

Minimum Wage (Contractor Remuneration) Amendment Bill

Member's Bill

Explanatory note

General policy statement

People engaged as contractors have few of the protections of employees. They can be paid at a rate which is less than the minimum wage.

The purpose of this Bill is to amend the Minimum Wage Act 1983 to extend its provisions to apply to payments under a contract for services that are remunerated at below the minimum wage. Currently certain types of work, such as pamphlet deliveries, are not subject to any minimum wage requirements because remuneration is paid under a contract for services. The Bill provides for such contractors to be paid not less than a minimum rate, equivalent to the minimum wage.

As is the case for the minimum wage, the rate can be either hourly or on a piece rate basis.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Minimum Wage Act 1983, the **principal Act**.

Clause 4 is the purpose clause.

Clause 5 amends the name of the principal Act.

Clause 6 amends section 2.

Clause 7 inserts *new sections 4A and 4B*.

Clause 8 amends section 5.

Clause 9 amends section 6.

Clause 10 inserts *new section 6A*.

Clause 11 inserts *new sections 8B and 8C*.

Clause 12 amends section 10.

Clause 13 inserts *new sections 11AB and 11AC*.

Clause 14 inserts *new Schedule 2*.

Hon David Parker

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**Schedule
New Schedule 2 inserted**

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Minimum Wage (Contractor Remuneration) Amendment Act **2015**.

2 Commencement

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This Act comes into force on the day that is 6 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Act that was previously called the Minimum Wage Act 1983 (the **principal Act**).

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4 Purpose

The purpose of this Act is to—

- (a) rename the principal Act; and
- (b) amend the principal Act so that it applies to remuneration received by specified persons for providing certain services under a contract for service.

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5 Name of principal Act changed

(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**.

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(2) In the heading to section 1, delete “**Short**”.

(3) In section 1(1) replace “may be cited as the Minimum Wage” with “is the Minimum Wage and Remuneration”.

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6 Section 2 amended (Interpretation)

In section 2, insert 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

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(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

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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—

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(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

7 New sections 4A and 4B inserted

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After section 4, insert:

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**.

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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

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(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

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(d) any other relevant matters.

8 Section 5 amended (Annual review of minimum wages)

(1) In the heading to section 5, after “wages”, insert “and remuneration”.

(2) In section 5(1), replace “pursuant to section 4” with “under section 4”.

9 Section 6 amended (Payment of minimum wages)

In section 6, replace “under this Act, shall be entitled” with “under section 4 is entitled”.

10 New section 6A inserted

After section 6, insert:

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

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.

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11 New sections 8B and 8C inserted

After section 8A, insert:

8B Remuneration record to be kept

(1) This section applies if—

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- (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:

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- (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.

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(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.

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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.	5
(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.	
12	Section 10 amended (Penalties and jurisdiction)	10
(1)	In section 10, after “full payment of any wages”, insert “or remuneration”.	
(2)	In section 10, insert as subsection (2):	
(2)	The provisions of the Employment Relations Act 2000 apply, with the necessary modifications, to the recovery of minimum remuneration as if the minimum remuneration were minimum wages.	15
13	New sections 11AB and 11AC inserted	
	After section 11A, insert:	
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.	20
(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	25
(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	30
(b)	applies despite—	
(i)	the acceptance by the specified person of any payment at a lower rate; or	35
(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— 5
- (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. 10
- (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.

14 New Schedule 2 inserted 15

After the Schedule, insert the Schedule 2 set out in the Schedule of this Act.

Schedule
New Schedule 2 inserted

s 14

Schedule 2
Services for purposes of section 4A

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ss 2, 4A, 4B, 6A, 8B

The following services may be provided under a contract for service:

- (a) building and construction services:
- (b) cleaning services:
- (c) courier services: 10
- (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 house:
- (h) public entertainment services as an actor, musician, or singer: 15
- (i) the manufacture of clothing, footwear, or textiles:
- (j) telemarketing services:
- (k) market research services:
- (l) licensed security guard services under the Private Security Personnel and Private Investigators Act 2010: 20
- (m) services in the forestry industry related to planting, pruning, or felling:
- (n) truck-driving services delivering goods.