



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Minimum Wage (Contractor Remuneration) Amendment Bill

24/09/2015

SUBMISSION ON THE MINIMUM WAGE (CONTRACTOR REMUNERATION) AMENDMENT BILL

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Minimum Wage (Contractor Remuneration) Amendment Bill (Bill). The Law Society's comments focus on the provisions of the Bill relating to capped hours and multiple recovery rights.

Capped Hours

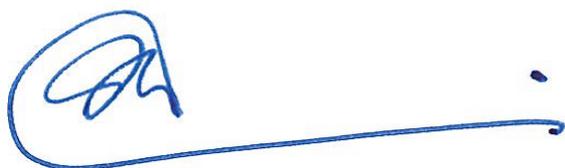
2. The purpose of the Bill, as stated in the Explanatory Note, is for contractors for specified services to be paid not less than a minimum rate, equivalent to the minimum wage.
3. The Bill, and in particular difficulties with keeping records in a contracting environment, may have the effect of limiting the types of contracts for services that principals are willing to enter into, and may affect flexibility, access and productivity. The Law Society identifies these effects (without expressing a view on them), for the purpose of ensuring they have been considered and weighed against the considerations favouring a minimum rate.

Where no time for completion is stated in the contract

4. Under proposed section 8B(2)(d), where the contract for services does not state the amount of time the specified person will take to provide the services, the principal must keep a record of hours during which the person provides the services. However, principals have limited powers of supervision or control over contractors' work due to the inherent nature of contracting, and maintaining such records is likely to be difficult. The enactment of these provisions is therefore likely to result in principals imposing specified hours for completion of contracts for services and there being fewer contracts for services at fixed amounts of remuneration. In addition to affecting the general flexibility of contracting, this may preclude parties who are unable (or unwilling) to carry out the contract within the stated hours. Alternatively, contractors may work longer than the hours stated in the contract simply so they can secure the contract, or subsequent contracts, effectively bringing the hourly rate below the minimum rate of remuneration.
5. The difficulties in keeping time records may also lead to a reduction in the type of contracting arrangements that involve "overs and unders" and piece rates. As these contracts incentivise a contractor to provide a service as quickly and efficiently as possible, the effect may be a reduction in the quality and efficiency of such contracted services.
6. The cost represented by these consequences may however be justified by the considerations favouring a "minimum wage" equivalent in the contracting context.

Multiple Recovery Rights

7. Under proposed section 11AB(2), the specified person or a Labour Inspector may commence recovery action in the Employment Relations Authority (ERA). Under proposed section 11AB(3)(a), this action does not affect other remedies for the recovery of minimum remuneration. Generally, employees are required to pursue matters through the exclusive jurisdiction of the ERA or the Employment Court. There is the exception where employees can pursue matters under the Human Rights Act 1993 but they must make an election as to which path they choose. Whilst a specified person would not be able to recover more than they had lost, under the proposals in the Bill they could initiate two or more recovery actions and wait and see which path led to the quickest or best outcome. This is not a desirable outcome. The Law Society recommends that the specified person is required to make an election as to which path they choose.
8. The Law Society wishes to be heard.



Allister Davis

Vice President

24 September 2015