



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Additional Employment Protections for Security Officers Under Part 6A: Approval to Draft	Date to be published	2 February 2021 (RIA published 15 March 2021)

List of documents that have been proactively released

Date	Title	Author
25/11/2020	<i>Additional Employment Protections for Security Officers Under Part 6A: Approval to Draft</i>	<i>Office of the Minister for Workplace Relations and Safety</i>
25/11/2020	<i>Cabinet minute: Additional Employment Protections for Security Officers Under Part 6A – Approval to Draft</i>	<i>Cabinet Office</i>
10/11/2020	<i>Impact Summary: Security officers and Part 6A of the Employment Relations Act 2000</i>	<i>Ministry of Business, Innovation and Employment</i>

Information redacted YES / NO

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Business Committee

Additional employment protections for security officers under Part 6A: approval to draft

Proposal

1. This paper seeks agreement to add security officers to Schedule 1A of the Employment Relations Act 2000 (the Act), which would apply the additional employment protections in Part 6A to them.

Executive Summary

2. The security industry is a competitive industry where clients often seek low prices for contracts. This may incentivise employers to offer low wages in order to win business with a low price. This has negative impacts for employees who are subject to restructuring, employment instability, and low wages. If an employer loses a contract, the employee is at risk of being made redundant – likely without compensation – and losing all their service-related entitlements such as sick leave.
3. Part 6A (Subpart 1) of the Act provides additional protections in restructuring situations for specified categories of employees who are listed in Schedule 1A of the Act. These restructuring situations include ‘contracting out’, ‘contracting in’ and subsequent contracting. The protections include the ability to transfer employment – under the same terms and conditions – to the new provider of services where their work is to be performed by the new provider.
4. Before adding a category of employees to Schedule 1A, I must be satisfied that they have low bargaining power, are subject to frequent restructuring, and that their terms and conditions tend to be undermined by restructuring. The Ministry of Business, Innovation and Employment (MBIE) has reviewed these criteria in consultation with the security industry and relevant unions. MBIE advises me that the employment of security officers meets these three criteria.
5. I seek Cabinet approval to add security officers to Schedule 1A of the Act, so that security officers receive additional protections under Part 6A. This will benefit the approximately 7,800 security officers in New Zealand.
6. These measures should encourage the security industry to move away from competing on the basis of price and towards service quality and productivity.

Background

Competition can result in poor outcomes for workers

7. The tendering process can be a useful way of generating competition for goods or services. However, in service industries where labour costs are a high proportion of the product price, employers can be incentivised to offer low wages in order to drive down total prices and to win contracts over their competitors.
8. While competition can be beneficial for clients who receive low prices for services, it can have negative impacts for employees who are subject to restructuring, employment instability, and low wages. If an employer loses a contract, the employee is at risk of being made redundant – likely without compensation – and losing service-related entitlements such as sick leave. If an employee loses a job they may seek employment with the new employer, but even if they are successful they may be employed on worse terms and conditions.
9. COVID-19 is having a significant effect on the New Zealand economy, and low-paid workers are likely to be even more vulnerable in the current labour market. Although Part 6A does not protect workers where a company ceases operation and makes its workers redundant, it could protect workers from an erosion of wages where work is transferred from one company to another.

Part 6A of the Employment Relations Act provides additional protections for specified categories of employees

10. Part 6A (Subpart 1) of the Employment Relations Act provides additional protections from restructuring for specified categories of employees who are listed in Schedule 1A of the Act. The most significant of these protections are:
 - The right for employees to transfer to a new employer where, because of proposed restructuring (including contracting in, contracting out, or subsequent contracting), their work is to be performed by the new employer.
 - If employees elect to transfer to the new employer, their terms and conditions of employment are transferred, and the new employer must recognise their entitlements to sick leave, annual holidays and their continuous service is unbroken.
11. Part 6A also includes a system for prospective employers to request information relating to the transfer of employees from the current employer, including the number of employees eligible to transfer, wages, work hours, etc.

There is a live application to apply Part 6A to security officers

12. The Employment Relations Amendment Act 2018 restored the ability for the Minister of Workplace Relations and Safety to add and remove specified categories of employees to Schedule 1A by Order in Council.

13. In July 2019, the former Minister received an application from the union E tū to add security officers to Schedule 1A of the Act.
14. Under the Employment Relations Act I may only recommend the Governor General makes an Order in Council adding to the schedule of specified categories of employees if I am satisfied that the category of employees in the application:
 - are employed in a sector in which restructuring of an employer's business occurs frequently, and
 - have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business, and
 - have little bargaining power.
15. As required by the Act, MBIE has prepared a report on whether the employees in the category of employees satisfy those three criteria, and my officials have consulted with stakeholders.

Analysis

I am satisfied that the criteria in the Employment Relations Act are met

16. MBIE has consulted with relevant industry stakeholders, and has advised me that security officers meet all three criteria.
17. Stakeholders from both worker and employer perspectives generally agreed that there was frequent restructuring of employers in the security industry. Contract periods for security services are typically three years long, although there was some variation. This level of frequency appears to be consistent with other sectors already included in Schedule 1A. Overall, MBIE considered that this satisfies the requirement in the Act that the restructuring occurs frequently.
18. MBIE considered that security officers' terms and conditions of employment tend to be undermined by the restructuring of an employer's business, although they noted some uncertainty on this point. Officials were confident that static terms and conditions (e.g. accrued sick leave and long service leave) were undermined when a contract changed from one company to another, but were less certain that terms and conditions were being undermined over time. However officials considered the evidence of at least some cases of terms being undermined over time – together with static terms being undermined – was enough to satisfy them that the criteria is met.
19. MBIE considered that security officers have low bargaining power, which is indicated by:
 - **Low wages.** Security officers receive low pay. Stakeholders indicated that security officers are typically paid close to the minimum wage, with a small premium (around two dollars per hour) for guards with additional qualifications.

- **Low union coverage.** Union density for security guards was about 10% across the industry, and unions find it difficult to negotiate collective agreements.
- **A high number of vulnerable workers.** As at the 2013 Census, a higher proportion of 'Security Officers and Guards' were Māori and Pacific compared to workers across all occupations. While not necessarily 'vulnerable', Māori and Pacific peoples are over-represented in sectors with poor employment outcomes. E tū also noted that a high proportion of the workforce in the urban centres are migrant workers.

20. Based on MBIE's analysis, I am satisfied the criteria in the Act are met.

There are benefits and costs associated with the change

21. I have also considered a wider range of factors, in order to determine whether adding security officers to Schedule 1A would be beneficial given there are risks and costs associated with doing so.
22. The greatest benefits would be for security officer employees. They would face less instability in employment in restructuring situations, helping to prevent the negative and potentially long-lasting effects of redundancy on wellbeing. They would also have access to more stable pay and terms and conditions of employment. Where their employment contracts do not expressly exclude redundancy compensation, employees would also be able to bargain for compensation in the event of a restructuring situation where the new employer does not need them.
23. There would be some benefits for both employers and employees. Incoming employers would have access to an existing source of labour where those employees elect to transfer. Incumbent employers would also benefit from being protected from being undercut on the basis of a competitor offering lower wages.
24. The main costs will be shared by employers and purchasers of services. For employers, there would be a one-off cost associated with training management and human resources professionals, and with establishing processes and systems for complying with Part 6A (e.g. exchanging information in a tendering situation, transferring employees). There would also be compliance costs associated with exchanging information and transferring employees.
25. The purchasers of security services may also face increased costs as the price of services may be higher, because receiving the protections of Part 6A would create a minimum 'floor' for terms and conditions. They would also have less control about which workers were present at their sites. Finally, there is a limited risk of less innovation in services if Part 6A reduces employers' flexibility, or reduced quality of services if less training is provided by employers.

26. I note the government is a significant purchaser of security services, such as in the health sector and at Ministry of Social Development offices, and will therefore be affected by this proposal.
27. Stakeholders had differing views on whether Part 6A would reduce the incentive for employers to fund training for their employees. Some employers argued that their incentive to invest in training would be reduced, because new employers would be able to take over their trained staff in a restructuring situation. Therefore employers may be encouraged to submit low pricing for tendering, in the knowledge that the incumbent provider has had to invest in, and absorb the training costs in meeting specified training qualification requirements as per the contract.
28. This was contested by unions, who argued that there is currently little training paid for by security employers beyond what the law and the client requires. The unions argued that if there was investment in training and wage rates, then employees would likely remain with the current employer if there was a contract change.
29. Overall the 2012 MBIE review of Part 6A found that the benefits of the system outweighed the costs. I consider this will also be the case if applied to security guards.

I propose to add security officers to Schedule 1A

30. The purpose of Part 6A is to provide additional protections to vulnerable workers in sectors with constant restructuring. It is a targeted intervention, which is why workforces must satisfy certain criteria to be covered.
31. I am satisfied that security officers meet the criteria of the Act, and that this protection would be beneficial to these workers.
32. I have considered the costs and risks of this proposal, but I do not believe these to be disproportionate given the anticipated benefits to both workers and employers.
33. In particular I propose to add security officers who:
 - guard properties (including via closed circuit television on site) such as shops, banks, courts, hospitals, universities, and other buildings,
 - control crowds at events,
 - escort prisoners,
 - undertake mobile security patrols, and
 - collect cash from premises such as banks and retailers.
34. The change would exclude private investigators, security consultants or technicians, personal guards and police officers from coverage.¹

¹ “Private investigators” gather information on people, their financial position, their business activities, or the identity or whereabouts of people. “Security consultants/technicians” are involved in the sale, installation or operation of security systems (e.g. burglar alarm, a safe, surveillance systems).

Delayed commencement and transitional provisions

35. In order to give the security industry time to comply with the new regulations I propose to delay commencement of the Order by three months.
36. In addition, I propose to also include transitional provisions in the Order which will provide clarity on whether the changes apply to any restructuring already underway at the time the Order comes into force.

Financial Implications

37. The proposal has no financial implications, except to the extent that state sector purchasers of security services may face a marginally higher 'floor' for the price of contracts. This impact will be mitigated by the Government's intention to introduce the Living Wage to contracted public service workers in priority industries such as security officers, and then further as the COVID-19 recovery allows.

Legislative Implications

38. The proposal will be implemented by Order in Council, to amend Schedule 1A of the Employment Relations Act to include security officers.

Impact Analysis

Regulatory Impact Statement

39. A Regulatory Impact Analysis Summary Assessment has been completed and is attached.
40. The Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel has advised the Assessment meets quality assurance standards.

Climate Implications of Policy Assessment

41. A Climate Implications of Policy Assessment is not required for this paper.

Population Implications

42. Given a higher proportion of Security Officers and Guards were Māori and Pacific compared to workers across all occupations, there are positive implications for Māori and Pacific peoples.
43. This proposal would offer increased protections for vulnerable workers, including greater job and income security. It would also help to avoid wage scarring effects in the event workers are made redundant.

"Personal guards" typically guard a specific person or persons (e.g. a bodyguard) rather than property or an event.

Human Rights

44. The proposals are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

45. The following agencies were consulted: the Treasury, Te Kawa Mataaho/Public Service Commission, Te Puni Kōkiri, the Ministry of Pacific Peoples, and the Department of the Prime Minister and Cabinet.

Communications

46. If agreed I intend to announce Cabinet's decision on 7 December.

Proactive Release

47. I intend to proactively release this Cabinet paper and attached regulatory impact analysis within 30 days of decisions being confirmed by Cabinet.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **note** that certain categories of employees listed in Schedule 1A of the Employment Relations Act have additional employment protections in the event of a business restructuring situation, including the right to transfer to the new employer on the same terms and conditions;
- 2 **note** that the E tū union has applied for security officers to be added to Schedule 1A of the Employment Relations Act 2000;
- 3 **note** that under the Employment Relations Act the Minister for Workplace Relations and Safety can recommend to the Governor-General to add categories of workers to Schedule 1A by Order in Council if they are satisfied that the workers:
 - 3.1 are employed in a sector with frequent restructuring,
 - 3.2 have terms and conditions of employment that tend to be undermined by restructuring, and
 - 3.3 have little bargaining power;
- 4 **note** that the Minister for Workplace Relations and Safety is satisfied that the criteria in the Employment Relations Act are met.
- 5 **agree** that security officers should be added as a category of employees to Schedule 1A of the Employment Relations Act;

I N C O N F I D E N C E

- 6 **agree** that the commencement date of the Order in Council should be delayed by three months to allow time for the security industry to understand and comply with the new regulation;
- 7 **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to Parliamentary Counsel Office giving effect to the policy decisions in this paper; and
- 8 **authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy framework in this paper, including appropriate transitional provisions, on any issues that arise during the drafting process.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety

Appendices

Regulatory Impact Analysis