

House of Representatives
Supplementary Order Paper

Tuesday, 17 June 2008

**Minimum Wage and Remuneration Amendment
Bill**

Proposed amendments

Darien Fenton, in Committee, to move the following amendments:

Clause 1

To insert “the” before “Minimum” (line 3 on page 2).

Clause 2

To omit “the day after the date on which it receives the Royal assent” (lines 8 and 9 on page 2) and substitute “**1 April 2009**”.

Clause 3

To insert “the Act that was previously called” after “amends” (line 11 on page 2).

Clause 4

To omit this clause (lines 12 to 16 on page 2) and substitute the following clause:

4 Purpose

The purpose of this Act is to—

- (a) rename the principal Act; and
- (b) insert new provisions into the principal Act that apply to remuneration received by specified persons for providing certain services under a contract for service.

New clause 5AA

To insert the following clause after the heading to *Part 2* (after line 18 on page 2):

5AA Long Title repealed

The Long Title is repealed.

Clause 5

To omit *subclauses (1) and (2)* (lines 20 to 23 on page 2) and substitute the following subclauses:

- (1) As from the commencement of this section,—
 - (a) the Minimum Wage Act 1983 is called the **Minimum Wage and Remuneration Act 1983**;
 - (b) every reference in any enactment and in any document to the Minimum Wage Act 1983 must, unless the context otherwise requires, be read as a reference to the **Minimum Wage and Remuneration Act 1983**.
- (2) The heading to section 1 is consequentially amended by omitting “**Short**”.
- (3) Section 1(1) is consequentially amended by inserting “and Remuneration” after “Wage”.

Clause 6

To omit this clause (lines 24 to 28 on page 2) and substitute the following clause:

6 Interpretation

Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**principal**, in relation to a specified person, means a person who—

- “(a) engages the specified person under a contract for service to provide a service listed in **Schedule 2**; and
- “(b) does not acquire the service for the person’s personal, domestic, or household use or consumption

“**remuneration** means the payment by a principal to a specified person who provides services to the principal under a contract for service for that part of the service that relates to the provision of labour by the specified person

“**specified person** 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 are the same person; and
 - “(iii) the person who is the shareholder and director personally provides the service”.

Clause 7

To omit this clause (lines 1 to 13 on page 3) and substitute the following clause:

7 New sections 4A and 4B inserted

The following sections are inserted after section 4:

“4A Prescription of minimum remuneration

The Governor-General may, by Order in Council, prescribe the minimum rate of remuneration payable to specified persons for providing 1 or more of the services listed in **Schedule 2**.

“4B Establishing actual rate of remuneration

The following matters must be taken into account in establishing the actual rate of remuneration of a specified person for providing a service listed in **Schedule 2**:

- “(a) the terms of the contract; and
- “(b) whether the principal and specified person have agreed on what is a reasonable amount of time for the specified person to provide the service; and
- “(c) the information in the remuneration record required to be kept under **section 8B**; and
- “(d) any other relevant matters.”

New clauses 7A and 7B

To insert the following clauses after *clause 7* (after line 13 on page 3):

7A Annual review of minimum wages

- (1) The heading to section 5 is amended by adding “**and remuneration**”.
- (2) Section 5(1) is amended by omitting “pursuant to section 4 of this Act” and substituting “under section 4 or **4A**”.

7B Payment of minimum wages

Section 6 is amended by omitting “under this Act, shall be entitled” and substituting “under section 4 is entitled”.

Clause 8: new section 6A

To omit lines 17 to 21 on page 3 and substitute the following:

Despite anything to the contrary in any enactment, agreement, or contract for services, if the minimum rate of remuneration is prescribed under **section 4A**, every specified person providing a service listed in **Schedule 2** to a principal is entitled to receive payment for providing the service at not less than the minimum rate.

New clause 8A

To insert the following clause after *clause 8* (after line 21 on page 3):

8A New sections 8B and 8C inserted

The following sections are inserted after section 8A:

“8B Remuneration record to be kept

- “(1) This section applies if—
- “(a) a specified person provides to a principal a service listed in **Schedule 2**; and
 - “(b) the minimum rate of remuneration has been prescribed under **section 4A**.
- “(2) The principal must keep a remuneration record that contains the following information in respect of the specified person:
- “(a) the name of the specified person;
 - “(b) the specified person’s postal address;
 - “(c) the kind of service that the specified person is engaged to provide;
 - “(d) if the agreement does not state the amount of time that the specified person will take to provide the service,—
 - “(i) the hours during which the specified person provides the service; and
 - “(ii) if the remuneration is payable at intervals, the hours during which the specified person provides the service in relation to each interval;
 - “(e) the remuneration paid to the specified person for the service and the method of calculation;
 - “(f) any other particulars that are prescribed.
- “(3) Information entered in the remuneration record must be kept for not less than 6 years after the date on which the information is entered.

“8C Specified person and Labour Inspector may request access to remuneration record

- “(1) A specified person 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 record relating to a specified person.
- “(2) A principal who receives a request under **subsection (1)** must comply as soon as practicable with the request by—
- “(a) allowing the specified person or Labour Inspector to view the record; or
 - “(b) providing a copy or certified extract of the information concerned.”

Clause 9

To omit *subclause (2)* (lines 25 to 30 on page 3).

New clause 9A

To insert the following clause after *clause 9* (after line 30 on page 3):

9A New sections 11AB and 11AC inserted

The following sections are inserted after section 11A:

“11AB Recovery of minimum remuneration

- “(1) This section applies to the recovery of minimum remuneration prescribed under **section 4A** and payable by a principal to a specified person.
- “(2) The specified person, 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 for the recovery of the whole or any part of minimum remuneration, if—
- “(a) there has been a default in payment of the minimum remuneration to the specified person; or
- “(b) the payment of remuneration to the specified person has been made at a rate lower than that prescribed under **section 4A**.
- “(3) **Subsection (2)**—
- “(a) does not affect any other remedies for the recovery of minimum remuneration prescribed under **section 4A** and payable by a principal to a specified person; and
- “(b) applies despite—
- “(i) the acceptance by the specified person of any payment at a lower rate; or
- “(ii) any express or implied agreement to the contrary.
- “(4) No action to recover minimum remuneration may be commenced under this section more than 6 years after the date on which the cause of action arose.

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

- “(1) This section applies if—
- “(a) a principal and the specified person have agreed on the amount of time that the specified person 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 person to provide the service exceeds the reasonable amount agreed.
- “(2) Despite **section 11AB(3)(b)(ii)**, the specified person may not recover any minimum remuneration that relates to the actual time taken to provide the service that exceeds the reasonable amount agreed.”

Heading above clause 10

To omit this heading (line 31 on page 3).

Clause 10

To omit this clause (line 32 on page 3 to line 4 on page 4).

New clause 11

To insert the following clause after *clause 10* (after line 4 on page 4):

11 New Schedule 2 added

- (1) The **Schedule 2** set out in the **Schedule** of this Act is added as **Schedule 2**.
- (2) The Schedule is consequentially renumbered as Schedule 1.
- (3) Section 14 is consequentially amended by omitting “the Schedule to this Act” and substituting “**Schedule 1**”.

Schedule

To omit the Schedule (on page 5) and substitute the following Schedule:

Schedule **s 11**
New Schedule 2 added to principal Act
Schedule 2 **ss 2, 4A, 4B, 6A, 8B**
Services for purposes of section 4A

The following services provided under a contract for service:

- (a) building and construction services:
- (b) cleaning services:
- (c) courier services:
- (d) food catering services:
- (e) fast-food delivery services:
- (f) newspaper or pamphlet delivery services to letterboxes:
- (g) personal home-care support to an individual in the individual’s dwellinghouse:
- (h) public entertainment services as an actor, musician, or singer:
- (i) the manufacture of clothing, footwear, or textiles:
- (j) telemarketing services:
- (k) market research services:
- (l) licensed security guard services under the Private Investigators and Security Guards Act 1974:
- (m) services in the forestry industry related to planting, pruning, or felling:
- (n) truck-driving services delivering goods.

Explanatory note

This Supplementary Order Paper amends the Minimum Wage and Remuneration Amendment Bill.

The amendments—

- make a drafting change to *clause 1*:
- substitute a new commencement date in *clause 2*. The commencement date is **1 April 2009**:
- make a drafting change to *clause 3*:

- substitute a new statement of the Bill's purpose in *clause 4*. The new purpose refers to renaming the principal Act and to the reduced scope of the Bill's application to specified persons providing certain services under a contract for service:
- insert a *new clause 5AA*, which repeals the principal Act's Long Title:
- recast *clause 5*, which is about renaming the principal Act. The amendments are drafting amendments:
- recast the definition of terms in *clause 6*. A new definition of **principal** is inserted. The definition of **remuneration** is recast to refer to that part of the payment by a principal to a specified person who provides services to the principal under a contract for service for the part of the service that relates to the provision of labour. A new definition of **specified person** is inserted, being an individual who is 16 years of age or older and providing a service listed in *new Schedule 2* under a contract for service. The definition of **specified person** also extends to one-person companies if the single shareholder-director personally provides the service:
- substitute a *new clause 7*, which inserts *new sections 4A and 4B*. *New section 4A* authorises the Governor-General, by Order in Council, to prescribe the minimum rate of remuneration payable to specified persons for providing 1 or more of the services listed in *new Schedule 2*. *New section 4B* is intended to provide guidance about the matters to be taken into account when determining actual remuneration before comparing the actual rate with the prescribed rate:
- insert *new clauses 7A and 7B* to make drafting changes to sections 5 and 6 of the principal Act:
- recast *new section 6A* in *clause 8* to take account of the reduced scope of the Bill:
- insert *new clause 8A*, which inserts *new sections 8B and 8C*. *New section 8B* requires specified persons to keep a remuneration record containing information about remuneration paid to specified persons. *New section 8C* requires a principal to provide access to, or a copy of, the remuneration record:
- omit *clause 9(2)*. This is a drafting amendment:
- insert *new clause 9A*, which inserts *new sections 11AB and 11AC*. *New section 11AB* provides for the recovery of minimum remuneration in the Employment Relations Authority. *New section 11AC* precludes a specified person from recovering minimum remuneration that relates to the actual time taken to provide a service that exceeds an agreed time that is reasonable:
- omit the heading above *clause 10*. This is a drafting amendment:
- omits *clause 10*. This is a drafting amendment:
- insert *new clause 11*, which inserts *new Schedule 2* into the principal Act:

- substitute a new schedule setting out the list of services for the purposes of *new section 4A* as inserted by *clause 7*.
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