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



**TE TAI ŌHANGA
THE TREASURY**



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Joint Report: Detailed Settings for the COVID-19 Wage Subsidy

Date:	4 December 2020	Report No:	T2020/3646
		File Number:	SH-3-0-6

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree to the proposals in this report	7 December 2020
Minister for Social Development and Employment (Hon Carmel Sepuloni)	Agree to the proposals in this report	7 December 2020
Minister for Workplace Relations and Safety (Hon Michael Wood)	Agree to the proposals in this report	7 December 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Outside Scope	Principal Adviser, Welfare and Oranga Tamariki	Outside Scope	N/A (mob) ✓
Keiran Kennedy	Manager, Welfare and Oranga Tamariki	N/A (wk)	Outside Scope

Minister's Office actions (if required)

Return the signed report to relevant Ministries, and refer to relevant Ministers

Note any
feedback on
the quality of
the report

Treasury Report: Detailed settings for the COVID-19 Wage Subsidy

Executive Summary

This report provides further advice on two areas of design choices for the COVID-19 Wage Subsidy, following on from previous advice seeking agreement to near-term changes to the subsidy [T2020/3581 refers].

Overall the Wage Subsidy Scheme (WSS) has been successful in its key objectives of supporting the economy through escalated alert levels. However, by necessity the WSS is a relatively broad policy tool, and as such is not well-suited to supporting a wider range of policy aims which might instead be better achieved through existing policy and regulatory settings (such as existing employment law).

Repayment of subsidy for profitable firms: Currently the wage subsidy is repayable when an employer did not meet the eligibility criteria (for example if its predicted revenue loss does not occur), is not upholding the conditions attached to the subsidy, has provided false information, or has received insurance to cover any costs covered by the subsidy.

We do not recommend any additional rules are added in relation to profit or revenue growth, given the complexity and uncertainty this would add to the scheme, and the risk of creating unintended hardship for certain firms and their employees.

However, we understand that public support for the scheme may reduce if companies are seen to declare significant profits after receipt of the subsidy. If Ministers wish to pursue options for repayment by profitable firms, we can discuss options with stakeholders and provide further advice. Any changes would not apply retrospectively, but would apply to any future WSS implemented during a resurgence.

Annual leave: Under current settings employers can use the wage subsidy to pay for holiday entitlements (including annual leave over planned closedown periods). Agencies have received feedback that some employers have not complied with the Holidays Act in relation to employee leave while receiving the subsidy.

To address the risk of non-compliance with employment law, we recommend light-touch options to strengthen employer compliance. If Ministers wish to disallow the use of the wage subsidy to contribute to annual leave then there are limited near-term delivery options, which will only approximately align support provided with working time excluding leave.

There are risks with this option, including creating additional financial pressure on employers, which could incentivise alternative cost saving measures, such as negotiating reductions in employee hours or wage rates. Further, employers may be reluctant to agree to employees' requests for annual leave, reducing employee flexibility.

Subject to Ministers' views on near-term options, these could be put to Cabinet for decision in the Resurgence Package Cabinet Paper, scheduled for 14 December. If deliberations on the options are ongoing at the deadline for that Cabinet paper, a further option is for Ministers to seek Cabinet approval for decision rights to be delegated to Joint Ministers, allowing decisions in the new year.

Recommended Action

We recommend that you:

For all aspects of this advice

1. **note** that as far as possible your views on this advice will be reflected in the paper for the Resurgence Package that Cabinet will consider in December;
2. **note** that if decisions on this advice are not provided before that deadline, we will include recommendations in the Cabinet paper that seek approval for any remaining design choices to be delegated to Joint Ministers;

Repayment of wage subsidy for firms with high revenue or profit

3. **note** that under the current settings, employers are required to repay the subsidy if they:
 - a do not meet the eligibility criteria, such as the revenue drop test or obligations around employees
 - b have provided false information, or
 - c have received insurance to cover costs covered by the subsidy;
4. **agree** to insert an obligation into the declaration for firms to keep records to show they meet these existing obligations;

Hon Robertson	Agree/Disagree
Hon Sepuloni	Agree/Disagree
Hon Wood	Agree/Disagree

5. **note** that there is no repayment rule for employers who have met all the criteria and obligations of the scheme, and experienced a 'bounce-back' in revenue or profit;
6. **note** that introducing a repayment requirement (based on profit, revenue or dividend payments) may create unintended consequences and undermine the scheme aims;
7. **indicate** if your preferred option to address the issue of firms making profits after receiving a wage subsidy is to:

Option 1: Make a public, but non-binding statement setting out an expectation for firms to repay the subsidy if they have made 'substantial profits' and/or experienced a 'substantial increase in revenue' and/or made dividend payments;

OR

Option 2: Create an additional repayment rule for employers who have met all the criteria and obligations of the scheme but have experienced an increase in profit or revenue [not recommended];

Hon Robertson	Option 1 / Option 2 / Neither
Hon Sepuloni	Option 1 / Option 2 / Neither
Hon Wood	Option 1 / Option 2 / Neither

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If you have indicated Option 2, then:

8. **direct** officials to discuss potential options with targeted stakeholders and report back with further advice on a workable option in February 2021;
9. **note** an additional rule would not apply retrospectively, but could apply to subsidies granted during a future resurgence of COVID-19;
10. **note** that officials' preferred approach is to do neither Option 1 nor Option 2, and to maintain the status quo;

Annual Leave entitlements

11. **note** that under current settings, employers can use the wage subsidy to pay for holiday entitlements, including where employees have been directed to take annual leave (including over business closedown periods) provided that the use of annual leave is in line with the provisions in the Holidays Act [MBIE 3154 19-20];
12. **note** that in line with the Holidays Act employers must either agree leave with their employee, or if agreement cannot be reached, an employer can direct their employee to take leave with a minimum of 14 days' notice in writing;
13. **note** that concerns have been raised that some employers are not complying with the Holidays Act in relation to annual leave use while receiving a wage subsidy;
14. **indicate** your preferred option to address reported non-compliance with the Holidays Act:

Option 1: implement light-touch measures (such as enhanced guidance to employers) to strengthen adherence to employment law as it relates to the wage subsidy [recommended];

OR

Option 2: change the scheme rules to prevent the subsidies being used for annual leave (including over closedown periods);

Hon Robertson	Option 1 / Option 2 / Neither
Hon Sepuloni	Option 1 / Option 2 / Neither
Hon Wood	Option 1 / Option 2 / Neither

15. **note** that officials' preferred approach is Option 1 as this maintains employees' flexibility to take annual leave voluntarily and avoids undermining existing employment agreements;

If you have indicated Option 1, then:

16. **direct** officials to:
 - a Develop communications options to employers setting out their obligations under the Holidays Act;
 - b Promote use of the Employment Service's Early Resolution service;
 - c Progress options over the longer term to automatically notify employees when their employer receives a subsidy in their name, including the terms under which their employer receives the subsidy and employee support options; and
 - d Engage with the CTU to further refine these actions.

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If you have indicated Option 2, then:

17. **note** that all options to change the scheme rules have risks for scheme integrity, scheme effectiveness and compliance and are unlikely to fully address the underlying employment law issue;
18. **note** we will provide further advice on the details of these options;
19. **note** the only option that is feasible in the near-term is a 'threshold' approach (option 3 in Table 1 in the body of this paper) which will only approximately match the subsidy support to time 'not on leave' (where an employer can claim for the wage subsidy for an employee only if the time the employee is on annual leave is below a certain percentage of the time the wage subsidy is being claimed);

Resurgence Package


20. **note** that following your previous decisions on the wage subsidy and assuming you agree to the recommendations in this report, the core proposals for the COVID-19 Wage Subsidy in the resurgence Cabinet paper will be:
 - a A wage subsidy scheme that is triggered by Cabinet after 7 days at Alert Level 3 or 4;
 - b Retaining key scheme settings of a weekly rate of \$585.80 (full-time) or \$350 (part-time), 40% revenue-drop test and employee retention obligations;
 - c A clearer link between the current alert level escalation and eligibility for support;
 - d Two-weekly payments that match the duration of Alert Level 3 or 4 to the nearest fortnight
 - e increased visibility of audit, enforcement and repayment activity
 - f existing settings enabling the wage subsidy to be used to pay for annual leave
 - g no new repayment obligations for firms who have reported increased revenue, profit or dividend payments, but an added obligation for firms to keep records to show they have met these existing obligations
 - h possible Ministerial communications on an expectation that firms should repay the subsidy if they experience increased revenue or profits or pay a dividend

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21. **refer** this report to the Minister of Revenue and Minister for Small Business and Minister for Economic and Regional Development

Hon Robertson	Referred/Not Referred
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Outside Scope




Keiran Kennedy
**Manager, Welfare and Oranga Tamariki
The Treasury**



Megan Beecroft
**Policy Manager
Employment and Housing Policy
Ministry of Social Development**

Outside Scope



Tracy Mears
**Manager, Employment Relations Policy
Ministry of Business, Innovation and Employment**

Hon Grant Robertson
Minister of Finance

Hon Carmel Sepuloni
**Minister for Social Development and
Employment**

Hon Michael Wood
Minister of Workplace Relations and Safety

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Treasury Report: Detailed settings for the COVID-19 Wage Subsidy

Purpose of Report

1. This report advises on options to amend COVID-19 Wage Subsidy Scheme settings, including advice on introducing repayment obligations for firms that have experienced increased revenue or profits, and disallowing the use of the wage subsidy for annual leave.
2. Subject to Ministers' views on the advice on this paper, these policy design choices could be reflected in the paper for the Resurgence Package that Cabinet will consider in December.
3. If deliberations on these issues are not finalised before the deadline for that Cabinet paper then Ministers can instead seek Cabinet approval for these design choices to be delegated to Joint Ministers.

Background

4. On 14 December the Minister of Finance, Minister for Social Development and Employment, Minister of Revenue, and Minister for Small Business and Economic Regional Development are taking a paper to Cabinet on the economic support package in the case of a resurgence of COVID-19.
5. A core part of this will be the wage subsidy scheme at Alert Level 3 and above. You recently received advice on this [T2020/3581 refers] which:
 - a Reported back on stakeholder views of the COVID-19 wage subsidy;
 - b Revisited the role and objectives of the subsidy in the context of a changed operating environment;
 - c Sought agreement to near-term changes to subsidy settings and to signal the criteria for introducing the subsidy going forward; and
 - d Sought your steer on whether to explore more substantive changes required to create a higher-integrity and more enduring subsidy.
6. Joint Ministers also agreed to a number of near-term changes to subsidy settings. However, further advice was requested on two issues which are covered in this paper:
 - a **Annual leave.** The report [T2020/3581] also sought a steer on the permissibility of employers using the wage subsidy to pay for annual holidays, including where employees are directed to take annual leave and for a business closedown period. The Minister for Social Development and Employment did not indicate agreement for this recommendation, and the Minister of Finance asked for further advice on:
 - i The legality of using the wage subsidy for annual leave;
 - ii Whether employees are being forced to take annual leave; and
 - iii Disallowing the use of the wage subsidy for holiday entitlements.

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- b **Repayment of subsidy.** The Minister of Finance requested information on options for firms to repay the subsidy if they have experienced improved revenue or profits after the subsidy period.

Economic Support Package in the Case of a Resurgence of COVID-19

- 7. In addition to the revised Wage Subsidy Scheme at Alert Level 3 and above, the Cabinet paper intended for 14 December will also include proposals for:
 - a an expanded Leave Support Scheme at all Alert Levels, to encourage compliance with self-isolation guidance and reduce the risk and extent of resurgences;
 - b a new Resurgence Support Payment (RSP) to support firms' non-wage fixed and transition costs at Alert Level 2 (and possibly above);
 - c additional measures at Alert Level 4 on childcare and residential tenancies, with further work on commercial tenancies.
- 8. The key purpose of agreeing this package in December is to provide businesses and the public with more certainty as to the support that will be available to them in the event of further Alert Level rises, and help ensure that a comprehensive response can be delivered in a timely fashion.
- 9. Last week, Treasury provided the Minister of Finance with an early draft of this Cabinet paper, and will provide an updated version of the Cabinet paper to your offices early next week.
- 10. There are still a number of moving parts for the design of the resurgence package, including Ministerial decisions regarding expanding the Leave Support Scheme, and further design of the RSP. Separate reports will be provided to responsible Ministers on these issues in parallel to this report.

Repayment of Subsidy for Firms with Improved Revenue or Profits

Current rules for subsidy repayment

- 11. There are rules in place for employers to repay wage subsidies under a range of circumstances including:
 - a When they no longer meet eligibility criteria, such as through the revenue drop test;
 - b When they have not met other obligations;
 - c If they have provided false information; and
 - d If they have received insurance to cover costs covered by the subsidy;
- 12. The obligations signal the intent of the scheme but rely on a high-trust model which avoids high compliance and audit costs.
- 13. There are no obligations under current rules for firms who have reported large profits or dividend payments to return money they received under the subsidy scheme.

Would additional repayment conditions improve the scheme?

14. The objectives of the scheme are to:
 - a Temporarily support workers' incomes and employment attachment during elevated public health alert levels;
 - b Provide support for employers to pay wages if they are struggling to do so as a result of elevated alert levels
 - c Share the cost of public health alert levels between the Government, employers and employees, and across economic sectors;
 - d Balance short term labour market attachment with longer term labour market reallocation; and
 - e Encourage the shift to a COVID-19 resilient economy.
15. A 'high' level of firm profits over a year does not mean the wage subsidy was not warranted (where the firm met the criteria for the scheme and the current obligations). For example, profitability may have been a result of shifting to a more resilient business model or may be the result of economic activity prior to restrictions. Likewise, the employer may have struggled to pay wages during elevated alert levels but recovered after restrictions lift.
16. However the public may be less supportive of wage subsidy schemes if they feel the cost of public health restrictions is not being fairly shared. An additional repayment mechanism could mitigate this risk.
17. There is limited data on the number of recipient firms that have made profits and not all firms are required to make this information public. Recent media reports have focussed on a small proportion of recipient firms, including firms with sizeable reserves and firms which operated during restrictions.
18. Despite the risk of decreasing public support, we recommend against additional changes to the repayment rules of the scheme as the potential benefit (reducing public concern regarding the fairness of profitable firms receiving subsidy) is outweighed by the potential costs and complexity:
 - a A repayment rule triggered by future criteria (e.g. end-of-year profits) which may be difficult to estimate would add significant uncertainty for firms. Firms make commercial decisions at the time the subsidy is available (during elevated alert levels) amidst significant uncertainty about future revenue or profitability. A repayment rule may be seen as penalising firms for an outcome they could not have reasonably expected at the time the subsidy was made available.
 - b If firms met a new repayment requirement contingent on profitability then the subsidy received would become a form of loan. This type of scheme is distinctly different from a grant and would need to be carefully designed to achieve its intended purpose. The likely behavioural impacts of this are unclear but if targeted towards firms reporting "large" profits their debt may be increased, although their viability is unlikely to be impacted.
19. Any rule changes would only apply prospectively.
20. However, we do recommend some clarifications of the existing obligations including:
 - a Working with stakeholders to develop a framework for the existing recovery approach (including civil proceedings or prosecutions, for example where false information has been provided)

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- b Clarifying an obligation on firms to keep records to show they meet the other obligations. This would align with the obligations proposed for the Resurgence Support Payment for firms.

Options for additional repayment obligations

- 21. We have considered some potential options for additional repayment rules, should Ministers wish to consider these. All options would need further exploration with stakeholders and would be subject to further advice. The repayment options are:
 - a **A non-binding public expectation.** Government could make a public statement expecting firms to repay the subsidy if they have made 'substantial profits,' though this would not be enforceable.
 - b **A trigger based on profit.** Subsidy could be repaid if a reported year-end profit exceeds the amount of the wage subsidy received. This would ensure firms are not put in a loss for repaying the subsidy. MSD has limited audit resources so this would likely need to be limited to large firms with published accounts. A number of details would need to be considered such as:
 - i The definition of large firms (e.g. firms with more than 50 FTEs on wage subsidy – this would be aligned with SBCS limit)
 - ii The ratio of profit to subsidy received
 - iii The calculation of profit (e.g. taxable profit or accounting profit)
 - c **A dividend payment trigger.** The subsidy could be repaid if a firm makes a dividend payment. However this trigger could be avoided by firms changing the timing of dividend payments, or passing on benefits to firm owners in another way such as salary payments, interest payments or other mechanisms.
 - d **Revenue recovery trigger.** This trigger would be related to the revenue drop test. For example if the revenue of a firm increased by more than twice as much as the drop they had previously recorded. This does not necessarily indicate profitability and seasonality of revenue for some firms would be a factor to consider.
- 22. Further details on all options would need to be considered in future advice to delegated Ministers, following further engagement with stakeholders.
- 23. All of these options have several common risks:
 - a No option would be able to cover every possible situation, and there are likely to be unintended consequences. There may be perceived or real differences in treatment between some firms who are in similar situations (for example large private firms and large publicly listed firms);
 - b The public may have decreased support for the scheme if gains are seen as being unfairly distributed due to distortions caused by these triggers;
 - c Firms may feel these changes create uncertainty about the availability of future support.

Use of Wage Subsidy relating to annual leave

Background

24. Under current settings, employers can use the wage subsidy to pay for holiday entitlements, including where employees have been directed to take annual leave (including over business closedown periods).
25. In our previous advice to you [T2020/3581], we recommended continuing this approach because the significant compliance and administrative issues were too high to warrant changing settings.
26. In addition there is a risk that changes to settings would reduce employees' flexibility to take annual leave, either to have a break or to ensure continuity of income over the lockdown period. There is also a risk that there is increased financial pressure on employers potentially resulting in them taking other cost saving action such as negotiating a reduction in hours or wages.
27. The Minister of Finance has since indicated that he would like further advice on:
 - a the legality of using the wage subsidy for annual leave;
 - b if employees are being forced to take annual leave; and
 - c disallowing the use of the wage subsidy for holiday entitlements.

The legality of using the Wage Subsidy for annual leave

28. There is currently no legal impediment to using the wage subsidy to fund, partially or in full, employees' annual leave entitlements (including over planned closedown periods), provided that annual leave use is in line with the provisions in the Holidays Act [MBIE 3154 19 20].
29. Whether an employer has breached the Holidays Act in relation to requiring an employees to take annual leave will depend on the facts of the case. The Act requires that the parties first seek to agree on when annual leave is to be taken. If agreement cannot reasonably be reached, the employer can only require an employee to take annual leave if the conditions set out in section 19 of the Act are met. The onus is on the employer to get employee's agreement to take annual leave, or to show that the requirements of section 19 are met, even where this is presented as an alternative to cutting hours or wages as part of a genuine restructuring conversation with employees.

Annual Leave use that does not comply with the Holidays Act

Current settings

30. Concerns regarding employers not complying with the Holidays Act in relation to employees' annual leave entitlement is an employment law issue. There is some anecdotal evidence that some employers may be requiring use of annual leave that does not comply with the Holidays Act, while they receive a wage subsidy. The scale of this behaviour is unclear.
31. Employees who are concerned that their employer may not be adhering to their employment law obligations are able to contact MBIE's Employment Services. The number of complaints that were received since March 2020 relating to the categories 'enforced taking of leave' and 'employee made to take leave without agreement' are 489 and 4 respectively. 191 of these complaints have been resolved, 29 were not resolved, 39 had been referred to MSD for fraud or for other reasons and 72 were unsubstantiated.

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32. Given that over approximately 1.5 million jobs were associated with wage subsidy payments as at the end of October, these figures indicate a relatively low level of issues (although it is not possible to know how many people have not complained or where the conditions of the scheme have not been fully complied with, or where issues have been raised without contacting MBIE).
33. The wage subsidy's declaration notes that breaching some employment law requirements can trigger a partial or full repayment of the subsidy including not making any changes to obligations under any employment agreement, including to rates of pay, hours of work and leave entitlement, without the written agreement of the relevant employee.
34. If employers fail to follow the law set out in the Holidays Act, there are also processes in place that can be followed. For example, employees can:
 - a. Access Employment Services free Early Resolution Service, a free phone-based service providing assistance to resolve an issue early on via making a complaint through the Wage Subsidy complaint form. The Early Resolution Service provides assistance to resolve a workplace issue early, quickly, and informally, before it becomes too serious or needs a more formal process. Where appropriate, information could be referred to the Labour Inspectorate for potential breaches of minimum employment standards, or to the Mediation Service for formal mediation.
 - b. Lodge a claim with the Employment Relations Authority asserting a breach of the Holidays Act - though claimants are likely to be directed to use more informal dispute resolution services such as mediation in the first instance.
 - c. Call the Employment New Zealand contact centre.

We do not recommend making changes to the scheme

35. We recognise that some employers may not have complied with the Holidays Act regarding the use of employees' annual leave, while receiving the wage subsidy.
36. However, we do not recommend making changes to the scheme settings to address what is primarily an employment law issue. Settings were designed to sit alongside employment law statutes, maintain employees' flexibility, and avoid undermining the strength of employment relationships.
37. As future lockdowns will likely be for shorter durations than previous lockdowns [T2020/3581 refers], the issue may also diminish. This is because employees will be able to return to work more rapidly, and employers may therefore be less inclined to direct leave-taking.
38. There are also a number of further disadvantages with changing the scheme which are set out fully in paragraph 47.
39. We therefore recommend only light-touch options to address the potential issue of coerced leave, but have also set out options for disallowing the use of the subsidy for leave entitlements if Ministers want to consider that approach.

Light-touch options to address the issue without changing the scheme (recommended)

40. Light touch options to strengthen adherence to employment law as it relates to the wage subsidy could be made through enhancing communication of employers' obligations under the Holidays Act.
41. Changes could also be made to the declaration to clarify the interaction between the wage subsidy and employment law requirements, and to highlight the dispute service is available for employees to use.

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42. There could be more explicit guidance on:
 - a employer obligations relating to directing employees to use annual leave (and clarification that any other use of annual leave requires agreement from both parties within a good faith context), and
 - b employees' rights and where they can go to get help to resolve complaints about taking annual leave.
43. The Early Resolution Service is already dealing with these kinds of complaints. There may be opportunities for promoting its use, for example through MSD's channels.
44. Consideration could also be given to automatically notifying employees on the terms under which their employer received a wage subsidy in their name as well as links to suitable support services.
45. Currently the employer declaration requires employers to obtain their employees' consent when they apply for a subsidy on their behalf. However, automatic notifications to employers would increase transparency, incentivising compliance by employers and ensuring employees are better informed. This would need to be a longer-term change.

Disallowing the use of subsidy for leave entitlements (not recommended)

46. Should you wish to take a firmer approach to reinforce employers' adherence to employment law beyond the measures identified in the paragraphs above, changes could be made to the scheme settings to prevent the subsidies being used for annual leave.
47. This approach has significant disadvantages:
 - a Employers would be unable to use the wage subsidy to meet some of their wage bill costs (ie. were unable to pay for holidays taken) if they were prevented from using the wage subsidy if an employee had agreed, or requested, to take annual leave. This could put added financial pressure on employers and may result in them needing to take other cost saving action – potentially more detrimental to some or all workers such as reducing hours or wages.
 - b In instances where employees had agreed to lower wage levels during the period of the wage subsidy, an employer may be reluctant to enable an employee to use annual leave to "top up" their wages above the subsidy level. This was an intentional feature of the scheme, (along with the COVID-19 Leave Support Scheme), and Ministers were aware that the trade-off for this is that some employers may therefore be in the position of being able to reduce their overall annual leave liabilities.
 - c There would be extra compliance costs for the employer in having to alert MSD when their staff take annual holidays and what the duration was. It may be difficult to identify how much of the subsidy needs to be repaid. There would be extra administrative costs for MSD in order to process a repayment.
 - d It may provide an incentive for employers to not agree to employees taking holidays, even where employees want to, to avoid the additional compliance costs of repaying parts of the subsidy.
 - e Some employers may be deterred from applying for the wage subsidy if they were risk averse and worried about being accused of misusing the wage subsidy.
48. The table below outlines three options for how this could be operationalised if Ministers nonetheless want to progress changes. It also provides information on the benefits and limitations of each option.

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49. Because this is high trust model, under each option, it would not be possible to prevent employers from claiming the wage subsidy, and then directing staff to take annual leave in a way that is inconsistent with the Holidays Act after the wage subsidy period ends.
50. We considered the option of providing firms with bespoke retrospective payments, based on pay slip information. This would enable a high degree of targeting and integrity. However it would not be possible to implement and operationalise at pace, and we therefore have not included it in the table as a feasible option.

Table 1: Options for disallowing the use of subsidy for leave entitlements

Option	How it works	Benefits	Limitations
1: Bespoke repayments	MSD provides full subsidy to firms in advance. Firms repay subsidy based on self-declaration for any days employees are on annual leave.	Supports rapid pay-outs Consistent with high-trust model	Unlikely to be ready until 2021 Administrative implications Challenging to verify
2: Bespoke payments	MSD provides bespoke payments to firms in advance based on information firms submit on annual leave days.	Reduces deadweight Enables targeting	Unlikely to be ready until 2021 Would require new build Significant administrative implications
3: Threshold option - use of wage subsidy for annual leave is limited	MSD provides subsidy to firms in advance based on upfront declaration firms make about entitlement under the 'annual leave threshold.' Firms would be able to use the wage subsidy for annual leave only if the worker is on annual leave below a certain percentage of the time subsidy is being claimed for.	Reinforces employment law	Blunt Reduces employees flexibility Challenging to verify May be complications if employee leave plans change after the employer has applied for the subsidy

51. The time and resource required to establish any form of bespoke payment system renders options 1 and 2 unfeasible in the short-term. These could be considered in further advice on longer-term changes, which will be provided to you in February 2021.

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Considerations for option 3 (threshold approach)

52. Should you wish to pursue changes to settings at pace, option 3 could be implemented rapidly, although detailed settings as to how it would be delivered would need to be developed
53. Under the current payment system, it would not be possible to match exactly the level of wage subsidy support to employees' leave (unless the duration of leave matched the two-weekly payment instalments).
54. Option 3 would therefore require an 'annual leave threshold,' which would determine whether employers could claim for the named employee.
55. Further design work would be needed for this option to remedy potential issues resulting from, for example, changing leave plans.
56. The table below illustrates how this could work in practice over a two-week lockdown. It assumes that the threshold is set at 50% of standard hours worked over the fortnight for full time worker and part time worker, using the subsidy's existing definition for these.

Table 2: Examples of how a "threshold approach" could work in practice

Employee	Number of Annual Leave Hours Taken	Can the subsidy be claimed for this worker?	Why?
Employee 1 – Full Time Worker (80 hours per fortnight)	38	Yes	Worker is on leave for less than 50% of the subsidy period
Employee 2 – Full Time Worker (80 hours per fortnight)	42	No	Workers is on leave for more than 50% of the subsidy period
Employee 3 – Part Time Worker (40 hours per fortnight)	16	Yes	Worker is on leave for less than 50% of the subsidy period

57. Option 3 could be implemented quickly, but it would operate in a high-trust manner. This could negatively impact both the scheme's integrity, and perceptions of the scheme.

Next Steps

58. We will provide you with an updated Cabinet paper early next week on the economic resurgence package, which will reflect your feedback on this report.
59. Following consideration of the paper by Cabinet on 14 December, we recommend that the Minister of Finance announce the resurgence support package at an event prior to Christmas.

Consultation

60. This is a joint report from the Treasury, the Ministry for Social Development and the Ministry of Business, Innovation and Employment. The Inland Revenue Department was also consulted.

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