

Minimum Wage (Contractor Remuneration) Amendment Bill

12 June 2015

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Minimum Wage (Contractor Remuneration) Amendment Bill

Purpose

1. We have considered whether the Minimum Wage (Contractor Remuneration) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

3. The purpose of the Bill is to amend the Minimum Wage Act 1983 ('the Act') to enable a minimum rate of remuneration for contractors providing certain services.
4. The Bill does this by providing that:
 - a. the Governor-General may prescribe the minimum rate of remuneration payable to specified persons for providing certain services (cl 7)
 - b. remuneration records are to be kept so that specified persons and Labour Inspectors may request access to them (cl 11), and
 - c. the provisions of the Employment Relations Act 2000 that relate to the recovery of minimum wages apply to the recovery of minimum remuneration (cls 12 & 13)

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

5. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression. The freedom of expression is "as wide as human thought and imagination" [1] and includes any activity which conveys or attempts to convey a meaning. [2]
6. The freedom of expression also includes the right to say nothing or the right not to say certain things. [3] Clause 11 inserts new s 8B of the Act which requires a person who engages a specified person under a contract of service to keep records of remuneration. This record must include information such as:
 - a. the specified person's name and postal address

- b. the kind of service the specified person is engaged to provide
- c. the remuneration paid to the specified person for the service and the method of calculation, and
- d. any other particulars prescribed.

7. New s 8C of the Act will enable the specified person or a Labour Inspector to request access to, or a copy of information in the remuneration record relating to a specified person.

8. To the extent the requirement to provide access to or copies of this information could be considered to engage the right to freedom of expression we consider the limitation is justified under s 5 of the Bill of Rights Act. This is because:

- a. the Bill serves an important objective – it seeks to give contractors the same right to a minimum rate of remuneration as employees
- b. there is a rational connection to the objective - the required information will enable the enforcement of compliance with the law
- c. the right is minimally limited - the information required is factual in nature and is limited only to what is necessary to achieve the purpose, and
- d. the limitation is in due proportion to the importance of the objective and is also consistent with the requirement to keep records for employees in s 8A of the Act.

Conclusion

9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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Footnotes

[1] *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9, (1999) 5 HRNZ 224 (CA)

[2] *Irwin Troy Ltd v Attorney-General (Quebec)* [1989] 1 SC 927, 969 – 970 (SCC)

[3] *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).