Report of the **Portfolio Committee on Labour** on the **National Minimum Wage Bill [B 31 – 2017]**, dated 18 May 2018:

The **Portfolio Committee on Labour**, having considered the subject of the **National Minimum Wage Bill** (National Assembly – sec 75), referred to it and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B 31A – 2017].

The list of amendments is attached hereto.

Minority views:

1. On clauses 1, 3, 4, 5, and Schedule 1, the DA objected to the definition of a 'worker' as it seems to include an independent contractor and proposed that it be substituted by 'employee' instead.
2. On clause 9, the DA objected to the Commission having association with any government official. It should comprise of totally independent experts with no vested interest in the outcomes.
3. On clause 10, the DA objected to the Minister having powers to remove a member of the Commission; as well as to the reason of 'serious misconduct' which seems wide and unclear.
4. On clause 14, the DA objected on the basis that the Commission should have its own funding or budget and not rely on the Department of Labour. The reason provided for objection was that the Department will have influence over the Commission if the funds of the Commission are defrayed from its budget vote.
5. On clause 15 (Exemptions) and 16 (Regulations), the DA objected on the basis that such exemptions and regulations should be outlined and not left solely to the Minister.
6. On Schedule 1(2)(c), DA objected on the basis that Government can afford to pay the national minimum wage.

Report to be considered.

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

NATIONAL MINIMUM WAGE BILL

[B 31—2017]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 31A—2017]

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AMENDMENTS AGREED TO

NATIONAL MINIMUM WAGE BILL
[B 31—2017]

CLAUSE 1

1. On page 4, in line 15, to omit "responsible for labour" and to substitute "of Labour".

2. On page 4, from line 26, to omit the definition of "organised community" and to substitute the following definition:

> " **'organised community'** means those non-governmental organisations contemplated in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);"

3. On page 4, from line 37, to omit the definition of "worker" and to substitute the following definition:

> " **'worker'** means any person who works for another and who receives, or is entitled to receive, any payment for that work whether in money or in kind.".

CLAUSE 3

1. On page 4, after line 50, to insert the following subsection:

> "(2) This Act does not apply to a volunteer, who is a person who performs work for another person and who does not receive or is not entitled to receive, any remuneration for his or her services."

CLAUSE 4

1. On page 5, in line 4, to omit "The" and to substitute "Subject to subsections (2) and (3), the".

2. On page 5, after line 5, to insert the following subsections:

> "(2) *(a)* The Commission must, within 18 months of the commencement of this Act, conduct a review of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1—
> (i) in accordance with the process contemplated in section 6; and
> (ii) taking into account the goals contemplated in section 7*(a)* and the factors listed in section 7*(b)*,
> make recommendations to the Minister on the adjustment of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the national minimum wage contemplated in item 1 of Schedule 1, or as close to that amount as the Commission's findings allow.
> *(b)* The Minister must, within two years of the commencement of this Act, and taking the recommendations of the Commission into account, determine an adjustment of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1 in accordance with the process contemplated in section 6.

(3) The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2*(c)* of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6.".

3. On page 5, in line 12, after "agreement", to insert ", sectoral determination".

4. On page 5, in line 20, to omit "32 and 33" and to substitute "32, 33 and 34".

CLAUSE 5

1. On page 5, in line 27, after "allowance", to insert ", unless specified otherwise in a sectoral determination".

2. On page 5, in line 28, after "accommodation", to insert ", unless specified otherwise in a sectoral determination".

3. On page 5, in line 31, to omit "A" and to substitute "Subject to section 9A of the Basic Conditions of Employment Act, a".

4. On page 5, in line 33, to omit "If" and to substitute "Subject to subsection (2), if".

5. On page 5, in line 34, after the first "the", to insert "national".

6. On page 5, after line 34, to insert the following subsection:

"Any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, provided that a deduction made in terms of section 34(1)*(a)* of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration.".

CLAUSE 6

1. On page 5, in line 38, to omit "1 May of the next year" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

2. On page 5, in line 39, after "views", to insert ", including those of the public,".

3. On page 5, in line 42, to omit "by 31 October of each year" and to substitute "on a date fixed by the President by proclamation in the *Gazette*".

4. On page 5, in line 45, to omit "alter their recommendation" and to substitute "reconsider its recommendations".

5. On page 5, from line 46, to omit subsection (5).

6. On page 5, from line 48, to omit subsection (6) and to substitute the following subsection:

"(6) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2.".

7. On page 5, from line 53, to omit subsection (7) and substitute the following subsection:

"(6) The Minister must, within 7 days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner.".

CLAUSE 9

1. On page 6, in line 25, to omit "An independent" and to substitute "A".

2. On page 6, in line 29, after "experts", to insert ", who are knowledgeable about the labour market and conditions of employment,".

CLAUSE 10

1. On page 6, in line 33, after "Minister", to insert ", after consultation with NEDLAC,".

2. On page 6, from line 34, to omit "after consultation with NEDLAC".

3. On page 6, after line 52, to insert the following subsections:

"(5) The chairperson and members of the Commission—
(a) must act impartially when performing any function of the Commission;
(b) may not engage in any activity that may undermine the integrity of the Commission; and
(c) must recuse themselves from advising the Minister on any matter in respect of which they have a direct or indirect financial interest or any other conflict of interest.

(6) The Commission must appoint a member to act as chairperson whenever the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson.".

CLAUSE 11

1. On page 7, in line 6, after "differentials", to insert "and make such information available to the public".

2. On page 7, in line 12, to omit the fullstop and to substitute a semi-colon.

3. On page 7, after line 12, to insert the following paragraphs:

"*(f)* advise the Minister on sectoral determinations;
(g) advise the Minister on any matter concerning basic conditions of employment; and
(h) perform any such function as may be required of the Commission in terms of any other employment law.".

CLAUSE 13

1. On page 7, in line 20, after "secretariat", to insert "and the necessary resources".

CLAUSE 14

1. On page 7, from line 26, to omit "appropriated by Parliament and which are subject to audit by the Auditor-General in terms of section 188 of the Constitution" and to substitute "defrayed from the budget vote of the Department".

CLAUSE 15

1. On page 7, in line 33, to omit "its members" and to substitute "a member".

CLAUSE 16

1. On page 7, in line 45, to omit "may" and to substitute "must".

2. On page 8, from line 7, to omit paragraph *(b)* and to substitute the following paragraph:

   "*(b)* the publication of data on exemptions.".

3. On page 8, after line 9, to insert the following subsection:

   "(2) The Minister may make regulations which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.".

4. On page 8, in line 11, to omit "30" and to substitute "21".

5. On page 8, after line 15, to insert the following subsection:

   "(5) The Minister must table the regulations in Parliament.".

CLAUSE 17

1. On page 8, in line 17, to omit "2017" and to substitute "2018".

2. On page 8, in line 20, to omit "1 May 2018" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

SCHEDULE 1

1. In paragraphs *(a)*, *(b)* and *(c)* of item 2, to omit "1 May 2018" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

LONG TITLE

1. On page 2, from the fifth line, to omit "**to provide for transitional provisions in respect of farm workers and domestic workers;**".