

House of Representatives

Supplementary Order Paper

Thursday, 3 March 2016

Employment Standards Legislation Bill

Proposed amendments

Denise Roche, in Committee, to move the following amendments:

Clause 87

In *clause 87*, delete *new section 67E(3C)(e)* (page 52, lines 19 and 20).

In *clause 87*, delete *new section 67E(5)* (page 52, lines 25 to 31).

Clause 89

In *clause 89(2)*, delete *new section 130(1C)* (page 56, lines 18 to 20).

Explanatory note

This Supplementary Order Paper amends the Employment Standards Legislation Bill to address two major missteps made in the Bill in relation to salaried workers.

The first is to allow bundling of compensation for being available outside of contracted hours into a salary (*clause 87* inserting *new section 67E(5)* into the Employment Relations Act 2000). This makes the reasonableness of compensation opaque and difficult to test, and acts as a perverse incentive to place more and more workers onto salary as a way to reduce their entitlement.

This Supplementary Order Paper would remove the exemption relating to availability for salaried workers by deleting *new sections 67E(3C)(e) and 67E(5)*.

The second issue is the issue of what time records are required for salaried workers. It is known that there are systemic failures to keep accurate time records in many sectors (most notably in dairy farming where the Labour Inspectorate has consistently found issues of non-compliance).

The majority of the Transport and Industrial Relations Committee has amended *clause 89* by inserting new provisions into *section 130* of the Employment Relations

Act 2000. The problem lies in *new section 130(1C)*, which defines usual hours as including “any reasonable additional hours worked in accordance with the employee’s employment agreement”.

This proposal defeats the purpose of keeping wage and time records. It allows an employer to refuse to keep a record of additional hours worked by arguing that they are reasonable and therefore need not be recorded. It is deeply ironical that a Bill which purports to increase compliance with minimum standards should hamstring the ability of workers and labour inspectors to pursue breaches of the minimum wage.

This Supplementary Order Paper would remove the definition of usual hours by deleting *new section 130(1C)*. This would also require employers to comply with wage and time records by simply keeping a record of usual hours worked so long as they also record any additional hours worked.