

DEPARTMENT OF LABOUR

NO. R. 1275


17 NOVEMBER 2017

PUBLICATION OF THE NATIONAL MINIMUM WAGE BILL, 2017

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, intend introducing the National Minimum Wage Bill, 2017, in the National Assembly shortly. The explanatory summary of the Bill is hereby published in accordance with Rule 276(b) & (c) of the Rules of the National Assembly.

The Bill seeks to provide for a national minimum wage; to establish the National Minimum Wage Commission; to provide for the composition and functions of the National Minimum Wage Commission; to provide for the review and annual adjustment of the national minimum wage; to provide for exemption from paying the national minimum wage; to provide for transitional provisions in respect of farm workers and domestic workers; and to provide for matters connected therein.

A copy of the Bill can be found on the website of the Department of Labour at <http://www.labour.gov.za/legislation/bills/proposed-amendment-bills>


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M N OLIPHANT, MP
MINISTER OF LABOUR
DATE: 02/11/2017

REPUBLIC OF SOUTH AFRICA

NATIONAL MINIMUM WAGE BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette 41257 of 17 November 2017)
(The English text is the official text of the Bill)*

(MINISTER OF LABOUR)

[B---2017]

BILL

To provide for a national minimum wage; to establish the National Minimum Wage Commission; to provide for the composition and functions of the National Minimum Wage Commission; to provide for the review and annual adjustment of the national minimum wage; to provide for exemption from paying the national minimum wage; to provide for transitional provisions in respect of farm workers and domestic workers; and to provide for matters connected therein.

PREAMBLE

RECOGNISING that the Republic of South Africa is one of the most unequal societies in the world and that there are huge disparities in income in the national labour market;

NOTING the need to eradicate poverty and inequality;

ACKNOWLEDGING the need to promote fair and effective competition in the labour market and labour market stability;

NOTING the constitutional obligation on the State and employers to promote and fulfil the right to fair labour practices;

BE IT THEREFORE ENACTED by the Parliament of Republic of South Africa, as follows: —

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CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

"Cabinet" means the cabinet referred to in section 91 of the Constitution of the Republic of South Africa ;

"Commission" means the National Minimum Wage Commission established in terms of section 8;

"employer" means any person who is obliged to pay a worker for the work that that worker performs for that person;

"Labour Relations Act" means the Labour Relations Act, 1996 (Act No. 66 of 1995);

"Minister" means the Minister responsible of labour;

"national minimum wage" means the national minimum wage determined in Schedule 1 and adjusted annually in terms of section 6;

"NEDLAC" means the National Economic Development and Labour Council established in terms of section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"ordinary hours of work" means the hours of work permitted in terms of section 9 of the Basic Conditions of Employment Act or in terms of any agreement in terms of section 11 or 12 of the Basic Conditions of Employment Act;

"organised business" means organised business as defined in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"organised community" means those non-governmental organisations identified by the Minister without Portfolio in the Office of the President, which represent community interests relating to reconstruction and development in terms of section 3(5) of the National Economic Development and Labour Council Act;

"organised labour" means organised labour as it is defined in the National Economic Development and Labour Council Act;

"prescribed" means prescribed by regulation under this Act;

"this Act" includes the regulations made under this Act;

"wage" means the amount of money paid or payable to a worker in respect of ordinary hours of work or, if they are shorter, the hours a worker ordinarily works in a day or a week;

"worker" means an employee as defined in section 1 of the Basic Conditions of Employment Act.

Purpose of Act

2. The purpose of this Act is to advance economic development and social justice by—

- (a) improving the wages of lowest paid workers;
- (b) protecting workers from unreasonably low wages;
- (c) preserving the value of the national minimum wage;
- (d) promoting collective bargaining and supporting economic policy; and
- (e) supporting economic policy.

Application of Act

3. This Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

CHAPTER 2

NATIONAL MINIMUM WAGE

National minimum wage

4. (1) The national minimum wage is the amount stated in Schedule 1 as adjusted annually in terms of section 6.

(2) Every worker is entitled to payment of a wage in an amount no less than the national minimum wage.

(3) Every employer must pay wages to its workers that are no less than the national minimum wage.

(4) The payment of a national minimum wage cannot be waived and the national minimum wage takes precedence over any contrary provision in any contract, collective agreement or law, except a law amending this Act.

(5) The national minimum wage must constitute a term of the worker's contract except to the extent that the contract, collective agreement or law provides a wage that is more favourable to the worker.

(6) It is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage and sections 191, 193, 194(4) and 195 of the Labour Relations Act apply, unless the context indicates otherwise.

(7) Sections 32 and 33 of the Basic Conditions of Employment Act apply to the payment of the national minimum wage to workers.

Calculation of wage

5. (1) Despite any contract or law to the contrary, the calculation of a wage for the purposes of this Act is the amount payable in money for ordinary hours of work excluding—

- (a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance;
- (b) any payment in kind including board or accommodation;
- (c) gratuities including bonuses, tips or gifts; and
- (d) any other prescribed category of payment.

(2) A worker is entitled to receive the national minimum wage for the number of hours that the worker works on any day.

(3) If the worker is paid on a basis other than the number of hours worked, the worker may not be paid less than the minimum wage for the ordinary hours of work.

Annual review

6. (1) The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage, which minimum wage must commence on 1 May of the next year.

(2) The review report to the Minister must reflect any alternative views in respect of any recommendations made in terms of subsection (1).

(3) The Commission must forward the report on its review and its recommendations for the next year to the Minister by 31 October of each year.

(4) If the Minister does not agree with, or requires clarity in respect of, the report and recommendations, the Minister may, in the prescribed manner, refer the report and recommendations back to the Commission to clarify or alter their recommendation.

(5) By 31 January of each year, the Minister must submit the report and recommendations of the Commission to the Cabinet for approval.

(6) If the Cabinet approves the adjustment to the national minimum wage, the Minister must—

- (a) table the amended Schedules 1 and 2 in the National Assembly; and
- (b) publish the amended Schedules in the *Gazette* within 7 days of tabling in terms of paragraph (a).

(7) If the National Assembly does not pass a resolution to the contrary within 14 days of tabling, the amended Schedules take effect on 1 May of that year.

Conduct of annual review

7. For the purposes of conducting an annual review and recommending adjustments, the Commission must—

(a) promote—

- (i) the medium term targets referred to in section 11(d);
- (ii) the alleviation of poverty; and
- (iii) the reduction of wage differentials and inequality; and

(b) consider—

- (i) inflation, the cost of living and the need to retain the value of the minimum wage;
- (ii) wage levels and collective bargaining outcomes;
- (iii) gross domestic product;
- (iv) productivity;
- (v) ability of employers to carry on their businesses successfully;
- (vi) the operation of small, medium or micro-enterprises and new enterprises;
- (vii) the likely impact of the recommended adjustment on employment or the creation of employment; and
- (viii) any other relevant factor.

CHAPTER 3

NATIONAL MINIMUM WAGE COMMISSION

Establishment of Commission

8. The National Minimum Wage Commission is hereby established.

Composition of Commission

9. (1) The Commission comprises of the following members:
- (a) An independent chairperson appointed by the Minister;
 - (b) three members nominated by organised business;
 - (c) three members nominated by organised community;
 - (d) three members nominated by organised labour; and
 - (e) three independent experts appointed by the Minister.
- (2) The members of the Commission must be citizens or permanent residents of the Republic.

Appointment and termination of appointment of members of Commission

10. (1) The Minister appoints—
- (a) the chairperson and the three independent experts after consultation with NEDLAC; and

(b) the members nominated by organised business, organised community and organised labour.

(2) The term of office for the members of the Commission is for a maximum period of five years but members may be re-appointed.

(3) The members of the Commission are appointed on a part-time basis and on terms and conditions prescribed by the Minister in consultation with the Minister of Finance.

(4) Termination of appointment may be effected in the following manner:

- (a) The member's death;
- (b) the resignation of a member giving three months' notice to the Minister;
- (c) Subject to due process of law, the removal of a member from office by the Minister for the following reasons:
 - (i) Serious misconduct;
 - (ii) permanent incapacity;
 - (iii) failure to attend three successive meetings without a reasonable explanation; or
 - (iv) engaging in any activity that undermines the integrity of the Commission.

Functions of Commission

11. The functions of the Commission are to—

- (a) review the national minimum wage and recommend adjustments;

- (b) investigate and report annually to the Minister on the impact of the national minimum wage on the economy, collective bargaining and the reduction in income differentials;
- (c) investigate income differentials and recommend benchmarks for proportionate income differentials;
- (d) set medium term targets for the national minimum wage within three years; and
- (e) advise the Minister on measures to reduce income differentials or any other matter on which the Minister requests the Commission's advice.

Conduct of meetings of Commission

12. The Commission must determine its own rules on the conduct of meetings, provided that those rules—

- (a) require the Chairperson to act impartially; and
- (b) provide that the chairperson has no vote or casting vote.

Secretariat of Commission

13. Subject to the laws governing the public service, the Minister must provide the Commission with a secretariat to perform the following functions:

- (a) The administration of the Commission;
- (b) the conduct and procurement of research for the Commission; and
- (c) the monitoring and evaluation of the impact of the national minimum wage on the economy and the reduction of income differentials.

Funds of Commission

14. The funds of the Commission consist of money appropriated by Parliament and which are subject to audit by the Auditor-General in terms of section 188 of the Constitution.

CHAPTER 4

GENERAL

Exemptions

15. (1) An employer or an employers' organisation registered in terms of section 96 of the Labour Relations Act, or any other law, acting on behalf of its members, may, in the prescribed form and manner, apply for an exemption from paying the national minimum wage.

(2) An exemption granted in terms of this section—

- (a) must specify the period for which it is granted, which may not be longer than one year;
- (b) must specify the wage that the employer is required to pay workers; and
- (c) may contain any other relevant condition.

(3) The Minister may delegate or assign powers or duties arising out of the application of this section, excluding the power to make regulations, in accordance with the provisions of section 85 of the Basic Conditions of Employment Act.

Regulations

16. (1) The Minister may, after consulting NEDLAC and where appropriate after consulting the Commission, make regulations relating to—
- (a) the form and manner in which exemptions must be made in terms of section 15(1), which include—
 - (i) the procedure for applying for an exemption;
 - (ii) the information to be submitted with an exemption application;
 - (iii) the obligations on employers to consult with employees or trade unions concerning an exemption application;
 - (iv) the criteria that must be applied when evaluating exemption applications;
 - (v) the period within which an application must be made; and
 - (vi) the period within which a decision on an exemption application must be made; and
 - (b) any other matter that must or may be prescribed in terms of this Act or which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.
- (2) The Minister must publish the draft of any regulations that the Minister proposes to publish in terms of this Act in the *Gazette* and allow interested parties at least 30 days to comment in writing on the draft regulations.
- (3) If the Minister alters the draft regulations based on the comments received from interested parties, it shall not be necessary to publish those alterations before making the final regulations.

Short title and commencement

17. (1) This Act is called the National Minimum Wage Act, 2017.
- (2) Subject to subsections (3) and (4), the Act comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.
- (3) Schedule 1 comes into effect on 1 May 2018.
- (4) Section 4(6) takes retrospective effect from 1 May 2017.

SCHEDULE 1

NATIONAL MINIMUM WAGE

(Section 6(6))

1. Subject to item 2, the national minimum wage is R20 for each ordinary hour worked.

2. Despite item 1—

- (a) farm workers are entitled to a minimum wage of R18 per hour from 1 May 2018;
- (b) domestic workers are entitled to a minimum wage of R15 per hour from 1 May 2018;
- (c) workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour from 1 May 2018;
- (d) workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, 1998 (Act No. 97 of 1998), are entitled to the allowances contained in Schedule 2.

3. For the purposes of item 2—

"farm worker" means a worker who is employed mainly or wholly in connection with farming or forestry activities, and includes a domestic worker employed in a home on a farm or forestry environment and a security guard on a farm or other agricultural premises, excluding a security guard employed in the private security industry in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

"domestic worker" means a worker who performs domestic work in a private household and who receives, or is entitled to receive, a wage and includes—

- (a) a gardener;
- (b) a person employed by a household as a driver of a motor vehicle;
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled; and
- (d) domestic workers employed or supplied by employment services; and

"expanded public works programme" means a programme to provide public or community services through a labour intensive programme determined by the Minister in terms of section 50 of the Basic Conditions of Employment Act and funded from public resources.

SCHEDULE 2

LEARNERSHIP ALLOWANCES

(Section 6(6))

1. For the purposes of this Schedule—

"allowance" means the amount of money paid or payable to a learner in terms of regulation 3 of the Sectoral Determination 5: Learnership made under the Basic Conditions of Employment Act, published in Government Notice 519 of 15 June 2001 as amended by Government Notice R.234 of 15 March 2011;

"credit" means a credit earned as defined in the Regulations made under the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), Government Notice R.452, published in *Government Gazette* 18787 of 28 March 1998;

"learner"—

(a) means a learner who has concluded a learnership agreement in terms of section 17 of Skills Development Act, 1998 (Act 97 of 1998); and

(b) includes an apprentice;

"NQF level" means a level on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act no. 67 of 2008)

2. The learnership allowances are as follows:

NQF level	Credits already earned by learner	Minimum allowance per week
Levels 1 to 2	0-120	R 301.01
	121-240	R 601.99
Level 3	0-120	R 301.01
	121-240	R 566.93
	241-360	R 928.11
Level 4	0-120	R 301.01
	121-240	R 602.05
	241-360	R 928.11

	361-480	R 1354.51
Levels 5 to 8	0-120	R 301.01
	121-240	R 652.15
	241-360	R 975.75
	361-480	R 1374.61
	481-600	R 1755.84

MEMORANDUM ON THE OBJECTS OF THE NATIONAL MINIMUM WAGE BILL, 2017

1. BACKGROUND

1.1 Section 7(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") imposes an obligation on the State to respect, protect, promote and fulfil the rights in the Bill of Rights, which include the right to fair labour practices. In this respect, the proposed National Minimum Wage Bill, 2017 ("the Bill"), seeks to provide for a national minimum wage and establish the National Minimum Wage Commission ("the Commission"), which will mainly implement the provisions relating to the national minimum wage.

1.2 The South African labour market is characterised by high levels of inequality, unemployment and poverty. One of the measures to reduce these levels is a national minimum wage.

1.3 Such a measure respects and promotes the right to dignity and fair labour practices.

1.4 To this end, the business, labour, community and government representatives at the National Economic, Development and Labour Council ("NEDLAC") commissioned a task force to investigate and make recommendations on a national minimum wage and a legislative mechanism for the annual adjustment of the national minimum wage.

1.5 On the basis of the report from this task force, NEDLAC engaged in an extensive process of consultation resulting in agreement in respect of the national minimum wage and the mechanism for annual adjustment. The resulting agreement constituted the basis for the drafting of this Bill, in order to enact the envisaged National Minimum Wage Act, 2017 ("the Act").

2. OBJECT OF BILL

The main object of the Bill is to provide for a national minimum wage in order to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages and promoting collective bargaining and supporting economic policy.

3. CLAUSE-BY- CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill provides for the definitions which will assist in the interpretation of the Bill.

3.2 Clause 2

Clause 2 of the Bill provides for the purpose of the Act which is to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy.

3.3 **Clause 3**

Clause 3 outlines the application of the Act, which applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

3.4 **Clause 4**

3.4.1 Clause 4 of the Bill specifies the national minimum wage that was agreed to at NEDLAC, and set out in Schedule 1 to the Bill. In terms of Schedule 1 to the Bill the national minimum wage is R20 for each ordinary hour worked, and is due to come into force on 1 May 2018. The reason for placing it in a Schedule is that it is to be adjusted on an annual basis.

3.4.2 In terms of clause 4 every worker is entitled to at least the national minimum wage. An employer may not pay wages that are below the national minimum wage and the national minimum wage cannot be varied by contract, collective agreement or law, except a law amending the Act.

3.4.3 The national minimum wage constitutes a term of the worker's contract except to the extent that the contract provides for a more favourable wage.

3.4.4 In terms of the Bill it is an unfair labour practice for an employer to unilaterally alter hours of work or other conditions of employment in implementing the national minimum wage.

3.5 **Clause 5**

Clause 5 of the Bill provides for the calculation of the national minimum wage. The national minimum wage is the amount payable for the ordinary hours of work. This means that a worker is entitled to receive the minimum wage for the number of hours that the worker works in a day. This does not include the payment of allowances such as transport, tool, food or accommodation allowances, payments in kind (board or lodging), tips, bonuses and gifts. Provision is also made for the exclusion of other forms of payment by regulation.

3.6 **Clause 6**

3.6.1 Clause 6 of the Bill provides for the annual review and adjustment of the national minimum wage by the Commission, which must annually review the existing national minimum wage, and make recommendations to the Minister. The Commission must prepare a report with recommendations for the Minister by 31 October of each year, and if the Minister does not agree with the recommendations of the Commission the Minister may refer it back to the Commission to reconsider.

3.6.2 By 31 March of each year, the Minister must determine the adjustment and publish the amended Schedule in the *Government Gazette*.

3.7 **Clause 7**

In terms of clause 7 of the Bill the Commission must conduct an annual review of the national minimum wage by promoting medium term targets, alleviation of poverty, the reduction of wage inequality, and in this regard take into account factors such as

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inflation, cost of living and the need to retain the value of the national minimum wage.

3.8 Clauses 8, 9 and 10

3.8.1 Clauses 8, 9 and 10 of the Bill provide for the establishment, the composition and appointment of members of the Commission. According to clause 9, the Commission consists of—

- an independent chairperson appointed by the Minister;
- three members nominated by organised business;
- three members nominated by organised community;
- three members nominated by organised labour; and
- four independent experts appointed by the Minister.

3.8.2 In terms of clause 10, the members of the Commission are appointed by the Minister from members nominated by organised business, organised labour and the organised community, in other words through nomination by these three constituencies as they are constituted in NEDLAC. The Minister also appoints the chairperson and four independent experts after consultation with NEDLAC.

3.9 Clause 11

Clause 11 of the Bill provides for the functions of the Commission, which are to review the national minimum wage and to make recommendations annually for its adjustment. The Commission has ancillary functions such as investigating the impact

of the national minimum wage on the economy, collective bargaining and income differentials. (Read with the amendments to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), the Commission will take over many of the functions of the repealed Employment Standards Commission).

3.10 **Clause 12**

Clause 12 of the Bill provides that the Commission must determine its own rules in respect of the conduct of its meeting.

3.11 **Clause 13**

Clause 13 of the Bill provides for a secretariat of the Commission, which will support the Commission with the responsibility of administering the Commission, procurement of research and also monitor the impact and evaluation of the national minimum wage on the economy and income differentials.

3.12 **Clause 14**

Clause 14 of the Bill provides for the funds of the Commission which must consist of money appropriated by Parliament and such money is subject to audit by the Auditor-General in terms of section 188 of the Constitution.

3.13 **Clause 15**

Clause 15 of the Bill empowers the Minister, on application by any relevant employer, to grant exemptions from the national minimum wage, and provides that the applications must be made in the prescribed form and manner.

3.14 **Clause 16**

3.14.1 Clause 16 of the Bill empowers the Minister to make regulations on the form and manner in which exemptions must be in terms of clause 15, including—

- the procedure for applying for an exemption;
- the information to be submitted with an exemption application;
- the obligations on employers to consult with employees or trade unions concerning an exemption application;
- the criteria that must be applied when evaluating exemption applications;
- the period within which an application must be made; and
- the period within which a decision on an exemption must be made.

3.14.2 Clause 16 of the Bill also gives the Minister the power to make regulations on any matter required or necessary to be prescribed. It sets out a standard publication and comment procedure in respect of interested parties.

3.15 **Clause 17**

Clause 17 provides for the short title and commencement of the various provisions of the Bill.

3.16 Schedules 1 and 2

3.16.1 Schedule 1 to the Bill provides that the national minimum wage will be R20 for each ordinary hour worked. Schedule 1 also provides for temporary exceptions to the national minimum wage for the first year, which is 1 May 2018, as follows:

- the minimum wage for farm workers will be R18 per hour;
- the minimum wage for domestic workers will be R15 per hour; and
- the minimum wage for workers in expanded public works programme will be R11 per hour.

3.16.2 Schedule 2 specifies the learnership allowances in respect of workers who conclude learnership agreements in terms of the Skills Development Act, 1998 (Act No.97 of 1998).

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Departments of Economic Development, Small Business Development, Trade and Industry and the National Treasury were consulted on a regular basis during the process of engagement in the National Economic Development and Labour Advisory Council on the National Minimum Wage Bill. .

Organised business, organised labour and the organised community sector were consulted during the engagement in the National Economic Development and Labour Advisory Council.

5. FINANCIAL IMPLICATIONS

The National Minimum Wage Bill will require the Department of Labour to establish a Secretariat to support the work of the National Minimum Wage Commission.

Provision has been made within the Medium Term Expenditure Framework for this cost.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

6.2 The Office of the Chief State Law Adviser considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill

affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

6.4 The issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

6.5 The Bill seeks to provide for a national minimum wage, to establish the Commission (and its composition and functions) in order to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy. The functions of the Commission, amongst others, are to review the national minimum wage and to make recommendations annually for its adjustment. The Commission may also investigate the impact of the national minimum wage on the economy, collective bargaining and income differentials.

6.6 The Bill provides for the annual review and adjustment of the national minimum wage by the Commission and the final determination thereof by the Minister. The Commission has to take a number of factors into consideration in conducting its review of the national minimum wage and its recommended adjustment. These factors include the increase in inflation, the cost of living, wage levels, wage differentials, productivity, the ability of businesses to carry on successfully, the impact on small businesses and employment.

6.7 The Bill empowers the Minister, on application by any relevant employer, to grant exemptions from the national minimum wage, the exercise of which is to be regulated by regulations.

6.8 The Bill gives the Minister the power to make regulations regarding the procedure for exemption, the obligation on employer to consult with employees or their trade unions and the criteria for evaluating exemptions. The Minister may also make regulations and any matter required or necessary to be prescribed. It sets out a standard publication and comment procedure in respect of interested parties.

6.9 Schedule 1 of the Bill provides for the national minimum wage of R20 for each ordinary hour worked and also provides for temporary exceptions to the national minimum wage for the first year, from 1 May 2018 i.e the national minimum wage for farm workers will be R18 per hour, the national minimum wage for domestic workers will be R16 per hour and R11 per hour for workers in expanded public works programmes.

6.10 The provisions of the Bill as reflected above have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.11 In the view of the Office of the Chief State Law Adviser, the subject matter of the provisions of the Bill do not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

6.12 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

6.13 The Office of the Chief State Law Adviser is also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.



planning, monitoring & evaluation

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Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS) FINAL IMPACT ASSESSMENT TEMPLATE (PHASE 2)

NATIONAL MINIMUM WAGE BILL, 2017

DEPARTMENT OF LABOUR

The Final Impact Assessment: Department of Labour. National Minimum Wage Bill.

The Final Impact Assessment provides a detailed assessment of the new Minimum Wage Bill. The Bill arises from a two year engagement process between government, organised business and organised labour in the National Economic Development and Labour Advisory Council (NEDLAC) to address the challenges of labour market stability and wage inequality as posed by the President in his State of the Nation Address in June 2014.

1. The problem Statement/ Theory of Change

1.1. Give summary of the proposal, identifying the problem to be addressed and the root (causes) of the problem that will be addressed by the new rule.

a) Summary of the proposal (Summary Background of the proposed policy/bill/regulations/ other):

Background

The South African labour market demonstrates a strong link between low wage levels, high unemployment, a large number of people living in poverty and the high level of inequality that characterises the country. Of a population of 55.9 million people, 29.7 million live below the poverty line, or 51 per cent of South African's live on less than R1036.07 per month in 2016.¹ A key reason for widespread poverty is lack of access to employment. Only 36 per cent of the poorest households have access to employment opportunities and those that do have jobs in many cases earn low wages that provide insufficient household income to support dependants. Over half of South Africa's workforce earn below R3700 per month.²

In addition to widespread poverty and low wages, South Africa is known to be "among the top three most unequal countries in the world. The World Bank estimates our Gini coefficient to be between 0.66 to 0.70, where the richest 10 per

¹ National Minimum Wage Panel Report. A National Minimum Wage for South Africa. Recommendations on Policy and Implementation. 2017, page 7. The NMW Panel Report uses the Upper Bound Poverty Line.

² Ibid.

cent of the population accounts for 58 per cent of the country's income, while the poorest 10 per cent accounts for 0.5 per cent of income.”³

These features of low levels of income, high unemployment and poverty and high levels of inequality are found in an economy experiencing very low growth, with a growth forecast for 2017 of less than 1 per cent. While income from wages is the main source of ensuring a sustainable livelihood for workers it is also a key factor in competitiveness and sustainability of enterprises in the private sector the sustainability of enterprises in the public sector and for raising state revenue.

Against this background, government, organised business, labour and the community constituencies of the National Economic Development and Labour Advisory Council (NEDLAC) resolved to engage on the modalities of introducing a national minimum wage in South Africa and to explore ways of reducing pay differentials while maximising job creation efforts. This resolution was captured in the Ekurhuleni Declaration of 4th November 2014. A Technical Task was established and met at NEDLAC during 2015 and 2016. In June 2016, the Deputy President, with the support of a Committee of Principals at NEDLAC, decided to establish an Advisory Panel to, inter alia, recommend a meaningful level for the first national minimum wage. The Advisory Panel tabled its report in November 2016 and in February 2017, an agreement was reached on the introduction of a national minimum wage of R20 per hour to be implemented not later than 1 May 2018.

The agreement between the social partners provided the basis for the drafting of the National Minimum Wage Bill, 2017 which is summarised below.

³ Ibid.

Summary of proposal

The **National Minimum wage Bill** deals with the following areas:

i. The National Minimum Wage from 1 May 2018

The agreed national minimum wage is R20 per hour that is to come into effect on or before 1 May 2018. The farming and domestic sectors are given a period of time to reach the level of the national minimum wage with the following minima applying from 1 May 2018:

- The minimum for farm workers will be 90 per cent of R20 per hour (R18 per hour);
- The minimum for domestic workers will be 75 per cent of R20 per hour (R15 per hour).

ii. Nature of a national minimum wage

The national minimum wage forms the minimum floor for wages. This will mean that:

- Every workers is entitled to at least the minimum wage;
- Every employer may not pay wages that are below the minimum wage;
- The national minimum wage cannot be varied by contract, collective agreement or law;
- The national minimum wage constitutes a term of an employee's contract except to the extent that the contract provides for a more favourable wage;
- It is an unfair labour practice for an employer to unilaterally alter hours of work or other conditions of employment in implementing the national minimum wage.

iii. Calculation of the national minimum wage

The national minimum wage is the amount payable for the ordinary hours of work. This means that an employee is entitled to receive the minimum wage for the number of hours that the worker works in a day.

The Bill makes provision for a guaranteed minimum number of hours, namely four hours which must be paid even if an employee should work less than four hours.

The minimum wage does not include the payment of allowances (such as transport, tool, food or accommodation allowances).

iv. Annual review of the national minimum wage

The national minimum wage must be reviewed annually by the National Minimum Wage Commission.

The Commission must review the existing national minimum wage, taking into account a number of factors that are identified in the Act, such as; employment, inflation, wage levels and collective bargaining outcomes, etc.

v. National Minimum Wage Commission

The Bill provides for the establishment, functions and composition of the Commission which will take over many of the functions of the repealed Employment Conditions Commission.

The primary function of the Commission is to review the national minimum wage and to make recommendations annually for its adjustment. It has additional functions such as investigating the impact of the national minimum wage on the economy, collective bargaining and income differentials.

The Commission is appointed by the Minister of Labour from members nominated by organized business, labour and the community constituencies at NEDLAC. The Minister appoints an independent chairperson and four independent experts after consultation with NEDLAC.

vi. General Provisions

The National Minimum Wage Bill provides for the Minister of Labour to grant exemptions from the national minimum wage. The exemptions process is to be dealt with by way of regulations.

b) Problem/s and root causes that the proposal is trying to address

Identified Problem	Root causes
Low levels of income.	Historical legacy of low pay for less skilled work in South Africa.
Exclusion of vulnerable workers from minimum wage regulation.	Sector based approach to minimum wage regulation not covering all employees and collective bargaining arrangements also not comprehensive in their coverage.
Fragmented and complex system of minimum wage regulation through Sectoral Determinations.	Sector based system of minimum wage regulation, some with a number of minimum wages for different categories of employee.
Low levels of compliance with minimum wages.	Lack of knowledge, lack of willingness and, in certain cases, an inability to pay prescribed minimum wages.

1.2. Describe the intended outcomes of the proposal

At a strategic level, the overall intended outcome of the proposal is to reduce poverty and improve income from employment. With the envisaged simpler national minimum wage it is also intended that compliance will be improved.

In addition, it is intended that collective bargaining will be strengthened, particularly in sectors where there are vulnerable workers, for example, in private security.

1.3. Describe the groups that will benefit from the proposal, and the groups that will face the cost. These groups could be described by their role in the economy or in society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R 7000 a month or less); for black people, youth or women; for small and emerging enterprise; and /or for rural development. Add more rows if required.

Groups that will benefit	How will they benefit?
Workers	The proposed national minimum wage is intended to have a positive effect on the earnings of all those who earn below R20 per hour. The estimated group of employee beneficiaries is in the region of 5 million employees.

Trade Unions	The positive effect of the national minimum wage for employees will be to the benefit of trade unions in that it is consistent with the aims of trade unions to improve the earnings of vulnerable workers.
Employers and employers' associations	Employers and employer associations will benefit from the likely increase in demand brought about through the national minimum wage.

Groups that will bear the cost or lose	How will they incur the costs or lose?
Employers and their associations	<p>Those employers who pay below the proposed national minimum wage of R20 per hour will face an increase in their payroll cost.</p> <p>Some small employers may also carry a cost of increasing wages.</p>
Employees	<p>Loss of employment. The impact of a NMW are difficult to predict and will most likely vary by sector and by firm (see NMW Panel Report, pages 66-68).</p> <p>Research on the impact of minimum wages in sectoral determinations in South Africa has found that adjustments have not had significantly negative disemployment effects, with the exception of agriculture.</p>

- 1.4.** Describe the behaviour that must be changed, main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision making process systems; changes in procedures; educational work; sanctions; and or incentives. Also identify groups inside or outside government whose behaviour will have to change to implement the proposal. Add more rows if required.

Groups inside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
Department of Labour	Minimum wage regulation by the Employment Conditions Commission	Establishment of National Minimum Wage Commission

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
Employers and Employer associations	Payment of wages below legislated minimum wage.	National Minimum Wage Bill and amendments to Basic Conditions of Employment Act that deal with enforcement.

- 1.5.** Report on consultations on the proposal with the affected government agencies, business and other groupings. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they propose? And have these amendments been incorporated in your proposal?

Consultation took place during 2015-2016 under the auspices of NEDLAC and via a Committee of Principals chaired by the Deputy President. Government was represented in the Committee of Principals by the Ministers of Labour, Finance, Economic Development, Trade and Industry and Small Business. The NEDLAC consultations were facilitated by a Senior Commissioner of the CCMA who provided regular reports to the Committee of Principals on the work of the task team. These reports recorded areas of agreement and disagreement between the constituencies represented in the task team. In April 2016, the Task Team on Wage Inequality deadlocked over the proposed level at which that national minimum wage should be set. The Committee of Principals agreed to the establishment of an Advisory Panel which was tasked with interrogating the

research that had been carried out and to recommend a meaningful level or range for the first national minimum wage. The Advisory Panel was established by the Deputy President and submitted its report in August 2016. The process culminated in the adoption of a Declaration on Wage Inequality and Labour Market Stability and an Agreement on the Introduction of a National Minimum Wage in February 2017. Since the February agreement, the Department of Labour submitted a draft National Minimum Wage Bill and amendments to the Basic Conditions of Employment Act to NEDLAC for consideration. A task team was established and has deliberated all aspects of the NMW Bill.

A meeting of the Committee of Principals that took place on 12 September 2017 arrived at a final agreement on the National Minimum Wage Bill. The following summarises the agreement reached on final areas that were in dispute prior to the Committee of Principals meeting.

Table on consultations:

Affected Stakeholders	What do they see as main <u>benefits, costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
1. Government Departments and Agencies (Name them)	<p>The main benefit will be a positive impact on poverty and inequality.</p> <p>Secondary benefits could be improved compliance arising from a simpler wage regulation system.</p> <p>Costs will relate to implementation and are detailed below.</p> <p>The main risk is that of non-compliance.</p>	Support.	<p>As per final NMW Bill.</p> <p>DPW have indicated support for setting the EPWP's as a percentage of the NMW.</p>	Final Bill makes provision for R11 per hour as the pay in the EPWP's.

2. Business- Business Unity South Africa, Black Business Council.	Improving the wages of lowest paid workers the main benefit. Costs will accrue to employers paying below the NMW.	Support.	Minimum hours should remain at 4 hours. Threshold for application of minimum hours should be set at R40 per hour. Definition of employee should be retained.	Minimum hours will remain at 4 hours and will be reviewed in three years. Threshold to be set in range of R40 to R60. Worker used in place of employee.
3. Organised Labour- COSATU, NACTU, FEDUSA.	Improving wages, reducing income inequality and increasing standard of living.	Support. Comfortable with 5 hours as minimum hours of work. Want annual adjustment to NMW and medium-term target. Want EPWP covered by NMW via a tier if necessary.	5 hours as guaranteed minimum hours. Annual adjustment to NMW and establishment of medium-term target. EPWP to be covered by NMW that could be via a tiered arrangement.	Minimum hours set at 4 hours. Provision in bill for annual adjustment to retain value of the minimum wage. Reviews of the minimum wage will include the setting to medium-term targets. EPWP covered by national minimum wage at 55% tier and Minister of Public Works to consider an increase to R12 per hour for the EPWP's.
4. Civil Society- Community constituency as represented at NEDLAC.	Improving wages, reducing income inequality and increasing standard of living.	Support.	Same as Labour.	As above.

1.6. Describe possible disputes arising out of the implementation of the proposal, and system for settling and appealing them. How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

The NMW Bill makes provision for an exemption process, but disputes over implementation are to be dealt with by the CCMA in terms of amendments to the BCEA.

2. Impact Assessment

2.1. Describe the costs and benefits of implementing the proposal to the groups identified in point 1.5 above, using the following chart. Add more rows if required

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
Trade Unions	N/A	N/A	Benefits will accrue to union members who stand to increase their earnings.	
Employers and Employers' association	Employers paying below the minimum of R20 per hour will have an increase in payroll costs once the NMW is implemented.	The actual cost will be determined by the current level of earnings and the number of employees eligible for increases.	Some firms will face an increase in payroll costs. Benefits could accrue from productivity gains associated with increased earnings and growth in household expenditure. Estimates of labour productivity increases under different NMW scenarios project a positive impact of between 0.7 and 3.8 percent and growth in household expenditure is projected to be between 0.3 and 2.1 percentage points. ⁴	Additional costs could result from retrenchments that are as a result of the implementation of the NMW.

⁴ A Adelzadeh & C Alvillar, The impact of the national minimum wage on the South African economy. ADRS & National Minimum Wage Research Initiative, University of Witwatersrand, Working Paper Series no.2, page 46 and 37. 2016.

			Potential job losses by sector and under different elasticity and minimum wage assumptions and have been estimated at between 204 977 to 897 068. ⁵	
Government	R11.1m in 2018/19 for establishment of NMW Commission.	Inspectorate will be trained on NMW and will be required to enforce compliance.	Recurring costs will be associated with the establishment of a NMW Commission but process of regulating minimum wage should give rise to benefits associated with improved compliance. Estimates of the impact of a NMW on GDP vary from positive growth of 0.1 percent (minimal scenario) to a negative impact of -2.1 percent. ⁶	
CCMA	Estimated at R20.8m for training activity, advocacy and increase in case load.	Estimated at R20.8m for training activity, advocacy and increase in case load.	Costs will be associated with training, advocacy and case load increase. Benefits will derive from enhanced capacity to deal with new areas of dispute resolution and support.	Cost estimates for the CCMA have been used to request additional funding for the entity.

2.2. Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

Seven new posts are envisaged to staff the Secretariat of the NMW Commission. Additional posts are likely to be transferred from the existing Employment Standards Directorate in the Department of Labour. The budget allocated in the Medium Term Expenditure Framework (MTEF) process is R10.3 million for the 2017/18 financial year and 11.1 million for the 2018/19 financial year.

⁵ Development Policy Research Unit & Centre for Social Development in Africa, Investigating the feasibility of a national minimum wage for South Africa. University of Cape Town & University of Johannesburg, 2016, page 77.

⁶ Positive GDP impact is taken from Adelzadeh & Alvillar, *ibid.* and the negative impact from C.Macleod, Measuring the impact of a national minimum wage. National Treasury, 2015.

The CCMA has submitted a request for additional funding in the amount of R20.8million for implementation activities associated with the NMW and BCEA. This proposal does not include additional personnel for the entity, but would result in additional usage of the existing cohort of full-time and part-time commissioners.

2.3. Describe how the proposal minimises implementation and compliance costs:

The introduction of a National Minimum Wage Commission (NMWC) is proposed as a relatively small unit to be established as part of the budget of the Department of Labour. The NMWC is envisaged as being independent in its operations and in having control of its budget, but it is envisaged that it will operate from within the Department thus minimising costs of equipment, offices and related costs.

The cost of compliance will rest with employers whose employees are currently earning below R20 per hour. The real cost of adjusting employee payroll after the implementation of the NMW is very difficult to estimate in advance with any accuracy.

3. Managing Risk

3.1. Describe the main risks to the achievement of the desired ends of the policy/bill/regulations/other and/ or to the national priorities (aims) that could arise from adoption of the proposal. Also describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified Risk	Mitigation Measures
Non-compliance with national minimum wage.	Training and publicity campaigns.
Job losses associated with increases in hourly pay.	Effective exemption process that is accessible and quick. The exemption process is to be dealt with by regulation but it is envisaged that it will be based on an IT enabled exemption system

	supported by staff in the NMW Commission. A 30 day turnaround is anticipated to be a target for all exemptions.
	Transitional provisions could also make provision for a phase-in period for vulnerable sectors if agreed by the social partners.
Low levels of enforcement and compliance	Training of the inspectorate and publicity campaigns combined with more effective dispute resolution measures contained in the BCEA amendments.
Dissatisfaction and protest action by workers in the public works programmes	Engagement around the comprehensive social security programme at NEDLAC and consideration of a higher minimum wage for public works programmes by government.

3.2. Describe the mechanisms included in your proposal for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

The National Minimum Wage Bill makes provision for a Secretariat whose functions include monitoring and evaluation of the impact of the national minimum wage on the economy. The NMW Commission is expected to meet on a regular basis to, inter alia, receive reports on the effects and the impact of a national minimum wage and to review it on an annual basis taking account of a number of factors and indicators. The Bill indicates that the Commission must consider the following:

- i. Inflation, the cost of living and the need to retain the value of the minimum wage;
- ii. Wage levels and collective bargaining outcomes;
- iii. The alleviation of poverty;
- iv. Wage differential and inequality;
- v. Gross domestic product;

- vi. Productivity;
- vii. Ability of employers to carry on their businesses successfully;
- viii. The operation of small, medium or micro-enterprises and new enterprises;
- ix. The likely impact of the recommended adjustment on employment or the creation of employment.

4. Summary

4.1. Summarise the impact of the proposal on the main national priorities

National Priority	Impact
1. Social Cohesion	Improved standard of living .
2. Security (Safety, Financial, Food, Energy and etc.)	Enhanced food security for those workers that benefit from the national minimum wage.
3. Economic Growth	Both positive and negative impact on GDP indicated by separate modelling exercises. The real impact will have to be determined after implementation.
4. Economic Inclusion (Job Creation and Equality)	Greater equality in earnings for lower income workers expected through the raising of the minimum wage.
5. Environmental Sustainability	N/A

4.2. Identify the social and economic groups that would **benefit most** and that would **bear the most cost**. Add more rows if required.

Main Beneficiaries	Main Cost bearers
Workers	Employers
Employers and their associations	
Government	Government

4.3. In conclusion, summarise what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the policy/bill/regulations/other. Note supplementary measures (such as educational campaigns or provision of

financing) as well as amendments to the draft itself, if appropriate. Add more bullets if required.

A well-publicised and well-coordinated implementation of the national minimum wage in 2018 should mitigate risks by creating advance awareness, giving certainty and managing expectations. Such steps should also serve to maximise the benefit of the national minimum wage by ensuring maximum compliance by employers.

An effective, information technology enabled, exemption system is being planned which should also assist in mitigating risks for those who face significant increases in payroll cost and associated pressure on their business.

Training of inspectors and CCMA commissioners will also be important to ensure that enforcement and dispute resolution is optimised after implementation of the national minimum wage.

4.4. Please identify areas where additional research would improve understanding of the costs, benefits and/ or risks of the policy/bill/regulations/other:

Strategies used for implementation of a national minimum wage in other countries could inform the South African experience if these could be made available in the next few months.

For the purpose of building SEIAS body of knowledge please complete the following:

Name of Official/s	Ian Macun
Designation	Director: Collective Bargaining
Unit	Labour Relations
Contact Details	012-3094634; 0829082861
Email address	ian.macun@labour.gov.za