

Minimum Wage (Contractor Remuneration) Amendment Bill

Submission to the Transport and Industrial Relations
Committee

Date: 24 September 2015

Contact

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 46,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces Te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse.*

EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on Minimum Wage (Contractor Remuneration) Amendment Bill ("the Bill") which provides valuable protections, including a minimum remuneration rate, for vulnerable workers.
2. This submission is informed by members and staff of NZNO, including College and Section members, Te Rūnanga o Aotearoa, and professional nursing, policy and industrial advisers.
3. The Bill will affect NZNO's members both directly as providers of "personal home-care support to an individual in their house", and indirectly, through the impact it will have on "cleaning and food catering services", which are critical to their delivery of health care.
4. NZNO supports the Bill.
5. NZNO is affiliated to the New Zealand Council of Trade Unions, Te Kauae Kaimahi, and has contributed to, and supports, its comprehensive submission and the recommendations therein.

DISCUSSION

6. NZNO members both deliver and interact with those who deliver personal home care support. Health care assistants (HCA) or

‘Kaiāwhina’¹, have long been recognised as vulnerable workers because of their poor wages and conditions, lack of job security, and heavy workloads (New Zealand Human Rights Commission, 2012).

7. The Kaiāwhina workforce also reflects structural inequities in the disproportionate representation of women, Māori, Pacific, migrant and disadvantaged populations.
8. Their work can be difficult and demanding as they support those who are old, sick, and mentally or physically disabled, for very little reward and often with few alternative prospects.
9. Their skill and compassionate care makes a significance difference to the quality of many people’s lives, and their ability to live independently. Since we have an aging population their importance is likely to increase as in-home support care becomes more and more critical to “aging in place” strategies.
10. These workers, who unfortunately represent an increasing proportion of the workforce engaged in ‘precarious employment’ (New Zealand Council of Trade Unions, 2013) deserve the protection of the State.
11. While most HCA members of NZNO are protected through negotiated collective agreements, the rise of individual agreements and casual contracting has made universal coverage almost impossible, leaving many workers exposed to exploitation, and consumers exposed to risk, as the following indicates:

I am aware of one business, [name withheld], which offers in-home care, as well as running a Bureau providing Registered Nurse and HCA workers for the local age care facilities. Their services were engaged to care for a man at home with early stage Alzheimer’s. What a disaster!

The carer sent had no previous experience of dementia care of any kind and ended up arguing with the client, which was distressing and unhelpful for all. She was employed to give 24 hour in-home care. I have since found out the contracted terms and conditions of this type of employment. They are required to be in the home 22 of the 24 hour period! For this they receive \$100 in payment. They are contracted to [...] and therefore pay their own taxes, ACC levies and transport costs, ending up with around \$4.17 per hour before

¹ the generic term care and support workers recently introduced by Health Workforce New Zealand and Careerforce As part of a joint plan to develop the non-regulated health and disability workforce, <http://www.careerforce.org.nz/kaiawhina/>.

tax, while those who work through the Bureau are paid around \$18 per hour.

Nurse Organiser

12. Clearly those contracted to provide personal home-care support to an individual in their house need the protections offered by this Bill.
13. In many, if not most, DHBs, cleaning and food catering services are contracted out and workers in these services are often in vulnerable to the same exploitative and unacceptable employment conditions as HCAs.
14. Equally, the lack of control over training, continuity of employment, quality assurance etc. in outsourced services with substandard or precarious employment practises, poses a risk to the quality and safety of health services and patients.
15. Health Benefits Limited's proposals for national procurement of DHBs laundry and food services, for example, provoked very strong and consistent opposition from nurses, who pointed out the problems that contracted services with poor employment practices can lead to, particularly with maintaining infection control, ensuring nutrition etc. as the following excerpts from our submissions indicate:

Historically people who work in laundry are the lowest paid and less aware workers; they do the filthiest jobs that most people don't want to do, and are often grossly disadvantaged and at risk. Even now we have to keep pushing for protections like staff vaccinations, provisions for the proper personal protective equipment from injury and blood borne viruses, and education in place. When it is totally about profit, and there is no direct line of employment, it becomes harder to monitor and easier to take shortcuts.

Clinical Nurse Specialist, Infection Prevention and Control

An outstanding concern is the risk of introducing food from countries with a high rate of antibiotic resistance, which is a global problem. Antimicrobial resistance is relatively low in New Zealand² but as antibiotic use in food animals can lead to resistant infections in humans, it is vital that food for people whose immune systems are already compromised by illness is sourced from the safest places. The business case has no provisions for requiring the food source

² Deborah A Williamson, Helen Heffernan. The changing landscape of antimicrobial resistance in New Zealand. Review article *NZMJ* 26th September 2014, Volume 127 Number 1403

to be stated, or for preferential sourcing of local food, which are essential and prudent for maximising health and safety. Hospitals are not restaurants, and patients are not customers - they are people with acute and complex health needs for whom high quality nutrition is an essential part of recovery.

Registered Nurse

16. The problem is not with the contracting *per se* but with exploitative employment practises, where the profits from productivity gains are monopolised by employer who do not invest in, or fairly reward those they employ via individual contracts.
17. The minimum remuneration the Bill offers to contracted in cleaning and food catering services is necessary; improved and fairer conditions for workers will benefit them and improve the services they are able to provide, particularly in health settings.

CONCLUSION

18. In conclusion, NZNO supports the Bill and the recommends that you give full consideration to the suggested amendments made by the NZCTU in its submission, namely that you:
 - **give** consideration to the expansion of the definition of employee beyond minimum remuneration protections alone;
 - **amend** (cl 6) by changing 'specified person' to one of the following terms for clarity:
 - Agent or personal agent;
 - Contractor or personal contractor;
 - **delete** the words "who is 16 years of age or older and" from the definition of specified person;
 - **delete** the proposed clause 4B;
 - **add** a new subsection 11AC(3) as follows:
 - (3) In determining whether an amount of time agreed is reasonable, the Authority must have regard to all relevant matters including:
 - (a) The amount of time an average person would need to undertake the service;

- (b) Factors which the principal knew or ought to have known about that influenced the timeliness of the specified person undertaking the service; and
- (c) Unforeseeable external factors which influenced the timeliness of the specified person undertaking the service.
- **remove** restrictions on services listed in Schedule 2. i.e. assume all industries are covered but allow an exemption process through regulations;
- **amend** the description of “building and construction services” to clarify that a wide definition is intended with reference to Australia-New Zealand Standard Industry Code Level 1: E Construction Services;
- **clarify** or define what is included in 10.7. *Food catering services*
- **clarify** or define what is meant by 10.8. *Fast-food delivery services*
- **amend** 10.9. to “Restaurant, food preparation, catering, and delivery services.”
- **extend** minimum remuneration protection to workers providing services relating to.
 - Television production work;
 - Film production work (as that term is defined in s 6(7) of the Employment Relations Act 2000), except where these services are remunerated solely through an Equity endorsed co-operative profit sharing arrangement that clearly stipulates that each party involved in the production is entitled to an equal share of any profits or net income derived from the production; and
 - Theatre and musical performance except where these are remunerated solely through an Equity endorsed co-operative profit sharing arrangement that clearly stipulates that each party involved in the production is entitled to an equal share of any profits or net income derived from the production, or where actors have signed a written authority where they agree to defer payment or forgo minimum remuneration; and
- Either **amend** s 236 of the Employment Relations Act 2000 or **add** a new section of the Minimum Wage Act 1982 to permit specified persons and principals to authorise others (such as union officials or lawyers) to take action on their behalf.

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Senior Policy Analyst

REFERENCES

New Zealand Council of Trade Unions. (2013). *Under pressure: A Detailed Report into Insecure Work in New Zealand*. Wellington. Retrieved from <http://union.org.nz/sites/union.org.nz/files/CTU-Under-Pressure-Detailed-Report-2.pdf>

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