

Your views on a wage supplement

- 1 The government wants to know your views on a wage supplement as an alternative to Minimum Wage Exemption permits
- 2 We are seeking feedback from disabled people, families, providers, employers and unions on a wage supplement, which could replace Minimum Wage Exemption (MWE) permits.
- 3 This document provides background information on the MWE, including issues with the MWE and its implementation. It also sets out a potential design for a wage supplement approach.
- 4 We are interested in hearing your views on the design of a wage supplement, whether you think it is better than the MWE, and any other points that you think are important for the government to consider.

How you can provide feedback

- 5 You can provide your views either:
 - directly online at: <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/wage-supplement-consultation-announced.html>
 - by post: PO Box 406, Rangiora 7440
 - by email: wage_supplement_consultation@msd.govt.nz
- 6 We need to hear back from you by Sunday 14 April 2019.

Next steps

- 7 Your feedback in this document will be collated and analysed along with other responses, and used to inform whether and how a wage supplement approach may be progressed.
- 8 Updates on this work will be available on the Office for Disability Issues website at: <http://www.odi.govt.nz>

Your submission may be made public

- 9 All submissions received by the government will be subject to the Official Information Act 1982.
- 10 Question 12 asks what you would like to do with information if it is requested under an OIA.
- 11 Please set out clearly in your submission if you object to the release of any information in the submission, and in particular, which part (or parts) you consider should be withheld, together with your reasons for withholding the information. The Ministries of Social Development and Business Innovation and Employment will take such objections into account when responding to requests under the Official Information Act 1982.

What is a MWE permit?

- 12 The MWE scheme has been in place since 2007. It was put in place after the Disabled Persons Employment Promotion (DPEP) Act was repealed. The DPEP Act allowed for disabled people to be employed in segregated workplaces (sheltered workshops) and to have fewer employment rights than people employed elsewhere. For example, people working in sheltered workshops did not have to be paid minimum wage, and they did not receive sick pay or holiday pay entitlements.
- 13 Section 8 of the Minimum Wage Act 1983 allows Labour Inspectors to issue MWE permits to individual workers. This means the employer can pay those workers less than the minimum wage, if the Inspector is satisfied that the employee is “significantly and demonstrably limited by a disability” in carrying out his or her work requirements. The key difference between section 8 of the Minimum Wage Act 1983 and the DPEP Act is that employees with a MWE issued under the Minimum Wage Act 1983 have the same employment rights and protections as other employees, except to receive the minimum wage.
- 14 Prospective employees applying for a permit are individually assessed by their employers. This assessment determines what wage rate the employee will be paid. The rate needs to be agreed between both employer and employee. Labour Inspectors provide a check that the assessments have been carried out by employers as they should be.
- 15 MWEs are for a set period – usually two years – and need to be renewed (via an application) or the minimum wage (or higher) paid on expiry of the permit.

Who is affected by the MWE scheme, and how?

- 16 There are approximately 900 MWE permits in place in New Zealand. Compared to the number of disabled people in employment generally, this number is very small. The 2013 Disability Survey reported that 291,000 disabled people were in full-time employment and 125,000 disabled people were in part-time employment.
- 17 Most people with MWE permits are employed at Business Enterprises. Business Enterprises are organisations that receive a funding contribution from the Ministry of Social Development (MSD), and whose primary purpose is to provide employment opportunities to disabled people. A minority of people with MWE permits (3–4%) are working outside of Business Enterprises or disability support organisations. Most businesses in the open labour market that employ someone with a MWE permit have only one employee with a MWE.
- 18 Most employees with a MWE rely on income support in the form of the Supported Living Payment, as income earned through their work is not sufficient to support them financially. Over a quarter of people with a MWE receive \$1.99 or less per hour of work (before tax), and around 70% receive less than \$4.99 per hour of work (before tax). About 5% of MWE permit holders earn over \$10 per hour of work (before tax). The current adult minimum wage rate is \$16.50 per hour (before tax).

Why are we looking to replace the MWE?

- 19 As part of the Disability Action Plan, which was jointly developed between government agencies and Disabled People's Organisations, an action was included to identify "better alternatives so that the minimum wage exemption process can be removed".
- 20 The lead agencies for this work are MSD and the Ministry for Business, Innovation and Employment (MBIE), recognising that the legislation is the responsibility of MBIE, and employment support for disabled people the responsibility of MSD.
- 21 In 2016 MSD and MBIE worked with representatives¹ from across the disability sector to help identify the issues with the MWE and shape potential alternatives. The main issues that were identified are that:
 - Only disabled people may be subject to the MWE.
 - The MWE conflicts with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), because disabled people with a MWE do not have the same right to earn minimum wage as other people.
 - The assessment process is subjective and the resulting wage rate is focused on what the disabled person cannot do or cannot do as quickly or as well as a non-disabled person, rather than being strengths based and focussing on what the disabled person can do.
 - Wage assessment tools are variable and there are concerns that the tools might not assess disabled people equitably.
 - Labour inspectors do not think they have enough knowledge or expertise in disability to verify that employers' wage assessments are reasonable in the circumstances.
 - Employees (and in some cases their families) may accept or request low wages so that their benefit is not reduced as a result of earnings.

Questions 1 and 2

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

Yes – however we believe a modification of the current system is preferable to either of the two proposed options.

2. If yes, what do you think is wrong with the current MWE scheme?
(please select all that you agree with, and provide as many other options as you think are relevant)

The wage assessment tools that are being used have the potential to be manipulated. The current wage assessment tools are a measure of productivity and capability, which can be applied subjectively.

There is no set wage tool which leaves it open to the employer to choose or design their own wage assessment tool, which meets the employer's requirements. This may or may not be of benefit to the employees.

These are concerns that we have wanted to address for many years.

¹ Including from the two disability provider umbrella groups; Inclusive New Zealand and the New Zealand Disability Support Network (NZDSN), as well as People First NZ and Blind Citizens NZ.

Why are we proposing a wage supplement to replace the MWE?

- 22 For many people, an end to all forms of discrimination (including MWE permits) remains a key objective. At the same time, we understand that for a lot of disabled people who are currently employed with a MWE permit, the job, workplace and income security are important.
- 23 When we were considering alternatives to the MWE scheme, we were mindful of the need to ensure the protection of all job opportunities that the current scheme provides for disabled people. A “bottom line” requirement for government is that nobody should be worse off as a result of any changes to the MWE scheme.
- 24 Through the work with disability sector representatives, we identified that a wage supplement would both protect existing employment opportunities for disabled people with a MWE, and would mean that those employees could be paid minimum wage.

How would a wage supplement approach work?

- 25 Under a wage supplement approach, employers would be required to pay all staff, including all disabled staff, at least minimum wage. In return, employers would be able to receive a wage supplement from the government to assist with some of the wage costs for disabled employees who are eligible for a wage supplement.
- 26 It is envisaged that a wage supplement be accessible by the same group that is currently accessing the MWE, and those who would be eligible for it in the future. Eligibility criteria for the wage supplement would include that:
- employees must be demonstrably limited by a disability, even after their employer has made reasonable accommodations
 - the job needs to provide a real opportunity for the disabled person to contribute and use their abilities and skills (ie not created solely as a means of occupying the disabled person at a rate heavily subsidised by the government).
- 27 In addition, we are proposing some additional criteria to further ensure that the wage supplement is not able to be used by employers as a means of subsidising their wage costs for disabled staff more generally, including that:
- the disabled person must be aged between 16²–64 years at the time of applying for the supplement³

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

³ A wage supplement could continue to be paid at age 65 and beyond, providing that it was applied for and approved before the person turns 65. Currently the age of eligibility for NZ Superannuation is 65. When a client

- the disabled person must meet New Zealand residence requirements, in line with the requirements to receive a benefit and to be entitled to work in New Zealand
 - the disabled person must not have been employed by the same employer at minimum wage or above previously, unless they became disabled by an injury or medical condition after their employment, and their disability limits their ability to meet the requirements of their job (even after reasonable accommodations have been made).
- 28 The application process for a wage supplement will include a criteria check to ensure it is not used to subsidise wage costs for a broader group than intended.
 - 29 Unlike other employment supports, a wage supplement would not be for a set period of time, but would continue for as long as the disabled person is assessed as eligible.
 - 30 A wage supplement would increase the earnings of the disabled person who receives it. Correspondingly, this may reduce any benefit payments the disabled person receives and/or increase financial obligations such as KiwiSaver deductions, and Student Loan repayments or child support payments, if applicable.
 - 31 We have modelled a number of scenarios and determined that most people would be better off under a wage supplement approach than they are under the MWE. In rare circumstances, if a person would be worse off as a result of increases in financial obligations from earning more, this could be offset by applying an income exemption under the Social Security Regulations.
 - 32 Under Schedule 8 Part 25 clause 44 of the Social Security Regulations, it is possible to disregard all or part of the income earned by a severely disabled person in employment as chargeable income for benefit purposes. This means that the income that is exempt is not counted when calculating whether earned income will reduce the rate of a person's benefit. Some people with a MWE may already have an income exemption.

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

Gina works 10 hours per week at a local Business Enterprise. She receives \$1.50 per hour she works and has an income exemption from Work and Income for the earnings she gets from the Business Enterprise, which covers the cost of her bus travel to and from the Business Enterprise. She receives a single rate of Supported Living Payment, 18 years+. She lives at home with her parents and younger siblings and does not pay board. She does not contribute to KiwiSaver. Each week she receives:

- Gross weekly income is \$303.40 from SLP and \$15 from working (total \$318.40)
 - PAYE deduction is \$41.29
- Net income is \$277.11 per week

turns 65 and is on a main benefit, they move from that benefit to NZ Superannuation. As NZ Superannuation is not income or asset tested, there would be no return to government from the increased expenditure on a wage supplement once a person turns 65.

Example continued...

Under a wage supplement approach, Gina would earn \$16.50 per hour. If we assume she continues to get an income exemption for the \$1.50 per hour that she previously had, each week she will now receive:

- Gross weekly income is \$288.40⁴ from SLP and \$165 from working (total \$453.40)
 - PAYE deduction is \$66.79
- Net income is \$386.61 per week

The net benefit of Gina receiving a wage supplement is \$109.50 per week or \$5,694 over a year/52 weeks. This is after paying additional income tax and abatement of her SLP.

Jeremy has a MWE. He works 28 hours per week at \$5 per hour. He receives a single rate of Supported Living Payment, 18 years+. He lives at home with his parents and does not pay any board. He receives \$12 per week Disability Allowance (DA) from Work and Income for ongoing costs related to his disability. In addition, he is paying back a Student Loan from a course he undertook after leaving school a few years ago. He also contributes 3% of his before tax income to KiwiSaver. Each week he receives:

- Gross weekly income is \$291.40 from SLP⁵, \$12 DA and \$140 from working (total \$443.40)
 - PAYE⁶ deduction is \$62.53
 - Student Loan repayment is \$16.80
 - KiwiSaver contribution (3%)⁷ is \$4.20
 - Total deductions (\$83.53)
- Net income after deductions is \$359.87 per week

Under a wage supplement approach, Jeremy would earn \$16.50 per hour. If we assume his financial obligations remain, each week he would now receive:

- Gross weekly income is \$90.40 from SLP (after abatement through earned income), \$12 DA and \$462 from work (total \$564.40)
 - PAYE deduction is \$98.01
 - Student Loan repayment is \$55.44
 - KiwiSaver contribution (3%) is \$13.86
 - Total deductions (\$167.31)
- Net income after deductions is \$397.52

The net benefit of Jeremy receiving a wage supplement is \$37.65 per week (\$1,957.80 over a year/52 weeks). This is after paying additional income tax, Student Loan repayments and KiwiSaver contributions. If Jeremy did not have a Student Loan to repay, the net benefit would be higher again. Under a wage supplement approach Jeremy will be able to pay off his Student Loan earlier.

⁴ Gina's full rate of SLP is abated by \$15 because of \$150 earnings (\$15 of the \$165 she earns are exempt), reducing SLP to \$288.40.

⁵ This is less than the full rate of SLP as Jeremy's \$140 earnings are considered chargeable income and mean his SLP is abated by \$12 per week.

⁶ This does not include DA, as DA is a non-taxable allowance.

⁷ Note KiwiSaver contributions are only paid in respect of earnings, not benefits.

Questions 3 and 4

3. Do you think that a wage supplement approach would be better than the MWE?
[No.](#)
4. What things (criteria) do you think should determine whether an individual should be able to get a wage supplement?
[See comments at question 11.](#)

How would the rate of the wage supplement be determined?

33 There are two options for determining the rate of a wage supplement:

- a new, government mandated wage assessment tool
- a single rate for all who are eligible for a wage supplement.

A new, government-mandated, wage-assessment tool

- 34 Currently employers can use any tool they choose to assess the wage rate for their employees. One of the issues identified with the MWE is that current wage assessment tools are variable and there are concerns that not all of the tools used assess disabled people equitably.
- 35 If there is support to continue with a wage-assessment process, then a new, government-mandated, wage-assessment tool could be developed to ensure that all disabled people eligible for a wage supplement are assessed using the same wage assessment tool. All employers would be required to use this tool for their wage supplement assessments. This would address the issues around variability and equity of the wage rates produced when different tools are used. The government would then pay the difference between the assessed wage rate determined by the newly developed tool, and the minimum wage.
- 36 There is a risk that the wage-assessment tool could increase wage costs for employers who are already employing disabled people with a MWE, particularly those employers who may have been relying on wage assessment tools that produced very low wage rates. The development and transition to a new tool would need to be managed carefully with employers to ensure that it does not result in disabled people losing their jobs.
- 37 A government agency would need to continue to maintain oversight of the wage assessment process and ensure that employers use the tool correctly. The Labour Inspectorate currently has this role but considers that it is not well-equipped to perform this function, as it is outside the Inspectorate's core business of enforcing minimum employment standards set in legislation.
- 38 Developing a wage-assessment tool would require specialist expertise, outside of government. It would also require targeted consultation with employers using these tools to ensure that the tool that is developed is fit for purpose.

A single rate for all who are eligible for a wage supplement

- 39 A single rate would mean that employers receive the same rate of supplement for all employees who are eligible for a wage supplement. For some people the rate of supplement paid to the employer may be more than they would receive under a wage assessment model, whereas for others it may be less. Employees would not be subject to a wage assessment process and employers would be expected to manage the wage

supplement payments they receive across their employees and pay all employees minimum wage.

- 40 A single rate would be simpler to administer both for employers and for government. It would also align with our obligations under the United Nations Convention on the Rights of Persons with Disabilities, as disabled people would no longer be subject to a wage assessment process.
- 41 However, a single supplement rate could result in employers choosing to only employ more 'able' disabled people, who would typically be paid at a higher rate under the MWE. This would be at the expense of disabled people who require more assistance and may typically be paid at a lower rate under the MWE.
- 42 It may also be difficult to reach agreement with employers as to what is a fair rate to pay, which is affordable both for the government and to meet the additional costs employers face when employing disabled staff. The single rate may need to be adjusted in response to increases to the minimum wage.

	A new, government mandated wage assessment tool:	Single rate for all who are eligible for a wage supplement:
Advantages	<ul style="list-style-type: none">• will meet the actual cost of increasing the wages of eligible disabled people to minimum wage• a new tool would be developed to address concerns raised with the current process that allows employers to use any tool they choose.	<ul style="list-style-type: none">• administratively simple, for both employers and government• no disabled people would be wage assessed.
Disadvantages	<ul style="list-style-type: none">• may increase wage costs for some providers (although it may also be reasonable and fair)• will continue to wage assess disabled people, when non-disabled are not wage assessed• more administration will be required to undertake the wage assessments and oversee the process• will require a new tool to be developed, which may mean the wage supplement approach cannot be implemented as quickly.	<ul style="list-style-type: none">• employers may decide to employ more productive employees at the expense of less productive employees• may be a higher cost for government.

Questions 5, 6 and 7

5. Do you think disabled people eligible for a wage supplement should be assessed to determine what rate of supplement is paid to the employer by the government?

Yes.

6. If yes:

- a. What things should be considered when determining how much an employer should contribute to the worker's wage, and how much should be paid by the government?

To have a single wage assessment tool that is mandatory and developed and applied by a third party is something we have been suggesting for many years now. This would remove any potential for conflict of interest in having the employer undertaking the assessment. Please see further comments at Question 11.

Who do you think should assess individual employees' productivity and/or their skills and abilities? (e.g. government, employer, someone else – please give as much detail as possible)

The Labour Inspectorate is a neutral regulatory body that looks at the wider workplace compliance issues, in particular adhering to minimum employment standards. We believe that it is essential to continue to have a workplace compliance focus going forward.

- b. What kind of government oversight should be applied to employers making use of a wage supplement? Which government agency or agencies do you think should fulfil this role?

We believe there needs to be a focus on continuing to assess minimum employment standards are being complied with, which is what the Labour Inspectors are currently doing. This provides integrity and ensures that there is no risk of exploitative practices.

Or

7. Do you think the government should pay the employer a single rate of wage supplement for all the disabled employees who are eligible, and avoid an assessment of their work abilities?

No - as this would undermine what Pathways to Inclusion was trying to achieve. Employees would all receive the same amount regardless of their ability. In essence this would be a return to the times of the sheltered workshops prior to the repeal of the Disabled Persons Employment Promotion Act 1960.

Advantages of a wage supplement approach

- 43 A wage supplement approach would mean that the MWE could be repealed.
- 44 All disabled people would have the same employment rights as non-disabled people, including the right to earn at least minimum wage.
- 45 Those eligible for the wage supplement would receive either the same gross (or before tax and deductions) amount of money as they do currently, or would receive more.
- 46 The supplement should protect existing employment opportunities for disabled people as the additional cost would be met by government so wage costs for employers should not change significantly.
- 47 Under an approach that pays a single rate of supplement, disabled people would no longer be subject to wage assessments.

Potential challenges of a wage supplement approach

- 48 A government-mandated, wage-assessment tool could result in some employers having to pay higher or lower wages to some employees than they currently do (note this is not a challenge with a generic rate of supplement).
- 49 A single rate of supplement could result in employers only choosing to employ more 'able' disabled people at the expense of more highly disabled people (note this is not a challenge if the approach uses a wage assessment tool to individually assess people's wage rates).
- 50 Some disabled people may be less inclined to take on additional responsibilities at work if everyone will earn minimum wage regardless of their role. If employers want to maintain relativity between roles, they would need to meet the additional wage costs of higher paid roles.
- 51 A supplement could be complex for employers to administer and may lead to some employers being less willing or able to accommodate flexible working arrangements (e.g. highly variable hours).

Questions 8, 9, 10 and 11

8. What do you like about a wage supplement approach?
Employees with disabilities will receive minimum wage.
9. What do you think are the downsides or risks of a wage supplement approach?
Please see comments at question 11.
10. Do you prefer:
a. something else – please specify in as much detail as possible the alternative mechanism you would prefer.
See comments at question 11.
11. Any there any other comments/feedback you would like to make?

We note there are comments made throughout the discussion document relating to the Labour Inspectorate and more particularly about the Labour Inspectors. In particular in paragraph 21 bullet point 5 and paragraph 37 of this document. We acknowledge that may have represented the position in 2015/16. We do not believe this is representative of the current situation with the Labour Inspectors.

In 2016 it was acknowledged that the administration of the MWE scheme needed to be improved. Therefore this work was centralised, and a team of three Inspectors was set up to ensure a consistent approach and plan on ways to improve the administration of MWEs. Each of the Inspectors has at least 10 years' experience with MWEs.

MWEs are an employment issue. The pay rates are assessed, negotiated and agreed to between the employer and employee. The current assessments generally take into account productivity and capability. This is the same for most employees who are subject to performance assessments which are linked to pay. The obvious difference being that the wages for employees with disabilities are below the minimum wage.

The Wage Supplement Approach:

As stated above we believe that a single Wage Assessment Tool (WAT) would improve the current MWE system and is something that we have been suggesting for many years.

We note that the eligibility criteria would be that *"employees must be demonstrably limited by a disability, even after their employer has made reasonable accommodations"* and *"the job needs to provide a real opportunity for the disabled person to contribute and use their abilities and skills"*. This is substantively the same as the MWE criteria is now.

Will it be part of the eligibility criteria that an employer will be compliant with minimum standards? Is the Labour Inspector going to have a role in this? If so, is it envisaged that this would be an audit compliance type role or a complaints based approach? If the latter, we believe such complaints may not meet the Labour Inspectorate's criteria to be investigated by a Labour Inspector.

Who is going to assess whether the employee is demonstrably limited by a disability even after accommodations have been made? If this remains with the employer then there is a potential for conflict of interest.

It is proposed that *"the wage supplement would not be for a set period of time, but would continue for as long as the disabled person is assessed as eligible"*. How often will assessments be done? How is it proposed to monitor eligibility?

In our experience we have seen family members and friends taking financial advantage of employees. If the employee receives more pay this could increase the risk of this. How will this be managed?

How often is the employer going to be paid the supplement? There could be a risk to the financial viability of a business enterprise if this is not paid out regularly. This also impacts on how a business enterprise manages other employment entitlements, for example managing leave liability.

The Labour Inspectorate receive complaints from employers in the open market that the paperwork associated with the MWE process is too time consuming and complicated. They often comment it would be easier not to employ a person with a disability. What evidence will the employer and employee be required to provide to be eligible for the supplement? Will this obligation lie with the employee or the employer? If this process is too cumbersome employers will not be interested and this will discourage employers providing opportunities to prospective employees with disabilities.

It is the intention that no employee is going to be worse off under this scheme. If there is a significant increase in cost to the employer how is it proposed to protect current and prospective employees' positions?

There is a potential that employees over 65 or subject to work visas could be disadvantaged by this system. If the 65 year old employee fails to apply for a supplement prior to turning 65 then it looks like they will lose their employment. There are employees who elect to continue to work after 65 who are on an MWE.

Individuals who are currently on open work visas and are working in the business enterprises would not meet the eligibility to receive a supplement. If the MWEs are repealed this will mean that they will not have the opportunity to participate in employment. While employees on work visas has not been common in the past this is a situation that has just started occurring.

Option 1: A new government mandated wage assessment tool.

As stated above, we believe the best option is a single mandatory wage assessment tool. However the introduction of a government mandated tool is likely to be subject to all the criticisms of the current wage assessment tool as discussed below.

The wage assessment tool will still be discriminatory and focus on what the employee cannot do and not on what they can do.

The assessment is still going to be subjective if completed by the employer. There remains scope for the tool to be weighted to achieve the desired outcome, eg the lower the assessed amount the higher the supplement. For the process to have validity and integrity there is still going to need to be a third party/regulatory oversight of the process.

Overall this may have the impact of an employer to prefer employing less productive employees at the expense of more productive employees.

This proposal has not taken into account the affect that this may have on the whole work place. The disability sector is generally not well paid with a lot of mainstream staff currently being paid minimum wage and supervisory staff being paid not much more. Therefore this change is going to significantly impact the wider workplace financially as well.

Option 2: A single rate for all eligible employees.

Depending on the amount being paid this may mean higher skilled staff may be disadvantaged by the employer having to ensure equity in the rate of pay. This could also have the effect of putting pressure on lower skilled employees to be more productive, which may not be possible. This could mean that existing lower skilled staff would not cope and may lose their job. In addition the employer could be discouraged from employing lower skilled staff in the first place.

Finally, we have a concern relating to the proposed timing of this change. Point 9 of the cabinet paper states that "*[c]onsultation could take place in early 2019 to allow the design of the wage supplement to be finalised ahead of the 2019/20 financial year*". We are concerned that this suggests an element of predetermination prior to the details being fully explained. There was a five year period to transition business enterprises to the MWE scheme. In our experience of that transition, while it seemed like plenty of time, the business enterprises were still ill prepared on the transition date. It fell back on the Labour Inspectorate to educate and support the business enterprises to make the necessary changes to complete an MWE application.

Question 12

12. If information on submissions is requested under the OIA, are there any parts you would not want released (note we will not release your personal information)?

Please advise what parts you would not want released and why (if submissions are requested we will take this into account when we consider the public interest in releasing information).

No concerns.

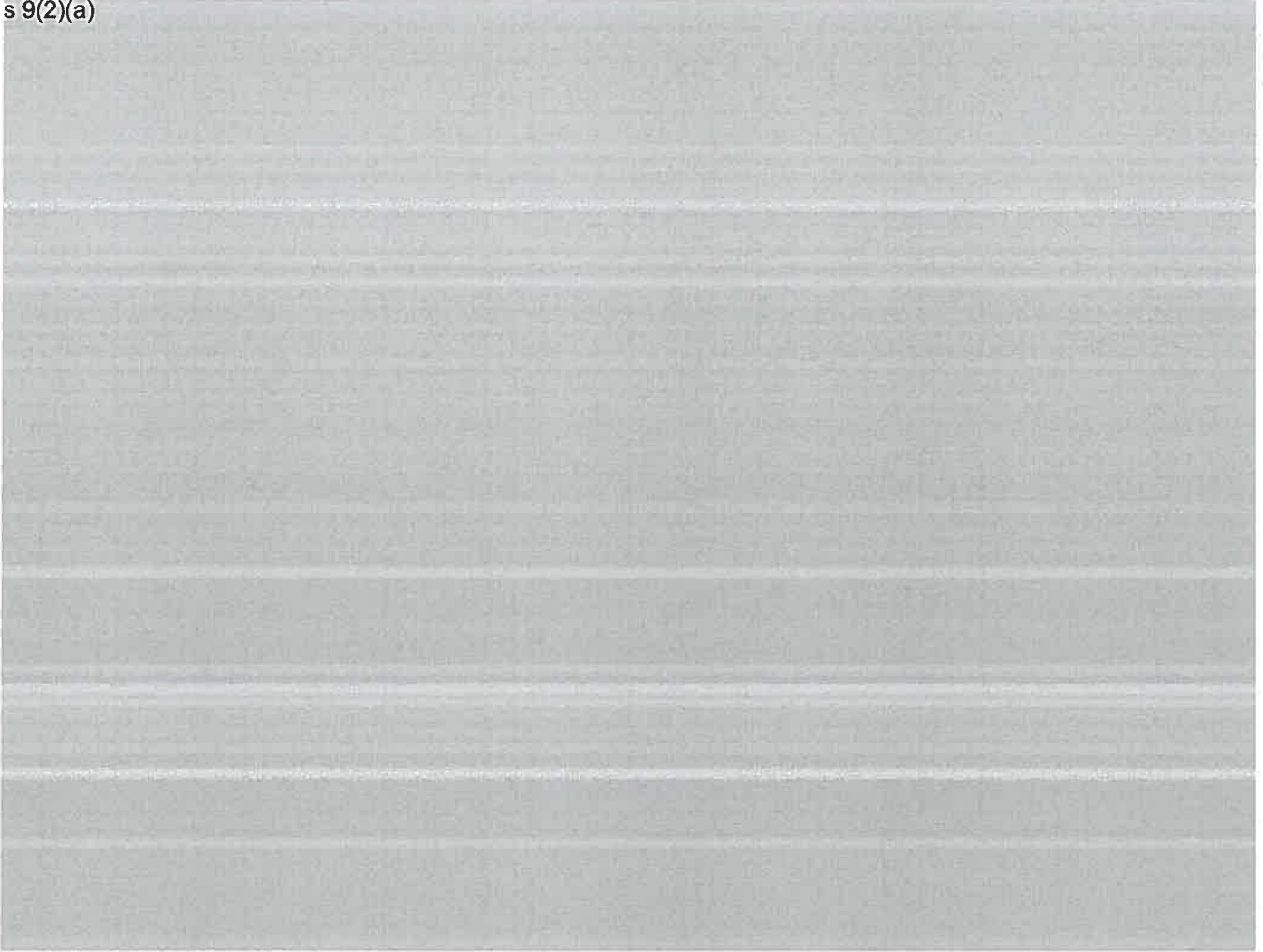
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OFFICIAL INFORMATION ACT

Demographic questions (optional)

To help us put your feedback into context, please tell us a little bit about yourself. These questions are voluntary.

In what capacity have you completed your feedback?

s 9(2)(a)



What is your ethnic group? (Please select all ethnic groups you identify as)

Māori

NZ European

Australian

Other European

Samoan

Cook Island Māori

Tongan

Niuean

Tokelauan

Fijian

Other Pacific Peoples

Southeast Asian

Korean

Chinese

Indian

Other Asian

Middle Eastern

Latin American

African

Other ethnicity _____

What is your age group?

Under 15

15-24

25-34

35-44

45-54

55-64

65 or older

What is your gender?

Male

Female

Gender diverse



People First NZ's Submission on a Wage Supplement as an alternative to Minimum Wage Exemption permits

10 April 2019

People First NZ is pleased to make this submission on a wage supplement as an alternative to Minimum Wage Exemption permits

1. About People First New Zealand

People First NZ is a Disabled Persons Organisation and a national self-advocacy organisation run by and for people with learning disability.

People First NZ uses the term "learning disability" rather than "intellectual disability" as members think it is more respectful.

People First NZ was set up in New Zealand in the 1980's and has been an independent Incorporated Society for over 12 years. There are over 30 local groups around New Zealand where members meet monthly to learn about their rights and how to speak up for them.

To be a member of People First NZ you must be a person with a learning disability, over 18 years of age.

People First NZ members speak up on issues that are important to them such as:

- having the same rights as all other New Zealanders
- being a member of the community
- being a citizen of New Zealand.



First NZ works in a human rights framework and works to implement the United Nations Convention on the Rights of Persons with Disabilities to make sure people with learning disabilities have a good life. People First NZ is also a member of the New Zealand UN Convention Coalition Monitoring Group that monitors the rights of disabled people against the UN Convention.

People First NZ runs a translation service called **Make It Easy**, which translates information into Easy Read – everyday words and pictures. Easy Read is a format that is more accessible for people with a learning disability, low-literacy or English as a second language.

People First NZ also provides information and advice about rights and supports for people with learning disability. We run courses for people with learning disability and deliver educational presentations to the wider community.

1.2 Why People First New Zealand wants to make this submission.

People First NZ members are concerned with the human rights of all people and want to have their say about important issues.

Members believe it is particularly important to speak up on issues for disabled people and in particular the rights of people with a learning disability.

Members believe the rights in the CRPD are the minimum standard for disabled people and it is important that New Zealand puts in place policies and practices that make these rights real.

People First New Zealand is part of the Disabled Persons Coalition that works in partnership with the government making Article 4.3 real.

2. What People First NZ New Zealand thinks:

2.1 People First NZ strongly believes that the Minimum Wage Exemption urgently needs to change.

2.2 People First NZ believes that the Minimum Wage Exemption discriminates against disabled people and conflicts with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Minimum Wage Exemption permits have caused people with learning disabilities to be treated like second class citizens.

Many People First NZ members have experienced working for only a few dollars an hour due to MWE permits. The work (such as putting headphones in plastic bags for an airline company) or loading boxes can be repetitive and have no possibility for further learning or career advancement.

Real Life Example: D used to work 8 hours a day, 4 days a week packing boxes s 9(2)(a) . He got bullied and sick from being cold all the time. He also thinks that many of the people there didn't know that they could choose to not work there and still get paid a benefit. The staff didn't know anything about the rights of people with disabilities.

The Minimum Wage Exemption also focuses on what disabled people cannot do and involves wage assessment tools that no other worker has to be put through.

People First members had experiences where the employer or Labour Inspector did not know anything about their disability but they made a decision about how disabled they were. The assessments don't look at what you're good at or what you'd like to be doing. Members feel this type of assessment is unfair and wrong.

Real Life Example: some People First members get paid \$2 an hour for their work at a Business Enterprise when they are paid \$16.50 for the work they do at a local supermarket.

Another reason that the Minimum Wage exemption needs to change is that it does not match the current living situation that people with learning disabilities are living in. Many people with learning disabilities are living in poverty.

People living in residential services pay rent and associated costs and receive an allowance to cover all personal costs. Some people have barely any money for doctors appointments or food. People living in the communities are struggling to have an adequate standard of housing. Yet these same people might be working 15-40 hours per week with barely anything to show for it. While they do qualify for a Work and Income benefit this is inadequate and leaves people with no way of improving their situation. There needs to be an acknowledgement that disabled people have the same high costs of living as everyone else and many are living in relative poverty.

The supporters of minimum wage exemption are focused on giving people with learning disabilities something to do during the day. This focus is out of step with both the current socio economic reality and the broader goals of a good life as protected under the UNCRPD.

2.3 People First NZ believes that the wage supplement approach will be much better than the MWE. The wage supplement is a good way to stop the unfair treatment of disabled people while keeping people in their jobs. However some of the workplaces still need to change because of the type of work and how they treat their workers. There also needs to be pathways and opportunities for work in regular open employment. Some People First members felt that in some workplaces not enough has changed since sheltered workshops. Work should be fulfilling and meaningful.

Businesses that receive a wage supplement should ideally have representatives from the workers with disabilities on their boards or some other way for workers to have a voice.

There should also ways to check that the workers require a wage supplement. This should be done by people outside of the employing organisation. Workplaces receiving a wage supplement need a better system of checks and balances (including oversight by DPOs) than before. There could be a role for Unions, Labour inspectors and representatives from the Disabled People's Organisation, including People First NZ.

2.4 People First members believe the criteria for whether a person gets a wage supplement should be if they already have a MWE. People First NZ needs to know more about what the possible criteria might be and wants to be involved in making this decision.

2.5 The people affected need to have clear information, in ways they can understand, about their , their rights and any wage supplement. People First NZ believes workers may benefit from information in Easy Read. People First NZ has made an Easy Read employment agreement which is freely available on the website and can be changed to suit different situations.

2.6 People First members very much feel that the assessments based on disability need to stop.

Real life example: s 9(2)(a) People First group felt angry and upset when they heard that members who are seen as non-verbal get paid less for doing the same work.

People First NZ believes that the government should pay the employer a single rate of wage supplement for all the disabled employees who are eligible, and not do an assessment of their work abilities.

However People First NZ is also aware of people receiving MVE who have roles or skills such as team leader or forklift driver. There should still be a way of rewarding harder jobs, greater responsibility or length of service. Maybe the employer should still have to reward people by paying more than the minimum wage in the same way that employers in open employment do.

2.7 People First Members thought the possible risks of a wage supplement approach could be:

- People getting stuck working in a Business Enterprise work environment when regular work might be more fulfilling and provide more opportunities for growth.
- Re stigmatizing people with learning disabilities as not capable to work in a regular workplace
- Removing an incentive for people with learning disabilities to find more suitable work
- What about employers who have been treating their disabled workers fairly and paying them minimum wage already? Will there be a disincentive for those businesses to continue to hire disabled people when they are not getting a supplement? Different members shared stories of workplaces such as s 9(2)(a) that had employed people with learning disabilities part time for over 10 years.

2.8 People First NZ strongly prefers a wage supplement (to replace the MWE) rather than no change or something else. A wage supplement means all people will be paid fairly for their work and that people won't lose their jobs because of the changes.

People First NZ would also like a stronger commitment to inclusive workplaces, meaningful work opportunities and career progression as described in Article 27 of the UNCRPD.

People First members also want employment services such as Workbridge and others to help more people with learning disabilities to find work and to have business development opportunities as well. People with learning disabilities are all different and require different work opportunities.

2.9 People First NZ members believe that the Minimum Wage Exemption is unfair and a breach of the UNCRPD. Members believe that the proposed wage supplement is a big step forward in treating people with learning disabilities with dignity and respect and will make a real difference in many people's lives.

3.0 People First NZ does not want anyone to be worse off from any changes.

People First NZ thanks you for the opportunity to have a say on the Wage Supplement. As a People First member said "everybody deserves fair treatment and equal opportunity".

For anything further please contact s 9(2)(a) on:
s 9(2)(k)



Submission

By

Etū

To

Ministry of Business, Innovation and Employment

On the

Wage Supplement Consultation

April 2019

Overview

This submission is made on behalf of E tū, the largest private sector union in New Zealand, with 54,000 members. Our members work in industries including:

- Aviation
- Communications
- Community Support Services
- Engineering, Infrastructure and Extraction
- Manufacturing and Food
- Public & Commercial Services

E tū is the largest private sector union in New Zealand with over half of our members living in the greater Auckland region. Workers within the Community Support Services sector make up 20% of our membership with many of those working within the disability sector.

E tū is also an affiliated union to the New Zealand Council of Trade Unions and fully supports their submission on the approach to wage supplement consultation. We intend to focus entirely on the process that is needed to ensure that disabled workers are paid fairly for the work they do and to ensure that their dignity is maintained.

Executive Summary

E tū proposes

- That a Job Assessment Tool be developed with DPOs, with unions, with the Government and with employers
- That all employers who have successfully had a job assessed as requiring a wage subsidy would sign an agreement with Ministry of Social Development that would state the subsidy for each job, a guarantee that no productivity measurement would be used when employing staff for that position, all terms and conditions of any employment agreement at the workplace would apply, and that all workers at the workplace are covered by any legislative requirements that apply.
- That all Business Enterprises are covered by a Fair Pay Agreement/Multi Employer Agreement
- That service allowance rates are included in the Business Enterprises Fair Pay Agreement/Multi Employer Agreement to recognise continuous service by the worker

Wage Subsidy Discussion

E tū has always been a strong advocate for fair terms and conditions for our workers. We view the minimum wage as a good safety net that sets a rate that nobody should be paid below. However, we advocate for the Living Wage rate as this is the minimum rate needed to move people out of poverty. A system that allows employers to pay as low as 89 cents per hour to workers is against everything we believe in, is extremely exploitative and it must stop. The requirement for the worker to be assessed as to their ability to undertake the job is demeaning and discriminatory. No other worker has to be regularly assessed for work based solely on whether they are disabled or not.

The fact that there are currently only around 900 disabled workers affected each year by Minimum Wage Exemption Permits (MWEP) is more a reflection on what disabled workers have to go

through to get employment rather than an indication of how many disabled workers would like to be able to work.

It is important that any process set up must move away from assessing the workers ability to undertake a task and from measuring the time it takes to complete a task and to recognise the validity of the work the individuals do. The experience gained and skills being developed assist both the individual and employer. A good employer understands the importance of respecting the work being done by paying a fair wage.

“The reality is complicated, but it is important to note that in my experience good employers don't want to employ anyone for under minimum wage. I would never support someone into a position where an employer suggested a wage exemption and I would never suggest it as an option to ‘sweeten a deal’ for an employer” – s 9(2)(a)

The proposals being put forward within the consultation document look at the ways that the current individuals on MWEPs can be paid the minimum wage for any hours that they do. We believe that if the decision is to require the employer to pay all their workers the minimum wage, including those currently on MWEPs, then we will be putting the current 750 workers who are on MWEs at risk of not getting employment at all.

However, we also believe that if we set one top-up amount that the Government will pay to employers then the employers will employ those who are ‘more productive’ to undertake the tasks, again creating a group of people who are no longer employable who currently have jobs. We think there is a need to develop a system that does not require the individual to be assessed whilst also not being a flat rate paid to the individual to top up their wage rate to ensure they are paid the minimum wage. We believe that there must be a third way developed that is different from the two currently being proposed within the consultation document.

The current assessment tool is about assessing the individual and this obviously is not working. The wages being paid are atrocious and there is no link to movement in the minimum wage. These rates rarely change from one year to the next and do not recognise any skills/abilities that have been gained during the workers time with the employer. There is no incentive for the employer to pay the worker any more as the rate has been agreed within the MWEPs.

Any change to the system cannot be seen solely as a subsidy for the employer to exploit workers and it must allow our disabled people to have access to good employment. Whilst a single subsidy may be easier to manage by employers and the government it won't necessarily deliver a better outcome for the current MWEP workers. Most of these MWEP workers are employed in Business Enterprises whose function and goals are to provide, create and maintain employment opportunities for disabled people. Many of these have commercial contracts and some have government contracts, with many describing themselves as social enterprises. As well as paying the majority of MWEP workers less than \$5 per hour (with some being paid less than \$ per hour) they are also receiving funding contributions from the Ministry of Social Development. Getting a further subsidy to enable them to pay the workers a minimum wage does not put any requirements on them to review the wages they are paying and to recognise experience/skills gained from these workers who have been employed for a number of years.

E tu believes that there has to be differing top up amounts payable by the Government to ensure that all those who want to work can work and be paid with dignity, and that we need to find a mechanism that works to enable this to occur without retaining the current individual assessment tool. We need to ensure that the mechanism utilised has been developed with the DPOs, with unions, with the Government and with employers so that it is truly an inclusive tool and does not measure the workers productivity.

"My hope is that businesses that employ people with minimum wage exemptions will be able to be supported and educated through the change process by qualified supported employment consultants/brokers and that measurements for productivity are scrapped all together" – s 9(2)(a)

E tū firmly believes that it must be a tool that looks at the job and not at the person. The tool would look at the requirements of the job being undertaken and what a fair rate would be for that job. The subsidy paid would then be the difference between the rate for the job and the current minimum wage. Once the assessment tool is developed, then training would need to be completed by employers, employment consultants/brokers and the labour inspectorates. Training is paramount so that those using the tool are doing it fairly, consistently, and with the rights and requirements of the worker at the forefront and not the employer.

E tū's proposal: That a Job Assessment Tool be developed with DPOs, with unions, with the Government and with employers

This new tool cannot be used as a way to reduce the employment opportunities of disabled workers by employers and the subsidy agreement between the Ministry of Social Development and the employer must explicitly state that there are no productivity measurements being used when deciding on who to employ for these positions. The agreement must also state any Collective Agreement/Fair Pay Agreement/Multi Employer Agreement at the workplace would cover all workers, including those where a subsidy agreement has been reached. If there is no agreement then it must state that all legislative requirements that currently apply to all other workers within New Zealand would apply to those workers employed in jobs covered by wage subsidy, including the Minimum Wage Act, The Holidays Act, and any other relevant legislation.

E tū's proposal: That all employers who have successfully had a job assessed as requiring a wage subsidy would sign an agreement with Ministry of Social Development that would state the subsidy for each job, a guarantee that no productivity measurement would be used when employing staff for that position, all terms and conditions of any employment agreement at the workplace would apply, and that all workers at the workplace are covered by any legislative requirements that apply.

One way to ensure protection for workers is for all workers employed by Business Enterprises be covered by a Fair Pay Agreement/Multi Employer Agreement that would have the current minimum wage as the starting rate within the document, would set out the process for assessing the subsidised rate for all jobs undertaken by the Business Enterprises, and would set other terms and conditions to ensure that all workers are treated fairly and are covered by the requirements of the Employment Relations Act.

E tū's proposal: That all Business Enterprises are covered by a Fair Pay Agreement/Multi Employer Agreement

We also believe that there should be additional rates listed within the Fair Pay Agreement/Multi Employer Agreement that recognises the skills/experience gained by continuous service of the worker within the Business Enterprises by way of a service allowance.

E tū's proposal: That service allowance rates are included in the Business Enterprises Fair Pay Agreement/Multi Employer Agreement to recognise continuous service by the worker

We are happy to discuss our submission further if required.

Contact Information

s 9(2)(a) [REDACTED]
[REDACTED]

E tū

s 9(2)(k) [REDACTED]
[REDACTED]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

28 August 2019

This discussion document is submitted as a contribution to the Consultation on a Wage Supplement Approach to Replace Minimum Wage Exemption Permits.

Background Information

s 9(2)(a)

The Business Enterprises provide employment for s 9(2)(a) including s employees with disabilities, predominantly intellectual disabilities, who have been issued Minimum Wage Exemption Permits.

s 9(2)(a) considers employment to be a key element to enabling a person to lead a "normal" life. To satisfy this demand for employment which is not otherwise available in the region, we actively seek and promote business enterprise opportunities. Each of the enterprises operates on a break even basis and they do not provide significant support for the overall viability of the s 9(2)(a) caters for a large catchment area and it is a major source of employment within the region.

Since the repeal of the Disabled Persons Employment Promotion (DPEP) Act we have used the Wage Assessment Tool that was developed by the Federation of Vocational and Support Services (VASS). We have accepted that the wage assessments derived from this tool are considered by some Business Enterprises to be high but we have considered them to be a fair reflection of the work done or the value added by the individual employee.

The SWAT Objective

We accept that the present model of employing people with disabilities utilising Minimum Wage Exemption Permits has shortcomings and is subject to external criticism. We will therefore welcome an alternative that supports the following four objectives that the s has with regard to employment of people with disabilities:

Provide employment with meaningful work within a real employment environment.

Provide appropriate support and adaptive equipment.

Ensure that all employees are fairly rewarded for the work done.

Be financially viable.

Recommendations

To achieve the above objectives we recommend that the following considerations be observed in the development of any model that might replace Minimum Wage Exemptions:

- The productivity and capability of each individual employee should be assessed so that wage supplements are matched to each individual.
- The productivity and capability assessment should be conducted by an independent agency so that transparency and consistency are maintained.
- Acknowledge that it may not always be appropriate to employ those people with more profound disabilities due to environmental and supervision limitations or workplace safety considerations.
- In addition to employee wages, the employer requires the financial support that is needed for additional supervision and the assistive equipment necessitated by the employment of people with disabilities.
- Acknowledge that if the employer is not able to operate in a financially viable and sustainable manner, there will not be any employment.

Summary

Whilst the focus of this discussion is the possible replacement of MWE Permits with a wage subsidy we emphasise that there are two parties to any employment agreement. We believe that a properly administered and fair wage subsidy will address many of the shortcomings that exist in the present system.

Despite apparent popular belief, organisations such as ours operate in a manner that is often only just commercially viable. It is our mission to provide support for disadvantaged and marginalised people so we persevere. The Ministry of Social Development contracts to which we are party only partially meet the costs of the services we provide. The commercial work that we undertake is generally on a break even basis so that we can retain the work.

We support the review of the wage situation for employees with disabilities so that an element of fairness and equality prevails. To maintain that employment there also needs to be an acknowledgement that employment of people with disabilities places significant additional costs upon the employer.