

# Report



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA

**Date:** 12 December 2023

**Security** ~~IN-CONFIDENCE~~  
**Level:**

**To:** Hon Louise Upston, Minister for Social Development and  
Employment

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## Discontinuing the wage supplement to replace Minimum Wage Exemption permits

### Purpose of the report

- 1 This paper seeks your agreement to discontinue work on the wage supplement to replace Minimum Wage Exemption (MWE) permits.

### Executive Summary

- 2 In December 2023, you signalled to officials that you did not wish to progress with the wage supplement to replace MWE permits.
- 3 Subject to your agreement, work on implementing this initiative will be stopped, and all funding appropriated will contribute to the Vote Social Development saving requirements. This will save the Government \$2.405M operating funding in the current financial year, followed by a total of \$46.516M operating funding over the four-year forecast period. This would also result in the return of \$10.001M of capital funding.
- 4 While the current MWE scheme is not satisfactory, this wage supplement is not a perfect solution. Addressing the MWE scheme is a concluding observation under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Disability Action Plan. Officials will provide you with further advice on this, alongside other concluding observations relevant to your portfolio ahead of a report-back to Cabinet that the Minister for Disability Issues intends to take in the new year.
- 5 We also recommend that you speak to officials about your desired public announcements and Ministry of Social Development's (MSD) approach to external communications on the discontinuation of the wage supplement.

## Recommended actions

It is recommended that you:

- 1 **agree** to discontinue the wage supplement to replace Minimum Wage Exemption permits  

AGREE / DISAGREE
- 2 **note** that MSD will provide you with further advice regarding how these savings on the wage supplement fit within your wider Vote Social Development savings package
- 3 **discuss** with officials:
  - 3.1 whether you would like to take an oral item to Cabinet before stakeholders are informed of the discontinuation of the wage supplement
  - 3.2 your intended approach to public announcements on the discontinuation of the wage supplement, and
  - 3.3 MSD's approach to external communications with key stakeholders of the wage supplement
- 4 **agree** to forward this report to the Minister for Workplace Relations and Safety for their information  

AGREE / DISAGREE
- 5 **agree** to forward this report to the Minister for Disability Issues for their information.  

AGREE / DISAGREE

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Simon MacPherson  
Deputy Chief Executive  
Policy

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Date

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Marama Edwards  
Deputy Chief Executive  
Māori, Communities and Partnerships

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Date

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Hon Louise Upston  
Minister for Social Development and  
Employment

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Date

## Work to replace the MWE scheme has been underway since 2015

- 6 The current MWE scheme has been in place since 2007. Prior to the enactment of the MWE scheme in 2007, the Minimum Wage Act 1983 contained a provision for 'under-rate workers' permits, which applied when a person was incapable of earning wages at the appropriate minimum rate prescribed under the Act. The MWE permit scheme differs from the 'under-rate workers' permits in that it applies specifically to disabled people.
- 7 The Labour Inspectorate, hosted by the Ministry for Business, Innovation and Employment (MBIE), is responsible for issuing MWE permits and overseeing the MWE scheme. Section 8 of the Minimum Wage Act 1983 allows Labour Inspectors to issue MWE permits to individual employees if a Labour Inspector is satisfied that the employee is "significantly and demonstrably limited by a disability" in carrying out their work. An employer can pay an employee named in an MWE permit the wage named in the permit, sometimes as little as \$1 to \$2 an hour. The disability sector considers MWE permits to be discriminatory, as they only apply to disabled people.
- 8 Business Enterprises are the main users of MWE permits. There are currently 14 that are registered charities and are businesses that receive contributory funding from MSD. Business Enterprises employ disabled people who have difficulty obtaining employment on the open employment market; they provide segregated employment<sup>1</sup> opportunities for disabled people across a range of industries.
- 9 The individuals named in MWE permits are primarily disabled people with intellectual/learning disabilities or psychiatric conditions. As at 30 May 2023, there were 927 disabled people named in MWE permits most of whom worked in Business Enterprises.
- 10 The UNCRPD recommended in 2014 that New Zealand consider alternatives to MWE permits, and in 2022 again recommended that New Zealand "repeal Section 8 of the Minimum Wage Act of 1983 and ensure that persons with disabilities are paid on the principle of equal pay for work of equal value".
- 11 Work has been ongoing since 2015 to replace MWE permits with a wage supplement. Through consultation with the disability sector in 2016, a wage supplement was identified as the only feasible option to replace MWE permits

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<sup>1</sup> Segregated employment is also referred to as sheltered workshops, or as Business Enterprises in New Zealand. Segregated employment involves workplaces that congregate and segregate disabled people (primarily people with intellectual disability). Non-disabled people are absent from these workplaces other than in higher roles as managers, supervisors and support workers. Segregated employment workplaces are distinct from 'open employment' workplaces, where disabled people and non-disabled people work alongside each other.

and increase disabled employees' wages to at least minimum wage, without affecting disabled people's jobs or the financial viability of their employers.

- 12 We provided advice in November 2023 regarding operating within fiscal constraints and noted that further advice would be provided on stopping this initiative [REP/23/11/897 refers]. In December 2023, you indicated to officials that you were not interested in progressing with the wage supplement to replace MWE permits.

## **You have indicated you would like to discontinue work on the wage supplement**

- 13 While the current MWE scheme is not satisfactory, the wage supplement is not a perfect solution as it is a costly intervention that will not address the issue of segregated employment or support employment of disabled people more broadly.
- 14 While halting this initiative will enable the appropriated funding to be returned, it also means that current settings will remain the same:
- current MWE permits will remain active
  - the Labour Inspectorate will continue to administer MWE permits
  - employers will be able to obtain new MWE permits on behalf of their employees, and
  - Business Enterprises will be able to increase if they choose to, however, this will not mean increased funding from MSD to support additional employees.
- 15 There may be other more feasible options available, which officials will provide you further advice on.

## **All funding appropriated for the wage supplement can be returned as part of the Vote Social Development saving requirements**

- 16 Subject to agreement to stop the implementation of the wage supplement to replace MWE permits, all funding appropriated for this initiative through Budget 2023 and Vote Social Development underspends can be returned as part of the Vote Social Development saving requirements. MSD will absorb any costs that have already been incurred in relation to this initiative.
- 17 This savings initiative would therefore achieve total operating savings of \$46.516M over the four-year forecast period. Although the operating savings in Vote Social Development are \$53.940M over the forecast period, this is offset by a reduction in tax revenue of \$7.424M. We have therefore presented \$46.516M as the net saving for the Government. These estimated savings are set out in the table below:

	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28 &amp; outyears</b>	<b>Four-year total</b>
Vote Social Development Opex (\$M)	(11.340)	(13.397)	(14.967)	(14.236)	<b>(53.940)</b>
Tax Revenue (Vote Revenue) (\$M)	1.632	1.804	1.994	1.994	<b>7.424</b>
<b>Total savings</b>	<b>(9.708)</b>	<b>(11.593)</b>	<b>(12.973)</b>	<b>(12.242)</b>	<b>(46.516)</b>

18 In addition, this savings initiative would also achieve:

- a \$2.405m saving in Vote Social Development operating expenditure in the current financial year (2023/24), and
- a total reduction in Vote Social Development capital expenditure of \$10.001m.

19 These additional savings are set out in the table below:

	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>Total</b>
Vote Social Development Opex (\$M)	(2.405)	-	-	<b>(2.405)</b>
Vote Social Development Capex (\$M)	(8.334)	(1.667)	-	<b>(10.001)</b>

## **Cabinet agreement is required to return the funding**

20 The wage supplement to replace MWE permits was agreed to by Cabinet as part of the Budget 2023 package [CAB-23-MIN-0139 refers]. The rephrasing of the wage supplement was also agreed by Cabinet in June 2023 to bring forward the implementation of the wage supplement by one year [CAB-23-MIN-0259 refers]. Cabinet agreement is therefore required to reverse funding for the wage supplement and MSD will investigate the most straightforward mechanism for doing so.

21 It is important to note that key stakeholders have diverse views on the merits of replacing MWE permits with a wage supplement:

- those in favour – including Disabled Persons Organisations, and unions – see the current practice as discriminatory and conflicting with our responsibilities under the UNCRPD. These groups see the wage

supplement as a fairer approach that will ensure that disabled employees receive fair pay for their work. These groups will possibly be disappointed that the wage supplement is being discontinued and will lobby for change, and

- those opposed – including whānau of disabled people and employers who utilise MWE permits – were concerned that the proposed wage supplement would risk the viability of businesses utilising MWE permits, placing disabled people’s jobs at risk, which may affect family members’ own employment. These groups will possibly be pleased the wage supplement is being discontinued.

22 s9(2)(g)(i) [Redacted]

### **The Minister for Disability Issues intends on taking an update to Cabinet on the UNCRPD’s concluding observations**

23 Cabinet agreed to accept (with modifications) the concluding observation 52 (c) to repeal Section 8 of the Minimum Wage Act 1983 and accept the concluding observation 52 (b) to transition away from segregated employment to the open labour market [CAB-23-MIN-0296 refers]<sup>2</sup>. Cabinet invited the Minister for Disability Issues to report back by December 2023 on the implementation plans for each concluding observation.

24 s9(2)(g)(i) [Redacted]

25 Cabinet has also agreed that MSD will lead an action under the Disability Action Plan 2019-2023 (DAP) to replace the MWE scheme [CAB-19-MIN-0503 refers]. Discontinuing the wage supplement will mean that MSD does not complete this action. The Minister for Disability Issues reports to Cabinet on implementation of the DAP, which will include the decision not to deliver this action. She also directs Whaikaha – Ministry of Disabled People in its role as the lead agency on the DAP and its work programme to develop its replacement.<sup>4</sup>

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<sup>2</sup> The concluding observation 52 (b) is tangentially related to this work as Business Enterprises are the main users of MWE permits.

<sup>3</sup> s9(2)(g)(i) [Redacted]

<sup>4</sup> Action Plans are required by the Disability Strategy. The Disability Strategy is required by Schedule 1, Part 1, Clause 7 of Pae Ora (Healthy Futures) Act 2022 read with section 8 of New Zealand Public Health and Disability Act 2000

## Next steps

26 Following your agreement:

- funding for this initiative will be included in the Vote Social Development saving requirements and we will provide you with further advice regarding how these savings fit within your wider Vote Social Development savings package, and
- MSD will provide you with advice in early 2024 on the UNCRPD concluding observations relevant to your portfolio to confirm your intended direction.

27 Following discussions with you and your Office, MSD will:

- prepare an oral item for Cabinet should you wish to take one
- support any public announcements you wish to make on the discontinuation of the wage supplement, and
- prepare external communications to key stakeholders on discontinuing the wage supplement.

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