



Wage Supplements as an Alternative to Minimum Wage Exemption Permits Submission Auckland Disability Law 12 April 2019

Introduction

Auckland Disability Law (ADL) supports the consideration of wage supplements as an alternative to the existing Minimum Wage Exemption Permits (MWEPs). We believe that MWEPs are fundamentally discriminatory, and should be replaced with an employment process that retains disabled persons' job opportunities and guarantees them the same wage rights as non-disabled people. We think wage supplementation is an option worth investigating, and would be better than the MWEP system. This is because it would protect existing job opportunities, minimise additional costs for employers and move us towards ending a discriminatory and unfair practice against disabled people.

ADL is a community law centre (CLC). We are the only CLC in Aotearoa New Zealand which provides legal services and activities solely to disabled people on their disability related legal issues. This includes client casework, legal education and law reform work. We have experience educating, advising and assisting disabled people on MWEPs, who are the focus of our submission. We have also done previous law reform activities on MWEPs.

In our submission, we have responded to the questions within the *Discussion Document: A Wage Supplement as an Alternative to Minimum Wage Exemption Permits* (2019) from the Ministry of Social Development.

- 1. We strongly agree that there needs to be a change to the current MWEP scheme.**
- 2. Our concerns about MWEPs are as follows.**
 - a)** It sanctions disability discrimination. Disabled employees should have the same employment rights as non-disabled workers, including the right to fair pay. We know of an employee under a MWEP whose full time job was cleaning bathrooms and toilets for .75c an hour. They were

performing the same tasks at the same job output as a non-disabled employee not under a MWEP.

- b) It conflicts with the United Nations Convention on the Rights of Persons with Disabilities, Article 27: Work and Employment. Specifically, that disabled people have the right to “equal remuneration for equal work”.
- c) Assessment processes for non-disabled employees, such as performance pay reviews, focus on the employee’s strengths, with a view to increasing their pay. Our experience with MWEP wage assessments are that they focus on what the employee cannot do. Many of these assessment tools seem to focus on employees’ weaknesses, which seem designed to justify keeping wages extremely low. For example, we have seen assessments that require understanding of legislation and procedures that are irrelevant to any of the tasks the employee is carrying out.
- d) The wage assessment tools that are used do not assess disabled people equitably. Some workplaces pay every employee the same extremely low wage irrespective of productivity, while others pay varied wages. One employer told us every employee was receiving \$2.50 an hour. They believed some employees would be assessed as being eligible for a lesser rate. This was viewed as a positive and even generous situation.

We know of employees who earn less than \$2 an hour at one part-time job, and over minimum wage at another part time job. The assessment tools generally appear to be extremely subjective, giving the result that suits the employer. If the tools were being used correctly, we would expect to see employees being paid differently, with movement up the pay range towards the minimum wage. Of concern also is that the minimum wage is usually the highest pay rate on a typical range.

- e) While some of the existing wage assessment processes we have seen do appear to provide for progression and gradual wage increases through review, the checks and balances are often completely inadequate. They often appear to be simply a box ticking exercise. Many workplaces that use MWEPs do not have clear plans in place to help employees move up the pay range to the minimum wage and beyond.

A MWEP is premised on the provision of reasonable accommodations that is making adjustments and changes to the way the work is done, and developing people to increase their skills and capability to do the job more productively.

In our experience this does not happen very often in practice. A typical pay range culminates in the minimum wage, not the living wage or the market rate for a similar position elsewhere in the labour market.

Labour Inspectors do not have the training or knowledge to suitably assess whether wages are fair. They are not provided with disability awareness training. This means, for example, Labour Inspectors are not able to use the appropriate communication method with the disabled people they are taking through the MWEF process. We have also been told of times where inspectors have met with employees in groups, not individually, or have not met with workers at all during assessment or review for MWEFs.

We are concerned that there does not appear to be any impetus by the Inspectorate to enquire into the wage assessment process that each employer is using. We are also concerned that the Inspectorate often automatically chooses the minimum two-yearly review. We have seen cases where, while it was possible to do three month, six month or annual reviews of MWEFs, the Inspectorate have opted for a two yearly review. This delays wage progression up the pay range and seems very unfair for the employee.

Wage supplement and eligibility

3. **We think a wage supplement approach would be better than the MWEF**

4. **ADL thinks the following criteria should be considered when determining eligibility for the wage supplement.**

- Employee's ability to do the job must still be limited, after reasonable accommodations are provided by the employer. Disabled people who could be employed in open employment and earn above minimum wage, should not be employed using wage supplements.
- The job must be a real opportunity for the person to contribute and use their skills. It should not be a job to simply occupy the employee or get the wage supplement to cut staffing costs.
- Employees cannot previously have been employed by the same employer at or above minimum wage. The only very limited exception, would be if the person became disabled while in this job, through injury or medical conditions, and then had very limited ability to meet the job requirements. This would be after a robust return to work plan with real reasonable accommodations being implemented. Only in this very limited situation could a wage supplement apply. The wage

supplement regime should not become a way for employers to avoid a fair and reasonable return to work process, and not provide reasonable accommodations, with staff who have a disability as a result of injury or medical condition post starting their employment.

- The employer should demonstrate that they are supporting the person to work towards earning the minimum wage or market rates for the position. This is regardless of whether the person is employed by a business enterprise or in open employment in a job with wage supplements.
- The employer should be able to demonstrate they are providing training and coaching, have clear job assessment processes that explain and provide what the employee needs to do in order to progression up the pay range. The processes needs to be independently reviewable, and employment rights and obligations need to be enforceable.

How to determine the rate of the wage supplement

5. **We think disabled people eligible for a wage supplement should be assessed to determine what rate of supplement is most suitable.**
 - a. **When determining how much an employer should contribute to the worker's wage, and how much should be paid by the government, the following should be considered.**

The employee's skills, experience and output should be fairly recognised. The skills and tasks required to do the job to the minimum wage rate should be clear in the job description. Due to the changing nature of work, job descriptions may need to be frequently updated, with changes to tasks and the variation in accommodations required to do those tasks included. In our experience many employees on MWEPs require written documents, such as job descriptions and employment agreements, to be provided in very basic English and preferably in Easy Read format.

Employees should be assessed on which skills and tasks they are proficient at, and which ones need improvement. They should then be provided with the accommodations, support and training to achieve these improvements. We have seen this successfully done within supported employment programmes within disability service providers. The assessment process is well structured, regular reviews take place and the focus is on moving the disabled person up the wage range and into open employment jobs where possible.

The UNCRPD Article 27: Work and Employment gives disabled people the right to “equal remuneration for equal work”. For this reason, disabled people should be able to earn the market rate for comparable positions, not a maximum set at the minimum wage, after the government supplement.

b. We think assessment of individual employees’ productivity and/or their skills and abilities must be independent of the employer.

We have seen employers use extremely variable assessment processes and it is unrealistic to expect them to be objective. For this reason, there must be an independent assessor involved. It may be more suitable to have a government agency, a newly created one or the Labour Inspectors, or funded supported employment organisations, perform the assessments so long as they have the appropriate funding, training and support.

Employers should have to demonstrate a baseline for each task which shows the expected speed, skill and competency required for that task. In some positions, such as cleaning and lawn mowing, it is easier to establish a baseline, as there are plenty of non-disabled employees performing similar roles. Other roles, however, may not have equivalents in open employment to compare, making establishing a baseline more difficult.

We recommend that independent assessors be engaged to assess these positions. This is because we fear employer-led assessment may not be equitable. Employers have a financial interest in tough assessments, as it can keep wage costs low. If the requirements to attain minimum wage are more difficult to achieve, they will not have to pay their staff as much.

c. External oversight of employers making use of a wage supplement is vital. The agencies tasked with this role must have access to appropriate resources and training.

A government agency, a newly created one or the Labour Inspectors, need to have oversight and enforcement powers for employers using the wage supplement. This agency needs to be well-resourced, with appropriate funding and disability awareness training amongst other aspects.

Another aspect of oversight is that funded advocates with training in disability and employment entitlements should be provided without exception to new and existing employees on MWEs and wage supplements. These advocates will proactively and regularly seek out and support these employees, both in the employment and assessment processes. Organisations with supported

employment services and community law centres working within the disability sector already work with disabled employees and jobseekers. Unions would also potentially have an advocacy role. These organisations would be appropriate agencies to take on this role with funding from the Ministry of Business, Innovation and Employment or Ministry of Social Development.

There should be a clear pathway provided for problem solving which recognises the real barriers encountered, or reluctance to speak up, by these employees. Finally the Labour Inspectorate or other appropriate oversight agency should always be alert to these employees and should have specialist training in disability.

6. We do not think the government should pay the employer a single rate of wage supplement for all the disabled employees who are eligible.

The current median wage paid to people on MWEPs is very low, with approximately 70% earning less than \$4.99 per hour before tax¹. This approach could result in rising costs for most employers and therefore job losses amongst their disabled employees. Offsetting this would require a very high subsidy. Even if the subsidy was \$12.70 per hour, 70% of employees would need to be paid more by their employer than they currently earn².

Some business enterprises which employ using MWEPs have told us that they would have to close their operations if they had to pay more to their employees. We believe that some of these enterprises will close and people will lose jobs if a flat wage supplement is implemented.

It would also provide financial incentive to only hire people with higher levels of skills and capabilities. This could reduce employment opportunities for people with more significant impairments who often seem to be employed on some of the lowest pay rates.

The only real benefits are that it would cost the government less and it would end detailed wage assessments. However, there will still be a need for an assessment process to determine eligibility for the wage supplement, so this is not a significant benefit.

¹ Discussion Document: *Wage Supplements as an Alternative to Minimum Wage Exemption Permits*. 2019. Ministry of Social Development, p. 4.

² This calculation is based on the figures in the *Discussion Document: Wage Supplements as an Alternative to Minimum Wage Exemption Permits*, and the minimum wage of \$17.70, as at 1 April 2019.

Advantages, risks and other options

7. ADL believes the key benefits of a wage supplement approach are as follows.

A wage supplement would allow MWEPs to be repealed without resulting in a loss of job opportunities for disabled people. This would give disabled people the same rights to the minimum wage as non-disabled people.

People with MWEPs would earn the same or more than they currently do.

It provides the government an excellent opportunity to incentivise employers to upskill disabled employees and prepare them for open employment.

8. Although we have identified a number of downsides and risks below, ADL believes that a wage supplement approach is worth seriously investigating to remedy the discrimination caused by MWEPs.

- The wage supplement, as proposed, does not follow a pay equity approach. Non-disabled people doing similar jobs may be earning more than minimum wage, especially in positions that require more skills or responsibility.
- Regardless of the method chosen to determine wage supplement rates, some employers' costs will increase. This may result in job losses.
- Additional wage costs of higher paid roles, for example, supervisor and team leader positions, might be difficult for some organisations to cover.
- A wage supplement would need to be flexible, especially in the case of flexible working conditions or rosters, with employees who may not work the same number of hours each week.
- The major concern raised on behalf of employees on MWEPs and by employers is that social security benefit entitlements will be affected. The employee may exceed the threshold set down for Supported Living Payment and find themselves being required to meet the requirements for a Jobseeker Payment. Employees on MWEPs for many reasons will need the safety net of an assured benefit income. We feel the interaction between pay and benefits will need to be addressed so it does not disadvantage the employee.
- Similarly, if it becomes necessary for an employee with fluctuating hours to report to Work and Income there must be a more

accommodating process in place by which they can do this. The current process is inaccessible and computer based. This reporting role could perhaps be taken by the specially trained advocates.

- There is some concern that a wage supplement will remove the financial incentive to upskill and take on increased responsibilities. However we not believe this is a significant concern. There is already a similar issue with some workplaces that employ all people on MWEPs at the same rate. This issue is unlikely to be exacerbated significantly. Employees are already motivated by participating in a workplace, earning more pay and by the prospect of finding a job in open employment.

9. In conclusion, ADL prefers a wage supplement approach. This is because it protects existing job opportunities and move us towards ending the MWEP system which is discriminatory and is unfair for disabled people.

NZDSN submission on the proposed Wage Supplement to replace the Minimum Wage Exemption

About the New Zealand Disability Support Network (NZDSN)

NZDSN is a network of not-for-profit organisations and some for-profit NGOs that provide a wide range of support services to disabled people including community residential, supported living, specialist employment support and community participation services (mainly through contracts with government). We have 170 members covering about 80% of disability services by volume.

NZDSN takes a pan-disability perspective on the sector. Our focus is leading and influencing change that supports inclusive lives for disabled people. We provide a strong voice and policy advice to government on behalf of our members and facilitate innovation and quality with providers.

There needs to be a change to the Minimum Wage Exemption

The current MWE scheme conflicts with the United Nations Convention on the Rights of Persons with Disabilities. The continuation of a minimum wage exemption for disabled workers is archaic. It has been long overdue for review and repeal.

Article 27 of the CRPD covers Work and Employment and outlines the obligations of States Parties to recognize the right of disabled people to work, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen, or accepted in a labour market and work environment that is open, inclusive and accessible.

The current MWE scheme that allows for some disabled people to legally be paid less than the minimum wage due to their impairments is discriminatory and contravenes their human rights. Most of the people currently with a MWE Permit are employed by "Business Enterprises" – many of these provide centre-based, segregated work environments that provide limited opportunities for disabled people to have meaningful work with the possibility of progression in that work.

The practice of allowing MWEs are not a reflection of evidence-based practice, and the assessments and applications used are highly variable. The assessment process is focused on what the disabled person cannot do, or cannot do as quickly or as well as a non-disabled person, and the resulting wage rate reflects this, rather than being strengths based and focussing on what the disabled person can do. The notion of assessing some disabled peoples' productivity (that non-disabled people are not subjected to) in a job setting is from a bygone industrial past that never considered the possibility of a diverse workforce.

A wage supplement approach would be better than the MWE, however -

NZDSN has significant concerns with a wage supplement approach:

- It's really a long-term wage subsidy which is at odds with evidence based best practice and is not supported by the employment practice guides¹ which were co-designed by employment support providers, disabled people and family members and government agency representatives (MSD and ACC)
- It is an approach that supports jobs that have no commercial underpinning
- It does not take a person centred/directed approach – it starts with a pre-determined employment option, rather than starting with the person and is entirely at odds with Enabling Good Lives (EGL) principles
- It locks-in support for segregated employment (Business Enterprises) which is also at odds with the UNCRPD and EGL
- It relies on an assessment approach which seeks to determine the productivity of the person (this is deficit-based, however it is dressed up) and ignores the potential for customised approaches based on an individual's preferences and aspirations and unique contribution.
- It creates some uneasy and difficult-to-reconcile discrepancies between support for people in segregated work settings and those who choose jobs in the open labour market. In the Cabinet Paper² it was noted that "the wage supplement approach appears to endorse the Business Enterprise model... [a model of segregated employment]...
- It doesn't address the economic viability issues associated with business enterprises
- It would potentially be expensive for government to maintain over the long term.

¹ New Zealand Disability Support Network (NZDSN). (2018). Employment Support Practice Guidelines: How to support disabled people to get the job they want. New Zealand Disability Support Network: Wellington.

<https://www.nzdsn.org.nz/wp-content/uploads/2016/07/FINAL-main-NZDSN-report-2.pdf>

² <https://www.msd.govt.nz/documents/about-msd-and-our-work/newsroom/consultation-on-a-wage-supplement-cab-paper.pdf>

If there is sector consensus for a wage supplement approach -

NZDSN is committed to ensuring that existing job opportunities for disabled people working with a MWE are protected. While we do not want MWEs to be allowed to continue, we do not want provisions for MWEs to be repealed with nothing to replace it.

NZDSN proposes that if a wage supplement is introduced:

- That the wage supplement be put in place for a maximum period of 5 years and reviewed in the context of the impact of other initiatives we are proposing (below) as a longer term and sustainable fix that is in line with the UNCRPD and Enabling Good Lives Principles
- That there is no assessment process – the same subsidy would apply for everyone
- That the numbers eligible for the wage subsidy are capped for the 5-year period
- That an investment strategy be put in place over 5 years that seeks to:
 1. Increase outputs and funding for employment support services
 2. Increase funding and availability of community participation services
 3. Invest in developing the capability of the workforce for employment support and community participation services
 4. Invest in business mentoring to assist business enterprises to become viable commercial entities that can pay all employees the minimum wage.

Note: If a wage assessment process is introduced we recommend that the minimum rate is 50% of the minimum wage with only one further step at 75%. Despite the best of intentions, a wage assessment process will always be fraught with complexity, inconsistency and ethical dilemmas – as is any deficit-based assessment process. We note the irony that having a wage assessment process is likely to expand employment opportunities for non-disabled professionals!

A series of alternative measures are needed

NZDSN believes a series of alternative measures are needed to offer a way forward that seeks to clarify the status of disabled people currently on MWEs as employees, offers a future pathway for business enterprises, is affordable and is compatible with Government's UN obligations.

A Social Enterprise Model

There is a need to reconceptualise business enterprises as viable commercial undertakings that have a strong social goal underpinning their operation – a commitment to employ disabled people. This will mean that several things need to happen:

- Develop a sound business model that pays careful attention to the relative number of disabled employees and/or that plays to the particular skills of those disabled people who are employed – and pays everyone at least the minimum wage. The model needs to recognise the possible mix of full time as well as part time employment.
- Because of the social goal underpinning the business model, Government funding continues at some level relative to the number of disabled employees.
- An upfront one-off investment by Government for business advice and mentoring to assist existing business enterprises to transition to a social enterprise model.
- Some grand parenting of MWEs while the transition takes hold. (Note that some business enterprises are already making this transition)

Micro business possibilities

- Make existing funding to support these activities more accessible
- Remove current profitability requirements so that they are compatible with the actual business cases put forward.

Increase access to employment support services

- It is likely that there are many people working in business enterprises who would access employment support services if these were more available and had certainty around ongoing support funding for those with high needs (bearing in mind that people who meet MWE criteria will need some support wherever they are spending their days, but this is usually less when employment options are accessed).
- Provisions need to be made for people to participate in current business enterprises and/or supported employment programmes and/or community participation programmes simultaneously.

Increase access to Personalised Community Participation Programmes

- If people are working part time without support (or through employment support programmes and/or social enterprises), they may also wish to pursue their interests and preferred non-work activities through a community participation programme. It is essential that these programmes are funded at levels which enable a truly personalised approach that responds to each individual's preferences. Current funding, even with the most creative minds at work, makes the level of personalisation required difficult to achieve for every participant in a consistent way.

Implications for families

Families are often challenged by a move away from traditional options that give them the assurance that their family member is at a certain place for a certain length of time from Monday to Friday. These assurances are not just about feeling confident that their family member is occupied and safe, but their working and family life may depend on

their not being called into care-giving/support roles at a moment's notice during the course of the week. The expectation for these certainties are fair enough.

In less traditional options there is less certainty about where exactly their family member may be on any given day/time of day or what they might be doing. However, they should still be confident that their family member is safe, well supported by trusted people (paid and unpaid) and "having a good day" – engaged in a range/mix of work and non-work activities that reflect their skills, interests and ambitions. Good planning and communication between families and providers further reduces uncertainties/anxieties. They need to be confident in knowing that if the day does not go quite according to plan – there is a plan B (or even C) – one that doesn't involve people having to drop everything to go and pick up their family member and assume caregiving/support roles.

It is clear that there is some work for providers and families to do in together imagining these new realities that "enable good lives" to be person-driven and authentically personalised.

Implications for Government

There is work to do in terms of policy and funding that can respond flexibly to the ways in which disabled people want to live a "good life" – engaged, participating, and networked with their communities and neighbourhoods. This means that people may need to simultaneously access different/multiple support programmes involving employment and community participation. Current Business Enterprises need to respond to this environment (as suggested above), but with confidence that the changes in people's lives does not need to mean less overall engagement with the world of work and the community at large. This means better access to employment support and community participation programmes.

OIA consent

NZDSN is happy for the contents of our submission to be released.

NZDSN would appreciate any opportunity to speak to our submission.

For further information please contact Dr Garth Bennie (CE NZDSN) garth@nzdsn.org.nz or Sara Georgeson sarag@nzdsn.org.nz (Policy Analyst, NZDSN)



PSA Submission

Discussion Document

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

April 2019

PSA Submission on the

Discussion Document – A wage supplement as an alternative to Minimum Wage Exemption permits

About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 70,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.

The PSA has been advocating for strong, innovative and effective public and community services since our establishment in 1913. People join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

PSA member networks (especially our Deaf and Disabled Members' Network), Te Runanga and sector committees have been invited to comment on the Amendment Bill and their views are appended. The PSA has also repeated illustrative comments in the body of this submission.

The PSA is an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) and supports the submission of the CTU on this discussion document.

The PSA's position

The PSA supports the need to identify 'better alternatives so that the minimum wage exemption process can be removed' as highlighted in the Disability Action Plan. As proposed, the wage supplement approach (as opposed to minimum wage exemptions) would protect existing employment opportunities for disabled people *and* would ensure that those employees could be paid a minimum wage.

For the PSA it is crucial that no person with a disability should have a financial disadvantage in relation to their entitlement to being paid at least the minimum wage. The discussion document outlines that payment of the minimum wage to persons with disabilities is ensured through the government paying a wage supplement to the employer which would be passed on to the employee with disabilities.

The PSA sees the discussion document including the proposal of a wage supplement to replace minimum wage exemptions as a first step towards ensuring protection and equality for all workers in the labour market. However, it needs to be complemented by a fair wage assessment process for disabled people including an acceptable and agreed wage rate, which can increase with gained experience. To ensure the realisation of the purposes of the discussion document we recommend considering some additional thoughts of our members.

UN Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD was ratified by New Zealand in 2008. The Convention is intended as a human rights instrument with an explicit, social development dimension. It underlines that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms- including the right to work. This means that by ratification, New Zealand recognises

the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work (...) (Article 27, CRPD)

In addition to ensuring that persons with disabilities receive the minimum wage the government is also encouraged to focus more attention to developing concrete employment opportunities and strategies for persons with disabilities. Employment and income from which persons with disabilities can live is essential to contribute to social development and the goal of full inclusion.

A Transformed Model is Needed which Truly Values Persons with Disabilities

Persons with disabilities must make a living like everyone else- sometimes under more challenging circumstances. A wage supplement tries to make the existing model fairer. But it stops here. What it doesn't do is to envisage a transformed model which does away with individual assessments based on people's assumed productivity and creates a system which ensures an income from employment people can live from. A transformed model needs to ensure that contributions by persons with disabilities are valued at work and in society. It also needs to consider employers' responsibility to pay fair wages to their employees.

Our members have questioned if the discussion document goes far enough and are calling on the government to promote a **living wage** as a minimum for persons with disabilities, especially on a longer-term basis. A transformational model should be based on employers' paying a wage people can live from.

Having said that, members are concerned that additional earnings would currently be taxed to a degree that persons with disabilities would have not much additional money available after tax. Hence, a transformational model also needs to investigate and consider the interaction of income from work, **taxation and other sources of financial support**.

They are also concerned about confusing **motivational inclination and functional inclination** of persons with disabilities. The document says that 'some disabled people may be less inclined to take on additional responsibilities'. The issue of motivational inclination and functional inclination needs to be clearly separated to ensure fair and decent treatment including the assessment of their work. In addition, the PSA would like to underline that persons with disabilities have a strong desire to work. Unfortunately, the only work available is often unpleasant and dissatisfying work which no person would wish to do long-term.

A robust process is needed to continue using a wage assessment tool

The PSA strongly supports the CTU's call for the design of a robust process to assess wages if the current proposal goes ahead. This process must take into account two distinct tools: first a tool to assess people's range of needs and second, a tool to allocate supports based on people's needs. Based on these assessments, a **supplement allocation framework** needs to be developed and should include the following elements:

- The assessment is conducted by a trained person with knowledge in disability and employment.
- An acceptable wage rate needs to be set which cannot be undermined
- The wage rate of persons with disabilities must rise automatically with national minimum wage increases
- The wage rates need to be re-assessed after a certain period to include the opportunity for wage increases reflecting gained experience.

- Persons with disabilities must be informed about unions and their right to join prior to the wage assessment taking place. This could be done by the trained assessor in an initial visit to ensure support and representation if wanted.

In relation to the **needs assessment tool** suggested above our members are concerned for the needs of persons with disabilities in different regions- needs may differ in urban and rural areas- and the impact of various types of disability. Assessors need to be mindful of a 'diagnostic overshadowing' situation. That means vocational problems are misattributed to their disability when the issue suggests a more systemic problem in the work environment. Depending on the type of disability the outside environments impact person's capability to work as well. For instance, if you don't live in an accessible house, a lot of mental and physical energy is spent each day on managing the challenges a person with disabilities is facing. In turn, the person has less mental and physical energy to spare than a person without those daily challenges.

In relation to the **support allocation tool** our members highlight that it is crucial to consider the working environment. Persons with disabilities need to be fully enabled to work their best as everyone else. The complexity of this aspect requires some on site understanding of the required services and tools for persons with disabilities. The consideration of needs and support allocation should be the basis for any framework to decide on a possible wage rate.

Thank you very much for the opportunity to contribute to the discussion. The PSA would welcome an opportunity to continue to comment on the wage assessment tool.

For further information, please contact:

s 9(2)(a)

New Zealand Public Service Association
PO Box 3817
Wellington 6140

s 9(2)(k)



Submission to the Ministry of Social Development

**Discussion document: A wage supplement as an
alternative to Minimum Wage Exemption permits**

30 April 2019

**Trish Grant
Director of Advocacy
IHC New Zealand Inc.
PO Box 4155
Wellington**

s 9(2)(k)

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OFFICIAL INFORMATION ACT

1. Key points and recommendations

IHC makes the following summary points and recommendations in response to the Discussion document: A wage supplement as an alternative to Minimum Wage Exemption (MWE) scheme.

- IHC strongly supports moves to end the discriminatory practices of the MWE scheme in ways that ensure people with intellectual disabilities¹ receive fair wages and achieve better alignment with the Convention on the Rights of Persons with Disabilities (UNCRPD).
- That said, IHC has reservations about the proposed wage supplement alternative to the MWE and suggests that further work is needed before deciding on the whether to adopt such an approach or not.
- There needs to be consideration of the broad context in which this issue sits including the linked issues relating to:
 - greater investment in developing social investment models;
 - creating more microbusiness opportunities;
 - increasing access to employment support services;
 - increasing access to and addressing funding shortfalls for community participation programmes; and
 - increasing the amount that can be earned before abatement rates on benefits start.
- Further work is needed to ensure that people with intellectual disabilities and their families and whanau will not be disadvantaged and transition funding made available to assist service providers and employers adjust to changes.

As a member of the New Zealand Disability Support Network (NZDSN), IHC endorses NZDSN's submission on the Discussion Document.

2. About IHC

IHC was founded in 1949 by a group of parents who wanted equal treatment from the education and health systems for their children with intellectual disability. The IHC of today is still striving for these same rights and is committed to advocating for the rights, welfare and inclusion of all people with an intellectual disability. We support people with intellectual disability to lead satisfying lives and have a genuine place in the community.

We support more than 4,000 people in IDEA services (IHC's service arm) that include residential care, supported living, employment and community

¹ We use 'people with intellectual disability' as the officially recognized term in New Zealand. We acknowledge 'people with learning disability' as the term used by People First New Zealand, Nga Tāngata Tuatahi.

participation and inclusion, support for families and specialist services, and through Accessible Properties (a subsidiary company of IHC) are New Zealand's largest non-government social housing provider.

Through our charitable arm IHC raises awareness and advocates for the rights of over 50,000 people with intellectual disability at both a national and an international level. This includes an extensive advocacy programme, a one to one volunteer programme and the country's largest specialist intellectual disability library.

3. Replacing the MWE permit and a wage supplement alternative

IHC has long advocated for changes to the MWE scheme in order to redress the discrimination and unfair practices that occur, including in submissions to the Annual Minimum Wage review. This has taken place in the wider context of people with intellectual disabilities receiving a fair wage, having an adequate standard of living and social protections.

3.1 MWE scheme

The MWE was put in place in 2007 after the repeal of the Disabled Person's Employment Promotion (DPEP) Act.

People with intellectual disabilities make up the majority of the approximately 900 disabled people who currently have MWE permits. By far the greatest number of people with MWE permits work in Business Enterprises with only 3-4% working outside Business Enterprises or disability support organisations.

More than 70% of those having a MWE exemption earn less than five dollars an hour 25% of those receiving less than \$1.99 for an hours work (both are before tax rates). The contrast of these numbers is now even greater with the increase this year of the minimum wage to \$17.70 an hour. Most also rely on the income support in the form of the Supported living Payment (SLP). New Zealand has a way to go in people with intellectual disabilities being paid fairly and having the same rights for a minimum wage as other employees.

The MWE scheme was a product of its time and has not kept pace with changes in policies, practices and contemporary understandings of disability employment rights. Additionally, despite the original intent of the Scheme there have been problems with implementation. These have included

- Subjective processes using different wage assessment tools that have resulted in inconsistencies in the granting of MWEs and a deficit rather than a strength based focus.
- Lack of knowledge and expertise among Labour Inspectors leading to difficulties in being able to adequately verify employer's wage assessment.
- Situations where people with intellectual disabilities have been denied their right to have a union representative or an advocate of their choice when seeking to review their MWE or where there are changes in their job or workplace.

3.2 Changes require more than a single wage supplement alternative

IHC acknowledges that the wage subsidy approach attempts to provide disabled workers with job security and rewarding work alongside ensuring that every working age New Zealander is paid at least the minimum wage. However, a broader rather than a single solution option is required for sustainable changes that are consistent with transformations in universal and disability support systems and evidenced based policy and practice.

To build confidence and trust for people with intellectual disabilities, families and service providers, changes and alternatives need to be adequately resourced. This includes providing transition funding to assist the sector to move to a new system and addressing the funding shortfall in the sector.²

Further work needs to be undertaken in the context of wellbeing and improving employment opportunities and outcomes for people with intellectual disabilities. A series of measures and initiatives need to be considered and linked. These involve government:

- making a greater investment in developing *social enterprise models* that are underpinned by a commitment to employing people with intellectual disability and paying fair wages;
- making existing funding for *microbusiness* more accessible with change current profitability requirements so they are more compatible with actual business case put forward;
- increasing access to *employment support/supported employment services* and awareness of the *practical application of 'reasonable'*
- increasing access to and funding available for *personalised community participation programmes*.
- Increasing the amount the people can earn before the abatement rate on the SLP starts.

3.3 Proposed wage supplement approach

Given that the utility a wage supplement approach should be considered through a broader lens as outlined in section 3.2, it is premature to respond in detail to most of the questions asked (4-11). In considering the advantages and disadvantages of a wage subsidy approach IHC makes the following general points

- People with intellectual disabilities who are currently working for less than the minimum wage and their families need reassurance that they will have meaningful work, community participation activities of their choice.
- While the discussion document gives some costings and alternatives to show that a wage subsidy will not impact on benefits or reduce income these are insufficient information to allay fears that people may be worse off.

² Funding and financial analysis: New Zealand Disability Support providers (November, 2018), report by Deloitte for NZDSN.

- There are a number of potential pitfalls in a wage subsidy approach that include
 - Disincentives for people to work more hours, take on extra responsibilities or change employer.
 - Employers may be less likely to employ people with an intellectual disability without a wage subsidy.
 - A wage supplement becoming a default position for people with intellectual disabilities rather than greater efforts being undertaken to get better employment opportunities and outcomes.
 - Inconsistencies in meeting New Zealand's obligations the New Zealand under the UNCRPD and New Zealand Disability Strategy (NZDS) with regard to employment rights, reasonable accommodations and the principles of proportionality so that large numbers of disabled people are not congregated in one setting.

We also note that the use of Schedule 8 Part 25 clause 44 of the Social Security Regulations is suggested as a possible pathway to ensuring that people are not disadvantaged financially. This section allows for application to be made to exempt all or part of income earned by severely disabled persons to be disregarded as chargeable income for benefit purposes. In our experience this is a poorly understood and implemented provision. There is also insufficient data on how this is currently working as we do not know how many people have an income exemption.

4. Release of IHC submission

There are no parts of IHC's submission we would not want released if a request for information was made under the OIA.



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

Discussion document

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

2019

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Ministry of Social Development

PO Box 1556

Wellington 6140

New Zealand

Telephone: +64 4 916 3300

Facsimile: +64 4 918 0099

Email: info@msd.govt.nz

Web: www.msd.govt.nz

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Foreword

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

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

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

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

Yet, many disabled people in work are currently prevented from earning a minimum wage through minimum wage exemptions.

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

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

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

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

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

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

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



Hon Carmel Sepuloni
Minister for Disability Issues



Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

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