



9 September 2024

Tēnā koe

Official Information Act request

Thank you for your email which was transferred to the Ministry on 15 August 2024, requesting the following information:

- 1. Any evidence of analysis held by the Ministry of Social Development or the Minister supporting the claim that the wage supplement could or would risk the viability of businesses utilising MWE permits or place disabled peoples jobs at risk*

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below.

Please find attached the following report:

- 1. REP/17/11/1062 – Minimum Wage Exemption: Possible Directions for change*

Please note that any further analysis that led to the creation of this advice cannot be found.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

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

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

Magnus O'Neill
General Manager
Ministerial and Executive Services



Minimum Wage Exemption: Possible directions for change

Date: 15 December 2017

Report no.: REP/17/11/1062

Security level: IN CONFIDENCE

Priority: Medium

Action Sought

Hon Carmel Sepuloni Note the contents of this report
Minister for Disability Issues

Contact for telephone discussion

Name	Position	Telephone	1st Contact
James Poskitt	General Manager, Community and Family Policy	04- 916 3051 029-200 7295	<input checked="" type="checkbox"/>
Lachlan Cartwright	Policy Manager, Community and Family Policy	04-916 3656 029-201 4290	

Report prepared Emma Churchill, Senior Policy Analyst

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments

Date received from MSD

1 8 DEC 2017

Date returned to MSD

2 1 DEC 2017



Report

Date: 15 December 2017

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Disability Issues

Minimum Wage Exemption – possible directions for change

Purpose of the report

- 1 This report provides you with information on the Minimum Wage Exemption (MWE), and an overview of recent work in this area. Further work is needed to fully develop alternatives to the MWE, and we think broader solutions that support disabled people into open employment may better address the issues with the MWE and help disabled people achieve better employment outcomes.

Recommended actions

It is recommended that you:

- 1 **note** that some work has been undertaken to identify possible alternatives to the Minimum Wage Exemption (MWE)
- 2 **note** that only a small population of disabled people are currently subject to MWE
- 3 **note** that a wage supplement could address the issues identified with the MWE
- 4 **note** that further work would be required to design a wage supplement approach and a Budget bid would be required to fund it
- 5 **note** that officials recommend considering disabled people's wider pathway to open employment as this may be able to achieve better employment outcomes for disabled people
- 6 **note** that undertaking work on a wider pathway to open employment is likely to take considerably more time and resource to carry out

7 **agree** that officials will report back to you by the end of February 2018 with a proposed strategy for taking a broader approach to this work, which will cover the work described in 4 above and also look at the wider pathway to open employment for disabled people

Yes / No



James Poskitt
General Manager
Community and Families Policy

19/12/17

Date



Hon Carmel Sepuloni
Minister for Social Development

20/12/17

Date

Released under the Official Information Act 1982

The Disability Action Plan contains a commitment to identify better alternatives so that the Minimum Wage Exemption process can be removed

- 1 Action 2B of the Disability Action Plan (DAP) contains a commitment to build on the Ministry of Social Development's (MSD) long-term work programme to improve employment outcomes for disabled people by identifying better alternatives so that the minimum wage exemption (MWE) process can be removed. It was included in the DAP at the request of Disabled Persons Organisations (DPOs), and agreed by Cabinet in 2015.
- 2 The lead on this action is shared across MSD and the Ministry for Business, Innovation and Employment (MBIE). While the relevant legislation sits with MBIE, responsibility for other disability employment support levers sits with MSD.

The MWE is set in legislation and enables disabled people to be paid less than the minimum wage on the basis that their disability makes them less productive

- 3 Under section 8 of the Minimum Wage Act 1983, a labour inspector can issue a permit to a worker exempting an employer from the requirement to pay them the minimum wage (a MWE permit), if the inspector is satisfied that the employee is "significantly and demonstrably limited by a disability" in carrying out his or her work requirements.
- 4 Individuals applying for a permit are individually assessed by their employers and this assessment determines what wage rate the employee will be paid. Labour inspectors provide external oversight of the assessments that have been carried out by employers. Wage rates are indexed to the adult minimum wage and increase proportionally when the minimum wage rate is adjusted.

Approximately 800 disabled people in New Zealand are subject to a MWE permit

- 5 There are approximately 800 MWE permits in place in New Zealand at present. Compared to the population of disabled people working in New Zealand, this is extremely small, at 0.2 per cent of the disabled people in either full-time or part-time employment¹. Most people who currently hold MWE permits (93%) are employed at Business Enterprises (organisations whose primary purpose is to provide employment opportunities to disabled people).
- 6 Most employees with a MWE permit rely on income support in the form of the Supported Living Payment, as income earned through their work is not sufficient to support them. Of all the people currently with MWE permits, over a quarter receive \$1.99 or less per hour of work, and 70 percent receive less than \$4.99 per hour for their work.

Several issues have been identified with the MWE

- 7 The main issues that have been identified with the MWE system are:
 - a. The legislation allows only disabled people to be paid less than the minimum wage based on the outcome of a productivity assessment. Singling disabled people out as less productive is discriminatory and sends a message devaluing the contribution of disabled people in the workplace.
 - b. The MWE conflicts with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which has the purpose of promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

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

- c. The assessment and permit process is deficit focused, and is inconsistent with more recent approaches towards supporting disabled people that use a strengths-based approach.
- d. Employers use a range of productivity assessment tools to assess wage rates, with anecdotal evidence suggesting that the tools most commonly used are those that produce the lowest wages. Stakeholders have raised concerns about the validity and reliability of the tools being used.
- e. Labour inspectors consider they are not the right people to verify that employers' wage assessments are reasonable in the circumstances. The Labour Inspectorate's view is that the function of reviewing an employer's wage assessment (productivity assessment), and deciding if it is reasonable to grant a permit on this basis, would sit better with another agency with more knowledge of disability issues (eg MSD or the health sector).
- f. Employees (and in some cases their families) have a perverse incentive to accept or request low wages so that their earned income does not cause any benefit abatement.

- 8 The government position has been to acknowledge that MWE permits are discriminatory. However, in terms of the New Zealand Bill of Rights Act 1990, the relevant legislation was assessed as being justified on the grounds that MWE permits were a proportionate and rational way of maintaining employment opportunities for a group that faces persistent disadvantage in the labour market.

The Ministry engaged with a reference group from the disability sector to develop alternatives to the MWE

- 9 Officials established a reference group² from across the disability sector to help identify issues and shape potential alternatives.

The "bottom line" was that no one should be made worse off

- 10 The reference group was directed by previous Ministers to only consider policy changes that would protect existing job opportunities for disabled people. A "bottom line" requirement was that nobody should be worse off as a result of any potential changes to the MWE scheme. Within these parameters, the options for change were limited. Simply repealing the legislation with no supports in place for either employers or disabled people currently with a MWE permit was not an option as it would likely result in the loss of jobs currently held by people with MWE permits.

With this in mind, one option was identified (a wage supplement) that could address the concerns with the MWE and meet the "bottom line" requirement

- 11 The only outright alternative to the MWE policy put forward by the reference group, which could address the sector's concerns and allow the MWE to be repealed, was a government funded wage supplement. Under this approach, individuals who are currently employed subject to MWE permits would instead become eligible to have their hourly wages (as assessed) 'topped up' by government to the level of the adult minimum wage. Increasing the wages earned by this group of people would be consistent with the Labour-led Government's stated intention to boost the wages of people on low incomes and improve employment conditions.
- 12 The core features of a wage supplement would likely be as follows:
- a. An individual's eligibility for the supplement would be determined by applying criteria. Criteria could include that the employee must be "demonstrably limited by a disability" (even once an employer has made reasonable accommodations) to the point where their workplace productivity is significantly diminished, and

² The reference group includes representatives from the two disability provider umbrella groups; Inclusive New Zealand and the New Zealand Disability Support Network (NZDSN), and includes two employers that currently use MWE permits, and representatives from both People First NZ and Blind Citizens NZ.

the job would need to be one that provides a real opportunity for the person to contribute and use their abilities and skills. The intention of the criteria will be to tightly target the wage supplement to the small group who needs it, rather than providing the option of subsidised employment for those disabled people where other approaches could already assist them to find work.

- b. To address concerns about the inconsistent approach different employers take to wage assessments under the current MWE system, a single government-endorsed wage assessment tool would need to be developed. We would look to contract an organisation with expertise in this area to develop the tool, which all employers would be required to use to assess the pre-supplement wages of eligible employees.
- c. A government agency would need to assess eligibility for a wage supplement, and provide oversight of the productivity assessment. The Labour Inspectorate considers that, in a post-MWE environment, there would be no justification for it to oversee the eligibility or assessment process as it lacks knowledge around disability to be able to determine eligibility and appropriateness of assessments. However, an oversight mechanism would need to be in place to ensure consistency and minimise the risk of employers gaming the system. Further work is required to confirm whether this should shift from the Labour Inspectorate and, if so, where this role would best sit in government.
- d. Further work is required to consider the detailed service design for how a wage supplement would be passed on to employees. This could be achieved as subsidy paid by the government to either:
 - an employer, to pass on as part of an employee's wages; or
 - an employee, to top up the wages they've received from their employer

13 Advantages of a wage supplement approach are that:

- a. It would enable the MWE legislation to be repealed, which would remove a discriminatory provision from New Zealand legislation and improve our alignment with international human rights treaties.
- b. All disabled people would have the same employment rights in law as non-disabled people, including the right to earn at least the minimum wage. Although it would not allow a complete move away from the productivity assessments that form part of the current system, a new assessment process could be designed (in collaboration with the sector) to mitigate any risk of the process being perceived to retain discriminatory elements.
- c. It could be designed to ensure individual employees are better off, or no worse off, financially. Assuming that people currently receiving a MWE continue to work the same hours as they do currently³, then under a wage supplement model they would all receive either the same gross amount of money as they do currently, or would receive more, even after the abatement of benefits is taken into account.
- d. The supplement would protect existing employment opportunities for disabled people. A wage supplement model could meet the needs of employees (to continue to participate in the workforce) and employers, as it would allow employers to continue their current operations without relying on MWE permits, and without incurring significant additional wage costs.
- e. Business Enterprise providers that we have spoken to have advised us that a government funded wage supplement model would ensure their organisations can continue to operate as they do currently, and that they would be able to

³ This has been assumed on the basis that most people with a MWE currently work in Business Enterprises which have advised they do not presently have additional capacity to take on more employees or to offer more work to current employees.

continue to employ the staff they do. Similarly, we do not anticipate the move to a wage supplement system would lead any employers in the open labour market, who currently employ individuals on MWE permits, to change their current employment practices.

14 Potential disadvantages of a wage supplement approach are that:

- a. There may be implications for people receiving income related supplements and supports. Officials will need to work to identify the nature and scale of any impact and how this may be addressed, as part of future advice on change.
- b. Supplementing wages up to the minimum wage may minimise the current incentives to take on additional responsibilities at work. Business Enterprises have advised that some supervisory roles within their organisations are already remunerated at the minimum wage or above. Maintaining wage relativity (post the introduction of a wage supplement) would require Business Enterprises to incur additional wage costs for some employees. If relativity is not maintained by Business Enterprises then the incentives for an employee to take on additional responsibility may be diminished.
- c. A supplement could be complex for employers to administer and could lead to some employers being less willing or able to accommodate flexible working arrangements (e.g. highly variable hours).
- d. There is some risk of employers of disabled people outside Business Enterprises wanting to access the wage supplement for their disabled employees not currently holding a MWE permit. It is further possible that employers of people with disabilities may choose to take on a disabled employee who is eligible for a wage-supplement over a disabled person who is not eligible. Research in Belgium, however, found that disabled employees with a wage subsidy available to them were no more or less likely to be offered a job than disabled people without a wage subsidy⁴. We do not consider that the risk of this happening can be mitigated, although further consideration would be given to this as part of any solution design.
- e. A supplement may perpetuate a model of segregated employment, as most of the people subject to a MWE permit currently work in Business Enterprises. This would be contrary to the intent of the UNCRPD.

There is further work to be done before a wage supplement is ready and there would be a new cost associated with it

- 15 A government funded wage-supplement would result in a new cost for government. Preliminary costings have been undertaken based on the minimum wage, but more thorough costings will be required to update this to the current and planned future minimum wage rate and to fully consider all other implications.
- 16 The increased incomes for this group of people under a wage supplement approach would in turn lead to increased income tax revenue and reduced benefit expenditure due to benefit abatement and increased GST from any additional expenditure by this group. While that increased revenue would partially offset the cost, it would not cover the total new cost. The estimated net cost to government when this work was costed in early-2017 was approximately \$1.8m per annum. Changes to the adult minimum wage since the costing mean that the cost is likely to have increased slightly.
- 17 There are also likely to be some wider implications for taxation. Currently income earned by disabled people from a disabled workshop (business enterprise) is exempt from being taxed if the average amount earned is less than \$50 per week. Under a wage supplement model this is unlikely to be needed as there would be no difference in real wage rates for disabled people receiving a wage supplement and the general population. Increases in salary and wages may also impact on other social policy

⁴ Baert, Stijn. *Wage Subsidies and Hiring Chances for the Disabled: Some Causal Evidence* IZA DP No. 8318 found at ftp.iza.org/dp8318.pdf

entitlements and obligations (eg Working for Families support, child support payments and student loan repayments). If a wage supplement option was to be progressed, officials from MSD and MBIE would need to work with Inland Revenue to identify any potential tax implications, impacts on income related supplements that might arise, and whether the existing tax exemption would remain relevant, and provide advice on whether and how these should be addressed.

- 18 A wage supplement model would need to be designed to mitigate any risk of it being used inappropriately. This could include careful design of the eligibility criteria, for example, to avoid an unintended shift of disabled people from non-government-supported employment to government-supported employment criteria could be developed to prohibit any claim for a supplement on productivity grounds where the applicant has previously been employed by the same employer at minimum wage or above.
- 19 A universal wage assessment tool would need to be developed. This would need to be cognisant of the issue that arose in Australia in 2012, when the High Court of Australia found that one of the wage assessment tools most commonly used in Australian Disability Enterprises (ADEs) discriminated against people with learning disabilities, as compared to workers with other types of disabilities. In response to this finding, the Commonwealth government has invested considerable resources to provide backpay to the affected workers, develop a new wage assessment tool, and support ADEs to transition to higher wage rates.
- 20 Lastly, we will need to give detailed consideration to the delivery of a wage supplement, including where this should sit, how it should be paid to employers and what any changes to service delivery will cost. As part of this we will also need to determine which agency would be best placed to maintain oversight of the productivity assessment processes, if this is shifted from the Labour Inspectorate's role.

Alternatively, we could consider the issues with the MWE more broadly

Looking at the pathway to open employment for this group of disabled people might provide a way to address the issues with the MWE more holistically

- 21 The primary concern with regard to the MWE is its discriminatory nature. While this aspect could be addressed through a wage supplement model, in that disabled people would no longer be able to be paid under the minimum wage, in practice this group would still be being assessed and labelled as less productive than other employees. There may also be little incentive for employers to increase wage rates if the government will 'top up' the wages to minimum wage.
- 22 We may instead be able to help this group of disabled people to achieve better outcomes if we are able to assist them into open employment.

A broader approach will take considerably more time and resources to carry out, but it is likely to address more fundamental issues in the pathway to employment for disabled people

- 23 If we were to look at the broader pathway to employment we would first need to scope this work fully. Our initial estimate suggests that it would take considerably more time and resources to carry out than it would require to work through the costs and implications of only a wage supplement model. But we think it is more likely that a broader approach to support those subject to a MWE into open employment will result in better employment outcomes for this group of disabled people, at the same time as addressing concerns with the MWE.
- 24 If you agree we should take a broader approach, we will report back to you with a proposed strategy for this work by the end of February 2018. The work will also consider if a wage supplement model could be progressed in conjunction with broader approaches to assist disabled people into open employment.

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Responsible manager: Lachlan Cartwright, Policy Manager, Community and Families Policy

Released under the Official Information Act 1982