



PRESS RELEASE

Department of Labour conduct in parliament undermines a meaningful national minimum wage package

Press release from National Minimum Wage Research Initiative, University of the Witwatersrand

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The Parliamentary Labour Portfolio Committee reconvened on Wednesday 9 May 2018 to consider amendments to the National Minimum Wage ([NMW](#)) Bill and further amendments to the Basic Conditions of Employment Act ([BCEA](#)) and Labour Relations Act ([LRA](#)).

The Department of Labour (DoL), which played a dominant role in the redrafting process, has, in a number of instances, either ignored the letter or spirit of decisions taken by the Portfolio Committee (PC). This follows their selective presentation of certain issues to the PC suggesting a pursuit of particular outcomes that ignore critical concerns raised by the public and social partners, and thereby undermining the ability of the Committee to conduct a balanced engagement on the Bills before them.

This comes on top of the DoL's sidelining of a number of aspects of the February 2017 national minimum wage [Nedlac agreement](#) between the social partners. In key instances they have weakened the protections the national minimum wage (NMW) seeks to provide workers.

Dr Gilad Isaacs, coordinator of the Wits National Minimum Wage Research Initiative notes:

"As a research project within a university we have offered only very limited comment on the actions of the social partners throughout the process and have focused our energy on providing evidence and policy suggestions. However, the manner in which the Department of Labour has used the Parliamentary process to advance its own preferred outcomes cannot go unnoted."

The Department's amendments undermine the instruction from the PC to reinstate the role of sectoral determinations (SDs), ignore the agreement to include the two-year deadline by which the lower domestic and agricultural worker levels must be raised to the NMW (subject to research not indicating otherwise), and reduce the independence of the NMW Commission. The Bills remain weaker than the Nedlac agreement regarding protecting the real value of the national minimum wage (i.e.

ensuring yearly increases) and in implementing a meaningful medium-term target. A number of other issues, including the exemption process, remain concerning. Limited improvements made to the Bills (such as increased fines for repeated offences) are outweighed by these concerns.

Key issues include:

- **Sectoral determinations:** After enormous opposition from the DoL the PC resolved the NMW Commission must be empowered to update existing SDs and institute new ones. This appears in the amendments but in the weakest possible form.

The Bill, for example, does not stipulate regular reviews of SDs must be undertaken, as is mandated for the NMW. Further, Section 51(3) of the BCEA amendments stipulates that SD wages must increase proportionally to adjustment to the NMW, indicating a desire to not manually review and alter SDs. This is a reversion to the original position of the DoL that sought to phase out the use of the SDs. Regarding instituting new SDs, the Bill leaves it up to the Minister to trigger the investigation needed to create a new SD rather than allowing the Commission discretion to do this off its own bat, thus potentially limiting the institution of new SDs. This undermines the Commission's ability to co-ordinate a coherent wage policy using the NMW and SDs in tandem.

- **Phasing out lower tiers:** Both the Nedlac agreement and PC agree that the lower levels for domestic workers and farm workers should fall away after two years unless research indicates otherwise. This agreement was supposed to be reflected in the amendments, but, despite the issue being raised with the DoL, it does not.
- **The independence of the NMW Commission:** While the DoL touted the importance of the independence of the Commission in their Parliamentary engagement, their drafting of the legislation moves in the opposite direction. This is despite all social partners and the PC stressing the value of independence and the international evidence overwhelming indicating that the most effective commissions have operational autonomy from government departments. An Achilles heel of the existing Employment Conditions Commission has been its lack of resources.

The PC agreed that the Commission secretariat will be housed within the DoL but the amendments have further subordinated the Commission to the Department. The Commission no longer has its own budget appropriated by Parliament but now must have funds defrayed from the DoL at their discretion. The Commission has limited operational authority over the Secretariat despite the Parliamentary Law Advisor flagging this as concerning during the PC's deliberations. This will potentially impact the Commission's autonomy to undertake research, implement complex aspects of its mandate, such as setting a medium term target, and to independently manage its affairs, and is most concerning regarding its role in amending and adding SDs, as noted above.

- **Annual increase:** The NMW Bill does not guarantee, or even promote, an annual increase. This was agreed to by the PC but the DoL's position on this violates the Nedlac agreement which noted: "It is specifically agreed that the adjustment should not lead to the erosion of the value of the NMW taking into account all of the above factors." The Bill only instructs the Commission to "consider" as one amongst other factors "retaining the value of the minimum wage" rather than as a factor that should be specifically promoted subject to considering other factors.
- **The medium-term target:** The medium-term target offered Government a perfect means of compensating for the perceived low level of the NMW – they could have said "we're starting at R20 but we have an ambitious framework to increase this through the medium-term target". However, the medium-term target in the Bill is a damp squib.

The medium-term target must only be set within 3 years, with no mention of what benchmarks to use or when it must be implemented by – if the target is only reached 3-5 years after it is set, then, in the current formulation, it could take until 2026! On the sidelines of the PC a minimal improvement was accepted by the DoL – changing "within three years" to "within two years" – although when the PC opposed this the DoL put up no resistance. The Nedlac February agreement reads: "The NMW Commission to be established will, as part of its mandate, establish a medium term aspirational target for the NMW and take into account appropriate benchmarks and International Labour Organization (ILO) guidelines." The lack of guidance given to the Commission on establishing the target may lead to the sort of paralysis that characterised the NMW negotiations.

- **Expanded Public Works Programme:** As we've noted repeatedly the EPWP R11 per hour is extremely low, but it is even weaker than the Nedlac report which stipulates the level at 55% of the NMW thereby implying that it should at least increase in line with the NMW – no such stipulation is contained in the Bill.
- **Exemptions:** The ability of employer organisations to apply for exemptions on behalf of their members has been opposed by a range of organisations on the basis that it risks creating a sophisticated conveyor belt of applications. The Nedlac agreement notes that businesses should apply and that it is government departments that must be "fully equipped to provide the necessary assistance" – we have previously argued such assistance should be offered by the DoL.

The DoL has touted their changing of Section 15(1) "on behalf of their members" to "on behalf of a member" as responding to these objections. This is completely disingenuous, does not address the concerns raised, and was a change suggested, during the deliberations, by the Parliamentary Law Advisor as a narrow technical correction.

Further, there is no framework for the exemption regulations (i.e. stipulating broadly what the Minister should take into account when making regulations) as there is in Section 50 of BCEA regarding current exemption mechanisms.

It is worth noting that exemptions from the NMW are rare internationally and already abused in South Africa.

- **Timeframes:** All timeframes for promulgation, reviews and amendments to the level have been removed and it is unclear when the NMW Commission will start operating. Some flexibility is understandable given the failure to meet the 1 May 2018 deadline but it creates a great degree of uncertainty. It is essential for predictability in this respect as changes to the NMW will also impact other wages and collective bargaining in the economy. Therefore new target dates should be transparently stipulated.
- **Guaranteed minimum hours of work:** Guaranteeing workers must be paid for four hours of work even if they work less is an international innovation and a win for workers. However, it is marred by ignoring the Nedlac Committee of Principles agreement that the Commission must investigate the feasibility of increasing the minimum number of hours from four to five, something which was captured in an earlier draft of the Bill.
- **Employer contributions:** During the PC deliberations the DoL noted they did not object to specifically excluding employee contributions from counting towards the NMW (subject to checking how this relates to Pension and UIF Acts), requiring an addition to 5(1) along the lines of “employer contributions to medical aid schemes, or retirement funds”. This does not appear in the amended Bill.

The national minimum wage has been promoted since 2014 as the first step in a multi-pronged strategy to reduce wage inequality, including engagement on issues such as setting wage ratios and tightening up Section 27 of the Employment Equity Act on disproportionate income differentials to ensure implementation. This has not found expression in this round of the process. We therefore call on the President to announce the next steps in this engagement and for the Labour Portfolio Committee to mandate that Nedlac and the DoL must report on progress in this regard before the end of the 2018.

Further, we call on all those involved, in both Parliament and Government, to amend the Bills to ensure they offer maximum protection to workers and a strong, independent and well-resourced Commission to oversee this critical policy intervention.

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