



Sleepover Wages (Settlement) (The Chequer's Trust) Order 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 10th day of December 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 24 of the Sleepover Wages (Settlement) Act 2011, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Health (made after consultation with the Minister of Labour), makes the following order.

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Order**1 Title**

This order is the Sleepover Wages (Settlement) (The Chequer's Trust) Order 2012.

2 Commencement

This order comes into force on 14 December 2012.

Part 1**Preliminary provisions****3 Effect**

The modifications and extensions of the Sleepover Wages (Settlement) Act 2011 made by this order do not affect the text of the Act but require it to be read as if it had been amended in the manner indicated in this order.

4 Interpretation

In this order,—

Act means the Sleepover Wages (Settlement) Act 2011

transitional formula 1 means—

$$(((a \times b) + c) \times 0.50) - d = e$$

where—

a is the applicable minimum hourly rate

b is the number of hours in the sleepover

c in relation to the sleepover, is the difference between—

- (a) the amount The Chequer's Trust would have paid in respect of annual holidays taken by the employee had the applicable minimum hourly rate been paid for the sleepover; and
 - (b) the amount actually paid by The Chequer's Trust to the employee in respect of annual holidays taken by the employee
- d is the amount of taxable allowances for the sleepover that was actually payable by The Chequer's Trust to the employee at the time the employee performed the sleepover
- e is the amount payable for the sleepover

transitional formula 2 means—

$$(((a \times b) + c) \times 0.75) - d = e$$

where—

- a is the applicable minimum hourly rate
- b is the number of hours in the sleepover
- c in relation to the sleepover, is the difference between—
 - (a) the amount The Chequer's Trust would have paid in respect of annual holidays taken by the employee had the applicable minimum hourly rate been paid for the sleepover; and
 - (b) the amount actually paid by The Chequer's Trust to the employee in respect of annual holidays taken by the employee
- d is the amount of taxable allowances for the sleepover that was actually payable by The Chequer's Trust to the employee at the time the employee performed the sleepover
- e is the amount payable for the sleepover.

Part 2
Modifications and extensions of Part 2 of
Act

Settlement relating to The Chequer's Trust

- 5 Extension of subpart 2 of Part 2 to The Chequer's Trust**
Subpart 2 of Part 2 of the Act, as modified and extended by this Part, applies to—
- (a) The Chequer's Trust (as employer); and
 - (b) each employee of The Chequer's Trust who performs or performed a sleepover.
- 6 Modification of section 21 (entitlements for sleepovers performed immediately before 18 October 2011)**
- (1) This clause applies instead of section 21 of the Act in relation to the entitlements of employees of The Chequer's Trust for sleepovers performed immediately before 18 October 2011.
 - (2) In relation to a sleepover performed by an employee during the period beginning on 1 July 2011 and ending with the close of 17 October 2011, The Chequer's Trust must pay the employee the greater of—
 - (a) the amount calculated in accordance with transitional formula 1;
 - (b) the amount the employee would have received for that sleepover immediately before the date of commencement of this order.
 - (3) The Chequer's Trust must pay any amount payable to an employee under subclause (2) no later than 2 months after the date of commencement of this order.
- 7 Modification of section 22(1) (entitlement to be paid minimum hourly rates for sleepovers performed on and after 18 October 2011)**
- (1) This clause applies instead of section 22(1) of the Act in relation to the entitlements of employees of The Chequer's Trust for sleepovers performed on and after 18 October 2011.
 - (2) In relation to a sleepover performed by an employee on or after 18 October 2011, The Chequer's Trust must pay the employee the greater of—

- (a) the amount specified in subclause (3):
- (b) the amount the employee would have received for that sleepover immediately before the date of commencement of this order.
- (3) The amount payable for each sleepover that an employee performs during the period specified in the first column of the following table is the amount calculated in accordance with the method set out opposite that period in the second column of the following table:

Specified period	Amount payable
Period beginning on 18 October 2011 and ending with the close of 30 June 2012	The amount calculated in accordance with transitional formula 1
Period beginning on 1 July 2012 and ending with the close of 30 June 2013	The amount calculated in accordance with transitional formula 2

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 14 December 2012, modifies and extends the operation of the Sleepover Wages (Settlement) Act 2011 (the **Act**) to give effect to a settlement agreement reached between The Chequer's Trust and certain of its employees. The settlement relates to the payment of wages to employees who are permitted to sleep overnight at their workplace while on duty (**sleepover wages**).

The Act implements a settlement of litigation between Idea Services Limited and Timata Hou Limited and their employees (the **Idea settlement**) relating to the payment of sleepover wages. Subpart 1 of Part 2 of the Act extinguishes certain claims for sleepover wages in the health and disability sector, and subpart 2 of Part 2 of the Act implements the terms of the Idea settlement.

*Subpart 1 of Part 2 of Act: Extinguishing claims
for sleepover wages*

Subpart 1 of Part 2 of the Act already applies to The Chequer's Trust, because it applies to all employers in the health and disability sector funded through Vote Health. It extinguishes claims relating to sleepovers performed before the Act commenced, if those claims were lodged after 5 pm on 2 September 2011. Claims filed before that time are preserved. Section 9 of the Act extinguishes claims by employees of Idea Services Limited and Timata Hou Limited for sleepover wages. It is not necessary to extend the application of this section to The Chequer's Trust and its employees, because no employees lodged claims regarding sleepover wages before the specified time.

*Subpart 2 of Part 2 of Act: Settlement relating
to The Chequer's Trust*

Clause 5 extends the effect of subpart 2 of Part 2 of the Act (which implements the Idea settlement) to The Chequer's Trust and its employees, but with certain modifications that are set out in *clauses 6 and 7*.

Sections 21 and 22 of the Act provide for a staged progression towards the minimum hourly wage payable under the Minimum Wage Act 1983. *Clause 6* modifies section 21 of the Act, which sets out an employee's entitlements for sleepovers performed between 1 July 2011 and 17 October 2011 (being the date immediately before commencement of the Act), and when those entitlements must be paid. The modification provides that the amount payable to employees of The Chequer's Trust for sleepovers performed during this time is either an amount calculated in accordance with transitional formula 1 (defined in *clause 4*) or the amount the employee would have received immediately before the date of commencement of this order, whichever is greater. Transitional formula 1 reflects the agreement reached between the parties. It differs from the formula set out in the Act for calculating the wages payable for sleepovers performed during this period in 2 respects as follows:

- it uses a variable to reflect the number of hours in the sleepover;
- the order in which the operations are performed produces a lower result.

Clause 6(3) provides that the amount payable for sleepovers performed in the period between 1 July 2011 and 17 October 2011 must be paid no later than 2 months after the date of commencement of this order. Section 28(c) of the Act permits this modification of the date on which payment is due only if the relevant Minister is satisfied that the proposed period has been agreed to by a simple majority of the employer's employees. The Minister has indicated that he is so satisfied.

Clause 7 modifies section 22(1) of the Act, which sets out how sleepover wages are to be calculated for sleepovers performed after commencement of the Act by those employees to whom subpart 2 of Part 2 of the Act applies. The section implements a staged progression towards payment of the full minimum hourly wage payable under the Minimum Wage Act 1983. The effect of *clause 7* is to modify the staged progression set out in the Act in the following ways:

- for sleepovers performed in the period between 18 October 2011 to 30 June 2012, an employee of The Chequer's Trust must be paid an amount calculated in accordance with transitional formula 1 (defined in *clause 4*), rather than in accordance with the Act;
- for sleepovers performed in the period 1 July 2012 to 30 June 2013, an employee of The Chequer's Trust must be paid an amount calculated in accordance with transitional formula 2 (defined in *clause 4*), rather than in accordance with the Act;
- the period of time during which an employee of The Chequer's Trust may be paid at less than 100% of the applicable minimum hourly rate is extended to the close of 30 June 2013;
- if, before the commencement of this order, an employee of The Chequer's Trust would have received an amount greater than that specified in this order, he or she will be entitled to be paid that greater amount.

**Sleepover Wages (Settlement) (The
Chequer's Trust) Order 2012**

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This order is administered by the Ministry of Health.
