportunity exists for government to work with the business enterprise sector to explore different ways of working. Indeed, there is scope to deepen the relationship between government and the business (social) enterprise sector on-going.

7.7 This could take the form of a pilot project based around exploring the value of government integrating social clauses into procurement contracts. Furthermore, with systems transformation based around individual budgets, there is a unique opportunity to pilot an approach that factors in other policy initiatives such as wage subsidies and social procurement policies. Moreover, a pilot would also allow business enterprises to explore adaptations to the existing model, including testing new business areas and associated processes.

7.8 These policies have proven very effective in other jurisdictions, including the UK and Australia. In New Zealand this approach to procurement has in recent times been discussed and considered within various government departments, however, there has been no formal adoption of such policies as far as we are aware.

7.9 In both 2014 and 2017, members of the Inclusive New Zealand Board visited the UK for the purposes of better understanding policy changes that impacted on the disability support sector and what factors contribute to a vibrant and sustainable sector. As a part of these study trips a number of social enterprise organisations were visited, these organisations have benefited from support from government through various policy instruments including social procurement policies.

7.10 Below are two case studies of organisations in the UK that have evolved into vibrant and sustainable organisations through assistance from several government policy instruments including social procurement policies, wage subsidies and personal budgets. The main point here is the need for a suite of policy initiatives to help create a sustainable business enterprise sector and thus create more opportunities for disabled people and strengthen the relationship between the sector and government.

a. The Camden Society - London

The Camden Society has eight social enterprise cafes as well as a garden centre and a mail distribution business. The largest and most successful of the social enterprises is Unity Kitchen in Olympic Park. These cafes started some years ago when the local council put out a tender for a social enterprise only to operate a café in their new offices. This was an intentional policy decision to include this particular social clause in the procurement policy of the local council. The Camden Society was successful and so the journey began. Today the café at Olympic park is a successful and busy café and income from it helps to fund their hospitality apprenticeship scheme for people with learning disabilities. Moreover, many of the apprentices go on to work in the Unity Kitchen café or in other local businesses.

b. Rehab Recycle – Ireland

Rehab Recycle is the social enterprise arm of Rehab Group, a major disability support service in Ireland, which also comprises Rehab Care and the National Learning Network. Rehab Recycle is the second largest recycling service in Ireland. It was established in 1984 and provides a wide range of recycling solutions, including WEEE, IT equipment, plastic, paper, cardboard, textiles and shoes. It also offers an information security management service and an asset recovery service, where clients can get value back on equipment that is surplus to requirements. This business is strongly supported by government as recycling in Ireland is a key government priority. Accordingly, Corporations have to pay a 12% recycling tax and also have to pay for anything they send to landfill.

7.11 Tax incentives are widely used as a policy instrument in many jurisdictions as a means to encourage employers to employ people with disabilities. For example, in the USA there is the *Work Opportunity Tax Credit (WOTC)*. This credit is available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment. The *Disabled Access Credit* provides a non-refundable credit of up to \$5,000 for small businesses that incur expenditures for the purpose of providing access to persons with disabilities. An eligible small business is one that earned \$1 million or less or had no more than 30 full time employees in the previous year; they may take the credit each and every year they incur access expenditures.

7.12 It would be useful to look into the possibility of tax incentives as a mechanism to encourage more companies to do business with Business Enterprises. This could compliment social procurement policies and assist in creating a more vibrant and sustainable Business Enterprise sector.

8. Next Steps

8.1 Convene a working group consisting of disabled employees, business enterprise representatives and government officials to further explore key elements of this proposed change including looking at a range of associated policy instruments over and above the wage supplement including, social procurement policies.

8.2 As a part the working group Business Enterprise organisations can explore ways in which they may be able to diversify their businesses. This could include looking at opportunities to provide more structured workplace training, as well as other possible new business opportunities. This could involve a pilot as a part of the systems transformation that could test new ideas and opportunities linked to social procurement.

8.3 Alongside this MSD officials to explore the benefit policy settings that create a negative impact on some individuals whereby they would lose certain benefits and end up financially worse off with being paid the minimum wage. This is critical to the process moving forward and may require legislative changes to address this issue.

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SUBMISSION TO THE MINIMUM WAGE EXEMPTION REVIEW

Altus Enterprises

30 April 2019

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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Executive Summary

Thank you for the opportunity to provide this submission on the review of the Minimum Wage Exemption (MWE) permit programme. We acknowledge work being done under the Disability Action Plan and the priority to increase the number of disabled people in paid employment.

Altus Enterprises is a social enterprise which prides itself on being able to provide opportunities for sustainable and meaningful employment for people with disabilities who may not otherwise be able to find work – and all the benefits that come with employment, including social connections, inclusion, and a sense of contribution. We are the largest Business Enterprise employing approximately 200 people with varying levels of disability. The majority of our staff have intellectual disabilities, mental health issues, or both, requiring significant levels of oversight and supervision.

We are aware that the UN has questioned the use of MWE and whether the use of MWE complies with the government's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). We are pleased to be invited to contribute to the government review of MWE and consideration of changes or replacing MWE with a wage supplement.

We understand why the idea of a wage supplement could be attractive. We note the "bottom line" requirement for the government is that nobody should be worse off as a result of any changes to the MWE scheme. We are concerned that the full impact of the proposals as put forward has not been adequately considered, with particular regard to the overall wellbeing of our employees and their whānau, the impact on Business Enterprises, and the impact on the role that the Government plays in supporting those less able.

We believe that the proposals carry very real risks to the provision of employment opportunities to those most vulnerable and often excluded from the labour market, by impacting on the ongoing viability of Business Enterprises.

The proposed change risks reducing the availability of employment opportunities for persons with disabilities in the labour market, which goes against the goals of the UN Convention on the Rights of Persons with Disabilities.

In addition, we are concerned that replacing the MWE with a wage supplement will impact on the lives of vulnerable people beyond the financial areas considered in the examples provided in the paper. We suggest that a wider review of the impacts on the wellbeing on affected individuals and their whānau needs to be considered before any changes are made to avoid unintended consequences.

In summary some of the consequences we see of moving to a wage supplement scheme are:

- People with intellectual disabilities will need to rely on their employment for a greater share of their overall income. As a result
 - the person will require significant budgeting skills and/or support,

- illness or other absences from employment will have a greater impact,
- employers will likely not have the same flexibility to provide superior leave arrangements
- Business Enterprises such as Altus will become more reliant on receiving government subsidies and less on commercial revenue. In Altus' case, to sustain the current level of employment we believe up to 80% of our revenue will be from government subsidies.
- Significant additional compliance costs will be imposed on Business Enterprises, which may threaten our ongoing viability given our slim operating margins. We note that in Sweden, which operates a wage subsidy scheme, the government has acknowledged this extra cost and provides additional payments to Business Enterprises.
- Government expenditure will increase. In the examples provided in the consultation paper, the employees net benefit increases. The net benefit increase can only come from the Government providing a wage supplement in excess of the current Supported Living Payment net of any tax changes. We believe that any additional funding could be better targeted to improving employment outcomes for a greater number of people with intellectual disability.

In making this submission we have tried to provide sufficient detailed information to Government to show there are better ways to improve outcomes for those less able by promoting the creation of ongoing, sustainable, and meaningful employment. We believe this should include improving how minimum wage exemptions are assessed, and increasing the number of people that we are supported to employ.

We strongly encourage the Government to take another look at the problems that they are trying to address and consider the full range of options, in partnership with the sector, Business Enterprises, and most importantly those we employ and their families. Rushing through changes risks disrupting a vulnerable population. Such changes will be incredibly difficult to unpick.

Answers to specific questions

Summary of views:

We understand the Government's wish to abolish the Minimum Wage Exemption (MWE); however, for vulnerable people the MWE framework provides an appropriate balance, enabling sustainable and meaningful employment for people with significant disability. Employment at Altus under the scheme is highly valued by our employees, their whānau and carers.

Government needs to reconsider the goals that it is trying to achieve. Greater impact for more people would come from increasing the support to Business Enterprises to hire more people, and provide more training and pastoral support.

A shift to a wage supplement scheme carries real and significant risk for Business Enterprises due to increased costs and ongoing uncertainty, changing us from commercial entities to dependants on Government. We are concerned that most Business Enterprises will be forced to close, taking with them the employment opportunities they offer to people with significant disability.

A wage supplement would also bring very large changes to the lives of our employees, and not all positive as presented in the discussion document. We are concerned that these impacts have not been fully scoped or considered, with our employees becoming significantly more reliant on their employment, apparently without the support to direct their remuneration to their real needs. Our employees will need support to understand what is happening, why, and what it means for them.

Given these risks, we do not believe that the proposal would achieve its stated underlying principle (as set out in the accompanying Cabinet paper) of ensuring no disabled person should be made worse off as a result of any change.

We agree that it would be appropriate to review the process for granting Minimum Wage Exemptions, including developing a single tool to ensure consistency, and appointing an independent body with appropriate expertise to grant the exemptions.

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

We agree that there are opportunities to improve the Minimum Wage Exemption framework, particularly through a review of the wage assessment tool.

Question 2: If yes, what do you think is wrong with the current MWE scheme?

While we acknowledge and support the Government's attempts to improve alignment with the UNCRDP, we do not consider the perceived discrimination of the MWE to be an issue that needs to be changed.

The discrimination is positive in nature, offering differential treatment designed to give access to productive employment and social connections to people who would not be able to access employment otherwise. We also believe the MWE supports Article 27 1(e) of UNCRDP

"Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;" Article 27 1 (e)

Any discrimination under the Minimum Wage Exemption framework is lawful under section 5 of the New Zealand Bill of Rights Act, unless there is a reasonable alternative which limits the right to be free from discrimination less than the current framework and achieves its important objective to provide work and meaningful opportunities to disabled people to live their lives to their fullest.

If this is the driving issue for the Government, we are committed to working with the Government to find alternative options. However, further work needs to be done rather than jumping straight to a wage supplement approach.

We do not consider that the MWE conflicts with the United Nations Convention on the Rights of Persons with Disabilities.

We fully support the goals of the UNCRDP to reduce discrimination and improve outcomes for people with disabilities. However, we consider that the conflict between the MWE and the UNCRDP is more about perception. The Convention specifies *equal remuneration for work of equal value* – however a key point of the MWE is acknowledging that the productive capacity of some people with disabilities is not the same and therefore the amount of work able to be done is not of the same value – and that this creates a significant barrier to entry into the labour market.

The MWE process strikes an appropriate balance, helping create employment opportunities for people with disabilities who would not otherwise be able to work by allowing them to be paid according to their productivity.

We agree that there are opportunities to improve consistency in the wage assessment tool.

We note that many other jurisdictions have an independent or government mandated Wage Assessment Tool, to standardise the process. We believe that there would be merit in developing a standardised wage assessment approach. We are keen to be involved in this process. There is scope for this to be framed in a strengths based manner.

Furthermore, we believe that the Government needs to reconsider the cap placed on the number of funded places able to be held by Business Enterprises.

We believe that there is substantial unmet need for employment for people with significant disabilities. Any changes to the framework need to be seen within the wider context of promoting employment outcomes for people with disabilities, and should include an assessment of opportunities to improve outcomes for the largest number of people.

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

No. For reasons provided throughout this submission.