



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Amending the Minimum Wage Order 2019	Date to be published	29 July 2019

List of documents that have been proactively released

Date	Title	Author
6 June 2019	<i>Amending the Minimum Wage Order 2019</i>	Office of Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety
11 June 2019	Minute of the Cabinet Legislation Committee LEG-19-MIN-0076	Cabinet Office

Information redacted

~~YES~~ / **NO** (please select)

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In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

Amending the Minimum Wage Order 2019

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission of the *Minimum Wage Amendment Order 2019*, to correct an error in the current *Minimum Wage Order 2019*.

Background

- 2 The *Minimum Wage Act 1983* (the Act) provides that the Governor-General may, by Order in Council, prescribe the minimum wage rates for:
 - 2.1 adult workers aged 16 years and over for the purposes of section 4 of the Act
 - 2.2 starting-out workers for the purposes of section 4A of the Act
 - 2.3 trainees for the purposes of section 4B of the Act.
- 3 An Order in Council giving effect to Cabinet's decisions to increase all minimum wage rates from 1 April 2019 was made in February 2019 [LEG-19-MIN-0028]. As in previous years, the Order expresses the minimum wage rates as hourly, weekly and fortnightly amounts. The latter two figures are based on standard 40 hour weeks.

A typographical error in the Minimum Wage Order 2019 requires correction

- 4 The Regulations Review Committee has written to the Ministry of Business, Innovation and Employment (MBIE) advising that one of the figures in the *Minimum Wage Order 2019* is incorrect. The Order gives a figure of \$556.40 as the minimum training rate per week (for a 40 hour week), rather than the correct figure of \$566.40. This typographical error means that the Order:
 - 4.1 does not accurately reflect Cabinet's decision to increase the minimum training rate
 - 4.2 conflicts with the regulation-making power in primary legislation, which specifies that the minimum training rate must be no less than 80 per cent of the adult minimum wage.
- 5 Parliamentary Counsel Office (PCO) has advised that this error is not of a type that can be corrected in a reprint under the Chief Parliamentary Counsel's discretion in section 25 of the *Legislation Act 2012*. An amending Order in Council is therefore required to fix the mistake.
- 6 The *Minimum Wage Amendment Order 2019* achieves this correction and gives effect to the minimum training wage rate for 2019 as agreed by Cabinet [DEV-18-MIN-0309].

Timing and 28-day rule

- 7 I propose that the *Minimum Wage Amendment Order 2019* come into force on the day after it is notified in the New Zealand Gazette. A waiver of the 28-day rule is needed to correct the error promptly.
- 8 Early commencement is necessary for compliance with the statutory obligation that the minimum training wage be at least 80 per cent of the adult minimum wage, and to avoid any chance of someone taking unfair advantage of the error. Any delay in commencement could imply that it is acceptable to rely on the incorrect weekly rate until the correction comes into force, which is not desirable.

Compliance

- 9 The regulations comply with:
- 9.1 the principles of the Treaty of Waitangi
 - 9.2 the principles and guidelines set out in the Privacy Act 1993
 - 9.3 relevant international standards and obligations
 - 9.4 the Legislation Design and Advisory Committee's *Legislation Guidelines* (2018 edition).

Regulations Review Committee

- 10 There do not appear to be any grounds for the Regulations Review Committee (the Committee) to draw these regulations to the attention of the House under Standing Order 319.
- 11 The Ministry of Business, Innovation and Employment has written to the Regulations Review Committee advising them that the error they identified will be corrected as soon as possible.

Certification by Parliamentary Counsel

- 12 The *Minimum Wage Amendment Order 2019* has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, subject to a waiver of the 28-day rule.

Impact analysis

- 13 A Regulatory Impact Assessment is not required to make this amendment to regulations, as it will have no or only minor impacts on businesses, individuals or not-for-profit entities. A Regulatory Impact Assessment accompanied the Cabinet Economic Development Committee paper seeking agreement to an increase to the minimum wage rates [DEV-18-MIN-0309].

Publicity

- 14 I do not intend to proactively publicise this amendment to the Minimum Wage Amendment Order 2019. An announcement of the current minimum wage rates was made on 19 December 2018.

- 15 The Cabinet Economic Development Committee paper and other relevant documents have been uploaded to the Ministry of Business, Innovation and Employment's website.

Proactive release

- 16 This paper, along with the Cabinet minutes and any relevant supporting documentation, is proposed to be proactively released on MBIE's website within 30 working days of the final decision being made by Cabinet. The release of the information is subject to redactions consistent with the *Official Information Act 1982*.

Consultation

- 17 Agencies were not consulted on this paper as it seeks to correct a typographical error. The following agencies were consulted on the Cabinet Legislation Committee paper for the original *Minimum Wage Order 2019* [LEG-19-MIN-0028]: the Treasury, State Services Commission, Accident Compensation Corporation, Department of Prime Minister and Cabinet (Child Poverty Unit and Policy Advisory Group), the Reserve Bank of New Zealand, Te Puni Kōkiri, Inland Revenue, Oranga Tamariki, the Ministries of Health, Education, Social Development and Justice, and the Ministries for Pacific People and Women.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that the Regulations Review Committee has highlighted a typographical error in the *Minimum Wage Order 2019* (it gives a figure of \$556.40 as the minimum training rate per week, rather than the correct figure of \$566.40)
- 2 note that the *Minimum Wage Amendment Order 2019* will correct the error referred to in recommendation 1 above, and will give effect to Cabinet's decision to increase the training minimum wage rate from 1 April 2019 [DEV-18-MIN-0309]
- 3 note that a waiver of the 28-day rule is sought:
 - 3.1. so that the regulations can come into force as soon as possible
 - 3.2. on the grounds that early commencement is necessary to comply with the statutory requirement that the minimum training wage be no less than 80 per cent of the adult minimum wage, and to avoid any chance of unfair advantage being taken of a typographical error
- 4 agree to waive the 28-day rule so that the regulations can come into force on the day after they are notified in the New Zealand Gazette
- 5 authorise the submission to the Executive Council of the *Minimum Wage Amendment Order 2019*.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister for Workplace Relations and Safety