

Minimum Wage (Abolition of Age Discrimination) Amendment Bill

Member's Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Minimum Wage (Abolition of Age Discrimination) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

It was the purpose of this bill to amend the Minimum Wage Act 1983 (“the principal Act”) to end age-based discrimination in employment by removing the ability of the Governor-General, by Order in Council, to set minimum wage rates defined by reference to the age of workers.

Having considered this bill the majority of us believe the premise upon which it is based is right. The majority of us acknowledge, however, that the main argument in opposition to the bill—that youth workers on entering the workforce for the first time lack basic work skills and experience and therefore initially require more supervision and training than adult workers—has merit.

The majority of us, therefore, propose amendments to narrow the purpose of the bill by allowing for a “new entrants” minimum rate to be set by minimum wage order for 16–17-year-olds.

We recommend to the Minister of Labour that he or she, when reviewing minimum wages at the end of the year, consider introducing a new entrants' minimum rate that will—

- apply for the first 200 hours of employment, which may be accumulated across several different employers, for 16–17-year-olds
- be set at a minimum of 80 percent of the adult minimum wage
- not apply to young people employed as supervisors.

Amendments

Title

To reflect the narrowing of the purpose of the bill the majority of us recommend that clause 1, the title clause, be amended to change the name of the bill from the “Minimum Wage (Abolition of Age Discrimination) Amendment Bill” to the “Minimum Wage (New Entrants) Amendment Bill”.

Commencement

The majority of us recommend the amendment of clause 2, the commencement clause, so that the changes to the principal Act would come into force on 1 April 2008 instead of 30 days after the date on which Royal assent is given.

This would allow a new entrants' minimum rate to be implemented at the same time as any other changes to the minimum wage resulting from the 2007 minimum wage review. This would give businesses time to make any necessary changes and might reduce compliance costs as they implement the new rate at the same time as any other changes resulting from the 2007 minimum wage review.

Purpose

The majority of us recommend that clause 3, the purpose clause, be amended to reflect the narrowing of the purpose of the bill by the introduction of a new entrants' minimum rate.

The introduction of a new entrants' minimum rate

This bill was intended to remove the power of the Governor-General, by Order in Council, to set minimum wage rates defined by reference to the age of workers, by repealing section 4(1)(a) of the principal Act. We have been advised that the repealing of this

section would also remove the power to set the adult minimum wage, as this is an age-based rate, allowing only minimum training wages to be set.

The majority of us recommend that section 4(1)(a) be retained, to allow age-based rates, such as the adult minimum wage, to continue to be set in the normal fashion, but that section 4 of the principal Act be amended to allow a new entrants' minimum rate to be set.

To effect this change the majority of us recommend repealing section 4 and inserting a new section 4, which includes a new paragraph (1)(b) and new subsections (2), (3), and (4). The current section 4(1)(b), which sets minimum training rates, would be retained as new section 4(1)(c).

Proposed new section 4(1)(b) allows the Governor-General, by Order in Council, to set a new entrants' minimum rate for 16–17-year-olds and establish criteria related to employment experience, such as a worker's length of service and the position held, in a minimum wage order. We recommend that the Minister of Labour, when reviewing minimum wages at the end of the year, consider introducing a new entrants' minimum rate that applies for the first 200 hours of employment on or after an employee's 16th birthday and that the rate would not apply to 16–17-year-olds employed in supervisory positions.

Proposed new section 4(2) reflects the current section 4(2) with minor drafting changes. This section prescribes that the minimum rate set under section 4(1) may be a monetary amount or a percentage of any other minimum rate prescribed such as the adult minimum wage.

Proposed new section 4(3) provides that a new entrants' minimum rate must not be less than 80 percent of the minimum wage for workers aged 18 years.

Proposed new section 4(4) allows the Governor-General, by Order in Council, to specify the extent to which the criteria in the minimum wage order may be satisfied by circumstances occurring before the order is made. For example, this would allow a minimum wage order to provide that 16–17-year-olds currently in employment can count the number of hours they have already completed since their 16th birthday and before the commencement date of the minimum wage order towards a 200-hour requirement for the new entrants' minimum rate. Under such a minimum wage order, if a young

person had been employed for 200 or more hours after turning 16 and before the commencement date of a minimum wage order setting a new entrants' minimum rate, then he or she would have met the 200 hours requirement and his or her employer would be required to pay him or her at least the minimum wage that applies to 18-year-old workers.

Deletion of the Schedule

The Schedule made consequential amendments to the minimum wage order to give effect to the changes to the principal Act on the commencement date. As it is now intended that the changes to the principal Act will come into force at the same time as any other changes to minimum wages resulting from the 2007 minimum wage review there is no need for such consequential amendments.

National Party view

National believes that this bill will not work for youth or employers. There is the potential to create a perverse incentive whereby 16–17-year-old youths will choose to go into employment rather than continue with their secondary education. At a time when many youths are choosing to leave school earlier than they should we believe that this perverse incentive will only exacerbate the problem of youths leaving without a complete high school education.

National welcomes the fact that many employers pay above the minimum wage to youths. We are, however, concerned that this bill may act to price young persons out of the market in some cases. We believe that there are employers who will only take young persons on as workers because the lower wage rate allows them to afford to employ an extra person. This bill will be a barrier for employers to hire young persons in these scenarios.

Green Party view

The Green Party does not support the amendments made to the bill by the select committee. The bill's original purpose was to end age-based discrimination in employment.

Instead, this revised version of the bill and the majority commentary introduce a new form of discrimination in the form of a 200 hour "new entrants" minimum wage for 16–17-year-old workers set at the same rate as the current youth minimum.

We do not support this on a number of grounds including:

- young workers are often part time and casual and therefore could be up to nine months in one job before they achieve the 200 hours
- young people often have many hours work experience before they turn 16; this is not taken into account
- this will add to the compliance burden for employers
- this amendment is unlikely to meet Bill of Rights compliance
- it overturns the original purpose of the bill.

Appendix

Committee process

The Minimum Wage (Abolition of Age Discrimination) Amendment Bill was referred to the committee on 22 February 2006. The closing date for submissions was 21 April 2006. We received and considered 81 submissions from interested groups and individuals. We heard 48 submissions, which included holding hearings in Auckland.

We received advice from the Department of Labour.

Committee membership

Hon Mark Gosche (Chair)

Hon Maurice Williamson (Deputy Chair)

David Bennett

Peter Brown

Darien Fenton

Sue Moroney

Lesley Soper

Hon Judith Tizard

Kate Wilkinson

Pansy Wong

**Minimum Wage (Abolition of
Age Discrimination) Amendment**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Sue Bradford

**Minimum Wage *<(Abolition of Age
Discrimination)> <(New Entrants)>*
Amendment Bill**

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Minimum Wage *<(Abolition of Age Discrimi-
nation)> <(New Entrants)>* Amendment Act **2005**.

Struck out (majority)

- (2) In this Act, the Minimum Wage Act 1983¹ is called “the principal Act”.

¹ 1983 No 115

2 Commencement

This Act comes into force *<30 days after the date on which it
receives the Royal assent> <on 1 April 2008>*.

New (majority)

2A Principal Act amended

This Act amends the Minimum Wage Act 1983.

10

Struck out (majority)

3 Purpose

The purpose of this Act is to amend the principal Act to end age discrimination in employment by removing the ability of the Governor-General in Council to set minimum wage rates defined by reference to the age of workers.

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New (majority)

3 Purpose

The purpose of this Act is to amend the principal Act to provide expressly for a minimum rate of wages to be prescribed for new entrants, being workers who—

- (a) are 16 or 17 years of age; and
- (b) meet certain criteria.

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Struck out (majority)

4 Prescription of minimum wages

Section 4(1) of the principal Act is amended by—

- (a) omitting the words “either or both of the following”; and
- (b) repealing paragraph (a).

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New (majority)

4 Prescription of minimum wages

Section 4(1) and (2) are repealed and the following subsections substituted:

“(1) The Governor-General may, by Order in Council, prescribe the minimum rate of wages payable to—

20

“(a) 1 or more classes of workers—

“(i) defined in the order by reference to the age of the workers; and

“(ii) to whom **paragraph (b) or (c)** does not apply:

25

“(b) workers who are new entrants, being workers who—

“(i) are 16 or 17 years of age; and

New (majority)

- “(ii) meet criteria specified in the order relating to their employment experience, such as—
- “(A) a worker’s length of employment service:
 - “(B) whether a worker has completed any specified length of employment service with 1 or more employers: 5
 - “(C) the position held by a worker:
- “(c) 1 or more classes of workers—
- “(i) defined in the order; and
 - “(ii) who are employed under contracts of service under which they are required to undergo training, instruction, or examination for the purpose of becoming qualified for the occupation to which their contract of service relates. 10
- “(2) A minimum rate of wages prescribed under **subsection (1)** may be prescribed as— 15
- “(a) a monetary amount; or
 - “(b) a percentage of any other minimum rate prescribed under **subsection (1)**.
- “(3) However, a minimum rate prescribed for the purposes of **subsection (1)(b)** must not be less than 80% of any rate prescribed for the purposes of **subsection (1)(a)** that applies to workers who are 18 years of age. 20
- “(4) To avoid doubt, an order made under **subsection (1)(b)** may specify the extent to which the criteria specified in the order may be satisfied by circumstances occurring before the order is made.” 25

Struck out (majority)

- 5 Consequential amendments to Minimum Wage Order 2005**
- The Minimum Wage Order 2005 is consequentially amended in the manner indicated in the Schedule. 30

Struck out (majority)

s 5 **Schedule**
**Consequential amendments to Minimum Wage
Order 2005**

Regulation 2

- (a) Amend the definition of **adult worker** by omitting the expres- 5
sion “18” and substituting the expression “16”; and
- (b) Revoke the definition of **youth worker**.

Regulation 5

Revoke regulation 5.

Legislative history

7 December 2005	Introduction (Bill 9–1)
22 February 2006	First reading and referral to Transport and Industrial Relations Committee
21 August 2006	Discharged from Transport and Industrial Relations Committee
30 August 2006	Referral to Transport and Industrial Relations Committee

