

House of Representatives

Supplementary Order Paper

Wednesday, 24 August 2016

Minimum Wage (Contractor Remuneration) Amendment Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 4

Delete *clause 4* (page 2, lines 11 to 16).

Clause 6

In *clause 6*, in section 2, *new definition* of **principal** (page 2, line 29 to page 3, line 2), replace “person” with “contractor” in the 2 places it occurs.

In *clause 6*, in section 2, *new definition* of **remuneration** (page 3, lines 3 to 5), replace “person” with “contractor” in the 2 places it occurs.

In *clause 6*, in section 2, replace the *new definition* of **specified person** (page 3, lines 6 to 14) with:

specified contractor means—

- (a) an individual who is 16 years of age or older and provides a service listed in **Schedule 2** under a contract for service; or
- (b) a company that provides a service listed in **Schedule 2** under a contract for service if—
 - (i) the company has only 1 shareholder and 1 director; and
 - (ii) the shareholder and director is an individual; and
 - (iii) the individual who is the shareholder and director personally and exclusively provides the service

Clause 7

Replace *clause 7* (page 3, lines 15 to 31) with:

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7 New section 4C inserted (Prescribed minimum rate of remuneration for specified contractors)

After section 4B, insert:

4C Prescribed minimum rate of remuneration for specified contractors

- (1) The Governor-General may, by Order in Council, prescribe the minimum rate of remuneration payable to specified contractors for providing 1 or more of the services listed in **Schedule 2**.
- (2) A minimum rate of remuneration prescribed under **subsection (1)** must not be less than the minimum adult rate of wages prescribed under section 4.

Clause 8

Replace *clause 8(2)* (page 3, line 34), with:

- (2) In section 5(1), replace “pursuant to section 4, 4A, or 4B” with “under section 4, 4A, 4B, or **4C**”.

Clause 10

Replace *clause 10* (page 4, lines 4 to 11) with:

10 New section 6A inserted (Rate of remuneration not to be less than minimum rate)

After section 6, insert:

6A Rate of remuneration not to be less than minimum rate

- (1) Despite anything to the contrary in any enactment, agreement, or contract for services, if a minimum rate of remuneration is prescribed under **section 4C**, every specified contractor providing a service listed in **Schedule 2** to a principal is entitled to receive remuneration for his or her labour in providing the service at not less than the prescribed minimum rate of remuneration.
- (2) **Subsection (1)** does not apply to a specified contractor who is providing a service to more than 1 principal at the same time (for example, a truck driver delivering goods for more than 1 principal at the same time).

Clause 11

Replace *clause 11* (page 4, line 12 to page 5, line 9) with:

New sections 7A and 7B inserted

After section 7, insert:

7A Remuneration and time record to be kept

- (1) This section applies if—
 - (a) a specified contractor provides to a principal a service listed in **Schedule 2**; and
 - (b) the minimum rate of remuneration has been prescribed under **section 4C**.
- (2) The principal must keep a record (called the **remuneration and time record**) showing, in the case of each specified contractor engaged by that principal,—
 - (a) the name of the specified contractor;
 - (b) the specified contractor’s postal address;
 - (c) the kind of service that the specified contractor is engaged to provide;
 - (d) the number of hours spent providing the service by the specified contractor and the remuneration for those hours;
 - (e) the remuneration paid to the specified contractor for the service and the method of calculation;
 - (f) any other particulars that are prescribed.
- (3) The remuneration and time record must be kept—
 - (a) in written form; or
 - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (4) If a principal and a specified contractor agree in advance to the number of hours the specified contractor will take to provide a service and the specified contractor provides the service, it is sufficient compliance with **subsection (2)(d)** if the hours and remuneration are stated in—
 - (a) the remuneration and time record; or
 - (b) the contract for services; or
 - (c) a roster or any other document or record used in the normal course of the specified contractor’s engagement.
- (5) Information entered in the remuneration record must be kept for not less than 6 years after the date on which the information is entered.
- (6) This section does not apply if—
 - (a) a specified contractor provides to a principal a service listed in **Schedule 2**; and
 - (b) the specified contractor and the principal agree in advance to a rate of remuneration payable to the specified contractor for the specified contractor’s labour in providing the service; and

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- (c) the agreed rate of remuneration is calculated otherwise than by reference to the number of hours worked by the specified contractor; and
- (d) the principal reasonably believes that the agreed rate of remuneration payable to the specified contractor is sufficient to remunerate the specified contractor at a rate that is higher than the prescribed minimum rate of remuneration under **section 4C**.

7B Specified contractor and Labour Inspector may request access to remuneration and time record

- (1) A specified contractor or a Labour Inspector may request that a principal provide access to, or a copy of, or a certified extract from, information in the remuneration and time record relating to the specified contractor.
- (2) A principal who receives a request under **subsection (1)** must comply as soon as practicable with the request by—
 - (a) allowing the specified contractor or Labour Inspector to view the record; or
 - (b) providing a copy or certified extract of the information concerned.

Clause 12

Replace *clause 12* (page 5, lines 10 to 15) with:

12 Section 10 amended (Penalties)

- (1) In section 10(2)(a), after “full payment of any wages”, insert “or remuneration”.
- (2) After section 10(4), insert:
- (5) The provisions of the Employment Relations Act 2000 apply, with all necessary modifications, to the imposition or recovery of a penalty in relation to payment of remuneration at a rate lower than the prescribed minimum rate of remuneration under **section 4C** as if the remuneration payable to the specified contractor were wages payable to a worker.

Clause 13

Replace *clause 13* (page 5, line 16 to page 6, line 14) with:

13 New sections 11AB and 11AC inserted

After section 11AA, insert:

11AB Recovery of minimum remuneration

- (1) This section applies where, in relation to remuneration payable by a principal to a specified contractor whose minimum rate of remuneration is prescribed under **section 4C**, payment has been made at a lower rate than the prescribed minimum rate of remuneration.
- (2) The specified contractor, or a Labour Inspector, may commence an action in the Employment Relations Authority in the same manner as an action under section 131 of the Employment Relations Act 2000 to recover the whole or any part of the remuneration referred to in **subsection (1)**.
- (3) For the purposes of **subsection (2)**, the provisions of the Employment Relations Act 2000 apply, with all necessary modifications, as if the remuneration payable by the principal to the specified contractor were wages payable by an employer to a worker under an employment agreement (including, without limitation, section 236 of that Act, which relates to representation).
- (4) **Subsection (2)** applies despite—
 - (a) acceptance by the specified contractor of payment at the lower rate; or
 - (b) any express or implied agreement to the contrary.
- (5) No action to recover remuneration under this section may be commenced more than 6 years after the date on which the cause of action arose.

11AC Specified contractor may not recover minimum remuneration for time that exceeds agreed reasonable time to provide service

- (1) This section applies if—
 - (a) a principal and a specified contractor have agreed, at the time the contract for service was entered into, on the amount of time that the specified contractor will take to provide a service under a contract for service; and
 - (b) the amount of time agreed is reasonable; and
 - (c) the actual time taken by the specified contractor to provide the service exceeds the reasonable amount of time agreed.
- (2) Despite **section 11AB(4)(b)**, the specified contractor may not recover any remuneration that relates to the actual time taken to provide the service that exceeds the agreed reasonable amount of time.

Clause 14

In *clause 14* (page 6, line 16), replace “insert the **Schedule 2**” with “insert as **Schedule 2** the **Schedule 2**”.

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New clause 15

After *clause 14* (page 6, after line 16), insert:

15 Transitional provision

This Act does not apply to any contract for service entered into prior to the commencement date referred to in **clause 2**.

Schedule

In the *Schedule*, title to new *Schedule 2* (page 7, line 4), replace **4A** with **4C**.

In the *Schedule*, shoulder reference to new *Schedule 2* (page 7, line 6), replace “**4A, 4B**” with “**4C**” and replace “**8B**” with “**7A**”.

In the *Schedule*, new *Schedule 2*, delete item (f) (page 7, line 13).

In the *Schedule*, new *Schedule 2*, item (g) (page 7, line 14), after “house”, insert “except where the principal to the contract acquires the service for their personal, domestic, or household use or consumption”.

In the *Schedule*, new *Schedule 2*, item (h) (page 7, line 15), replace “public entertainment” with “professional”, and after “singer” insert “or support crew for the production of advertising or content for television, on-line or cinema industries”.

Explanatory note

This Supplementary Order Paper makes amendments to improve and update the text of the Bill in the light of amendments to the Minimum Wage Act 1983 (the **principal Act**) made since this Bill was introduced.

The amendments to *clause 6*, section 2 *new definitions* make it clearer who the Bill applies to and would help the public in understanding this legislation. The Bill is intended to apply to companies only where the company consists of a single person as a shareholder and director who personally provides the specified service. For clarity, we would recommend amending the *new definitions* to specify that the Bill would apply only where such a person provides the service exclusively—that is, not simply in a managerial capacity alongside employees. We believe this intention was not fully clear in the Bill as introduced.

This Supplementary Order Paper proposes to delete *new section 4B*, containing guidance for the courts to use in establishing the actual rate at which a contractor has been paid. We do not consider it necessary to give this level of guidance and would recommend that *new section 4B* be deleted.

The amendment to *clause 8* is a technical change to section 5 to ensure that a minimum rate of remuneration (if such a rate is set) be reviewed annually.

In *clause 10*, *new section 6A(2)* is inserted to make it clear that the Bill does not apply to a contractor providing services to more than one principal at the same time.

This Supplementary Order Paper proposes to amend *clause 11*. As introduced, the requirements in the Bill for keeping remuneration records were ambiguous. It was un-

clear whether the record must be retrospective and exact, or it might be made in advance and be approximate in some situations. The amendments we considered are modelled on the new simplified record-keeping requirements in the Employment Relations Act 2000 (as amended by the Employment Relations Amendment Act 2016).

In the Bill as introduced there is no explicit provision for those defined as a specified person or as a principal to appoint someone to represent them. In the amendment to *clause 13* this Supplementary Order Paper proposes to explicitly allow people to choose someone to represent them in any legal action under the amendments in this Bill.

Clause 14, which inserts *new Schedule 2*, is amended to clarify that personal home-care support to an individual is covered by minimum remuneration requirements only when the principal is not, themselves, the person receiving the home-care support. This is consistent with the definition of principal inserted into section 2 by *clause 6* of the Bill, which effectively excludes services purchased by the principal for their own household use or consumption from the minimum remuneration requirements.