

# Action for Children and Youth Aotearoa

## Incorporated



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9 October 2006

## Submission on Minimum Wage and Remuneration Amendment Bill

### Position on Bill

1. We support the Minimum Wage and Remuneration Amendment Bill but would like to see amendments to the Bill to:
  - a) extend the ambit of the Bill to amend the Health and Safety Regulations so that young contractors receive the same health and safety protection as young employees;
  - b) include a means of calculating the minimum payment to a contractor.
  
2. This submission is made by Action for Children and Youth Aotearoa **Incorporated (ACYA). Action for Children and Youth Aotearoa Inc**
  
3. ACYA is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:
  - a) education and advocacy on the rights of children and young people;
  - b) encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
  - c) promoting opportunities for the voice and participation of children and young people.

In 2003, ACYA produced and published Children and Youth in Aotearoa 2003, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called Whakarongo Mai / Listen Up.

ACYA has 100 or so members, both individual and child related organizations. These organizations are the leading child interest groups. It is noted that individual members may not agree on each item, but there is support for the bill.

ACYA is indebted to Robert Ludbrook who carried out research for this submission and who is making a personal submission.

4. Our particular interest is in the rights of children- those under 18 years of age. Employment law in New Zealand discriminates against young workers in a number of ways:
  - a) the youth minimum wage is lower than the adult minimum wage
  - b) children under 16 years do not qualify even for the youth minimum wage although research shows that many under 16s are undertaking part time work. The basic principle of equal pay for equal work does not apply to under-18s and this is a form of discrimination which is specifically permitted by the Human Rights Act which otherwise makes it unlawful for employers to discriminate on the grounds of age.
  - c) there is no minimum age for work.
  
5. Some jobs that are popular with children treat children as contractors under a contract of service rather than as employees. Children contract their labour in return for piece work rates. Circular and newspaper deliverers and garment outworkers are commonly taken on as contractors despite the fact that such contracts may be unenforceable against a person under the age of 18 years by reason of the Minors Contracts Act 1969. Because contractors are paid in arrears the principal has little to lose if a contract is later ruled unenforceable and children seldom exercise their right to challenge a contract.
  
6. Children who work as contractors are in a particularly vulnerable position and are easily exploited. Children often work as contractors, particularly in pamphlet delivery or garment outwork. They are able to fit the work into out-of-school hours and weekends and there is a degree of flexibility about when they complete the contracted tasks. The work, while poorly remunerated, is repetitive and boring. Young contractors often work before school or after dark and they may have to work in wet and windy conditions. There is evidence that pamphlet deliverers suffer injury as a result of being attacked by dogs, falling or being knocked off their bicycles or suffering strain as a result of lifting and carrying heavy loads” See Caritas survey *Protecting Children at Work* 2003, and the more comprehensive NSW study *Children at Work NSW* Commissioner for Children and Young People 2005.
  
7. There are a number of disadvantages in being a contractor rather than an employee. Contractors are required to file a tax return in respect of their earnings and they will be assessed for an ACC annual levy that may involve a substantial payment for a young person. If they are 16 or 17 years they do not qualify for the Youth minimum wage to which they would be entitled if they were employees. They are not entitled to holiday pay or paid lunch and refreshment breaks. Furthermore they do not receive the protection of certain health and safety provisions in the Regulations.

8. **UN Convention on the Rights of the Child**, Art 32.1 of the United Nations Convention on the Rights of the Child (UNCROC) requires that government recognise the right of the child to be protected from performing any work that is hazardous or harmful to child's health or development. Art 2 requires the government to respect the rights in UNCROC to each child without discrimination of any kind.
9. **UN Committee on the Rights of the Child.** The UN Committee recommended in its 2nd report expressed concern for the lack of protection of persons under 18 years in employment and recommended that NZ expedite the ongoing process of reviewing and strengthening legislation protecting all persons under the age of 18 who are employed : CRC/C/15/Add216, 3 October 2003 paras 47, 48.
10. **NZ Human Rights Commission.** The Commission in its September 2004 report *Human Rights in New Zealand Today* reviewed New Zealand's laws and policies with a view to developing a *New Zealand Action Plan for Human Rights*.

In Chapter 4 of the report *Rights of Children and Young People* the Commission refers to Art 32 UNCROC and notes that a "recent survey highlighted extreme working conditions for children and young people including working through the night, carrying huge weight loads, working while being hurt and working with equipment that has the potential to cause them harm": page 60 quoting *Caritas* study 2003.

In the *New Zealand Action Plan for Human Rights* (February 2005) the Commission identified as a key priority for action the need to improve the protection of rights for low paid workers: para 8.6.

11. The Department of Labour has been aware for some years that children who are contractors rather than employees do not qualify for some of the protections granted to workers under the Health and Safety Regulations. This was raised by the Minister of Labour in a paper prepared for a Cabinet Social Development Committee meeting on 1 September 2003 when the Minister was advising Cabinet what steps needed to be taken before NZ could withdraw its reservation to UNCROC on child labour.
12. The Department of Labour websites [www.ers.dol.govt.nz/factsheets](http://www.ers.dol.govt.nz/factsheets) and [www.osh.govt.nz/kidz](http://www.osh.govt.nz/kidz) contain useful information in respect of the rights of young workers but contain no information as to the different legal status of employees and contractors and the implications of being a contractor rather than an employee. There is no information specific to young contractors.

13. While the Bill is an important move to give rights to people who work as contractors rather than employees, it may strike difficulty in that contractors:
- work off-site and often choose their own hours according to their other commitments (eg schooling) and preferences;
  - are usually paid piece rates according to the number of pamphlets delivered or the number of garments completed;
  - often receive allowances to assist with the cost of deliveries (bicycle maintenance and wet weather clothing) or the cost of garment manufacturing (sewing machine maintenance)
  - do not have any statutory entitlement to sick leave, holiday leave, lunch and tea breaks etc.