

Chair
Cabinet Social Wellbeing Committee

REPORT BACK ON A WAGE SUPPLEMENT APPROACH TO REPLACE MINIMUM WAGE EXEMPTION PERMITS

Proposal

- 1 This paper provides the report back requested by the Cabinet Social Wellbeing Committee on the design of a wage supplement approach to replace minimum wage exemption (MWE) permits, following consultation with the disability sector [SWC-18-MIN-0188 refers].

Executive summary

- 2 Approximately 900 disabled employees in New Zealand are paid less than the minimum wage, in some cases working for \$1 - \$2 per hour (the current minimum wage rate is \$17.70 per hour). Most of these employees have an intellectual disability and work for organisations whose primary purpose is to provide employment opportunities to disabled people. Although enabled by legislation, the MWE is discriminatory as it only applies to disabled people. The MWE is also subject to unfair and inconsistent practices in its implementation.
- 3 We released a discussion document in December 2018 to seek views from the disability sector on the level of support for introducing a wage supplement to replace the MWE. We also sought feedback on the design of a wage supplement approach.

Opinions are divided on the merits of replacing the MWE system with a wage supplement

- 4 Officials received 210 responses from disabled people, their families, employers, Disabled Peoples' Organisations and unions. Opinions are sharply divided. Many responses in favour of changes to the MWE system see the current practice as discriminatory and conflicting with our responsibilities under the United Nations Convention on the Rights of Persons with Disabilities. A wage supplement is seen as a fairer approach that will ensure that disabled employees receive fair pay for their work.
- 5 In contrast, those who are opposed to changing the MWE system are mainly concerned about the potential for job losses and the flow-on effects, such as family members having to leave their own jobs to become full-time carers if their disabled relative loses their job. A recurring concern expressed in submissions is that the proposed replacement would lead to businesses using MWEs having to shut down due to increased costs, placing jobs at risk.

Business enterprises (the main employers using MWE permits) highlighted particular concerns

- 6 While some business enterprises agree that there are issues with the MWE system, they also point out that a wage supplement approach may have unintended consequences. Additional funding for a wage supplement would substantially alter their financial model and risk some employers already under financial pressure due to a lack of funding being forced to close.
- 7 In a September 2019 meeting with officials, representatives of business enterprises using MWE permits raised concerns about increased wage-related costs, pay relativity and being reliant on a government funded wage supplement that may change in the future. Together

with their disagreement that the MWE system is discriminatory, the business enterprise representatives at the meeting were clear that they do not support change.

We think the risks raised during consultation can be mitigated, and we plan to implement a wage supplement approach to replace the MWE system

8 As set out in the New Zealand Disability Action Plan, we believe that replacing MWEs is the right thing to do. The introduction of a wage supplement will end the discriminatory system of MWE permits and enable the repeal of Section 8 of the Minimum Wage Act 1983. A wage supplement remains the only viable option that could allow this legislative change while protecting existing job opportunities.

9 We are clear that a wage supplement must be designed so that employees' overall incomes are maintained or increased, even after the abatement of benefits and other financial assistance that results from higher hourly earnings. We note that:

9.1 Officials have modelled a number of scenarios using characteristics common among the group of disabled employees who we expect will be eligible for a wage supplement. In the scenarios modelled, disabled employees will all either be the same or better off financially under a wage supplement model, even after abatement to benefits and increased income tax and other social policy obligations have been met.

9.2 While it is very unlikely that an individual will be made worse off by a wage supplement approach, there are some discretionary mechanisms that could be applied in order to disregard all or part of the individual's income as chargeable income for benefit purposes. Officials are considering the legal requirements and wider implications of these mechanisms, and the practicalities of their implementation.

10 **s 9(2)(f)(iv)**
[Redacted]

11 As part of the consultation, we sought views on an individually-assessed wage supplement or a flat rate of supplement, and on the idea of a government-mandated wage assessment tool that would be used to assess individual wage rates. We have discounted the option of a flat rate of supplement because of the potential negative impact on more highly disabled people. We therefore propose to develop a government-mandated wage assessment process to ensure that all disabled employees eligible for a wage supplement are assessed fairly and consistently.

s 9(2)(f)(iv)
[Redacted]

12 **s 9(2)(f)(iv)**
[Redacted]

¹ **s 9(2)(f)(iv)**
[Redacted]

² **s 9(2)(f)(iv)**
[Redacted]

s 9(2)(f)(iv)

13 s 9(2)(f)(iv)

Background

- 14 The MWE scheme has been in place since 2007, following the repeal of the Disabled Persons Employment Promotion (DPEP) Act. The DPEP Act allowed for disabled people to be employed in segregated workplaces (sheltered workshops), where they did not have the same employment rights as people employed elsewhere (including rights to earn at least minimum wage, holiday pay and sick leave entitlements).
- 15 Section 8 of the Minimum Wage Act 1983 allows Labour Inspectors to issue MWE permits to individual employees. This means the employer can pay those employees 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. Unlike the previous sheltered workshops, employees with a MWE permit have the same employment rights and protections as other employees, except to receive the minimum wage.
- 16 There are approximately 900 MWE permits in place in New Zealand. Most people with MWE permits are employed at business enterprises, which 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 people⁴. 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.
- 17 Prospective employees applying for a MWE permit are individually assessed by their employers, with Labour Inspectors providing a check that the assessments have been carried out by employers as they should be. 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. It is estimated that over a quarter of employees with a MWE receive \$1.99 or less per hour of work (before tax), and around 70 percent receive less than \$4.99 per hour of work (before tax). About five percent of MWE permit holders earn over \$10 per hour (before tax). The current adult minimum wage rate is \$17.70 per hour (before tax).
- 18 The Disability Action Plan⁵ agreed by Cabinet contains a commitment to improve employment outcomes for disabled people by identifying better alternatives so that the MWE process can be removed [CAB-MIN-0503 refers]. It was included in the Disability Action Plan at the request of Disabled People’s Organisations (DPOs), which have argued for some time now

³ s 9(2)(f)(iv)

⁴ Three of the fifteen business enterprises funded by MSD already pay (at least) minimum wage to all employees. Twelve business enterprises funded by MSD employ disabled people with MWE permits, although some of them also employ people on minimum wage and some also have Community Participation contracts.

⁵ The Disability Action Plan sets out New Zealand’s priorities for actions that promote disabled people’s participation and contribution in society. It is jointly governed by Disabled People’s Organisations and government agencies.

for an end to this discrimination against some disabled people. More recently, young disabled people attending the i-Lead conference in September 2019 reinforced the need to be valued and recognised for their contributions as paid employees.

- 19 Responsibility for the action is shared between the Ministry of Business, Innovation and Employment (MBIE) and MSD. MBIE is responsible for the Minimum Wage Act 1983, and MSD is responsible for other disability employment supports.

The problem: MWE permits are discriminatory but enable valuable job opportunities for disabled people

- 20 In 2016, representatives from the disability sector⁶ worked with officials to shape potential alternatives to MWEs. The main issues identified with the current system are:

- It is discriminatory because only disabled people may be subject to MWE permits.
- 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 focused on what the disabled person cannot do, or cannot do as quickly or as well as a non-disabled person, and the resulting wage rate reflects this, rather than being strengths-based and focused 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.
- 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 expertise in disability issues.
- The system creates a perverse incentive for employees (and sometimes their families) to accept or request low wages so that their benefit is not reduced as a result of earnings.

- 21 This work with stakeholders highlighted the importance of protecting existing job opportunities for disabled employees with a MWE. It was quickly identified that simply repealing the MWE legislation with no supports in place for either employers or disabled employees currently with a MWE permit was not an option. It would likely result in the loss of jobs currently held by people with MWE permits.

- 22 Business enterprise representatives had also previously told officials that the only way they could afford to pay minimum wage to their disabled employees with a MWE was if the government provided the top up⁷. Without that, business enterprise representatives believed they would not be sustainable.

We have undertaken consultation with the disability sector on a proposed wage supplement to replace MWE permits

- 23 In 2018, we directed officials to develop and consult on a proposed design for a wage supplement approach, whereby employers would receive a wage supplement from the government to assist with some of the costs for paying minimum wage to employees who currently have MWE permits. With agreement from the Cabinet Social Wellbeing Committee

⁶ 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.

⁷ This was at a meeting of business enterprise representatives hosted by Inclusive New Zealand in 2015.

in December 2018 [SWC-18-MIN-0188 refers], a discussion document was released to seek views from the disability sector⁸ on whether a wage supplement had widespread support, and the possible design of a wage supplement approach, including the methods of calculating and paying the wage supplement.

- 24 Officials received 210 responses from disabled people, their families, employers, DPOs and unions⁹. Most responses focused on the primary issue of whether a replacement for the MWE system is needed. Opinions on the proposed changes to the MWE were split, with 96 submissions in favour of change compared to 103 against¹⁰. Within this, DPOs¹¹, unions and disabled people themselves were generally in favour of change; while employers, families and carers of disabled people were generally opposed.
- 25 Many responses in favour of changes to the MWE system see the current approach as discriminatory and conflicting with our responsibilities under the United Nations Convention on the Rights of Persons with Disabilities. A wage supplement approach is seen as a fairer approach that will ensure that disabled employees receive fair pay for their work.
- 26 In contrast, those who are opposed to changing the MWE system are mainly concerned about the potential for job losses and the flow-on effects for families, such as family members having to leave their own jobs to become full-time carers if their disabled relative loses their job. A recurring concern expressed in submissions is that the proposed replacement would lead to businesses using MWEs having to shut down due to increased costs, placing jobs at risk. While some indicated that they do not agree with the practice of paying disabled employees less than the minimum wage, their concerns about job losses outweighed their concerns about the existing model.
- 27 Submissions from business enterprises responded with more detail. A submission made by the Moreable network, comprised of eight business enterprises, agreed that there are issues with the MWE system that need to be addressed and offered to be part of the solution. However, their submission also pointed out that a wage supplement approach may have unintended consequences. Additional funding for a wage supplement would substantially alter their financial model and risk some employers already under financial pressure due to a lack of funding being forced to close. They also highlighted the perceived risk of a wage supplement resulting in some disabled employees being worse off due to losing benefit eligibility.

We have sought to better understand the perspectives of business enterprises, the main employers using minimum wage exemption permits

- 28 Due to the concerns raised by some business enterprises, and their role as the main employers using MWE permits, officials have met with representatives of those business enterprises currently paying less than the minimum wage. The meeting, in September 2019, aimed to ensure that the proposed wage supplement can be designed in a way that allays concerns and maintains business viability in order to protect jobs.
- 29 While it might appear that a wage supplement, paid by the Government, alleviates the financial burden of employers paying minimum wage, business enterprise representatives

⁸ Disabled people with a learning disability (the preferred term used by People First for people with intellectual disabilities) are a particular group we wanted to hear from, as most people with a MWE have a learning disability. Officials sought advice from People First as to how they might do this, and on People First's advice offered to hold workshops with business enterprises to ensure that their employees with MWE permits could have their say. One workshop was held as a result. An easy read version of the discussion document was also prepared by People First.

⁹ Responses came in the form of online survey responses, paper-based booklet submissions and written responses via email or letters.

¹⁰ This includes individual submissions and submissions made on behalf of groups and organisations.

¹¹ Submissions from DPOs also raised issues around the broader context in which issues MWEs sit, and advocated for more opportunities for disabled employees in the open labour market.

spoke about the increased costs associated with the proposal to ensure all employees are paid minimum wage. The other costs associated with wages, such as KiwiSaver and ACC contributions, will increase proportionally once all employees are paid minimum wage. While the increase in employer KiwiSaver contributions, in particular, would be a big positive from the perspective of employee equity, the extra cost for employers will be considerable.

- 30 Business enterprises will also be responsible for claiming and handling wage supplements for their employees, and this is likely to be complex and time-consuming for employers to administer in cases where employees work highly variable hours. The introduction of a wage supplement might lead to some employers being less willing or able to accommodate flexible working arrangements (e.g. highly variable hours) due to the administration this will create in claiming the supplement.
- 31 Business enterprise representatives also told us that some disabled employees may be less inclined to take on additional responsibilities at work if everyone will earn minimum wage regardless of their role. Some business enterprises have supervisory roles that are currently remunerated at minimum wage. As employees who are already earning minimum wage will not be eligible for the wage supplement it means that if employers want to maintain relativity between roles, they will need to meet the additional wage costs of higher paid roles.
- 32 Business enterprise representatives also raised concerns about being reliant on a government funded wage supplement that may be subject to change in the future. Representatives have experienced inconsistencies in government support over the years, and recognise that a wage supplement could be reduced or removed totally in the future.
- 33 Together with more general concerns about why the MWE system should be replaced¹², business enterprise representatives are clear that they do not support change.

We intend to implement a wage supplement approach and will ensure that supports are in place to mitigate the risks raised by business enterprises

- 34 The discussion document released late last year states that a bottom line requirement for government is that nobody should be worse off as a result of any change to the MWE scheme. This remains a primary concern. While we recognise the mixed views on replacing MWEs, we believe that much of the opposition comes from concern that disabled people will lose their jobs because of changes that cause employers to go out of business. We believe that replacing MWEs remains the right thing to do, and we are taking these concerns seriously and seeking to put mitigations in place.
- 35 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] While we cannot guarantee that the government-funded wage supplement will remain in perpetuity, we fully intend to ensure that the changes we introduce enable employers to retain their current employees and remain operational at their current financial levels. Employers will not be financially better or worse off as a result of changes to the MWE system.
- 36 We consider that a wage supplement remains the only feasible option to replace MWEs. While we have heard from business enterprises that they are reluctant to handle the wage supplement themselves, it is a fundamental principle of this work that all disabled employees are paid (at least) minimum wage. Employers pay wages. For this reason, we have not

¹² Business enterprises representatives at this meeting stated that they employ a discrete group of people who should be treated differently, and that the current MWE system serves them well.

pursued the option of government making supplementary wage payments directly to employees.

- 37 We also recognise that a small number of business enterprises are already paying (at least) minimum wage to all of their employees, and that there is a view among some of this smaller group that the loss of MWE permits presents an opportunity for employers to review their business models.

Our proposed wage supplement will be based on a fair and consistent assessment of employees' individual wage rates

- 38 As part of the consultation, we sought views on whether a wage supplement should be assessed for each individual employee or whether a flat rate should be set. We also sought feedback on the idea of a new, government-mandated wage assessment tool that would be used to assess individual employees' wage rates.
- 39 Officials received relatively little feedback on these key design questions. However, the vast majority of submitters who did voice their opinions on a flat rate of supplement were against this. A flat rate might result in employers only choosing to employ more 'able' disabled people at the expense of more highly disabled people. While a flat rate would be easier to administer, it ultimately lacks fairness and we have therefore decided not to pursue this option. We therefore need to look at how individual wage rates are assessed.
- 40 Currently, employers can use any tool they choose to assess the wage rate for employees with MWEs. Anecdotal evidence suggests that some employers are using tools that result in very low wage rates. Developing a strengths-based government-mandated wage assessment process will ensure that all disabled employees eligible for a wage supplement are assessed using the same wage assessment tool. This will address existing issues of inconsistency and unreliability of resulting wage rates. However, it might result in some employers having to pay higher or lower wages to some employees than they currently do. In particular, it is likely to impact on those employers who have been relying on individual wage assessment tools that produce very low wage rates (and whose current wage assessment practices are unlikely to confirm with best practice).
- 41 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED] Independent development of a wage assessment tool should include consideration of how it should be used, by whom, and what checks and balances are appropriate. The tool should also be designed in collaboration with the disability sector to mitigate any risk of the process being perceived to retain discriminatory elements. We would look to learn from the Australian experience in this regard¹³.

A wage supplement will increase the net earnings of most disabled employees on a MWE permit

- 42 As outlined in our December 2018 paper to the Cabinet Social Wellbeing Committee, most employees with a MWE permit rely on income from the Supported Living Payment (SLP) because the income they earn from working is not sufficient to live on. With a wage supplement, disabled employees will earn more from their work and pay more income tax,

¹³ In 2012, 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, compared to employees with other types of disability. In response to this finding, the Australian Government has invested considerable resources to provide backpay to the affected employees, develop a new wage assessment tool, and support ADEs to transition to higher wages.

and it is possible that the increase in income from the wage supplement may result in the abatement of other financial assistance that they are receiving.

- 43 Officials have modelled a number of scenarios using characteristics common among the group of disabled employees who we expect will be eligible for a wage supplement. In the scenarios modelled, disabled employees will all either be the same or better off financially under a wage supplement model than they are under the MWE, even after abatement to benefits and increased income tax and other social policy obligations have been met. (This is true even without taking into account the additional employer-funded KiwiSaver contributions employees would receive.)
- 44 However, the modelling also identified that if an employee is receiving a significant amount of hardship assistance, the financial assistance they receive could be abated by more than they receive from a wage supplement. While this is considered very unlikely¹⁴ there are some discretionary mechanisms that could be applied to this small number of individuals in order to disregard all or part of their income as chargeable income for benefit purposes, although these mechanisms would not necessarily cover all clients. MSD is considering the legal requirements and wider implications of these mechanisms, and the practicalities of their implementation in order to ensure that disabled employees are not made worse off by a wage supplement. Legislative amendments may be required. Income exemptions have implications for people who are living in residential care (and therefore likely to be receiving Residential Support Subsidy) and for eligibility for social housing and Income Related Rent. Officials will work with agencies such as the Accident Compensation Corporation and Ministry of Health to work through issues of eligibility to disability support that might be impacted by the earning of higher wages. The Ministry of Health, for example, has income-tested supports such as Community Services Cards, Disability Support Services housing modifications, home help and children's spectacles subsidy.
- 45 Officials have sought information from business enterprises about the working patterns and family circumstances of employees with MWE permits, to assist with further modelling of scenarios. We particularly want to ensure consistency and predictability of income for those employees working highly variable hours.

s 9(2)(f)(iv)

46 s 9(2)(f)(iv)

47 The signalled increase to the minimum wage to \$20 by 2021 will increase the cost to government of the wage supplement, unless a decision is made to require employers to meet

¹⁴ A random check of clients working in business enterprises, who are most representative of the group that will be eligible for a wage supplement, did not identify any clients receiving hardship assistance.

¹⁵ s 9(2)(f)(iv)

¹⁶ s 9(2)(f)(iv)

¹⁷ s 9(2)(f)(iv)

the cost of increases to minimum wage¹⁸. In addition, any changes to the abatement regime through the welfare overhaul may also impact on the net cost of the wage supplement to government, if this results in a reduction in benefit abatement by earned income. This impact will not be known until decisions are made on some aspects of the welfare overhaul work.

- 48 Under Section 5(6D) of the GST Act 1985, employers will be required to pay GST on the wage supplement. In line with other wage subsidies administered by MSD, we propose to include GST on the payment of the wage supplement. Employers will then return the GST received to the Government, making this component fiscally neutral.

The wage supplement is feasible but there are risks and challenges

- 49 While we consider that the wage supplement approach remains the only viable way to replace the MWE, there are some risks and challenges in addition to those discussed in paragraphs 28-33.

- 50 The introduction of a wage supplement will end the discriminatory system of MWE permits and enable repeal of Section 8 of the Minimum Wage Act 1983. However, New Zealand might still be subject to criticism for continuing to support employment practices where disabled employees are segregated. This is contrary to the intent of the United Nations Convention on the Rights of Persons with Disabilities¹⁹. The change might also be seen as superficial, given that the employees affected will still need to be assessed and labelled as less productive than other employees.

- 51 In anticipation of such criticism, further work can be undertaken to increase the support and opportunities for disabled people, including people with significant disabilities, to gain access to and remain in open employment. There is evidence, both in New Zealand and internationally, that people with significant disabilities can be successfully placed and supported in open employment. The draft Disability Employment Action Plan **s 9(2)(f)(iv)** led by MSD, include proposals to expand and enhance successful employment services for disabled people, and pilot an initiative to support young disabled people to transition from school to work. Increasing and supporting the availability of alternatives to segregated employment, particularly for young disabled people, is a longer term objective that should sit alongside the removal of MWEs.

- 52 There is also the risk that some employers might see the wage supplement as a way to subsidise their wage costs at the government's expense. However, business enterprises will be restricted by their existing capacity contracts, meaning that they cannot receive the supplement for more employees than they are contracted to deliver business enterprise services. Uptake of MWE permits in the open labour market is very low, and we consider that the higher support needs of the group eligible for the supplement, together with the administration required to apply for a wage assessment and manage the wage supplement, means that current patterns of uptake are likely to continue.

- 53 **s 9(2)(f)(iv)**
[Redacted text]

¹⁸ Currently MWE rates are indexed to the minimum wage and employers are required to meet the additional wage cost when the minimum wage is increased, but in most cases that is only a small percentage of the minimum wage, not the cost of the full wage increase.

¹⁹ The United Nations Committee on the Rights of Persons with Disabilities is currently running behind schedule but we expect New Zealand's next examination will take place in 2020.

s 9(2)(f)(iv) [Redacted]

54 s 9(2)(f)(iv) [Redacted]

55 s 9(2)(f)(iv) [Redacted]

56 s 9(2)(f)(iv) [Redacted]

Implications for other wage subsidies such as the Productivity Allowance

- 57 Establishing the proposed wage supplement will have implications for an existing wage subsidy funded through MSD. The Productivity Allowance is a wage subsidy available to employers who hire a person assessed as having lower productivity due to a disability. To be eligible, the job must be in open employment (not reserved for a disabled person) and pay the minimum wage or above. The Productivity Allowance is time limited and the rate reduces over time as the worker develops their skills on the job²⁰.
- 58 There may be some overlap in the disabled people and employers eligible for the wage supplement and the Productivity Allowance. Also, some employers currently receiving Productivity Allowance may want to apply for the wage supplement because it will be ongoing. We will consider the feasibility of using the proposed government-mandated wage assessment tool for the Productivity Allowance, to ensure consistency and fairness between the programmes.

Next steps

59 s 9(2)(f)(iv) [Redacted]

60 s 9(2)(f)(iv) [Redacted]

²⁰ There were 111 participants in 2018/19.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Consultation

- 61 This paper was written by MSD and MBIE. Te Puni Kōkiri, the Treasury, the Accident Compensation Corporation, Inland Revenue, the Department of Internal Affairs, the Department of the Prime Minister and Cabinet (Policy Advisory Group), and the Ministries of Education, Health, Justice, Pacific Peoples and Women were consulted. Their views have been incorporated into the paper.

Financial implications

62 s 9(2)(f)(iv)

Human rights implications

- 63 We consider that the proposals in this paper will contribute to further meeting obligations under New Zealand human rights legislation. In particular, replacing MWE permits will address discrimination in relation to the wages paid to disabled people currently subject to a MWE permit. This is in line with Sections 21, 22 and 29 of the Human Rights Act 1993, and Section 19 of the New Zealand Bill of Rights Act 1990.
- 64 Enabling all disabled employees to earn at least minimum wage will also contribute to further meeting our international human rights commitments. It will be viewed positively by the United Nations Committee on the Rights of Persons with Disabilities, which in 2014 recommended

that New Zealand examine alternatives to MWE permits in the employment of disabled people. It will contribute to meeting our obligations under UNCPRD more generally, in particular Article 27 which relates to “equal remuneration for work of equal value”. It will also align with Article 23 of the United Nations Declaration of Human Rights, which states that “everyone, without any discrimination, has the right to equal pay for equal work”, and that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”.

Legislative implications

- 65 There are no immediate legislative implications arising from this paper. s 9(2)(f)(iv) [REDACTED] It will also ensure that no disabled employees will lose their jobs, and no businesses will be disadvantaged, as a direct result from the eventual repeal of this provision. s 9(2)(f)(iv) [REDACTED]

Regulatory impact and compliance cost statement

- 66 A regulatory impact assessment is not required for this Cabinet paper as it does not contain regulatory proposals.

Gender implications

- 67 Data on the gender distribution of MWE permits is not collected. We are therefore not aware of any specific gender implications. s 9(2)(f)(iv) [REDACTED]

Disability perspective

- 68 The development of an alternative to MWEs is a significant step progressing the rights of disabled people and meeting our obligations under UNCPRD. The proposed wage supplement will enhance the rights of a group of disabled people who experience multiple and compounding disadvantage in employment compared with others. While the wage supplement approach removes the discrimination practice of MWE permits, adopting this approach could be seen as endorsing the business enterprise model. As a model of segregated employment, some aspects of the business enterprise model are contrary to Article 27 of UNCPRD. Article 27 recognises “the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. Development of the wage supplement needs to align with relevant government work programmes including the Disability Employment Action Plan, Mana Whaikaha, Enabling Good Lives and welfare overhaul.

Proactive release

- 69 The Ministers for Disability Issues and Workplace Relations and Safety will release this paper proactively, subject to any redactions as appropriate under the Official Information Act 1982.

Recommendations

70 It is recommended that the Committee:

- 1 **note** that in December 2018 the Minister for Social Development and Disability Issues, and the Minister for Workplace Relations and Safety were invited to report back to Cabinet on the design of the wage supplement approach following consultation
- 2 **note** that the Disability Action Plan agreed to by Cabinet contains a commitment to improve employment outcomes for disabled people, by identifying better alternatives so that the minimum wage exemption process can be removed
- 3 **note** that work undertaken with key stakeholders from the disability sector in 2016 identified a wage supplement as the only feasible option to address the issues with the minimum wage exemption while also protecting existing employment opportunities for disabled people
- 4 **note** that officials have consulted the disability sector on a wage supplement approach, and have since undertaken further work with employers to address unintended consequences of a wage supplement
- 5 **note** that, while opinions on replacing minimum wage exemptions are divided, we remain of the view that a wage supplement is the only feasible option for replacing the minimum wage exemption
- 6 s 9(2)(f)(iv) [Redacted]
- 7 s 9(2)(f)(iv) [Redacted]
- 8 s 9(2)(f)(iv) [Redacted]
- 9 s 9(2)(f)(iv) [Redacted]
- 10 **note** that, despite ending the discriminatory system of MWE permits, New Zealand might still be subject to criticism for supporting employment practices where disabled employees are segregated.

Hon Carmel Sepuloni
Minister for Social Development
Minister for Disability Issues

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety