

## ***Minimum Wage and Remuneration Amendment Bill***

16 August 2006

Attorney-General

### LEGAL ADVICE

#### CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: MINIMUM WAGE AND REMUNERATION AMENDMENT BILL

1. We have considered the Minimum Wage and Remuneration Amendment Bill ('the Bill'), a Member's Bill in the name of Darien Fenton MP, for consistency with the New Zealand Bill of Rights Act 1990. The Bill was introduced to the House of Representatives on 27 July 2006 and is currently awaiting its first reading. The next Members' Day is scheduled for 23 August 2006.
2. We have concluded that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act").
3. The purpose of the Bill is to amend the Minimum Wage Act 1983 in order 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.
4. The Bill proposes to amend the Minimum Wage Act 1983 to:
  - change its name into Minimum Wage and Remuneration Act 1983;
  - include the following definition: 'remuneration includes any payment made under a contract for services';
  - introduce a regulatory power for the Governor-General to prescribe the minimum rates of remuneration payable to persons working under a contract for services. Regulations made under this new power may define minimum rates of remuneration by reference to the age of the person performing the services or by piecework. Minimum rates of remuneration may be prescribed as a monetary amount or as a percentage of any other minimum rate of remuneration prescribed under this new power;
  - entitle every person in respect of whom a minimum rate of remuneration has been prescribed under the Act to receive payment for services at not less than that minimum rate, despite anything to the contrary in any enactment, agreement, or contract for services;
  - extend the penalty provision in section 10 of the Minimum Wage Act 1983 from every person who makes default in the full payment of any wages to every person that fails to fully pay the remuneration payable by that person;

- extend the application of the Employment Relations Act 2000, with the necessary modifications, to the recovery of minimum remuneration as if the minimum remuneration were minimum wages;
5. Clause 7 of the Bill proposes to insert a section 4A(1) that provides for a power of the Governor-General to prescribe minimum rates of remuneration payable to any person working under a contract for services. According to the proposed section 4A(2), regulations made under this new regulatory power may define minimum rates of remuneration, *inter alia*, by reference to the age of the person performing the services. We are of the view that this provision does not authorise the Governor-General to make orders that discriminate on the ground of age in a way that is prohibited by the Bill of Rights Act or the Human Rights Act 1993.
  6. Section 6 of the Bill of Rights Act requires that wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill of Rights Act, that meaning must be preferred to any other meaning. Therefore, section 4A(2) of the Bill would be interpreted as only authorising the making of orders that are consistent with the Bill of Rights Act.
  7. In accordance with your instructions we attach a copy of this opinion for referral to the Minister of Justice. Copies are also attached for referral to the Minister of Labour, and Darien Fenton MP, if you agree.

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