

Sleepover Wages (Settlement) Bill

Government Bill

Explanatory note

General policy statement

The Sleepover Wages (Settlement) Bill implements a settlement agreement between the Crown, Idea Services Limited, Timata Hou Limited, and the Service and Food Workers Union Nga Ringa Tota for the payment of wages to employees in the health and disability sector who are allowed by their employer to sleep overnight at their workplace while on duty. The settlement agreement includes the payment of back wages for certain sleepovers performed by employees of Idea Services Limited and Timata Hou Limited. It also provides for a staged progression of payments for sleepovers performed by those employees towards the minimum hourly rate prescribed under the Minimum Wage Act 1983.

This Bill also provides a framework for the settlement of wages for other sleepovers in relation to other health and disability providers funded through Vote Health and, potentially, other sectors funded by the Crown, through an Order in Council process.

This Bill does not limit or affect the agreement dated 13 September 2011 between the Crown, Idea Services Limited, Phillip William Dickson, and the Service and Food Workers Union Nga Ringa Tota as it relates to the decision of the Court of Appeal in *Idea Services Limited v Phillip William Dickson* [2011] NZCA 14.

Clause by clause analysis

Clause 1 is the Title clause.

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

Part 1

Preliminary provisions

Clause 3 states the purposes of the Bill, which are—

- to facilitate the settlement of civil proceedings between certain parties about the payment of wages at the minimum rate prescribed under the Minimum Wage Act 1983 to employees who are allowed by their employer to sleep overnight at their workplace while on duty (**sleepovers**); and
- to provide for a staged progression towards full compliance with the Minimum Wage Act 1983 in respect of the wages payable to employees who perform sleepovers.

The Bill is intended to achieve these purposes by—

- giving legal effect to certain aspects of the terms of the settlement between those parties; and
- extinguishing certain claims for sleepover wages in respect of sleepovers performed before the Bill's commencement; and
- creating entitlements to back wages for certain sleepovers; and
- providing a process for the staged progression of payments towards the minimum hourly rate prescribed under the Minimum Wage Act 1983 for sleepovers performed after 1 July 2011; and
- providing a mechanism for extending the application of *subparts 1 and 2 of Part 2* of the Bill to other employers and their employees; and
- preserving the agreement dated 13 September 2011 between the Crown, Idea Services, Phillip William Dickson, and the Service and Food Workers Union Nga Ringa Tota as it relates to the decision of the Court of Appeal in *Idea Services Limited v Phillip William Dickson* [2011] NZCA 14.

Clause 4 defines various terms used in the Bill. Some key terms are—

- **claim for sleepover wages**, which means an action for the recovery of sleepover wages commenced in the Employment Relations Authority in accordance with section 11 of the Minimum Wage Act 1983:
- **disability support services** and **health services**, which have the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000:
- **sleepover**, which means a period of time spent by an employee overnight during which the employee, under the terms of his or her contract of service, is—
 - required to be at the employee’s workplace; and
 - allowed to sleep at the workplace while on duty; and
 - required to be available to attend to his or her duties during the course of the night as necessary:
- **sleepover wages**, which means wages in respect of a sleepover payable under the Minimum Wage Act 1983 and includes, as the context requires, wages in respect of a sleepover payable under the Bill:
- **wages**, which includes back wages and productivity or incentive-based payments, but does not include—
 - non-taxable allowances paid by an employer to an employee; or
 - any payment of an employer contribution to a superannuation scheme for the benefit of an employee.

Clause 5 provides that the Bill binds the Crown.

Clause 6 explains the relationship between the Bill and other law. It provides that the Bill applies despite anything to the contrary in the Minimum Wage Act 1983, any other enactment, or any rule of law.

Clause 7 provides that the Bill expires after 5 years after the date on which it comes into force and Orders in Council made under it are revoked at the same time (unless they are revoked sooner). Under section 17(2) of the Interpretation Act 1999, the repeal (which includes expiry) of an enactment does not revive any thing that is not in force or existing at the time the repeal takes effect. Accordingly, the expiry of the Bill will not revive any claims for sleepover wages

that are extinguished by the Bill and that no longer exist when the Bill expires.

Part 2 Sleepover wages

Subpart 1—Extinguishing claims for sleepover wages

Subpart 1 (clauses 8 to 11) relates to claims for sleepover wages.

Clause 8 provides that *subpart 1* applies to—

- Idea Services Limited (**Idea Services**) and Timata Hou Limited (**Timata Hou**), which are both in statutory management; and
- any employer who provides health services or disability support services and is funded through Vote Health (other than Idea Services or Timata Hou); and
- each employee of Idea Services, Timata Hou, or the other employer who performed a sleepover.

Clause 9 provides that a claim for sleepover wages in respect of a sleepover performed before the Bill comes into force by an employee of Idea Services or Timata Hou—

- is unenforceable and of no effect; and
- must be treated as if it had been withdrawn.

Clause 10 provides that a claim for sleepover wages lodged after 5 pm on 2 September 2011 in respect of a sleepover performed before the Bill comes into force by an employee of any other employer in the health and disability sector—

- is unenforceable and of no effect; and
- must be treated as if it had been withdrawn.

Clause 11 explains how *subpart 1* affects other civil proceedings.

Subpart 2—Settlement relating to Idea Services and Timata Hou

Preliminary

Subpart 2 (clauses 12 to 22) deals with the settlement relating to Idea Services and Timata Hou.

Clause 12 provides that *subpart 2* applies only to—

- Idea Services and Timata Hou; and
- each employee of Idea Services and Timata Hou who performs or performed a sleepover.

Clause 13 explains the effect of *subpart 2* on civil proceedings.

Back wages for sleepover

Clauses 14 to 16 create entitlements for current, recent, and historic employees of Idea Services or Timata Hou to be paid back wages for sleepovers performed during certain periods.

Clause 17 clarifies that current, recent, and historic employees of Idea Services or Timata Hou may be entitled to payments for back wages under any or all of *clauses 14 to 16*.

Clause 18 clarifies that current, recent, and historic employees of Idea Services or Timata Hou are not entitled to back wages for a sleepover except as provided in *clauses 14 to 16*.

Clauses 19 and 20 set out the formula for calculating payments for back wages and state when back wages must be paid.

Staged progression to minimum wage

Clauses 21 and 22 provide for a staged progression towards the minimum hourly wage payable under the Minimum Wage Act 1983.

Clause 21 relates to the amount payable for sleepovers performed by employees of Idea Services or Timata Hou during the period beginning on 1 July 2011 and ending with the close of the day before the commencement of the Bill. It provides that the employee must be paid an amount calculated in accordance with the formula set out in *clause 19(1)*. *Subclause (2)* provides that payments for those sleepovers must be made by the employer no later than 2 months after the commencement of the Bill.

Clause 22 relates to the amount payable for sleepovers performed by employees of Idea Services or Timata Hou after the commencement of the Bill until the close of 30 June 2013.

Subclause (1) provides that—

- for a sleepover performed by an employee of Idea Services or Timata Hou in the period beginning on the commencement of the Bill and ending with the close of 30 June 2012, the em-

ployer must pay the employee 50% of the applicable minimum hourly rate that applies under the Minimum Wage Act 1983 (the **applicable minimum hourly rate**):

- for a sleepover performed by an employee of Idea Services or Timata Hou in the period beginning on 1 July 2012 and ending with the close of 24 December 2012, the employer must pay the employee 75% of the applicable minimum hourly rate;
- for a sleepover performed by an employee of Idea Services or Timata Hou in the period beginning on 25 December 2012 and ending with the close of 30 June 2013, the employer must pay the employee 100% of the applicable minimum hourly rate.

Subclause (2) provides that on and after 1 July 2013, the employer must pay an employee of Idea Services or Timata Hou for each hour of a sleepover performed by the employee at not less than the relevant minimum hourly rate that applies under the Minimum Wage Act 1983.

Subpart 3—Miscellaneous

Application of subparts 1 and 2 to other employers and other employers' employees

Clause 23 defines some terms used in *clauses 24 to 28*.

Clause 24 authorises the Governor-General, by Order in Council, to modify or extend *subparts 1 and 2*, or only *subpart 2*, to apply to the following (to whom those subparts do not, or that subpart does not, otherwise apply):

- any employer in the health and disability sector (other than Idea Services or Timata Hou) and any employer in any other employment sector funded through a Vote; and
- those other employers' employees.

Clause 25 describes the modifications and extensions that can be made to *subpart 1*.

Clause 26 describes the modifications and extensions that can be made to *subpart 2*.

Clause 27 sets out certain limitations on the modifications or extensions that can be made to *subparts 1 and 2*, or only to *subpart 2*, in cases where any other employer and that other employers' employees cannot reach a settlement.

Clause 28 sets out certain limitations on the modifications or extensions that can be made to *subparts 1 and 2*, or only to *subpart 2*, in relation to the health and disability sector.

Clause 29 provides that an Order in Council made under *clause 24* is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

Dispute resolution under Act

Clauses 30 to 32 set out a procedure for resolving disputes arising between an employee and that employee's employer about matters under the Bill, including disputes about entitlements to, or the calculation of, any sleepover wages payable under the Bill.

Clause 30 provides that if the parties are unable to resolve the dispute themselves, the dispute resolution mechanisms under the Employment Relations Act 2000 may be used, including mediation services provided under section 144 of that Act and recourse to the Employment Relations Authority (the **Authority**).

Clause 31 applies the provisions of the Employment Relations Act 2000 to proceedings commenced before the Authority to the extent that is necessary to resolve the dispute.

Clause 32 provides that an order made or judgment given by the Authority or the Employment Court under *clause 31* may be filed in the District Court for the purpose of enforcing it.

Enforcement of obligations under Act

Clause 33 provides that an employer who does not comply with any obligation imposed on the employer under the Bill is liable to a penalty imposed by the Authority under section 135 of the Employment Relations Act 2000, and the provisions of that section apply with any necessary modifications to the imposition and recovery of the penalty.

Savings

Clause 34 is a savings provision, which provides that nothing in the Bill limits or affects the agreement dated 13 September 2011 between the Crown, Idea Services Limited, Phillip William Dickson, and the Service and Food Workers Union Nga Ringa Tota as it relates to the

decision of the Court of Appeal in *Idea Services Limited v Phillip William Dickson* [2011] NZCA 14.

Hon Tony Ryall

Sleepover Wages (Settlement) Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Preliminary provisions		
3	Purposes	3
4	Interpretation	4
5	Act binds the Crown	6
6	Relationship between this Act and other law	6
7	Expiry	6
Part 2		
Sleepover wages		
Subpart 1—Extinguishing claims for sleepover wages		
<i>Preliminary</i>		
8	Application of this subpart	7
<i>Extinguishment</i>		
9	Certain claims for sleepover wages by employees of Idea Services and Timata Hou extinguished	7
10	Certain claims for sleepover wages by employees of other employers in health and disability sector extinguished	7
11	Effect of this subpart on other civil proceedings	8

Sleepover Wages (Settlement) Bill

	Subpart 2—Settlement relating to Idea Services and Timata Hou <i>Preliminary</i>	
12	Application of this subpart	8
13	Effect of this subpart on civil proceedings	9
	<i>Back wages for sleepover</i>	
14	Entitlement of current employees	10
15	Entitlement of recent employees	10
16	Entitlement of historic employees	10
17	Payments may be cumulative	11
18	Disentitlement to back wages for other sleepovers	11
19	Calculation of back wages	11
20	When back wages must be paid	12
	<i>Staged progression to minimum wage</i>	
21	Entitlement of employees to specified amount for sleepover performed immediately before commencement of this Act	12
22	Entitlement to be paid minimum hourly rates for sleepovers performed after commencement of this Act	12
	Subpart 3—Miscellaneous <i>Application of subparts 1 and 2 to other employers and other employers' employees</i>	
23	Definitions for sections 24 to 28	13
24	Power to extend subparts 1 and 2 to other employers and other employers' employees by Order in Council	13
25	Modifications or extensions to subpart 1	14
26	Modifications or extensions to subpart 2	14
27	Limitations on modifications or extensions to subparts 1 and 2 if settlement cannot be reached	15
28	Limitations on modifications or extensions to subparts 1 and 2 in relation to health and disability sector	15
29	Application of Acts and Regulations Publication Act 1989 and Regulations (Disallowance) Act 1989	16
	<i>Dispute resolution under Act</i>	
30	Access to mediation services or Employment Relations Authority	16
31	Application of Employment Relations Act 2000	17
32	Enforcement of orders and judgments	17

	<i>Enforcement of obligations under Act</i>	
33	Penalty for non-compliance	18
	<i>Savings</i>	
34	Savings	18

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Sleepover Wages (Settlement) Act **2011**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Preliminary provisions

- 3 Purposes**
- (1) The purposes of this Act are—
- (a) to facilitate the settlement of civil proceedings between certain parties about the payment of wages at the minimum rate prescribed under the Minimum Wage Act 1983 to employees who are allowed by their employer to sleep overnight at their workplace while on duty; and 10
- (b) to provide for a staged progression towards full compliance with the Minimum Wage Act 1983 in respect of the wages payable to certain employees who perform sleepovers. 15
- (2) To those ends, this Act—
- (a) gives legal effect to certain aspects of the terms of the settlement of the parties referred to in **subsection (1)(a)**; and 20
- (b) extinguishes certain claims for sleepover wages in respect of sleepovers performed before the commencement of this Act; and 25
- (c) creates entitlements to back wages for certain sleepovers; and

- (d) provides for a staged progression of payments for sleepovers towards the minimum hourly rate prescribed under the Minimum Wage Act 1983; and
- (e) provides a mechanism for extending the application of **subparts 1 and 2 of Part 2** to other employers funded through a Vote and those employers' employees to enable, among other things, disputes that involve the same, or substantially the same, issue as that described in **subsection (1)(a)** to be settled; and 5
- (f) preserves the agreement dated 13 September 2011 between the Crown, Idea Services Limited, Phillip William Dickson, and the Service and Food Workers Union Nga Ringa Tota as it relates to the decision of the Court of Appeal in *Idea Services Limited v Phillip William Dickson* [2011] NZCA 14. 10 15

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- applicable minimum hourly rate** has the meaning given to it by **section 19(2)**
- back wages** means wages payable by an employer relating to a past period of time 20
- claim for sleepover wages** means an action for the recovery of sleepover wages commenced in the Employment Relations Authority in accordance with section 11 of the Minimum Wage Act 1983 25
- current employee**, in relation to an employer, means an employee who is employed by that employer on the commencement of this Act
- disability support services** has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000 30
- employee** means a person of any age employed to do any work for hire or reward under a contract of service
- employer** means a person employing any employee or employees 35
- employer in the health and disability sector** means any employer who provides health services or disability support ser-

vices and is funded through Vote Health (other than Idea Services or Timata Hou)

Employment Court means the Employment Court established by section 186 of the Employment Relations Act 2000

Employment Relations Authority or **Authority** means the Employment Relations Authority established by section 156 of the Employment Relations Act 2000 5

health services has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

historic employee, in relation to an employer, means an employee who ceased employment with that employer at any time during the period beginning on 1 June 2004 and ending with the close of 30 June 2005 10

Idea Services means Idea Services Limited (in statutory management) 15

recent employee, in relation to an employer, means an employee who ceased employment with that employer at any time during the period beginning on 1 July 2005 and ending with the close of the day before the commencement of this Act

settlement, except in **section 30(3)**, means a settlement in respect of sleepover wages 20

sleepover means a period of time spent by an employee overnight during which the employee, under the terms of his or her contract of service, is—

- (a) required to be at the employee's workplace; and 25
- (b) allowed to sleep at the workplace while on duty; and
- (c) required to be available to attend to his or her duties during the course of the night as necessary

sleepover wages—

- (a) means wages in respect of a sleepover payable under the Minimum Wage Act 1983; and 30
- (b) includes, as the context requires, wages in respect of a sleepover payable under this Act

Timata Hou means Timata Hou Limited (in statutory management) 35

Vote has the same meaning as in section 2(1) of the Public Finance Act 1989

wages—

- (a) includes—
 - (i) back wages:
 - (ii) productivity or incentive-based payments; but
- (b) does not include— 5
 - (i) non-taxable allowances paid by the employer to the employee:
 - (ii) any payment of an employer contribution to a superannuation scheme for the benefit of the employee 10

workplace has the same meaning as in section 5 of the Employment Relations Act 2000.

- (2) A reference in this Act to an employee in relation to the payment of any sleepover wages under this Act must, unless the context otherwise requires, be taken to include a person who, at the time that the payment is required to be made under this Act,— 15
 - (a) is entitled to the payment; but
 - (b) has ceased to be in the employment of the employer concerned. 20

5 Act binds the Crown
This Act binds the Crown.

- 6 Relationship between this Act and other law**
This Act applies despite anything to the contrary in the following: 25
- (a) the Minimum Wage Act 1983:
 - (b) any other enactment:
 - (c) any rule of law.

- 7 Expiry** 30
- (1) This Act expires on the close of the day that is 5 years after the date of its commencement.
 - (2) On the expiry of this Act, Orders in Council made under **section 24**, and in force immediately before that expiry, are revoked.

Part 2
Sleepover wages

Subpart 1—Extinguishing claims for
sleepover wages

Preliminary 5

8 Application of this subpart

- (1) This subpart applies to—
 - (a) the following employers:
 - (i) Idea Services:
 - (ii) Timata Hou: 10
 - (iii) any employer in the health and disability sector; and
 - (b) each employee of the employers referred to in **paragraph (a)** who performed a sleepover.
- (2) **Subsection (1)** is subject to— 15
 - (a) **section 24** (which provides a mechanism for extending the application of this subpart by Order in Council to other employers funded through a Vote and those other employers’ employees); and
 - (b) **section 34** (which is a savings provision). 20

Extinguishment

9 Certain claims for sleepover wages by employees of Idea Services and Timata Hou extinguished

On the commencement of this Act, a claim for sleepover wages in respect of a sleepover performed before the commencement of this Act by an employee of Idea Services or Timata Hou— 25

- (a) is unenforceable and of no effect; and
- (b) must be treated as if it had been withdrawn.

10 Certain claims for sleepover wages by employees of other employers in health and disability sector extinguished 30

On the commencement of this Act, a claim for sleepover wages lodged after 5 pm on 2 September 2011 in respect of a sleepover performed before the commencement of this Act by an employee of any employer in the health and disability sector—

- (a) is unenforceable and of no effect; and 35

- (b) must be treated as if it had been withdrawn.

11 Effect of this subpart on other civil proceedings

- (1) On and from the commencement of this Act, an employee to whom this subpart applies—
- (a) cannot name, join, or seek to name or join the employee’s employer, the Crown, or any other person as a defendant or a third party or subsequent party in—
- (i) any claim for sleepover wages in respect of a sleepover that is, could be, or could have been the subject of a claim for sleepover wages extinguished under **section 9 or 10**; or
- (ii) any other civil proceedings relating to liability for sleepover wages in respect of that sleepover; and
- (b) cannot apply in any civil proceedings for any remedy or relief from the employee’s employer, the Crown, or any other person in relation to any sleepover wages in respect of a sleepover that is, could be, or could have been the subject of a claim for sleepover wages extinguished under **section 9 or 10**.
- (2) This section is subject to **section 13(2) and (3)**.

Subpart 2—Settlement relating to Idea Services and Timata Hou

Preliminary

- 12 Application of this subpart**
- (1) This subpart applies only to—
- (a) the following employers:
- (i) Idea Services;
- (ii) Timata Hou; and
- (b) each employee of Idea Services or Timata Hou who performs or performed a sleepover.
- (2) **Subsection (1)** is subject to—
- (a) **section 24** (which provides a mechanism for extending the application of this subpart by Order in Council to other employers funded through a Vote and those other employers’ employees); and

(b) **section 34** (which is a savings provision).

13 Effect of this subpart on civil proceedings

- (1) On and from the commencement of this Act, an employee to whom this subpart applies—
 - (a) cannot name, join, or seek to name or join the employee’s employer, the Crown, or any other person as a defendant or a third party or subsequent party in—
 - (i) any claim for sleepover wages in respect of a sleepover to which the employee is, could be, or could have been entitled under this subpart; or
 - (ii) any other civil proceedings relating to liability for sleepover wages in respect of that sleepover; and
 - (b) cannot apply in any civil proceedings for any remedy or relief from the employee’s employer, the Crown, or any other person in relation to any sleepover wages in respect of a sleepover to which the employee is, could be, or could have been entitled under this subpart.
- (2) This section does not limit or prevent an action by an employee to whom this subpart applies for—
 - (a) the recovery of sleepover wages in respect of a sleepover to which the employee is entitled under this subpart; or
 - (b) the enforcement of any obligation imposed on an employer by this subpart.
- (3) This section—
 - (a) does not limit or affect any agreement entered into between the Crown and any person in relation to all or any of the matters dealt with by this Act; and
 - (b) does not prevent any of the parties to the agreement commencing any proceedings in relation to—
 - (i) the interpretation or implementation of the agreement; or
 - (ii) the enforcement of any obligation imposed on a party to the agreement.

*Back wages for sleepover***14 Entitlement of current employees**

- (1) A current employee to whom this subpart applies is entitled to be paid back wages for a sleepover if the employee—
- (a) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
 - (b) lodged a claim for sleepover wages by 5 pm on 2 September 2011.
- (2) The amount of back wages payable to the current employee under **subsection (1)** is the amount calculated in accordance with the formula set out **section 19(1)**.

15 Entitlement of recent employees

- (1) A recent employee to whom this subpart applies is entitled to be paid back wages for a sleepover if the employee—
- (a) performed the sleepover during the period beginning on 1 July 2005 and ending with the close of 30 June 2011; and
 - (b) lodged a claim for sleepover wages by 5 pm on 2 September 2011.
- (2) The amount of back wages payable to the recent employee under **subsection (1)** is the amount calculated in accordance with the formula set out in **section 19(1)**.

16 Entitlement of historic employees

- (1) A historic employee to whom this subpart applies is entitled to be paid back wages for a sleepover if the employee—
- (a) performed the sleepover no earlier than 1 June 2004 during the 6-year period immediately before the date on which the employee lodged a claim for sleepover wages; and
 - (b) lodged that claim by 5 pm on 2 September 2011.
- (2) The amount of back wages payable to the historic employee under **subsection (1)** is the amount calculated in accordance with the formula set out in **section 19(1)**.

- 17 Payments may be cumulative**
 To avoid doubt, an employee to whom this subpart applies may be entitled to payments for back wages under any or all of **sections 14 to 16**.
- 18 Disentitlement to back wages for other sleepovers** 5
 To avoid doubt, an employee to whom this subpart applies is not entitled to back wages for a sleepover except as provided in **sections 14 to 16**.
- 19 Calculation of back wages**
 (1) Any back wages for a sleepover payable under any of **sections 14 to 16** must be calculated in accordance with the following formula: 10
- $$(((a \times 9) - b) + c) \times 0.50 = d$$
- where—
- a is the applicable minimum hourly rate 15
 - b is the amount of taxable allowances actually paid by the employer to the employee to whom this subpart applies for the sleepover
 - c in relation to the sleepover, is the difference between—
 - (a) the amount the employer would have paid in respect of annual holidays taken by the employee to whom this subpart applies had the applicable minimum hourly rate been paid for the sleepover; and 20
 - (b) the amount actually paid by the employer to the employee to whom this subpart applies in respect of annual holidays taken by the employee 25
 - d is the gross amount of back wages payable to an employee to whom this subpart applies before tax is withheld. 30
- (2) In **subsection (1)**, **applicable minimum hourly rate** means the minimum hourly rate of wage prescribed under section 4 of the Minimum Wage Act 1983 that applied at the time the employee to whom this subpart applies performed the sleepover. 35

20 When back wages must be paid

An employer must pay any back wages for a sleepover that are payable to an employee to whom this subpart applies no later than 2 months after the date of commencement of this Act.

Staged progression to minimum wage 5

21 Entitlement of employees to specified amount for sleepover performed immediately before commencement of this Act

(1) During the period beginning on 1 July 2011 and ending with the close of the day before the commencement of this Act, an employer must pay an employee to whom this subpart applies an amount calculated in accordance with the formula set out in **section 19(1)** (which applies with any necessary modifications) for each sleepover that the employee performed during that period. 10 15

(2) An employer must pay any amount payable to the employee under **subsection (1)** no later than 2 months after the date of commencement of this Act.

22 Entitlement to be paid minimum hourly rates for sleepovers performed after commencement of this Act 20

(1) An employer must pay an employee to whom this subpart applies for each hour of sleepover that the employee performs during the period specified in the first column of the following table at the minimum hourly rate opposite that period specified in the second column of the following table: 25

Specified period	Minimum hourly rate
Period beginning on the commencement of this Act and ending with the close of 30 June 2012	50% of the applicable minimum hourly rate
Period beginning on 1 July 2012 and ending with the close of 24 December 2012	75% of the applicable minimum hourly rate
Period beginning on 25 December 2012 and ending with the close of 30 June 2013	100% of the applicable minimum hourly rate

(2) On and after 1 July 2013, an employer must pay an employee to whom this subpart applies for each hour of a sleepover per-

- formed by the employee at not less than the rate of minimum hourly wage that applies under the Minimum Wage Act 1983.
- (3) To avoid doubt, this section does not limit or affect any deductions that may lawfully be made to an amount payable under **subsection (1) or (2)**. 5

Subpart 3—Miscellaneous

Application of subparts 1 and 2 to other employers and other employers' employees

- 23 Definitions for sections 24 to 28** 10
 In **sections 24 to 28**,—
other employer means—
 (a) any employer in the health and disability sector;
 (b) any employer in any other employment sector funded through a Vote
other employer's employees means any employees of the other employer who perform or performed sleepovers 15
relevant Minister means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Vote that is most closely connected with funding the services provided by the other employer. 20
- 24 Power to extend subparts 1 and 2 to other employers and other employers' employees by Order in Council**
- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister after consultation with the Minister of Labour, extend both **subparts 1 and 2**, or only **subpart 2**, to apply to the following (to whom those subparts do not, or that subpart does not, otherwise apply): 25
 (a) any other employer; and
 (b) that other employer's employees.
- (2) An Order in Council made under **subsection (1)** may, subject to **section 25, 26, 27, or 28** (as the case may be), modify or extend any provisions of **subparts 1 and 2** for either or both of the purposes stated in **section 3(1)** as if they related to the other employer and that other employer's employees. 30
- (3) An Order in Council made under **subsection (1)**— 35

- (a) may specify a date in accordance with **section 25(b) or 26(a)** that is before, on, or after the date on which the Order in Council comes into force; but
- (b) may be retrospective only to the extent provided in **paragraph (a)**.

5

25 Modifications or extensions to subpart 1

In order to give effect to a proposed settlement between any other employer and that other employer's employees, a modification or extension of a provision in **subpart 1** may do 1 or more of the following:

10

- (a) extend the application of that subpart by declaring the other employer to be an employer to which that subpart applies:
- (b) specify different dates or different requirements in relation to the extinguishment of claims for sleepover wages made by the other employer's employees:
- (c) in relation to an employer in the health and disability sector, make any modifications to extend the effect of **section 9** to that employer.

15

26 Modifications or extensions to subpart 2

20

In order to give effect to a proposed settlement between any other employer and that other employer's employees, a modification or extension of a provision in **subpart 2** may do 1 or more of the following:

- (a) specify different dates by which claims for sleepover wages must be made in order for the other employer's employees to be entitled to back wages: 25
- (b) substitute different periods of sleepovers performed by the other employer's employees in respect of which back wages are payable: 30
- (c) prescribe a different formula or method for calculating back wages for those sleepovers:
- (d) provide a different process for achieving a staged progression to the minimum hourly rate of wage that applies under the Minimum Wage Act 1983 for the other employer's employees. 35

- 27 Limitations on modifications or extensions to subparts 1 and 2 if settlement cannot be reached**
- (1) This section applies if a settlement between any other employer and that other employer’s employees cannot be reached. 5
- (2) If this section applies,—
- (a) the relevant Minister must not recommend the making of an Order in Council under **section 24** that modifies or extends **subparts 1 and 2**, or only **subpart 2**, unless the relevant Minister is satisfied that the recommendation has the support of the parliamentary leaders of the political parties represented in Parliament that together command a simple majority in the House of Representatives; and 10
- (b) a modification or extension of a provision in **subpart 2** may only provide for the matter specified in **section 26(d)** if the effect of the modification or extension is that the other employer’s employees will receive payment for a sleepover at not less than the rate they were receiving from the other employer immediately before the Order in Council is made. 15 20
- 28 Limitations on modifications or extensions to subparts 1 and 2 in relation to health and disability sector**
- Despite **sections 25 and 26**, a modification or extension of **subparts 1 and 2**, or only **subpart 2**, that relates to any employer in the health and disability sector and that employer’s employees must not do any of the following: 25
- (a) amend the formula for calculating back wages set out in **section 19(1)** unless the amendment relates to specifying a different multiplier for variable “a” in order to reflect the number of hours of a sleepover performed by the other employer’s employees: 30
- (b) extend the deadline for paying 100% of the applicable minimum hourly rate to a date later than 30 June 2013: 35
- (c) substitute a different period within which back wages must be paid under **section 20** or within which the specified amount referred to in **section 21(1)** must be paid under **section 21(2)** unless the relevant Minister

- is satisfied that the proposed period has been agreed to by a simple majority of the other employer's employees:
- (d) provide for any of the matters specified in **section 25(b) or 26(a) or (b)**:
 - (e) provide a different process for the matter specified in **section 26(d)** if that process will result in the other employer's employees receiving payment for a sleepover at less than the rate they were receiving from the other employer as at 1 July 2011. 5
- 29 Application of Acts and Regulations Publication Act 1989 and Regulations (Disallowance) Act 1989** 10
- An Order in Council made under **section 24** is a regulation for the purposes of—
- (a) the Acts and Regulations Publication Act 1989; and
 - (b) the Regulations (Disallowance) Act 1989. 15
- Dispute resolution under Act*
- 30 Access to mediation services or Employment Relations Authority**
- (1) This section applies to a dispute between an employee and that employee's employer about— 20
 - (a) any entitlement to, or calculation of, any sleepover wages payable to the employee under this Act; or
 - (b) any failure by the employer to pay sleepover wages to which the employee is entitled under this Act.
 - (2) If the dispute is not disposed of between the employee and the employee's employer,— 25
 - (a) the parties may access mediation services provided under section 144 of the Employment Relations Act 2000 and, subject to **subsection (3)**, sections 145 to 154 of that Act apply to the mediation services provided to the parties: 30
 - (b) proceedings to resolve the dispute may be commenced before the Employment Relations Authority in accordance with section 158 of the Employment Relations Act 2000. 35

- (3) Despite **subsection (2)(a)**, section 148A(2) of the Employment Relations Act 2000 does not apply in relation to any agreed terms of settlement in which a party agrees to forgo all, or part, of that party's minimum entitlements to the extent permitted by this Act. 5
- (4) In **subsection (3)**, **minimum entitlements** has the same meaning as in section 5 of the Employment Relations Act 2000.
- 31 Application of Employment Relations Act 2000**
- (1) If proceedings are commenced before the Employment Relations Authority in accordance with **section 30(2)(b)**,— 10
- (a) the Authority has all the powers and functions it has under the Employment Relations Act 2000; and
- (b) the provisions of the Employment Relations Act 2000 and of any regulations made under that Act apply, with any necessary modifications, to the extent that those provisions are relevant to the resolution of the dispute. 15
- (2) Without limiting **subsection (1)**, the following provisions of the Employment Relations Act 2000 apply, with any necessary modifications, to the proceedings: 20
- (a) sections 157 to 160, 162 to 165, and 173 to 176 (which relate to the role, functions, duties, and powers of the Authority):
- (b) sections 177 to 184 and 188 to 199 (which relate to the referral of questions of law, challenges to determinations of the Employment Relations Authority, the removal of proceedings to the Employment Court, and provisions applying to the Employment Court): 25
- (c) sections 214 to 215 (which relate to appeals to the Court of Appeal and Supreme Court on questions of law). 30
- 32 Enforcement of orders and judgments**
- An order made or judgment given by the Employment Relations Authority or the Employment Court under **section 31** may be filed in any District Court and is then enforceable in the same manner as an order made or judgment given by the District Court. 35

*Enforcement of obligations under Act***33 Penalty for non-compliance**

- (1) An employer who fails to comply with an obligation imposed on the employer by this Act is liable to a penalty imposed by the Employment Relations Authority. 5
- (2) Section 135 of the Employment Relations Act 2000 applies, with any necessary modifications, to the imposition and recovery of a penalty imposed under **subsection (1)**.

*Savings***34 Savings** 10

Nothing in this Act limits or affects the agreement dated 13 September 2011 between the Crown, Idea Services, Phillip William Dickson, and the Service and Food Workers Union Nga Ringa Tota as it relates to the decision of the Court of Appeal in *Idea Services Limited v Phillip William Dickson* [2011] NZCA 14. 15
