

here. I have seen evidence, even though the minimum rate was more than \$5.75, where an adult person was being paid \$5.75. Now if Mr Brown condones that sort of tourist type wages I would really be surprised. I would be surprised if Mr Brown would also expect a person in Norfolk Island to work for more than 40 hours per week, and in some cases up to 60 and 70 hours per week without extra remuneration during those hours. Around Australasia people have fought for years to try and get a reasonable working wage and conditions which has worked over many many years. There's been union involvement, award rates, safety nets that the Government has put in place just in case everything else fails. All we have is the minimum hourly rate. The minimum hourly rate in 1991 was introduced as \$5 per hour. That is nearly ten years ago and it is time that it kept up with the times. At the time I remember \$5 seemed to be around what people expected to be paid as a reasonable hourly rate but as the Chief Minister keeps telling us, the costs have more than double over that time, tripled in some cases but the minimum hourly rate certainly hasn't. I don't think it is any longer fair to anybody who works in Norfolk Island to be earning below what would really equate to be below the poverty line. A simple survey was done recently and I talked to Members about that where a couple living in a home on average figures it would cost them at least \$480 and even one of the married people in the Legislative Assembly said, well I wish we could live on that and for a single person it's not much less than that so even at \$10 per hour on a normal 40 hour week people would only be surviving. Now that is becoming quite obvious when we talk about increasing charges, like our electricity or whatever it may be, it has a greater impact on the lower salary earner, particularly the ones on \$5.75 per hour. Part of the survey was done before we posed the minimum hourly rate, by telephone call and I think Mr Walker has some information on that, to check with employers to see what they were paying. Almost in every case they were paying a minimum of \$9 per hour which is what is proposed in this bill. Mr Walker may wish to speak, as it may be helpful to the debate

MR WALKER Thank you Mr Speaker, as chairman of the working group appointed by the Minister we did conduct a survey and the initiative for that survey actually came from around this table because the working group had been under the impression that the \$7.70 initially passed by this Legislative Assembly in February of this year would be acceptable as the minimum rate, however, when it was debated around this table in an informal meeting the indications were that that was nowhere near sufficient as a minimum rate therefore the working group felt that it needed to survey the community to find out what impact any increase above that proposed by the amendment would have. The result of that survey was that it would have very little impact because in almost every single occasion of the survey the base rate was in excess of what the working group proposed. Hence, that is why that figure was put to the Minister in our recommendations, which were then circulated to all Members and it was based on the fact that around this table we knew that if we put it forward as \$7.70 as previously passed it would not be acceptable

MR BROWN Mr Speaker, again, I say that I doubt that either the Minister or Mr Walker understands the nature of a minimum wage, but more importantly it is one thing to survey a business that operates 9 to 5 four days per week and two half days. There is no difficulty for that sort of business to roster its staff for only eight hours. There is no difficulty for that sort of business to roster its staff for no more than 40 hours per week. But there are plenty of other businesses and the hospitality industry is not the only one which don't have that kid glove luxury. There are plenty of other businesses that do from time to time have to get staff to work for more than 8 hours and that do from time to time have to get staff to work more than 40 hours in a week. There is no provision in this for averaging. What this says is that if you work for more than 8 hours per day the sword of Damocles comes down on you and if you are then going to want to increase the base to \$10 and insist on a 50% penalty all of a sudden you're insisting on a \$15 per hour rate and that is much more than any of the people you spoke are paying their staff. I don't think there are many employers in Norfolk Island who are stingy in what they actually pay but they ought to be able to get on with running their businesses, building a sound business that gives a bit of security to their families and staff. They don't want Governments coming along not understanding what they are doing and mucking it up. And when I say not understanding what they are doing let me tell you about a previous Member of this House. A lady Member who at the time of the increase to \$7.70 she was prominent in the Chamber of Commerce I should add, at the time of the increase to \$7.70 didn't give the slightest thought to the other possible consequences, she just announced to everyone that if they paid peanuts they were going to get monkeys and therefore the rate should go up. These things need to be thought out. And here you are wanting to put into legislation annual increases in accordance with the Retail Price Index. Mr Speaker the Retail Price Index was never introduced for the purpose of being the base of annual increases. I know that the Public Service Association feels that it is a pretty good way to try and get an increase now but the fact is that that wasn't its purpose and it's not the purpose of the public sector remuneration and it shouldn't play any part in amendments to this Act. How fair is it that be it a public servant or someone wanting to rely on this minimum wage, is able to come along and say well, the Government put up a lot of taxes last year. Now we don't think that we should have to pay it and the public servants don't think they should have to pay it, therefore we want to be compensated for those increases and we think the only people who should actually pay it is Adrian Cook with his judges pension and Ronnie Nobbs with his pension from the Northern Territory and those who are in the private sector. Now that's not fair. That is not fair at all and this Legislative

Assembly shouldn't be doing that. It needs a lot more thought. It needs talking to people who are actually affected by what you are proposing and in fairness, this has been put on the table, it will sit on the table for a month and those who are interested will be able to have a look and say something about it. Those who form part of the silent majority ;probably won't bother to look at it and will only start to whinge in a few months time when unfortunately it will be too late but I won't be supporting it Mr Speaker

MR WALKER Thank you Mr Speaker the Employment Amendment Bill 2000 which was passed by this Legislative Assembly in February and assented to later in February, had the clause in it under section 14 whereby the RPI was the way in which all increases in the future were to be set. This is prior to my coming on to this Legislative Assembly but I don't think it is prior to Mr Brown coming on to this Legislative Assembly and I think that he was one of the instigators on the working group that brought that bill forward under the guidance of the Minister who at the time was Mr Robertson. That formula for using the RPI was incorporated into a bill which is already an Act which we are seeking to amend. I'm staggered that Mr Brown is now trying to tell me that using the RPI is the wrong way to go. This Legislative Assembly has already passed it. It is already a bill. It just hasn't commenced

MR BROWN Mr Speaker, it is the wrong way to go. Whether I was conned by the previous Minister or whether I was missing on the day or whether I voted against it I don't recall but it is the wrong way to go. Tax increases should be shared by everyone. It should not be a situation where 75% of the community come along, or more than that because we compensate the cost of living increases for our social welfare people as well, so it shouldn't be the case where 80% or more of the community are totally compensated for tax increases and its just the poor people like Mr Cook and Mr Nobbs and myself and Mr Walker's wife who are expected as people either earning income from offshore or in the local commercial sector that fund it for everybody. That's unfair

MR SMITH Mr Speaker, we'll try and get this done by dark and we haven't got that long to go,. As Mr Brown is aware, and all Members are aware, if they would like to propose amendments to the amendment I have here, that is fine. What we have come up with is what we believe is reasonable and based on fact and with the research that" been done with employers and employees the changes we are making in this amendment to the amendment are minimal except for the things that Mr Brown has picked up on, quite rightly is the minimum hourly rate based on what we have learnt from employers and employees, it does make it so that yes, if you do make somebody work after 40 hours, that you have to pay them extra. I don't know that it is fair to expect somebody to work more than a normal working week and not pay them any more. I know that does happen under the current circumstances but I think it is fairly well accepted now that a 40 hour week is a standard week and after that you really need a break from what you are doing but if you have to carry on you should get paid extra for it. I know that Mr Brown and I disagree on that particular fact. The other thing which I'm surprised hasn't been picked up but I suppose that comes later, is the fact that everybody has to have a contract. I've reminded Mr Brown so he may want to have more to say about that because the contract is an integral part of this

MR WALKER Well if maybe I can allude to what the Minister has alluded to and that is the reasoning behind everybody having a contract. On the working group and on the previous working group, representation to both of groups by both the Employment Conciliation Board and the Employment Tribunal who brought the facts and figures to the discussion along with the Employment Officer who is the first port of call when somebody has a complaint and in by far the greatest number of occasions where a dispute was irreconcilable was because of the lack of any contracts and it was a you said/Isaid situation. It was felt that by enforcing the fact that everybody must have a contract, we could overcome this situation whereby either the employer or the employee had a misunderstanding of what the terms and conditions of employment were and we felt that by bringing in this amendment whereby everybody has to have a contract we were protecting both parties from a great number of those disputes that have gone on in the past

MR BROWN Mr Speaker, any sensible employer would have a letter of appointment in any event. If an employer is so silly as to not protect himself by providing a letter of appointment well in a way he deserves to have a requirement that there be a formal contract, but the law already provides for the employee to ask for a formal contract if the employee wants one so just how far are we going to go in being our brother's keeper. There is a real risk of Legislative Assembly's going overboard in this fashion. But whether or not we insist on every employee having a contract, the most outrageous part of this proposal is the suggestion that the contracts then get checked by the Immigration Officer. Now surely the employer and the employee are entitled to confidentiality in terms of just what their hourly rate is. Sure. The hourly rate has to be more than whatever the minimum is but that doesn't mean that you have to parade down to the Immigration Officer to say please Sir, is it alright if I sign this contract. Quite deliberately the only requirement in terms of the Immigration Officer is when an application is made for a Temporary Entry Permit, a certificate is provided and signed by the employer

and the employee to confirm that an employment contract has been signed. There are some pretty outrageous things in this amendment Mr Speaker and I really hope that employers and frankly, employees will take a good look at it and make some comment on it because what it is doing amongst other things is taking a lot away from the employee. Whether you want to realise it or not a lot of people come here to work and want to take the opportunity to put in big hours because they want to save money while their in Norfolk Island and if they've got the opportunity to work 50 hours in a week, they relish that opportunity. If they don't want to work more than 40 hours the law lets them say, I don't wish to work more than 40 hours thank you, and that's that. So there's not a big ogre out there that we've got to protect people from. It's either a situation where they say no, I don't want to work the extra hours thank you very much or they say yes, I would like the extra hours but I only want them if these are the conditions or yes, the conditions you've offered are adequate. Those issues should be left to the employer and the employee to sort out for themselves. I fully support the original concept of the Employment Act which was to provide a safety net. I do not support the concept of it becoming a union award

MR WALKER Thank you Mr Speaker I would just like to correct something that Mr Brown has stated, as being entirely incorrect. The Employment Amendment No 3 Bill 2000 before us, has an insertion into section 11(1) of subsection (3) which states "an employment contract referred to in section (1) shall be certified in the prescribed manner". It does not say anything about the Employment Officer. It has never said anything about the Employment Officer and the prescribed manner has yet to be determined

MR BROWN Mr Speaker, can I respond to that. Firstly I don't think I mentioned the Employment Officer. The Officer I mentioned was the Immigration Officer. Certainly if I said Employment Officer I apologise. I intended to say the Immigration Officer. And the Immigration Officer is the very person that has been discussed in terms of being the person who would be prescribed and I don't think any of you would deny that

MR NOBBS Thank you. This Bill is being adjourned until the next meeting and I don't think we are getting anywhere tonight gentlemen if you would agree with me and so I'll have the last word if I may, I move with your concurrence

MR SMITH Mr Speaker, I seek the call

MR NOBBS I was going to move that the Bill be adjourned. Will you do that

MR SMITH Mr Speaker, I seek the call then. I'm quite happy to adjourn but Mr Brown has raised some issues. I think I said earlier on that I didn't intend to pursue this so that it could be passed at the next sitting, which means that it is obvious that it will get out to the public at some stage, but now that issues have been raised I would want to pursue them further in case people are frightened by what Mr Brown has been suggesting that we shouldn't be looking after the workers and I don't want that to be misconstrued. To improve the conditions at long last is very important. It is my intention Mr Speaker with the Member who is also a member of the Chamber of Commerce to discuss this with the Chamber and any business person who wishes to have free and frank discussion with us about what is proposed here

MR GARDNER I should certainly hope that that offer is extended to employees as well and not just to business people but briefly, I've taken on board some of the concerns that Mr Brown has raised and I agree wholeheartedly with them. I guess I've been in a very fortunate position in the 20 years that I've lived on Norfolk Island to have worked for some exceptional employers who have been prepared to show a great deal of flexibility in my employment conditions that I have had to work under and I appreciate that and the old adage of there always being one bad apple stands quite true here and it seems to me that a lot of the amendments that are being proposed here are driven by those few bad apples that exist around the place. I take extreme exception in knowing that when I get tossed out of this House that I'll probably go out there and seek to be employed by somebody and as a matter of law have to have a contract to be employed. I take real exception to that because I pride myself on being able to accept people on face value and on their word. And I've been bitten in the past and I'll probably be bitten in the future but that's one little freedom that I, as an employee, have always cherished and I have real difficulty in being told that I must have a contract if I want to work for anybody. Regarding the minimum wage I think there is a fine balancing act in that we are trying to establish a tourism industry and Mr Brown has alluded to the hospitality industry here, seems to be the main engine for driving our revenue base here on the Island and if we overdo the fixed costs that goes into providing that sort of thing suddenly we become terribly unattractive. Gone are the days when either Mum or Dad stayed at home and looked after the kids and only one partner went out to work. Gone are those days. I've never worked in those days. My wife and I both have worked and we've worked all our lives and we will continue to work all our lives, because firstly there's not enough people on the ground and secondly because other costs seem to have exceeded the salaries and everything else that have been paid but simply because people can no longer afford

those massive salaries that were able to support a family of two adults and two children or whatever. This does need further looking at. I have been a member of this Working group. I wasn't invited to be a member of it in this Legislative Assembly. I don't know whether is because on a couple of occasions that I was invited to previous meetings of the working group and I was able to attend, that I was somewhat vocal at times in the representation of the employee

MR WALKER Thank you Mr Speaker I was only going to say exactly what the Minister has just said. I sincerely hope that the Minister for Commerce is intending to talk to any employee group that may approach him as well

MR SMITH Mr Speaker, that goes without saying but I would need to add that Mr Gardner when I spoke to him about it, said that he only attended one meeting of the previous working group and he wasn't particularly interested in being on another one and he might have forgotten he said that. But obviously I have introduced the Bill into the House Mr Speaker, it is there to be amended, it is there to be talked about, it is not something that somebody should get really upset about, particularly around the table here, because we all have the opportunity to move motions to amend. I'm well aware of that as all Members here are. If you are unhappy, simply move an amendment, but before doing so, please check with employers and employees in our community, thank you. I move the adjournment

SPEAKER Thank you. Honourable Members the question is that debate be adjourned and resumption of debate be made an made an Order of the Day for a subsequent day of Sitting
QUESTION PUT
AGREED

The ayes have it, that matter is so adjourned

HANSARD EXTRACT

15 NOV 2000

EMPLOYMENT AMENDMENT (NO 3) BILL 2000

Honourable Members we resume on the question that the motion be agreed to and Mr Smith you have the call to resume

MR SMITH Mr Deputy Speaker, I introduced this Bill in the last sitting of the House. I'll say at the outset that it is my intention to adjourn it til the next sitting but I will say a few words about it this afternoon. the Employment Amendment No 3 Bill completes three amendments to the Employment Act 1998, which are intended to commence in their entirety on the same date. The Employment Act 2000 and the Employment Amendment No 2 Act 2000 have passed through the Legislative Assembly and are partially commenced but sections 1 and 2 only. The present Bill provides some changes to the Employment Amendment Act 2000 and requires employers to enter into written contracts with all employees in accordance with the requirements of the Act. It provides for a minimum rate of pay for employees phased in over two years with yearly reviews according to the effect of the retail price index and wage increases in the event of the RPI formula is greater than the rate of the preceding year. This calculation appears in the earlier Employment Amendment Act 2000 however, a review will now be held each 31 March to be effective on and from 1 July in each year. The Bill further provides a rate of payment for employees who work greater than the normal prescribed working hours in each day or week, that is an eight hour day and a standard 40 hour week. Employees are to be paid time and a half or 150% of normal hourly rates for such additional hours and this provision cannot be avoided by contract. In addition there is some consequential amendments to reflect the advent of the Employment Amendment Act in the year 2000 rather than 1999 and an amendment to complete the penalty for failure to comply with annual leave provisions from 20 penalty units to 40 penalty units. Since I introduced this Bill it has had some exposure just through the processes of the sitting of the House. I have been to the Chamber of Commerce last Monday to go through what is proposed with the Members of the Chamber of Commerce. It is my intention to get more coverage over the next few weeks and already we have some suggestions for changes for what is proposed in this amendment. I'm going to say little more today because I intend to do a lot more talking in the next sitting when we come back to it and at an appropriate time after Members have had their say I will move the adjournment

MR BUFFETT Thank you Mr Deputy Speaker. Can I just acknowledged what Mr Smith has signalled in that he will adjourn this matter. I've had a number of comments raised with both from employers and employees and without being exhaustive can I just mention two or three of them that have been raised with

me so that we might talk further about them as you have in dictated there is room for such discussions. There has been concern that there may be some lack of flexibility when there is a strict definition of a certain number of hours per day and a certain number of hours per week. Eight and 40 respectively in this particular case and whilst there needs to be provisions to ensure that people are not taken advantage of there are times when both employer and employee would like to be a bit more flexible as to how they may work those hours and that is a factor that I just mention as being raised with me. Also the matter of how contracts should be registered has also been raised with me and another factor which I think we have shared earlier around this table in a number of ways is that some people do see a significant difference between the provisions of this particular legislation and some of the provisions that are being proposed which relate to the public service. Now that's not trying to say that one should be the other except to say that there are marked differences in some situations notwithstanding that one is seen as a set of minimum standards and the others are a set of realistic applicable standards. I don't know that there is necessarily a huge and ready answer to all of those things except that they have been identified and I would like to put them on the table so that Members can go through those

MR WALKER Thank you Mr Deputy Speaker I have had quite some discussions with the Minister on this Employment Amendment Bill. He is aware of my intention to foreshadow some amendments to the Bill as it stands at the moment. I think for everybody's consideration, although these won't be the actual words, I give you the intent of my amendments because one in particular is very important and that is that we insert into the principle act under subsection 8(1)(b) a new subsection (c) a person who receives remuneration in excess of the prescribed amount under the terms and conditions of their contract of employment and that we add to the Bill an insertion into the Employment Regulations 1991 by deleting the existing subsection 3a and inserting a new 3a for the purposes of subsection 8(1)(c) of the act, any employee who receives remuneration in an amount greater than \$30,000 is exempt from part 2 subsections 13, 14 and 15 of the Act. I apologise Mr Speaker. Before I started this I meant to declare that I am an employer in the community and I need to say that to declare my interest. The effect of those two amendments that I've just foreshadowed is to create what we have loosely terms a salary bar. In other words to exclude those people who earn above \$30,000 from those parts of the Act. The purpose of this is that the Act was intended to address minimums and continues to try to do that and we have been experiencing some difficulties when we try to have an act which is all things to all people. A second amendment is that No 7 of the Employment Amendment No 3 Bill be altered to delete the \$9 in 1a and substitute \$8 and the entirety of 1b be deleted therefore making the present 1c become 1b. No 4 is that the amount \$10 in No 8 be deleted and substitute \$8 and the last amendment is that we insert the following interpretation into subsection 4 of the principle act. Remuneration means the amount of monetary reward paid to an employee. At the appropriate moment I would like to move those amendments

MR NOBBS Thank you Mr Speaker it is probably a little unfortunate that the Public Sector Management Act and this Employment Amendment Act are in at virtually the same time because there is obviously some comparison in the community in relation to provisions of both of them but as the Speaker said earlier, the Employment Amendment Bill contains minimum levels established and the Public Sector Management Act refers to what you get. That's what you get regardless and there really are no great comparisons between the two and people should not do that however, I listened with interest at a meeting of the Chamber of Commerce on Monday night when the responsible Minister and Kim and Chairman of the Working Group addressed the Chamber of Commerce I noted there were some concerns and I'll be making a suggestion to the Minister in the days ahead. I knew he was going to adjourn this matter and I assume that he will be taking these proposals including those proposed amendments back to the Working Group to get some advice and I'll be having a chat in relation to that 40 hours and the 8 hour proposal which seems to be causing some concern. There may be a way out in relation to that and you don't have to look very far into the Public Sector Management Act to facilitate that I don't believe. I look forward to debating this fully at the next sitting and getting it into place

MR WALKER Thank you Mr Speaker the Clerk has brought my attention to the fact that if I was to table these amendments then they could be circulated to Members

SPEAKER By all means would you like to do that

MR WALKER Thank you Mr Speaker I so do

MR SMITH Mr Speaker, a couple of things. I think it was yourself that asked in relation to the 8 hour day and the 40 hour week, that's been in the Regulations for quite some years. I haven't proposed any change to that situation. That was asked at the Chamber of Commerce the other night. If it is thought that there needs to be some change, for example, if someone works an 8 hour day and there's a late flight which was the example given to me, that arrives at 11pm or 12pm and somebody needs to send their already worked eight hour day person specifically on that particular night but maybe not the rest of the week

MR SMITH

Mr Speaker, I nearly took offence when Mr Brown said that I didn't understand what I was doing in relation to the minimum condition for Norfolk Island employees but I won't because Mr Brown's been saying similar things for many years not only to me but he's been saying it to anybody. If I could just go back a step there, earlier on we were talking about conflict of interest and I said that I welcomed Members views even if somebody is involved in something that we are debating on and I welcome Mr Brown's and Mr Walker's and Mr McCoy's involved in the commercial sector and I think it's important that their view is put across, but what I don't appreciate is over the years there has been an obvious attempt by some to keep people's wages as low as they can on Norfolk Island. I was fortunate to be given the Islander, which is the Christmas Island version of the Norfolk Islander by Geoff who borrowed it from Adrian and when you look through here and you see what is being paid on another Island which is in a similar situation to us except that it is integrated into Australia then everything is a heckova lot more expensive than it is on Norfolk Island and that's okay because that's over there. But a lot of things are expensive over here except wages. Now I don't accept that somebody should be paid \$5.75 these days. And it happens Mr Speaker. It's alright to say not everybody pays that but right now, the minimum hourly rate is \$7.00. In 1991 I think it was when the hourly rate came in it was \$5.00. That stayed like that until 1995. In 1995 it went to \$7.00. Since 1995 it's been the same. Still \$7.00. You can't tell me that the cost of living hasn't gone up. You can't tell me that people don't deserve an increase in their wages to keep up with that cost of living. I don't think it is fair to argue against people getting a fair deal for a fair days work. Not everybody gives a fair days work, I understand that, but there are some ones that do and they need to be recompensed appropriately Mr Speaker. For too long I've heard the Assembly say with certain salaries and wages, it might be a public service, it might be for school teachers, great example, or the workers in the private sector, that they shouldn't get any more money. I was asked earlier on today what we are doing to support the commercial sector. A question on notice by Mr Brown. We are doing everything we can to support the commercial sector Mr Speaker because I realise that where the funnel through which all of our funding comes from. I appreciate it as most members around the table would but we've got to go a little bit the other way too. The people who do the work in a lot of situations, they should be recompensed the same. They shouldn't be put into the situation where they can't just get any more money. Any commercial operator would know that if you do need more money, you have to increase your charges or the cost of whatever you are producing to the consumer if you can get it, that doesn't always work, but the person who's working on \$5.75 per hour has real difficulty trying to get more money for a fair days work. The \$9 was proposed on the basis that a survey had been done of many of the businesses in the commercial sector who said that the minimum they pay now is \$9 an hour. That's where the \$9 came from that was proposed. Members around the table here when we were earlier discussing this suggested that \$10 was what the minimum hourly rate should be so we've compromised there with the amendment at this point. We've put \$9 now, \$10 at the beginning of the next financial year which would happen automatically at that time. However I've been lobbied as has Mr Walker and others. Maybe that's too much at this time. Maybe we should start with \$8 as the minimum. I'm reasonably happy with that. We make the adjustment 1st July to \$9. It's still not enough in a lot of cases but I'm open to suggestions to whatever we are doing in here but a lot of focus has been put on as Mr McCoy also said about the eight hour day and the forty hour week. That has been in place for a long time. The overtime provision is still in effect. There was an amendment to that in Gary Robertson's time which was in the Amendment No 2 Bill which has not yet fully commenced that removes that so those employers who think they shouldn't be paying overtime even at this very point in time, they should be. We are amending Gary's amendment to put that back in there but with a condition that Mr Walker is proposing that if somebody is paying fair hourly rates and there's quite a lot of employers who do, that if their workers want to work longer hours than the forty hours that they can get into the situation of a salary bar. Now if those employers are paying what they say they are and with overtime, would take them over this level they should be very happy with what is proposed by Mr Walker. I think the cut off figure is \$30,000. Mr Speaker it's getting dark. I think I'll leave the rest of my debate to the next sitting unless there is some other query that I need to answer

MR BROWN

Mr Speaker can I just refer to a couple of things. First of all the Minister has told us that there is something terrible happening that there are people being paid \$5.75 per hour. Well if that's true the existing Act is being breached and something should be done about this. But it is not a satisfactory reason to say, well because someone was being paid less than the minimum wage we should now increase the minimum wage. There's a bit of a non sequitur there somewhere and for the Minister to in his next breath to suggest that really the minimum wage should be \$10 an hour and for a 40 hour week that's 40 times 10 equals \$400 per week and that is \$20,800 per year. Mr Walker is suggesting that the salary cap he is proposing should be \$30,000 so George is telling us that an employee should simply go along to his boss and say listen, give me an extra ten grand and then I'll work a bit longer for you. I shake my head Mr Speaker

MR SMITH

Mr Speaker, I can't let that slip. That is what is being proposed to me and others as a solution to people who do pay way above average hourly rates. The other thing about the \$5.75 per hour, that was sorted out Mr Speaker but it was happening. It is a good point that was raised at the Chamber of Commerce the other night that there should be more effective controls within the Act and I'm glad Mr Brown has

reminded me of that so we can also add that in so that the whole Act has teeth that somebody who does do something wrong can be penalised for it when they know they are doing it wrong

SPEAKER I think we have concluded debate on that particular matter. Mr Smith

MR SMITH Mr Speaker, I adjourn debate until the next Sitting of the House in December

SPEAKER Thank you. The question is that this matter be adjourned and made an Order of the Day for a subsequent day of sitting

QUESTION PUT
AGREED

That matters is so adjourned

HANSARD EXTRACT

24 JAN 2001

EMPLOYMENT AMENDMENT (NO. 3) BILL 2000

Debate resumed on the question that the Bill be agreed to in principle and Mr Smith you have the call to Debate resumed on the question that the motion be agreed to and Mr Nobbs you have the floor

MR SMITH Thank you Mr Deputy Speaker the Employment Amendment No 3 Bill seeks to do certain things to the Employment Act including written contracts for all employees, it tidies up the overtime provisions and specifies the eight hour day and the forty hour week and sets as is required from time to time the minimum hourly rate. Mr Deputy Speaker I'm in no hurry to deal with this and I don't intend to push it to the end of the day because I'm still receiving public comment and there are further discussions to go on with myself and the Chamber of Commerce for example, however Mr Walker has some amendments he would like to talk today. I don't think he intends us to deal with them because they are detail stage amendments but I'm quite happy for him to raise the issues that he is talking about so that people are aware what his amendments will be

MR WALKER Thank you Mr Deputy Speaker I would like to table these detail stage amendments so that they can be discussed and we be given the views of those who are affected by these amendments. The amendments I would like to state are in three divisions, in one overwhelming feedback that the Working Group and myself as an MLA have had in relation to the contracts in the new subsection 3 of 11.2 of the principle Act, I wish to insert an amendment which will in effect re establish that a resident living on the Island does not have to have a mandatory contract with his or her employer but can opt to have that if they wish and give them mechanism by which should they so desire to have a contract that the employer must comply with that so the employee is protected in the sense that they can have a contract although it will not be mandatory for residents to do so. In the second part there is a deletion and a substitution. It is the deletion of the word must and a substitute of the word may in section 14.2 of the principle Act and thereby give the Executive Member the means by which he can use his discretion should he feel that the automatic consideration of an increase in the minimum wage rate each year need not happen. In other words there has been concern that he automatic in the word must took any consideration of extenuating circumstances where by the RPI would move out of kilter with its normal movement and would immediately start to impact on the minimum wage under the Employment Act. The amendment that I have proposed in section 2 is simply to change that so there is a discretion by the Executive Member and that he may change it or I may not choose to change it. In section 3 we talk about the actual setting of the minimum wage rate. to speak to this I would like to go back to the very beginning. In December 1985 a Committee of Inquiry into Wages and Working Conditions the Committee consisting of Mr Ross Westwood, Mrs Judy Jarvis and Mr Ross Reynolds, was presented to the Legislative Assembly and in this was some thoughts on how they had come up with what they were recommending and there fore formed the basis by which the 1987 bill was put together and eventually it became the Employment Act 1988 which was commenced in 1992 so there was a long transitional period for this bill. It started with this report and I would like to read what it says under rates of remuneration. The Committee's inquiries revealed that in most areas of the private sector market forces dictated base rates and movement in the rates of remuneration resulting in a self regulatory adjustment pattern which is considered satisfactory. the advent of Tribunals or similar bodies to set wage rates and awards for the many different types of work undertaken within the Island by a relatively small workforce would be unwieldy and costly and it is not considered either necessary or appropriate to Norfolk Island conditions. Therefore legislation for rates of remuneration is not considered desirable or necessary. However to give protection against exploitation in the private sector of which there is some evidence in certain areas the

Committee recommends the introduction of a minimum adult wage based on needs and this will be addressed under Terms of Reference No 19. Further the Committee recommends that an annual adjustment to the minimum wage based on 75% of the movement in the Norfolk Island Retail Price Index be introduced. Now effectively that was the beginning of how the minimum wage was set in the Act as we have it today. It was not meant to be an award rate. It was not meant to be a wage rate as in a weekly wage rate, it was meant to be protection against exploitation. I therefore would like to say that the amendments that we have before us in the No 3 Bill, are attempting to put into place not a minimum wage but an award wage and I have proposed under section 3 of my amendments that the award wage prescribed in the No 3 Bill be substituted with a minimum wage as is in the Act that has not been commenced, that is the Employment No 3 Act 2000. That's the basis of the three amendments that I am proposing. I am hopeful that in the cases of 1 and 2 that I will have full support in putting those in because they are the things that have been brought to us as a Working Group and to myself as an MLA and from the Chamber of Commerce, there are employees represented quite strongly on the Working Group and I emphasise that, that it is a balanced Committee put together and I commend the Minister on his balancing of the Committee with employees and employers. Those two I don't feel are in contention. Obviously there will be some contention under section 3 and that's why I would like them dealt with separately however, I can only refer you back to the basis of how the Act came into being in the first place, the intention behind the Act and the way in which we have now moved to shift that from a minimum wage to an award wage and I think I'll leave it there. I would like discussion on it if possible. I've tabled it so that it can be put to those other parties in the community who would like to consult it and come back to us on it and at the appropriate time when we get to the detail stage I do foreshadow that I will move those amendments

MR SMITH

Thank you Mr Deputy Speaker I'm interested to see Mr Walker's amendment, particularly with the contracts because I think it was Mr Walker's idea that we put it in in the first place so that's good if he's seen the light on that particular section where a resident could be required to have a contract. Quite rightly there was some input from the community about that, as long as they have the right to have a contract and request one and will be given such a contract. I think that's really important. No 2, where it goes from must to may, that would be interesting and would depend on the Minister of the day. In the past we have had Ministers who haven't been very keen on making any increase or allowing for an increase in the minimum hourly rate and that's obvious from the original \$5 per hour that it was didn't change until 1995 and went up to \$7 at that time and hasn't changed since although Gary did propose that it move to \$7.70 or \$8 that he had wanted passed in the last Assembly. The matter of the minimum hourly rate is a matter with a lot of contention attached. Some employers think that \$10 is the least that somebody should be paid on Norfolk Island, particularly the way the cost of living has increased over the last few years however there's debate about that and that's why I haven't been in any rush to deal with the amendments I've proposed because we need all the input we can get and it's interesting from the things that have come out. For example very obviously there's a number of employers who don't know their liabilities under the Employment Act. Now I suppose I hadn't even really considered that. However some people have stood up in public and stated things that they are doing who believe that that is how it should be, and under the Act they aren't right and they don't realise this. However, there's been some interesting debate and the Chamber has taken a keen interest and has written me a letter as have other employers around the Island but I am really interested to hear the comments because the other side of the equation and I thank Bruce for commending me for including employees on the Working Group that we have because, when you listen to the other side, and I'm not just referring to the people who help us on the Working Group, but the employees themselves in some circumstances do get ripped off. Now unfortunately, it is often people who are employed here on a temporary basis. If it means that by having people coming into Norfolk Island to work for a minimum rate which I know some people do, that undermines the wage structure of the resident work force. Now that is a concern to me. I don't discount what has been said about market rates and wages and other such information as provided to me but I believe what has happened is we have created a two tier wage system here. Now often I would say that a local person will not work for the bare minimum hourly rate. Maybe some do but I don't know about that. But if somebody can't get people to work for the bare minimum hourly rate of \$7 and no other entitlements, it's very easy to just bring somebody in from another country that will. Now I can't give any specific details of that – oh yes I can but I'm not going to do it today – so we are actually undermining what could be the market rate or a minimum hourly rate. If people will work for less than what they should be getting, it undermines the market rate. On the other side of the coin I understand the employers situation, some of them. Some of our employers here pay very good money and really look after their staff and you know those ones because their staff stay on but there are some who don't and they have a high turnover and that's up to them really in that sense because if you have good long serving staff at your establishment it helps your own business so it's wise for a person to do that and most employers would agree with that but having said that and looking at the employers side I accept that I shouldn't sit here and say yes it should be \$10 per hour. I need to know all the facts. Where everything is going. What the employees generally think and we are getting those views. One thing I'm doing is I'm doing a simple publication to all employers that I know of and that I can through the media, just exactly what their liabilities are right now. Without Gary's amendment, without my proposed amendment and without Bruce's proposed amendment to my amendment so

that people, employers and employees, can know their entitlements and liabilities. I think that's an important step in what I'm doing here. That is why I haven't been in a really hurry to progress this. I want to get all the facts, thank you

MR BROWN
adjournment

Mr Deputy Speaker if no other Member wishes to speak may I move the

DEPUTY SPEAKER

You may. The question we have before us Gentlemen is that this matter be adjourned and made an Order of the Day for a subsequent day of sitting

QUESTION PUT
AGREED

That matter is so adjourned thank you.

HANSARD EXTRACT

21 FEB 2001

EMPLOYMENT AMENDMENT NO 3 BILL 2000

MR SMITH

Thank you Mr Acting Deputy Speaker. I've brought this on today to allow Mr Walker primarily to make any comments he wants to make. I don't intend to take this any further myself today because we're going through that public consultation phase that I suggested that we were going to do at the last sitting and there is more information that is needed. So that's all I intend to say except to move an adjournment when other Members have had their say on it.

MR WALKER

Thank you Mr Acting Deputy Speaker. I'm not quite sure, if I could be guided by yourself as to whether we are adjourning if it's appropriate to start debating detail stage amendments at this point. Is that appropriate.

MR ACTING DEPUTY SPEAKER

Well the question is that the Bill be agreed to in principle and we're not really at the detail stage.

MR WALKER

Thank you Mr Acting Deputy Speaker. I have always foreshadowed that I would have certain detail stage amendments. I have circulated these in the past. I think we have had some discussion on them. I asked for them to be dealt with as number 1 number 2 and number 3 and really there is not a lot more I can say at this point other than, because I'm sure everybody is aware of what those amendments are. At this stage I would certainly leave it for other Members to discuss it or we move to adjournment, either.

MR ACTING DEPUTY SPEAKER

Thank you Mr Walker. We are debating the question that the Bill be agreed to in principle. Now we can either put that question or Mr Smith can move his adjournment and I think that's at the stage we're at.

MR SMITH

I so move.

MR ACTING DEPUTY SPEAKER

The question is that debate be adjourned and made an Order of the Day for a subsequent day of sitting.

QUESTION PUT
QUESTION AGREED

HANSARD EXTRACT

21 MAR 2001

EMPLOYMENT AMENDMENT NO 3 BILL 2000

MR SMITH Thank you Mr Deputy Speaker. Yes we're at the point where we need to agree to the Bill in principal and then move on to the detail stage which is, we've got some detail stage amendments or Mr Walker has got some proposed so I need some guidance on how we go from here.

MR BROWN Mr Deputy Speaker Norfolk Island is not a social laboratory. The Employment Act did head towards being a sensible piece of legislation which encouraged rather than discouraged employment and which provided protection where protection was needed. The direction in which the recent proposed amendments has taken us is away from all of that and I do not support it. I will support the amendments but I will then oppose the Bill. Thank you.

MR DEPUTY SPEAKER Thank you. Is there further debate. There being no further debate I put the question.

QUESTION PUT
QUESTION AGREED

MR DEPUTY SPEAKER Thank you. We move now to the detail stage and Mr Walker has foreshadowed detail stage amendments.

MR WALKER Thank you Mr Deputy Speaker. These amendments have been before Members for some time now and I propose to move the amendments one at a time to allow a vote to be taken on each one and I would so move No. 1 which is an insertion. The following is inserted at the end of Clause 5 of the Bill following new subsection 3 of Section 11 (2) of the principal Act and it consists of No. 4 this section does not apply to the employment of a person who is a resident within the meaning of the Immigration Act 1980 however in the case of the employment of a resident a) the employee may request the employer to enter into a written contract in the prescribed manner and the employer shall comply within 14 days from such request and b) such written contract shall comply with the standards and requirements imposed by this Act and 5) conditions and requirements for the employment of apprentices and trainees may be prescribed by regulation which are not in compliance with this section or division 2 of this Act.

MR DEPUTY SPEAKER Thank you Mr Walker. Is there further debate on amendment No. 1.

MR WALKER Thank you Mr Deputy Speaker. I have explained before but for those listening on air I will once again give a summary of the purpose of these amendments. This amendment which I have just proposed is to allow the employment of locals and that is Norfolk Island residents to be employed or to continue their employment without a contract being in place. In other words for local people on Norfolk Island it will remain optional that they have a contract or not. However should they so desire to have a contract there is a procedure by which it can be achieved. This is contrary to what the Minister first proposed and what the working group first brought forward. However through the public consultation process it became very adamant that the public out there inclusive of employers and employees wished that this be reinstated into the Act. The consequences of this of course will be that certain conciliatory and adjudication systems will be made a little difficult because in the past and the reason why we had introduced the Bill as it was, was that where a contract does not exist it is very difficult to conciliate or to adjudicate on a employee or an employers complaint. However that aside the overwhelming have asked that it still become optional for residents to have a contract. The Section 5 of that amendment is simply to allow that we can be seen to be encouraging the employment of apprentices and trainees in apprenticeships and traineeships where the conditions of their indentured contract with their employer and those that are training them may differ in certain areas from that of this Act and so therefore we require, this allows that to happen and does not in any way make the employer or the employee of such an apprentice or a trainee to be disadvantaged and effectively that is a summary of what this first amendment is all about. Thank you Mr Deputy Speaker.

MR SMITH Mr Deputy Speaker thank you. Yes Mr Walker was of a view that everybody should have to have a contract prior to putting in this amendment. There was some comment from around the table about Members saying that it's not the right way to go for a resident to have to have a contract so I was open to the idea of accepting an amendment that would make it not compulsory for residents. Seeing Mr Walker has been involved in the conciliatory side of things so his advice is taken in that case. I have no difficulty in supporting that particular amendment. Thank you.

MR DEPUTY SPEAKER Thank you. Is there further debate There being no further debate I put the question that the amendment be agreed to.

QUESTION PUT
QUESTION AGREED

MR WALKER Thank you Mr Deputy Speaker. Amendment No.2 is a deletion and substitution and that is that Clause 7 and 8 of the Bill are deleted and a new Clause 7 substituted as follows. Section 14 (2) of the principal Act is amended by deleting the word "must" where it appears and substituting the word "may".

MR DEPUTY SPEAKER Thank you. Is there any debate.

MR WALKER Thank you Mr Deputy Speaker. The purpose of this amendment is simply to allow a discretion to be brought into the Act whereby the current Bill propose that it be compulsory for the RPI to impact on the minimum wage at every time that the RPI either increases or decreases and I have asked here in this amendment that the compulsion of that mechanism whereby the review of the minimum wage becomes a discretionary may if the Minister so desires or can see that there would be some adverse effect in the employment field should the RPI for some unknown reason not indicate a true requirement for the minimum wage to be either increased or decreased. Thank you.

MR SMITH Mr Deputy Speaker this particular Clause and the following one I have some difficulty with because in the original Bill it was intended that we set up a regime that would relate to the RPI which as Mr Walker has just pointed out moving the words must and putting in the word may makes it become a discretionary matter. I have some difficulty with that even though I've certainly had some comment from employers about how we deal with the application of the RPI. The difficulty with putting in a discretionary word instead of a must is that what may happen is what's happened previously, the rate does not change. The Minister doesn't change it or hasn't. This is what has happened for long periods of time and what happens in the end is that you end up with what might seem a good rate at the time, in 4 or 5 years time it's not appropriate. So by putting in a mechanism where it would be adjusted by the RPI it would actually adjust one way or the other at that particular time. I know that some people are uncomfortable with that, with using the RPI but I think from my memory when we were doing some research on it the effect would be quite minimal on the hourly rate as such. However the important bit is how it relates to the actual minimum hourly rate in the end. That's the important thing. I'd be interested to see what other Members have to say about this particular Clause here. It's just making it more discretionary rather than it must but I would be seeking at some stage to adjourn the rest of the debate on these particular Clauses at an appropriate time because there is some additional things that are going to need to be included in this Bill at some point in time, probably at the next sitting, but also the idea today is for Mr Walker to be able to spell out what his amendment is about particularly where he's proposing to reduce the hourly rate to what has been proposed in the original amendment to a different number and that we can look for further comment on that.

MR DEPUTY SPEAKER Thank you. Is there further debate. There being no further debate I put the question.

QUESTION PUT

MR DEPUTY SPEAKER Do you wish the House called Mr Walker.

MR WALKER Yes I think so please.

MR BUFFETT	NO
MR NOBBS	NO
MR BATES	NO
MR COOK	NO
MR MCCOY	NO
MR GARDNER	NO
MR WALKER	AYE
MR SMITH	NO
MR BROWN	AYE

MR DEPUTY SPEAKER Thank you. The result of voting the No's 7 and the Ayes 2. The amendment is defeated.

MR WALKER Thank you Mr Deputy Speaker. Regardless of the result of amendment No. 2 I still wish to move amendment No. 3 which is deletion and substitution and remuneration and that is that

1) Clause 9 of the Bill shall become Clause 8 and I don't think that will apply now I'm sorry. So the amendment will have to be simply without the 1 and 2 and the first line and it will be that the sum of \$10 where it appears in Clause 9 of the Bill is deleted and the sum of \$7-70 is substituted.

MR DEPUTY SPEAKER

Thank you. Is there further debate

MR WALKER

Thank you Mr Deputy Speaker. I suspect that this also will be defeated however I wish to move it on the basis that I think it is wrong for us to be determining what is in effect a minimum wage which is creating an award and I think that there is still some misconception that a minimum wage is simply as a net to rescue those that may be in jeopardy of being taken advantage of. It is not to create an award wage and as such I would simply leave it at that. Thank you Mr Deputy Speaker.

MR DEPUTY SPEAKER

Thank you. Is there further debate

MR SMITH

Thank you Mr Deputy Speaker. This is a very important part of this whole amendment and this the point where I think I would be proposing an adjournment on this particular issue. Mr Walker had briefly spelled out what he's talking about here. It is in fact where it relates to the minimum hourly rate. Now there has been much debate from within the commercial sector appropriately and also in some correspondence to myself from the employers in that sector who have made comment about what had been proposed of \$9-00 per hour as being the minimum hourly rate. Somewhere along the line it was introduced, and I think it may have been in the Chamber of Commerce letter from Chamber President Gary Robertson that we're introducing an award rate or introducing something that was new. We're not introducing anything that is new Mr Deputy Speaker, what we're doing is reviewing the amount that was already proposed in the original Act. To suggest that we are setting up something different is totally wrong. It's a matter of what we set the rate at is the important factor in all of this. Mr Walker has said as other have said over the period of time since we've been talking about this Bill that it's a safety net. That's ok if it was a safety net but Mr Deputy Speaker I believe it gets used as more than a safety net but I don't know and that's what my amendment is going to be about. I suspect there's possibly an employer or two out there who use it as an award and say the minimum hourly rate is currently \$7 so \$7 is what you get. Now I can't go and check that out because I can't as I understand it send somebody out as an inspector to say are you paying this much or are you receiving this much, and that's one of the amendments that I want to introduce. The amount for the minimum hourly rate is up to Members. They could leave it exactly as it's been for the last 6 years or they could take into account the fact that costs actually do go up and if somebody has been employed for \$7 an hour or whatever rate it was for that period of time and they are still getting that same hourly rate they are certainly going to be behind the eight ball aren't they because costs do go up. We all know that. So what do we do? Do we just let them drift around out there and try and survive or do we make sure that the safety net, make sure that the safety net has got all its strings tightened up to be able to catch them. Leading up to introducing that \$9 per hour Mr Walker who is the Chair of the Employment Act Working Group kindly rang around many of the employers and was talking about what sort of rates that they would pay. I can't remember the exact words but it appeared that generally most people are paying normal rates of at least \$9 an hours and in fact quite a few as I understand it, well above that. So when we talked about making it \$9 an hour for the minimum hourly rate we knew that there would be some objections, but we believe them, I think the Members of the Assembly said at the time \$9 is what it should be for or I think it was even suggested \$10 is where we should start. So we chose \$9 as a starting rate going up to \$10 an hour from the 1st of July 2001. Now that has to be amended whatever rate we get because the 1st of July is getting a little bit closer now and I've already talked to the Draftsperson about extending that date out, whatever that number ends up being, but really this is the crux of the whole amendment is making the change from the old rate up to what is proposed a new rate and then with the RPI adjustment part on it. At the appropriate stage I'd like to move the adjournment, once other Members have had their say on it and that will give us time to get comments back on what we've been talking around the table here today and to be able to add in other pieces that I believe still need to go into this amendment Bill. Thank you Mr Deputy Speaker.

MR BROWN

Mr Deputy Speaker I don't know who Mr Walker may have phoned in the research which the Minister has just told us about. Perhaps he phoned some people who run a shop that operates from 9-5 Monday to Friday and certainly in that situation he may well have found that people pay X dollars an hour and didn't greatly care what changes were made to the minimum wage or to the Employment Act. I'm not criticising Mr Walker in saying that but what I'm getting at is the Minister has told us oh someone did a survey and came up with this answer but you've got to know who was surveyed, what questions were asked, what were they told. To increase, if there are indeed people that the Minister is talking about who are presently on \$7 an hour, to increase those people from \$7 to \$10 is an increase of about 40%. That's pretty substantial but more importantly the way this legislation is headed if the Minister has his way, if someone works more than the prescribed number of hours they will have to be paid time and a half or whatever the rate may be based on their actual hourly rate and so all of a sudden if there was this hypothetical \$7 an hour person, if they work more

up was that it is a safety net. It is a safety net so that people can't be taken advantage of. It is not meant to create a new market rate which is exactly what this is going to do if we start putting the minimum rate up to \$10. I'd be quite happy for the Clerk to come and collect these and distribute them to the Members if they so desire to look at it. There are no names on it as I have said and it does give some indication of what the market rate is at the time that the survey was taken.

MR DEPUTY SPEAKER

Thank you. Is there further debate

MR GARDNER

Thank you Mr Deputy Speaker. I'm pleased that Mr Walker's first amendment and that was relating to residents not requiring a contract other than if they seek to have one has been included. As Members would be aware I've been passionate on that fact for quite some time now and has occurred to me when one is no longer an Executive Member of the Legislative Assembly one has to go and find some other means of a livelihood, however it's not my proposal to go out and be an employee but if that were the case that I was pretty adamant that if I was needing to look for a job that I would like to retain that right to either have a contract or not have a contract. I'm a pretty old fashioned sort of guy at the end of the day and I take a lot of people on their word and as I've said in previous debate I've been bitten by that but on the whole I've had a pretty good experience. Mr Walker's gone and undertaken a pretty substantial survey by the look of it, by the paper that's just been handed around to us, and that's good to see and I guess when you glance at that I wonder what on earth we're discussing this for because I think everybody's pretty well catered for, and this really brings me back to a pretty strong position that I take in relation to legislation. Unless there is a demonstrated need to have to legislate for some of these things it better to try and maybe with what you have in place to tighten up some of the appeal mechanisms and review mechanisms of the employment tribunal etc to drag into line those few bad apples that are in the bunch, rather than just holus bolus go out and hit everybody over the head with a big stick, and those that historically for a long time have been towing the line and without doubt some of these businesses that have been identified have historically been exceptional employers. There's no doubt about that. It's not often that you hear of too many complaints against established operators. However as I say there is always a few bad apples in the bunch and I think that's probably the area that needs attention is the few bad apples and how you deal with those, rather than as I say hitting everybody over the head with a big stick. I've given examples in previous debate about overtime and those sorts of issues. Mr Deputy Speaker when I first came to Norfolk it certainly wasn't my intention in those days to spend any more than 2 weeks here. I was on a flying visit, flying holiday. I was off to other pastures. However the attractions of Norfolk Island tied me down and I've spent most enjoyable, in excess of half my life living on Norfolk Island, brought up a family here on the island but there's a lot of other people that are currently on the island that I used to be in their age group and one of the things that you want to do when your travelling is to be able to fly into somewhere, pick up a job, work unlimited hours to get as much cash behind you as you could before you moved on to your next destination, and because of the type of business that Norfolk Island is in tourist accommodation, we attract a lot of those people here to our shores. One of the beauties of it is that your prepared to put in the long hours, your not after enormous dollar value of overtime but if you want to work 60 hours you should be able to work 60 hours because you want to put that money away so that you can move on to the next stop on your road. An example that I gave was that maybe if you had 2 employers and I'll just take hypothetically a couple of Members of the Assembly. If we have Ron who was a substantial employer and we had Mr Buffett as a substantial employer and they had staff that were working for them and they hit that magic 40 hour side of things, they are I think going to be hesitant to pay exorbitant levels of overtime if there is a lot of work to do and I think Mr Brown says you've got an option, you can go out and employ a couple of other TEP's or these 2 operators can get together amongst themselves and say I've got Joe Bloggs who does X for me and you've got Joe Bloggs who does a similar thing in your establishment. I'll take your bloke after he's worked 40 hours at yours and pay him as a new employee in my establishment and you take my bloke. You probably find the employees are going to be after that because that's some way of them earning extra money. The employers going to enjoy that because it's simply saving them costs but getting another job done without going through the process of having to bring in other people to the island. It's a win win situation in that sort of experience. Granted there are other areas where people work and at times can well be abused in their responsibilities. People on salaries can work exorbitant hours but that's part of the job, that's what they accept when they take the job on. My history in the hotel industry is that you know that there's a lot of work there, you know that the hours are there, you accept to do that job as part of the job. You don't expect to get huge overtime allowances and bits and pieces. It's one of the beauties of it, it attracts younger people and people that are on the move and people that are very flexible in their time and movement and I think that's important, and certainly it underpins the tourist industry on Norfolk Island and something that we've got to bear in mind when we're dealing with this. What I'm trying to say at the end of the day is that I'd rather not us going wielding the big stick at everybody and capturing everybody in this. If you want to target those bad apples well we'll target the bad apples by strengthening the mechanisms to be able to deal with them. Thank you Mr Deputy Speaker.

MR DEPUTY SPEAKER

Thank you Mr Gardner. Is there further debate on amendment No. 3.

MR SMITH

Mr Deputy Speaker if this is the appropriate time I'd like to move the adjournment until the next sitting of this issue.

MR WALKER

Thank you Mr Deputy Speaker. Firstly I am so pleased that Mr Gardner brought up the subject of disciplining everybody or legislating everybody to discipline a few. I had admitted to bring that point forward and it is one where I sit on the Conciliation Board and under this Act and I'm sure it can be substantiated through the employment officer and the Minister could be furnished with that information that there is a trend within the complaints that are received that they are from a minority on the island of employers. They are not the general case. To my knowledge the general case is that most employers are very responsible, employees are happy with the conditions they have and this survey indicates that the market rate is healthy and I can't see why he is so insistent that the safety net has been breached and should be lifted so that it comes up to \$10 an hour on the basis that somebody might be employed at \$7. I've indicated here through my position as Chairman of the Working Group who undertook this survey that that is not the case and I simply think that we are over legislating and trying to wield the big stick as Mr Gardner said on everybody simply to bring 2 or 3 employers in line. I'm a little distressed that he's going to adjourn this Motion once again or is going to attempt to adjourn it because I believe this Act has been on the table for a number of years now. It is not a matter of this Act review, it was I think it goes back at least 3 Assembly's if not 4 Assembly's since it was started the review of the Employment Act and as such I believe a tremendous amount of public consultation has been entered into. I cannot see why we have to now go back and ask for more consultation on the consultation. It just does not seem to me that the Minister wants this Act to ever become commenced. He can always bring another Bill forward if he wishes or so desires once it has been commenced but this House in February of 2000, let me stress again passed a Bill which was assented to as an Act and has yet to be commenced. We are talking 13-14 months on that Act, which is this one. I don't know how long we can procrastinate to take public submissions on this particular Bill.

MR SMITH

Yes, before I move the adjournment or propose and adjournment Mr Walker must have forgotten a couple of things. He's on our Working Group. It was the Working Group who made these recommendations. Mr Walker is the Chairman of the Working Group. I've never set an hourly rate. It came out of the Working Group, it came to the Members, Members said it should be X. \$10 I'm talking \$9. Mr Walker keeps referring to \$10. I hope we are both on the same side with this particular Bill Mr Walker because we've been working on this together. I'm taking the time with it to make sure everybody knows what we are doing with it. I do that with my Bills if I feel that more information is needed or where people haven't understood the original Bill in the first place. Not the Bill the Act, and that has proven to be true in the last 2 maybe 3 months, where there are employers who did not fully understand the current Act which is in force, and instead of rushing in and making it so that we make it a little bit worse where some employers have said well you know perhaps we should get everybody used to what the real rules are already and then introduce new bits and that's the process I'm going through. Mr Walker said something about I might not have intention of passing the Bill. Of course I do but there's other things that need to happen with the Bill too. There's a suggestion, and I think it's a sensible proposal to split the Employment Act up so that the OH & S stuff comes out of that and becomes a separate Act. I want to do these things carefully so people understand what we're talking about, careful that we don't do something that may really create havoc amongst the employers and the employees and give us further problems with unemployment for example and I'm open to those negotiations. I want to make sure we get it right in the first place.

MR WALKER

Thank you Mr Deputy Speaker. The Minister is quite right that when he introduced this Bill which was on the 16th of October last year that it would have commenced had it been assented to immediately at \$9 and changed to \$10 on the first of July in the year 2001 which was a period of 8 months and the Working Group recommended that. He is quite correct. However we are now in March and we are going to adjourn it again according to the Minister and if we do so we are then talking the April sitting. It will possible get adjourned again. The first of July will only be a couple of months away, so we are talking about \$10 not \$9. By the time it is implemented and is commenced we will be talking about \$10 an hour as the minimum rate for the 1st of July.

MR GARDNER

Thank you Mr Deputy Speaker. Just an observation on Mr Walker's amendments. The previous amendment No. 2 that was defeated would have taken care of the reference to the dollar value in Clause 7. There would need to be further amendment if the amendment No. 3 were to get up to amend Clause 7 to reflect the changes in the dollar values and in light of I guess some of the confusions that now are starting to set in I think we need to, I would certainly support the adjournment of this. I've had brief discussion with Legislative Counsel and it may be an appropriate way to go through and to set out a clean Bill with proposed amendments and those that are being looked at being deleted so that Members were very clear on exactly what the outcome of this would be if it were agreed to and I would support that position because

there's nothing worse than ending up with another one of Mr Bates' sayings a snafu because we were unable to make this thing work properly and it's just mass confusion. So I think it's appropriate that we do adjourn it.

MR SMITH I was going to move the adjournment but there is another Member that wishes to speak.

MR NOBBS Thank you. I'm pleased that somebody has clarified the situation. As far as I'm concerned it's \$9 up till the 30th of June, it then goes to \$10, now you want to bring it back to \$7-70 from 2002 from the 30th of June 2002 by this particular amendment. That's my reading of it and I think it needs clarification because it just doesn't fit the bill. So I'd suggest an amendment or you either pass the \$10 which is due to come in on the 1st of Jul or have a look at the whole thing again.

MR DEPUTY SPEAKER Thank you.

MR SMITH Mr Deputy Speaker I did say in my debate earlier that that is one of the things that has to be fixed is that particular area there so that does reflect what we're intending to do and the \$10 an hour would be extended out to another date possible 2002 as one of the other things that does need to be fixed and I certainly agree with what Mr Gardner said. The adjournment has actually become quite necessary. Views have been expressed about the current proposed amendment and it's an appropriate time to move adjournment and we can make some adjustments to the Bill and bring it back in a different form for the next sitting and if there's not further indication of debate I'll move the adjournment.

MR DEPUTY SPEAKER Thank you Mr Smith. Do you wish to further debate.

MR WALKER I simply wish to give notice that I will have a further detail stage amendment when we come back to the House. I have actually give it to the Legislative Counsel some 2 weeks ago but his through pressures of work has not been able to bring it to me.

MR SMITH So we wouldn't have had it for today anyway.

MR WALKER We would have had it for today/

MR SMITH So we couldn't have passed this today.

MR WALKER Your in charge.

MR DEPUTY SPEAKER Thank you Mr Walker. I believe Mr Smith you had indicated that you would seek to adjourn debate on amendment No. 3.

MR SMITH Mr Deputy Speaker I move that debate on the Bill be adjourned and made an Order of the Day for the next sitting.

MR DEPUTY SPEAKER The question is that the debate on the Bill be adjourned and made an Order of the Day for a subsequent sitting.

QUESTION PUT
QUESTION AGREED

MR DEPUTY SPEAKER Do you wish the House to be called Mr Walker. The question as put has been agreed to and the Bill has been adjourned and made an Order of the Day for a subsequent day of sitting.

HANSARD EXTRACT

18 JUL 2001

EMPLOYMENT AMENDMENT NO 3 BILL 2000

We are resuming at the detail stage on the question that the detail stage amendment No 3 be agreed to and Mr Smith you have the call in respect of this matter

MR SMITH

Thank you Mr Speaker there has been some discussion on this piece of legislation over the last month and I had advised Members in the last week or so that instead of proceeding any further at this point with the legislation that we would give a report and that I would table that report and I would like to do so now and it's a brief report. I'll just read quickly through it. Some Members are aware of what it says and we will proceed with the further progress of the Bill at a later time if that's acceptable to Members. The Employment Act 1988 has undergone two separate amendments since February 2000 with a further amendment the Employment Amendment No 3 Bill currently before the House. The thrust of these amendments is to provide for contractual obligations on employers. The requirement of a written contract in some circumstances and the option of contract if requested. Moreover there has been an attempt to link minimum wage levels with the retail price index and to ensure an annual review of minimum wages in that context. In essence there has been a comprehensive amendment to ensure minimum statutory terms and conditions for private sector employment in Norfolk Island. The amending legislation is not yet commenced and is awaiting conclusion of debate concerning the current amending bill. That process has been placed on temporary hold by myself in view of 1) a more comprehensive review of the Act by the Employment Officer and Deputy Crown Counsel relating to workers compensation and occupational health and safety as well as 2) concerns expressed by the Employment Working Group that the final amendment required more consideration of the detail stage. A full report is being developed in relation to Workers Compensation and the Occupation Health and Safety Matters and a copy of the suggested strategy matters for implementation of workers compensation and OHS matters under the Act is attached to this report outlined. In the time available the final report has not been completed however ultimately the document will recommend an excision of Workers Compensation and OHS matters from the Employment Act to a separate and updated piece of legislation. The concerns of the Employment Working Group will be fully canvassed in the final report however they can be summarised as follows –

- the need for there to be a provision of a statutory officer to inspect work place employment conditions
- accident report time frames
- provisions for second medical opinions to be obtained
- notice provision for termination need to be more equitable
- a flexible and appropriate overtime regime
- a realistic appropriate and global minimum wage based on research which concludes that employers are generally paying between \$9-10 per hour
- that detail stage amendments of the third Bill propose significant changes of the intent to the First Act awaiting commencement and that the Employment Working Group have its views and recommendations properly recommended to the Legislative Assembly by a written report

The report has been requested by the responsible Ministers which includes yourself Mr Speaker as the Minister for Immigration but will require another full meeting of the Employment Working Group prior to finalisation and I will table that report. I don't know if Members have already got it and if they haven't I will make sure you have one and I don't mean in any way to try and stop any other Members from talking about this Bill if they wish to do so today Mr Speaker but I would encourage them to hold off until next Sitting when I hope to have some further amendments to the legislation produced at that time depending on the Draftsman

SPEAKER

Thank you Mr Smith. I'll just explore to see whether there are any Members who want to participate in further debate

MR SMITH

Thank you Mr Speaker I move the adjournment of this debate until the next Sitting

SPEAKER

The question is that debate be adjourned and the resumption of debate be made an order of the day for the next sitting. I put that question to you Honourable Members

QUESTION PUT

AGREED

This matter is so adjourned thank you

HANSARD EXTRACT

26 SEP 2001

EMPLOYMENT AMENDMENT (NO. 3) BILL 2000

We resume debate on the question that the detail stage amendment 3 as proposed by Mr Walker be agreed to and I understand Mr Smith from our last debate you have the call to resume

MR SMITH

Thank you Mr Speaker. This Bill's been around quite a long time for various reasons. One of them was for more serious public consultation which has been taking place even up until just recently. The matter of contention was the minimum hourly rate as Members will recall from our last debate on it that the minimum hourly rate was proposed to be \$9 to increase to \$10 at the 1st July of this year. Mr Walker had proposed some amendments, some of which have been accepted and some which were not agreed to and we are now at the stage where we need to discuss debate or agree what the minimum hourly rate should be. Mr Walker has proposed that a sum of \$7.70 replace the \$10 amount that shows in the amendment Bill. Once we have debated that, I would be moving to adjourn it to the next Sitting purely at the request of the Chamber of Commerce whose meeting I attended when they asked that whatever we determined we leave it sitting on the table until the next Sitting and I said I would be happy to do that subject to what Mr Walker had to say about it and he was at that meeting and agreed that it would be okay but what I would like to really get myself is an indication from members as to whether they still agree that the \$10 minimum hourly rate should be what applies, or I guess Mr Walker's substituted \$7.70, thank you

MR WALKER

Thank you Mr Speaker. We are resuming debate on the third part of my detail stage amendments which is a deletion and substitution type amendment and I would read it here again to ensure that all members are aware of the content. It reads that 1. clause 9 of the Bill becomes clause 8 and 2. the sum of "\$10.00" where it appears in clause 9 of the Bill is deleted and the sum of "\$7.70" is substituted. Mr Speaker because part 2 of my detail stage amendments was defeated the first sentence or No 1. of the amendment we are now debating must be excised as not applicable as agreed the last time this was debated. However, the second sentence No 2 is still relevant and must proceed to a vote. I did give an explanation as to the reasoning behind the proposed amendment and would simply recap here that because the second part of my detail stage amendment was defeated it would be the case that should this Bill be agreed to, the minimum hourly rate applicable in the Employment Act 1988 will be subject to automatic increase. I'll say that again, to automatic increase each 1st July based on the calculation as set out in clause 9 of the Bill. That is to say the wage rate will be adjusted each year by the relevant movement in the RPI regardless of whether the executive member wishes it to or not. May I just remind members of the consequences already apparent in other areas where the relevant legislation or regulations are tied to the RPI movement. It should also be pointed out that this method of rate adjustment has a self perpetuating effect. The more one item rises in cost the more this affects the next item and so on and therefore the first item becomes affected again. That is to say that we could be instigating a spiraling of costs here within this bill regardless of whether those costs are warranted or not. In most businesses wages form one of the larger of their expenses and unwarranted movements in wages and salaries costs can have devastating effects of the business's viability. The informal and selective telephone poll of employers carried out to ascertain the level of hourly rates being paid to adult persons newly employed in the marketplace on Norfolk Island was just that, an informal and selective poll. This information was gathered to establish whether we had a majority of employers using the minimum wage as their base wage to effectively get employees on the least possible rate of pay. The result showed that most employers were being responsible and reacting to employee demand for higher than minimum rates of pay. There is little relevance between the polls results and the Employment Act minimum rates that are intended for an entirely different purpose to that which is demanded by the employees in the marketplace, that is, the minimum hourly rate is intended to give a safety net to those employees where an employer is endeavoring to take advantage of them. Mr Speaker, we the Legislative Assembly should not be getting into the business of setting award rates within the Employment Act for we could not possibly cover each and every type of skilled and or unskilled employment conditions as would normally comprise the full gambit of an award package for each and every type of employment on Norfolk Island. Whilst it is admirable that some members around this table may wish to increase the minimum hourly rate to match the going market rate it is not practical nor is it the purpose of the Act. It will simply lead to employee demand for the market rate to lift sufficiently that they are receiving a rate which is back to a relevant percentage above the new minimum rate. This will lead to a spiraling effect in the RPI and as a consequence the wage rate will automatically increase further next year and the year after and so on. I would urge all members to consider this Bill very carefully before you agree to pass it in its present form for the consequences will be far reaching and ongoing if it is passed today. Individual wage and salary rates should remain the responsibility of the employer and the employee in a proper industrial relations manner. Not influenced by a third party, the Government. The Government's responsibility is to set the acceptable minimum rate at which the new or unskilled employee is commenced. Before I close on this I wish to foreshadow a further detail stage amendment and request that at the appropriate time I may seek leave to bring it forward

MR SMITH

Thank you Mr Speaker in relation to this Bill and the discussions that have been held with many employers and employees in the community one of the things that I've come to realize and thanks to some members of the Chamber of Commerce who actually made me aware of it, there's been much talk about the market rate that employers work to. What I hadn't realised was that the market rate was only determined through private sector employees so the way it works is an employer who is considered a

top paying employer kind of sets the standard and other employees look to that rate which might be \$10 or \$20 an hour, whatever it may be, and they judge as I understand it, that what they would need to pay their employees to retain them so they don't move off to somewhere else. If they are a good employee you wouldn't want that to happen however, what had been missed out in those theoretical calculations, was the public sector. Now even though it was argued that the public sector has nothing to do with it, of course it does because that is part of the market. Your labour market is everybody who works or is employed whether in the public service or the private sector so when you look at that the public sector has the ability to seek a higher remuneration through the way they do, because the private sector doesn't have that, so if you combine the two you probably really would find that the market rate that is being talked about should be a lot higher so when it comes to making an award type wage as Mr Walker has said, I'm not doing that at all. I'm actually trying to bring into line the private sector minimums to satisfy that general market rate which is the market rate of the private sector and it was a real good point that I hadn't thought about myself. It was only in discussion with employers that we realised that was the case. So what we are proposing here is a lifting up after five or six years of no movement in the minimum hourly rate to something that would have turned out to be if the original amendment to this Act was commenced as the previous Minister Gary Robertson, had proposed at the time with the cost of living being adjusted up, it would have been something close to the hourly rate we are talking about now. I intend to move an adjournment on this but I would very much like to hear from other members before I do that of course and if Mr Walker has another amendment to propose I am quite happy for that to come forward today too if that's applicable

MR BROWN Mr Speaker I'm somewhat stunned at what the Minister with responsibility for employment has just said to us. I wonder whether after all of this time he has still failed to grasp what a minimum wage is. A minimum wage is not a basic wage. It is not an award wage. It is a concept which is in existence virtually world wide in the Western world at least and its not very high. It's a safety net. That's all that it is. In New Zealand I think it's something like \$6 or it certainly was until the present labour Government came to power and they may have done something with that for the same reason George is trying to, in that they might not have understood what it was they were playing with. I'm glad that our Minister is proposing to adjourn this today and I hope that he will take advise from someone who can explain to him what a minimum wage really is and then much of the confusion will disappear because he will not see the need for this minimum wage to be some kind of representation of what the best paying private sector or public sector employer on the Island might pay

MR WALKER If I could just pick up on a couple of things that the minister has put forward and they are this, that he has said that the market rate is set only for the private sector. That is very true. Because it is only the private sector that is affected by part 2. of the Act. The public sector has been exempted from it and so therefore run their own race in so much as industrial relations negotiations and they do that by coming forward to the appropriate Minister here within this House. The private sector doesn't have the luxury of being able to do that. They are set and everything and every move that they make by the Employment Act 1988 and here we are trying to make a comparison of that with the public sector who are able to go through a total negotiation system whereby they have to put up and a Tribunal at the end of it, sits on it. Now we are not saying that we have gone to the Tribunal to do this. We are saying that we've plucked this \$10 rate out of the air because it happens to match what most people are being paid in the private sector right now. That's the only basis I can find for how the \$10 was set. If you go to the RPI movement and take it from right when the \$7 was set which is the minimum hourly rate right now, and these figures were supplied by the Employment Liaison Officer to the Working Group, the highest it could possibly get to now is \$8.29. That's her figure. However we put in the Bill that it was going to be \$9 until the 1st July this year and then go to \$10. It's not relevant. It's just a figure simply picked out of the air and I cannot support something that isn't based on some sort of, at least semi scientific calculation. I really don't think that the Minister has realised the repercussions of setting a minimum hourly rate of \$10 where the market and the personnel employed within that market are going to react. They are already talking about it with some of their employers that if this \$10 happens, they want more than that because they should be worth more than the minimum rate. Now at the moment they are being paid above the minimum rate. However I'm happy that it is going to be adjourned and I hope that the Minister will take the time to find out what a minimum rate is all about. I have been trying to tell him for some two years and I would like him to look at some of the material that he has been supplied with not just by me and I would like the Working Group to have another look at it because I believe they have just gone along with this number which has been plucked out of the air and I'll leave it at that Mr Speaker

MR SMITH Thank you Mr Speaker relative to what Mr Walker has just said. The figure that was plucked out of the air was plucked out of the air by Mr Walker. He did a survey of employers throughout Burnt Pine and was able to give me a figure of generally, and he did say this earlier on, of around about \$9 was what people were generally paying but generally above that and from there Mr Walker was on my Working Group of about six people, some of whom were the Employment Conciliation Board who have seen the

way some employees are treated within the Norfolk Island workplace. The Employment Working Group took note of the casual survey I suppose we could call it, because it is probably not substantiated by actual figures but they took that as being at least \$9 and that was over a year ago. I'm quite interested in the way things has developed because this has been sitting around for quite a long time and even after nearly 12 months we are still talking about the same numbers. Now anybody who is an employer and if there's any sitting around the table who can say, okay well last month my hourly rate has gone up by a dollar or fifty cents or twenty cents or something I would look forward to hearing about that. So the figure wasn't just plucked out of the air. It is also based and no matter what anybody says about teaching Smith about working out what a minimum wage is etc, it is irrelevant to what we are talking about here. What we are trying to do which was the original intention of the Employment Act was to stop employees being abused because it does happen. Has happened for a long time. My personal belief and assessment is that \$10 an hour on Norfolk Island is appropriate for our own people. What does happen is that people will replace paying somebody local at a reasonable rate with people they can bring in. That's the sadness of it and that does happen and I know that happens as does Mr Walker who is on the Employment Conciliation Board. Probably most hard working residents get paid more than what is being called the market rate. I don't know exactly how much the market rate at this moment is but there is probably good local employees who get more than \$10 per hour. This is not about ignoring the commercial reality of what happens in the Norfolk Island industry. It's about looking after the people who do have and giving them an appropriate minimum hourly rate for what they do. It is so important to the industry here. It has been \$7 for years and it is time its changed. I think its six years. It may be only five years. Probably where we've been slack is that we haven't adjusted it every year because there then wouldn't be any fuss if it went up \$1 every year. We would probably be above what we are talking about today but every time it comes up, and I remember this discussion and I think it was Mr Adams actually when he was a Minister raised it from \$5 to \$7 many years ago that of course employers would complain especially if they are paying less than \$9 an hour and there are employers who do that. And whilst they can, good on them. There's nothing illegal about that until we set the rates at a higher rate where it makes it worthwhile for somebody in our community to get at least what they deserve. I appreciate all the arguments that have been given about of course, there would be some people who possibly aren't worth that sort of money and do get employment. I recognize that. I recognize also that children which under the Act is anyone under the age of 18, may be at a disadvantage if we put this up, like they might not get the hours that they did if they retained their work at all, but I would rather take that risk of doing that and bringing the minimum hourly rate up to something that is reasonable, thank you

MR WALKER

Thank you Mr Speaker I would just like to remind members that I started my debate on this subject by saying that the Legislative Assembly the last time we debated it defeated my second part of my amendment and so therefore you took away any hope of commonsense prevailing when it gets to the 1st July next year or the year after that or the year after that and the RPI will just take over so whatever rate you set now is going to go up every year by the RPI regardless. Please bear that in mind. We've seen it happen in other areas where suddenly those rates are out of the proportion to what they should be and I am tying my amendment into the fact that you defeated me on changing the word "must" to "may" and so "must" now is in the Bill if the Bill and so therefore that calculation under the RPI system will happen. It must happen. It says "must" happen so we are not just setting \$10 for this year, we are already past the 1st July, it will be \$10 as of now and it will change as at the 1st July next year and the year after that and the year after that regardless of what the economic situation of Norfolk Island is and I would just ask you to consider that when you are thinking about supporting that this amendment be defeated

MR NOBBS

Thank you Mr Speaker I just want to make a very quick comment in relation to this that firstly I think Mr Walker earlier mentioned about the minister and the public service pay rise. The Minister and the public service can agree, disagree, argue, they can argue with the Legislative Assembly, the three parties or the two against two, one against one or whatever you want to. The bottom line is that they do not set the wages for the Administration employees, the Tribunal does and maybe, and just maybe, the Chamber of Commerce might think about setting a Tribunal arrangement or ask us to set a Tribunal arrangement in place to set salaries for themselves. I don't know but that's a suggestion. The other thing is that whilst we have a figure here that was mentioned I think you will find that at the 1st July the figure would be about \$8.42 which is 70% which would give \$5.89 for a junior at 70% so if we keep putting it off we will soon end up with \$10 and everybody should be happy then but I would prefer us to get it over and done with as quickly as possible because it's been sitting around for a number of years as you know

MR BATES

Thank you Mr Speaker I need to take issue with Mr Walker over one comment that he emphasized just a few moments ago and its if you make it \$10 now and the RPI increases in July then the following July regardless of what we do the matter will get out of hand. I need to point out to Mr Walker that if what he says is the case and the minimum wage becomes unrealistic through this mechanism we always have the ability to amend the legislation. Any legislation that is not serving the purpose can be amended by this House and if that catastrophic event that Mr Walker is talking about happens we have the ability to fix it so I believe that, that aspect of it does not carry the weight that he has endeavoured to make it carry here today

and I would also point out that it would be nice to have a little input from the employees who have to live here with the very high cost of living and a little bit less input from some of the employers around this table

MR McCOY

Thank you Mr Speaker. I agree with what Mr Bates has just said and that's along the same lines as what I was about to say, that if there is an issue with the word "must" and it should be "may" well that amendment can be made at an appropriate time. I actually supported Mr Walker's amendment to include the word "may" because the difficulty I have with the word "must" is that if the RPI comes down the executive member must reduce the minimum wage but if the word may was left in there well the executive member has the ability to determine and consider whether he should reduce the minimum hourly rate if it comes down. Of course if it goes up then the executive member would have the ability to consider whether he should increase the minimum hourly rate in line with the RPI. The Minister with responsibility for Employment, Mr Smith, has been criticized I guess to a degree because some say that he does not understand the minimum hourly rate or what he is trying to achieve and we should look at it more carefully than what Mr Smith has done, but it is interesting when you look at the Grants Commission and when you look at the household expenditure survey that was carried out in 1995 and the average household expenditure back in 1995 was \$691.33. If you do an approximate 7% increase over the last five years you would find that the average household expenditure has increased to somewhere around \$739 per week. A person who is working 40 hours on \$7.70 who achieves \$308 a week, they would have to be a couple living together to meet the average household expenditure and I dread to think what it must be like for a young couple who has a family if they are only earning \$8 per hour because some employers will do the right think and pay the employees a little more than the minimum rate so it becomes I believe somewhat difficult for a person who is on even \$8 an hour to survive in the environment that we are putting them in here on Norfolk Island and with the average household expenditure per week that they are faced with. A lot of those costs come every month without fail from the Administration so I would support any increase in the minimum wage and I wouldn't support the amendment that has been proposed to remove the \$10 and to allow it to go back to a \$7.70 minimum. I appreciate that some employers will pay their employees a relative salary but some don't and unfortunately the ones who do the right think in a lot of cases are penalized by the ones who don't

MR BROWN

Mr Speaker I've heard some fascinating things said this afternoon. Our Minister for Myopia has told us that average expenditure equals minimum expenditure. They are different things Mr Speaker. You get to an average by taking account of everything, the minimum to the maximum. There is no way that the minimum expenditure in a household on Norfolk Island is \$739 because unless people take up robbing banks not everyone has that sort of money. We've heard all kinds of suggestions that there should be not only a guaranteed income but a guaranteed protection against increases in the RPI for employees. I haven't heard any suggestion that those who are the employers should be guaranteed an income in some fashion and I can tell you there are plenty of employers who are not ending up with \$10 per week. I'm sorry. \$10 per hour at the end of each week. The Retail Price Index is affected by things such as deliberate decisions made here. For example, not that many years ago we increased the taxes on liquor and cigarettes and do you know what happened, the public service came along and said to the Ministers, listen costs have gone up and the Ministers said oh my dear boys, run away and have a pay increase and went off to the Tribunal and supported it. Now we are being told that those who are employees in the private sector shouldn't pay tax increases themselves either. Now whose going to be left to pay them. The employers alone. I can tell you that although you I may think it's a golden mile up there, there are plenty of them who are doing it tough. Particularly in times like the present. You can't increase a tax and then take a view that no-one in the community should pay the increase. A deliberate tax increase is a deliberate tax increase that must be paid by everyone. There has been absolutely no understanding in the preparation of this Bill of the hospitality industry and the various industries that support it. If you wish to go back to having supermarkets open only five days per week, and if you wish them to only be open from 9 to 5, well by all means go ahead with this insane Bill. If you wish other employers on the Island instead of planning to keep the size of their work force as low as possible to plan to make it much larger so that people can be employed on the basis that they can be rostered for 35 hours per week and then if they are called in for an extra five hours in the week it won't cause penalties to apply, and if you are not going to care about any consequent increase in the number of TEP's then go ahead with this type of Bill, but you've got to understand that other parts of the developed world realised two things about the tourist industry. One is that they can't live without it and the other is that where people are required to work split shifts, where for various reasons they can be required to work more than eight hours in any one day, where for various reasons they can be required to work more than 40 hours in any one week, then this Bill tears the innards out of that industry because once people are outside of their normal working week you are going to be wanting them to get \$15 an hour not \$10. Now you've got to take account of all of these things. You've got to realise that it's all very well to sit there and say gee, \$7.70 doesn't sound very much, but for heaven's sake all of you go away and find out what a minimum wage really is. Take your blinkers off and look at the potential adverse consequences of this Bill. Recognise that although you may want to find around every corner an employee whose been mercilessly ripped off, there are very, very few of them and I can tell you there are far more employers that have been ripped off by people

such as doctors signing sickness certificates without employees being sick at all in the first place, things such as our Workers Compensation Scheme being ripped off in a similar fashion

MR BATES Point of Order Mr Speaker I think some of those accusations are quite improper, especially about doctors

MR BROWN I stand by them and if members wish to remove me that's fine

MR SPEAKER Yes, I'm not too sure that they contravene Standing Orders as I interpret them at this moment Mr Bates

MR BROWN But my point Mr Speaker is, this is apparently to be adjourned again today, I think it really needs to start again. I think it has not been progressed with an understanding of the way the world works and it has not been progressed with an understanding of the things that Governments can do to make the world not work and passing this Bill would be one of them thank you

MR SMITH Thank you Mr Speaker. This is really good debate. It is democracy at work. We have employers arguing the opposite case which is good and I don't object to that at all. Mr Brown made a comment and I just wonder if he realises what he said that with this Bill this is going to change it so people who want to work more than 40 hours per week will be penalized by this Bill. At the moment time and a half already applies to people who work more than 40 hours per week. The Employment Act has not changed that at this point in time. If there are employers who are employing people and not paying their workers who have worked for more than the standard 40 hours in the week already in the Act well then they are contravening the Act as are people who haven't understood the Act for a long time which has become quite obvious from some of the things that come out of the Conciliation Board, out of the Tribunal, even at a public meeting, the Chamber of Commerce meeting where employers have stood up and said well this is how I do it. They obviously weren't aware of how the Act already stands and we sent information out to the Chamber of Commerce and to employers to bring themselves up to date with just what the Act requires because no matter what Gary had proposed in the previous Legislative Assembly and what we have done here, nothing has changed with the original Employment Act so the overtime provisions still stand. Of course there are interpretations of the overtime provision where an employer might be paying \$7 and then if they do more than 40 hours they get paid half again of their \$7 which brings it up to around \$10 I think is considered the overtime rate and there are other cases where employees do not get paid for public holidays. There's a lot of things that don't happen as the Act stands today but I just wanted to clarify that point. I would also like to say that yes, I do understand the tourism industry. I do know what is right and what is wrong as far as the rate that people get paid. I do know that the cost of living has gone up a lot as we all know that, in the past five years since the minimum hourly rate went up. I do understand the concept of minimum rates. I do also understand from discussions with employers what the market rate is and how it is worked out. I've proposed what I have and I am looking for support around the table for a similar view and if that view is not there we have until the next Sitting to propose changes to that. There are other things that I will be changing when it comes to the next Sitting if we have a Draftsman to do it, and that's to make some other changes where the Administration will be able to go and inspect what employees are being paid to make sure that they do satisfy even the current Act. Now that may be considered to be a bit controversial but there are things that do happen that need fixing and that's what I'm proposing to do and one of the reasons why I want to adjourn the debate today and we might be getting to the stage where I should adjourn anyway Mr Speaker because this debate could go on for two or three hours longer if we get deeply into it and I so move that

MR SPEAKER The question before us Honourable Members is that this matter be adjourned and made an Order of the Day for a subsequent day of Sitting

QUESTION PUT
AGREED

The ayes have it and that matter is so adjourned

HANSARD EXTRACT

24 OCT 2001

EMPLOYMENT AMENDMENT (NO. 3) BILL 2000

We resume debate Honourable Members from the 26th September 2001 at the detail stage on the question that the detail stage amendment No. 3 as proposed by Mr Walker be agreed to and Mr Smith you have the call to resume. However I understand that Mr Walker has indicated his intention to seek leave to withdraw the amendment before us in favour of the amendment foreshadowed by Mr Smith in the terms circulated to members this morning. I also understand that Mr Walker is proposing a further amendment to the bill in the terms circulated to members this morning and insofar as leave is required for Mr Smith and Mr Walker to proceed with their amendments leave of the Chair is granted. How would you like to handle this Mr Smith and Mr Walker as to who is to resume

MR SMITH

Mr Acting Deputy Speaker this Bill has been in the House for some time, introduced in December, we didn't meet again until February. At the February meeting I'd been requested that more information was needed. We looked at it again in March, obviously did more public consultation at the time. I was not at the April meeting. By the time we got to May and June we didn't have anybody to do any drafting so it has taken a little while to get to this particular stage. My original amendment proposed to do only 3 things to the previous 2 amendments that Mr Robertson had put in place. My proposals were to adjust the minimum hourly rate which is called the minimum wage in the Act. It was to put in place once again the overtime provision as a requirement for people who work more than the statutory week which is 40 hours and there has been much debate within the community, particularly in the business sector, between myself, between other Members obviously as well in relation to what I had proposed. There has been some really good debate, there has been some very good letters that I have received from employers putting their case from the employers point of view and reasons why certain things shouldn't happen and in some cases with those I've been convinced that we need to be careful what we do with the Employment Act so as not to create unemployment in areas that we wouldn't like to unemployment in particularly in the area of apprenticeships and young people who are working if we weren't careful how we dealt with the Act. To the stage Mr Acting Deputy Speaker where I have opposed an amendment today which is the final word on this particular amendment where I concur with some of the employers views that the minimum was should not be set to a point where we'd actually cause unemployment and I have thought long and hard about that, I've argued strongly that what we had proposed in the early days was \$9 with a six months later increase to \$10 which would have happened earlier this year, and I've argued strongly that that is how we should go. However I'm not that silly that I don't take account of what people are saying and at a Members meeting on Monday I suggested that we look at \$9 and with debate with the Members on Monday there was obviously still some things that needed to be corrected. So I've taken a view which is the detail stage amendment which we'll be talking about or I'll be asking to put in which will make the minimum wage \$8.50 per hour which is about where it would have been with Mr Robertson's amendment. He proposed \$7.70 when that was being discussed almost 2 years ago and with the increase in the RPI up to this time it would be somewhere around that figure anyway and as this is probably the last time this will get dealt with for another year or so any difference in that would be accounted for. Mr Robertson had put in a thing in his amendment Act which has become an Act that would be tied to the minimum hourly rate would be tied to the RPI. That had caused some concern amongst employers and also some Members of the Assembly where the minimum hourly rate would be adjusted automatically with the RPI and I've been given good reasons why that, probably is not the best way to deal with it. In fact I had a call from Mr Robertson the Minister who introduced it in the first place to say that even he'd changed his mind on using the RPI as the calculation for the minimum wage. I'm quite happy with doing away with that at this particular point and I've done so in my amendment but I have still left same the matters relating to the overtime provision. I felt that what I had proposed here the minimum wage is \$8.50 instead of \$9 or \$10 that the overtime difficulty won't be quite so difficult for most employers. So all around I think what I'm proposing here will satisfy or won't make everybody happy but at least it will satisfy employers, employees and any other interested persons like Members of the Assembly. I also need to add that I'd forgotten and Mr Walker reminded me that we'd actually put as part of his amendment we'd agreed, we'd actually have a provision where conditions and requirements for the employment of apprentices and trainees can be prescribed by regulation which may not be in compliance with this particular Act and I'm really pleased that we did actually do that because that means that we won't be putting apprentices on to what may be a higher wage just instantly and cause some difficulty with their apprenticeships. So that's something that we need to do further down the track, not too far away, is put in a regulation that will tie it to something like the Mainland status for apprenticeship wages which is a very sensible thing to do. So that's what I'm proposing Mr Acting Deputy Speaker that we get to this amendment and we'll agree to delete the clauses that I've talked about but add in the minimum rate as being \$8-50 per hour. Thank you.

MR NOBBS

Thank you Mr Acting Deputy Speaker. Just something, this has been around for some considerable time and I think that the minimum wage at the present time and please correct me Mr Smith if I'm wrong is about \$7 and it's been in since about 1995 I think. I don't want to speak at this stage on the exact wage that should be the hourly rate that should be provided but I think that we need to get away from this type of consideration of wage increases and they are a wage increase whether it's a minimum wage or it's a basic wage or it's a living wage or whatever you call it. In other areas I mean we're just going through the

process now with the Public Service and we went through it in Mr Smith's time a few years ago where it went to a tribunal. I mean what we are sitting around here most of us at one time or another are employees and others and some of us at other times are employers or most of us are in that, so there is a considerable conflict. I believe that we should aim to set up a process where these sort of issues are taken out of the political arena and are dealt with under a system where you can then look at productivity and those sorts of issues instead of looking at a basic principle of which should be \$7, should be \$7-70, we had \$10 at one stage and it's been all over the place. It just seems to be at the whims and fancies of the Assembly at that particular point in time and I don't think it's fair on the community or the employees or the employers to have that sort of pressure going on all the time. That's my view and I think we should move in that direction Mr Acting Deputy Speaker.

MR ACTING DEPUTY SPEAKER Thank you Mr Nobbs. Honourable Members technically we are in trouble as far as debating any detail stage amendment because the detail stage amendment that we were debating was technically withdrawn. I was looking to Mr Smith to move his detail stage amendment so that we could continue with debate in an appropriate fashion. Mr Smith maybe I look to you now to move your detail stage amendment.

MR SMITH Yes Mr Acting Deputy Speaker I will certainly do that. I'd like to move a detail stage amendment to the Employment No. 3 Bill 2000 and it's as follows. The deletion and substitution of clause 7,8 and 9 of the Bill are deleted and a new clause 7 is substituted as follows. Deletion and substitution No. 7 the principal Act is amended by deleting Section 14 of the Act and substituting the following. 14 will not read the minimum rate is \$8-50 per hour from a date of commencement of this Section.

MR ACTING DEPUTY SPEAKER Thank you Mr Smith. The question is Honourable Members is that the amendment be agreed to.

MR MCCOY Thank you Mr Acting Deputy Speaker. I was a little bit confused but now you seem to have cleared that up for me, but I'm still wondering if the section of the Employment Act that we are now discussing at detail stage amendment for, has that ever been passed to finality.

MR SMITH You mean my amendment or ...

MR MCCOY No no no. The original Bill.

MR SMITH Yes

MR MCCOY It's been passed. Ok. What I'm on the same, I thought that section was still awaiting completion but the other area, and that's why I'm a little confused because we haven't had legal advice on this amendment as we've only just been presented with the detail stage amendment today and it would be nice and it would be more comforting for me if we had had legal advice on this amendment and also on Mr Walker's amendments because I do have some queries in my mind as to whether these detail stage amendments we have before us can go through to finality today, and I am on the same thinking as Mr Nobbs was speaking of before and I would like to know from Mr Smith or from Minister Smith if there is a method where he is now intending to delete the clauses that trigger a increase in the minimum rate of pay, if there is any method in the legislation to seek an increase in the minimum rate of pay. Because I haven't had legal advice and we haven't discussed this outside of this House I don't have a clear understanding of that and I believe as Mr Nobbs has said we do need to have in place some type of mechanism where it goes to remuneration tribunal rather than it being in the political arena. I will find it difficult to support these amendments today.

MR SMITH Thank you Mr Acting Deputy Speaker. In relation to what Mr McCoy is asking. The two Bills that Gary Robertson introduced as the previous Minister were both passed and assented to but they just haven't commenced and the reason they haven't commenced is because we wanted to further amend those Acts which is what we are doing here and I had my amendment Bill which all Members have got and Mr Walkers has already made some amendments to that. Some were accepted and some weren't and this is a further final detail stage amendment, and if it's any help to Mr McCoy it was the legal people who wrote this amendment, it's not something that I've done. I just want to clarify that and it has been checked by the Clerk of course. So there's no difficulty in this proceeding and to actually change it to something else, I don't know where you go. It used to be in the regulations, this particular piece where the minimum wage was set by regulation which meant the Government can do it at any time and just needed to table the regulations in the House. That was taken out, it was put into the Act at some stage and then was further amended to have these other pieces like the calculation with the formula which was the minimum wage calculation the minimum wage at the time, multiplied I think it was by the RPI increase which gave the result of what the new determination would be. The reason I'm not too fussed about removing that is the calculations on that, in the past, in earlier years have been

minimal anyway. It would make little difference for some years. Whereas the reality of life is that the costs of living is really sky rocketing, it's really going quite high at the moment and I think the effective way to do it is by this method that it is a political one but whatever happens, if it went to the Remuneration Tribunal the Government doesn't necessarily need to want to do it anyway but I think we've all got a fair idea of what a fair minimum should be and a lot of employers talked about the minimum as a safety net over the past months and I agree with what they say but this way we're actually picking up on what Gary Robertson had proposed, was increasing the minimum rate from \$7 to \$7-70 which is what Mr Walker has been agreeing with to slightly increasing that again to \$8-80 per hour. We need to pass this and I'm not trying to say Members should agree to it if you don't want to, I can't make you do that but this will then put it in position where we can actually commence, if this gets assented to commence the whole thing, so the two Acts that Gary put in will commence as well as with these amendments attached.

MR WALKER

Thank you Mr Acting Deputy Speaker. The Minister is quite right in that this Employment Amendment Bill was assented to back in early 2000. It has sat waiting to be commenced because of the Amendment Bill that he intended to bring in and it is an important Act which needs to be commenced because there are problems within the Employment Act as it stands right at this moment, and until this Act has been commenced part 2 of the original Employment Act 1998 remains a problem in many areas between employers and employees. This whole Bill is being held up on one particular thing and that is the minimum wage calculation. However let me remind Members that this replacement of the part 2 which was an extensive consultation process done with both employers and employees covers some 20 odd sections of the Act and brings in a new part 2 which completely replaces the old part 2. So I would commend to you that we need to move on this and even if we don't agree entirely with the \$8-50 per hour at least that is an advancement on the \$7 as it is at the moment, the \$7 minimum rate and I would hate to see us adjourn once again this Bill No. 3 which in turn affects the commencement of the Employment Amendment Act No. 3 of 2000 whereby all employers would have a much clearer idea of what is to be the new regime for employment on this island. It is such a pity that we have had to hold it up for so long on just one particular section of the Act. I am satisfied that although this doesn't achieve entirely what I was moving in my amendment, it does certainly achieve that it removes all reference in the Act to that automatic increase annually. It takes that out totally, it takes it back to the discretion of the Minister or this House to change the minimum rate, it means that that can go to consultation rather than being automatically set by the RPI, so that achieves part of what I have been trying to bring to the attention of the Minister. The \$8-50, as he quite rightly says, the charts given to the working group by the Employment Officer of the Service showed that if the RPI had been applied to the \$7 all the way through that that is approximately what it would be today, so it's not unfair in that sense. The RPI increases are being incorporated into the \$8-50 and I think that if we are to agree on this particular amendment then the Employment Amendment Act No. 3 of 2000 can be commenced and brought into practice. It's been sitting now for nearly 2 years and I would hope that we can take this through to finality so that that can be commenced and got on with.

MR NOBBS

Thank you. Can I ask Mr Smith for clarification. The Employment Amendment No. 3 Bill is dated the 16th of October 2000, is that the one that we're talking about. I just did some quick calculations and then Mr Walker told me what I wanted to work out anyhow and that's the \$8-50 is about the RPI figure. So that's fine. I still believe and it might have been struck from the record because we were out of order were we but we should have a tribunal arrangement in place and get it out of the political system. The community can have input through the political system and those sorts of things but I believe that that's the way it should go. I understand now that what's being proposed. I do support this \$8-80 per hour being the minimum, it's in line with the RPI proposal and I think we should bed this one down and move on with it, not just leave it for 5 or 6 years to progress it, that there should be other arrangements put in place which are more appropriate to this sort of thing than Assembly actually dealing with it. Thank you Mr Acting Deputy Speaker.

MR BROWN

Mr Acting Deputy Speaker I don't support \$8-50. The minimum wage was first set by regulation on the 13th of October 1992 at \$5 per hour. It subsequently increased to \$5-40, that occurred in December 1993 and then in August 1995 following the famous comment by one of our Members at the time Mrs Anderson that if you paid peanuts you got monkeys, it increased to \$7 per hour, that was at August 1995, and the Bill which passed back in the time of the previous Assembly sought to increase that to \$7-70 per hour. That's an increase even dating it back from today, that is an increase from \$5 to \$7-70 at 54% over the period of 9 years since 1992. That's quite a substantial increase. I don't think that very many of our Members have understood the real nature of the minimum wage but certainly I don't think many of our Members have understood the potential consequences of what was sought to be done in the amendments that have been discussed up until today. It's certainly pleasing that the Minister has now recognised that \$10 wasn't the right answer and that \$9-50 wasn't the right answer and that \$9-00 wasn't the right answer. I don't agree that \$8-50 is the right answer either but it's certainly a better mistake than the mistake that was previously proposed. I'm disturbed to hear any Member trying to tie the minimum wage to the RPI. Such a tie didn't go out quite as early as Noah's Ark ran aground but it wasn't long behind it Mr Acting Deputy Speaker. The civilised world for the last

10 years and perhaps longer has got itself right away from automatic costs of living increases, and let me give you an example of why that's the case. Not so long ago we made decisions to increase the fuel levy by 10c a litre and to increase the duty from recollection, on cigarettes and on alcohol as deliberate revenue raising measures. Quite rightly to such extent as those items influence the BAF Social Welfare benefits were increased, but then the members of the Public Service thought that they should be able to get a cost of living increase also and now some Members around the table want to pass cost of living increases on to all of the other employees on the island. Mr Acting Deputy Speaker who is going to be left to pay tax increases if we are going to isolate virtually everyone on the island who is not an employer from the impact of those increases. You can't go giving, imposing a tax increase with one hand and then giving money to everybody to ensure that they don't have to pay the increased tax with the other. That is absolutely ridiculous. So I'm certainly pleased that it is proposed today to do away with the automatic tie to the RPI, I'm certainly pleased that it is proposed to make the changes which are the subject of the present amendment. I don't support \$8-50 but I think we have come a long way in improving what's before us. Thank you.

MR BATES

Thank you Mr Acting Deputy Speaker. I must admit that I don't always follow Mr Brown's logic in my, if it costs Norfolk people to live then they've got to try and get by on the wage that they had before it got more expensive to live. I don't really think the average working man that needs to feed his kids and put them through school and support his wife, when he finds that the cost of his groceries and his fuel starts to exceed his wage then he shouldn't get a wage increase because the cost of living has gone up. I just don't follow that but perhaps it's because that I've mostly worked for wages in my life and Mr Brown has been mostly been somebody who pays the wages. So I guess if you look at it at different coloured eyes then your going to see it differently. I think the real reason we have to bring in this minimum wage is that there are a few people out there, not many, that have taken advantage and I think that's the real reason why we need to do something. The working person doesn't really have much choice as far as increases, he can look for another job, that's not always easy. He can leave the island and go somewhere else and that's not always what he wants to do. Employers do have the ability to increase the charge of their services, they have the ability to put more money in their pockets. I do know that in private enterprise that that may not always be easy either, but the working person really doesn't have much to negotiate with and I think that the regular review of wages and that should take into consideration what is happening around the person, what he's paying for his fuel, what he's paying for his food and what he's paying to educate his kids. So I don't think I'll ever agree with Mr Brown on that particular point. I'm a little bit disappointed that this \$8-50 has come down from about \$10. I do respect that the Minister has certainly been more closely involved in this than what I have and if that's what he is proposing then I intend to support him.

MR BROWN

Mr Acting Deputy Speaker Foodlands can certainly put up the price of food and most people will still need to eat. Foodlands might need to find cheaper brands and so on so that people can afford to pay their bill when they get to the checkout but people I expect will still want to eat. What I just said might be wrong though because they might need to grow more of their own vegetables, they might need to find ways of catching more fish and finding someone's sheep to bump off and get a bit of meat from that, but if Foodlands can put their prices up that doesn't mean that everybody else can. Norfolk Island relies on the tourist industry for probably 90% of its economic product and if we simply price ourselves out of the tourist market then it's goodnight nurse, we will go back to 1856. What happened in the rest of the world and what will happen in Norfolk Island if this theory of simply putting wages up because there's been an increase in the cost of living prevails is there will be a never ending spiral. Wages will go up, prices will go up, because prices go up the RPI goes up and wages go up, because the wages went up the prices go up and I can tell you it will not take very long for us to simply price ourselves out of the market. Around this table there are not too many Members sitting here who have ever been employers. There are not too many Members sitting here who have ever sat down of a Monday trying to work out how they can make sure that the wage money can be there for Friday and until such time as Members start to develop a better understanding of what makes the world tick in that regard things are going to be touch. But what's before us in an improvement. I'm going to support all of it other than the \$8-50. Thank you.

MR SMITH

Thank you Mr Acting Deputy Speaker. I appreciate Mr Brown's comments and being one of the larger employers I don't mean that personally, as an employer he does have a fair few people working for him and it's good to get those comments. I'm glad he's actually recognised what the affect of prices can have from the other side of the argument. If your on a working wage and if the cost of food does go up which it does that somebody's got to, either you have to go and grow your own as Mr Brown is saying or you go without and that's what the other side of the minimum wage is about, is the Government having to step in, as Government's do to say this is the minimum that anybody should be paid and in fact I copied off the internet the minimum wage rise in Australia and the minimum wage is now I think it's \$450 or something like that per week which is still above what we've got proposed here, based on a 40 hour week, and I recognise that there is taxation that applied over there but there's also benefits that come out of taxation. I think the Medicate

levy is paid out of the tax and things like that and employees have all sorts of other things that they don't have to pay where a Norfolk Island resident does or a Norfolk Island employee does. I'd just like to mention the RPI calculation formula that I've proposed that we remove in my amendment here but that was actually in the previous Minister's amendment. I'm not too sure but I think John might have been actually on the committee that proposed that in the first place, I understand where he's coming from. The last Assembly did pass it in its full form but I recognise that there is other ways that we can deal with it rather than by the RPI adjustment as proposed. I'm quite happy to do what I'm proposing here but I would like to pick up on something. Mr Brown kindly went back to 1991 and said the introduction of the minimum wage was \$5 but also at that time the casual rate was \$8-62 in 1991. The full time employee got \$5 per hour but casual rate was \$8-62. There were changes made over the time where the minimum hourly rate did go up by 40c and it went up to \$7 in the 6th Assembly but the casual thing disappeared. That went somewhere along the track and I haven't been able to find the amendment that did that. So even back at that time there was a recognition that if you were outside of the permanent job category I suppose in those times the value was about \$8-62, whereas it's different now, the rates are nearly the same. There's a lot we can say from both sides. We have as Mr Brown said, some employers and ex-employers and employees sitting around the table here. One of the things I supposed I was most insulted about over this particular Bill was the suggestion that we're just the Government, what would you know about commerce and probably not in those words but those suggestions have been made referring to all of us, the Assembly. That isn't correct. We're here for both sides of the argument. We've got to look after not only the employers but the employees wherever we can and we're doing that all the time. Assembly's do it sometimes quite by accident but we do do it. If this discussions ever, well it will go on again but next time this discussion comes up I would recommend for people not to suggest that the Members of the Assembly have no idea what is required for the employees in the community because we know. We probably get told more than what employers do and just what really does go on in some places. But here today we're looking at improving the basic, the very basics and that's what we're doing. I recommend that Members do support the amendment and get this whole thing put into perspective and passed. Thank you.

MR WALKER

Thank you Mr Acting Deputy Speaker. I'd just like to pick Mr Brown up on one of his points. He said that the \$8-50 minimum wage is what sets the spiral going. I disagree with that. I see it as being the market going rate that sets the spiral going and that brings into question relativity amongst juniors and seniors, seniors with experience and juniors with not so much experience. The employer has to have the flexibility to be able to set rates for employment out there in the private sector that are conducive with the employees that they have in their employ. That is a market going rate. What we are discussing here today is the minimum rate and the Minister is quite right, this is the minimum rate that any employee should receive, and don't forget that for those who are in the 16-18 age group it is a percentage of that \$8-50 and so their percentage of the current \$7 will be increased as well. I support this amendment because I believe it is a good compromise between having an automatic spiral which would have got out of control very quickly to having one which is at the discretion of the Minister and I like Mr Brown would like to see the \$8-50 slightly lower. However I'm prepared to accept that part of it. I think that's what debate is all about, is reaching the compromise between the two parties and the two parties in this instance are what are the employees interests and what are the employers interests and I think that this amendment serves both pretty well. Thank you.

MR BATES

Thank you Mr Acting Deputy Speaker. I just want to comment on something that Mr Smith mentioned before and I thank him for drawing to our attention that there is a minimum wage in Australia and it is about \$450 per week which works out about a bit over \$11 per hour, and then he went on to say but that's ok because they pay tax, income tax and I think that making a comparison with the minimum wage in Australia and the comparison with the minimum wage on Norfolk Island without taking into account that people on Norfolk Island do pay tax the average family man mightn't realise it but he probably can tell you it's around about \$700 per year just in petrol levy and duty alone, just to get his kids to school. But to compare a minimum wage in Australia and one on Norfolk Island without comparing the cost of living in Australia as to the cost of living on Norfolk Island I believe is well your not comparing apples with apples I don't think. I've tried on a number of occasions to find out what the cost of living on Norfolk Island and it's based on the same principles as the cost of living in Australia is established and I've never been able to get a really clear answer on that or a satisfactory answer on that. But I do know that if you go into a supermarket on the Mainland with \$100 in your pocket and you spend that on groceries and things you come out with a lot more plastic bags to carry to your motor car than you come out with here if you go in with \$100 and buy \$100 you'd probably could carry it in one hand I think on most occasions and until we do know what the cost of living on Norfolk Island is I think we're always going to be plucking figures out of the air and \$10 a little while ago and then yesterday it was \$9 and today it's \$8-50. I think that's always going to happen until we come to grips with just what the cost of living, what it does cost the average person on Norfolk Island to live. Mr Brown did make some comment about wages put up the cost of living and there's a lot of things that put up the cost of living on Norfolk Island that are completely outside our control here. When a can of tomato juice or a packet of cornflakes goes up here that's governed by what's happening in either Australia or New Zealand in most cases. It's not governed by the fact

that somebody on Norfolk Island might have got a wage increase. It could be, but just relate it to wage increases I think is not right because so many things happen that are completely outside our control and they are outside the control of the person that's trying to feed his family on a fairly low wage. I think that's all I want to say for the moment. Thank you Mr Acting Deputy Speaker.

MR ACTING DEPUTY SPEAKER Thank you. Honourable Members we have before us the Employment Amendment No. 3 Bill 2000 at the detail stage and we are dealing with Mr Smith's amendment as circulated this morning. Is there further debate.

MR SMITH Probably the last thing I need to say is I need to acknowledge the employers that have been working with me over the past 12 months, or not quite 12 months and the advice that they've given me and the help and the arguments that we might have had and I appreciate what they've done. The result here is not what I intended in the first place but I recognise that to get somewhere with it is better than getting nowhere with it and that I think Members all recognise the cost of living is getting to be quite high on Norfolk Island and I recognise that. I'd also like to say that commercially I suppose one of the things you can control price wise or cost wise is the wages and if you can keep your wages down you can't keep the cost of your products and things down and it's often probably it's the wages that get affected most in that sense. I think there's some really really good employers out in the commercial sector who really do the right thing by all their employees and good on them for doing that but the additional thing that I was going to say that when this whole package comes in there are penalties that will be used which weren't in the Act before which will apply from when this Act takes place. So if there is anybody that is doing the wrong thing they will start to pay for it.

MR ACTING DEPUTY SPEAKER Thank you Mr Smith. The question is Honourable Members that the amendment be agreed to. Is there any further debate. There being nor further debate I put the question.

QUESTION PUT
QUESTION AGREED

MR ACTING DEPUTY SPEAKER Mr Walker I turn to you now, you had indicated that you at detail stage time had a proposed amendment.

MR WALKER Thank you Mr Acting Deputy Speaker. In light of the fact that the Minister's Employment Amendment has been passed I seek leave to withdraw my notice of amendment.

MR ACTING DEPUTY SPEAKER Is leave granted Honourable Members. Leave is granted

MR BROWN I said no.

MR ACTING DEPUTY SPEAKER Sorry Mr Walker we hadn't moved it, so it didn't require leave to withdraw it.

MR BROWN I seek leave to move an amendment in terms of the amendment that had been proposed to be moved by Mr Walker and at which notice has been given to Members this morning.

MR NOBBS Point of Order Mr Acting Deputy Speaker. That's somewhat out of order isn't it

MR ACTING DEPUTY SPEAKER No I don't believe so. He's entitled to move an amendment. He's in the process of seeking leave. The time to deal with that is to whether leave will be granted or not.

MR BROWN As a matter of fact I believe that I don't need leave but as this is a later than a first amendment I'm entitled to simply move it but I seek leave to move an amendment in the terms of the amendment at which Walker had given notice this morning being an amendment to Clause 11 in relation to overtime.

MR ACTING DEPUTY SPEAKER Thank you Mr Brown. Leave is granted.

MR BROWN Thank you Mr Acting Deputy Speaker. I move the amendment as circulated this morning by Mr Walker.

MR ACTING DEPUTY SPEAKER Thank you Honourable Members. The question before us is that the amendment be agreed to as circulated by Mr Walker this morning now proposed by Mr Brown. Any debate.

MR BROWN Mr Acting Deputy Speaker the purpose of this proposed amendment is to enable an employer and an employee to reach an agreement by which the employee will be able to work more than the prescribed number of hours per week at such rate of pay as may be agreed between the employer and the employee, provided only that that rate is not less than the minimum wage and provided that the agreement is contained in a contract pursuant what will be Section 11. The purpose of this amendment Mr Acting Deputy Speaker is to provide maximum flexibility to employers and to provide employees with the opportunity to work as many hours as they would like to work. There are no shortage of employees Mr Acting Deputy Speaker who are keen to work more than 40 hours in a week. It is silly for us to force the employer to consider employing a second person to work any hours in excess of 40 hours. That could have the affect of in fact reducing the hours that are already available to the first employee so that there is room for a second employee. It can have the effect of requiring a substantial number of additional Temporary Entry Permit holders to be on the island, it can have the affect of placing a substantial number of additional motor vehicles on the island and generally increasing the pressures on the island's infrastructure. To provide the right to an employer and employee to negotiate in this fashion and reduce their agreement to writing is not at all unfair. I suggest to Members that it is quite appropriate and that it is something that Members should support, and that's all I wish to say about it. Thank you.

MR NOBBS Just on this. I've got no problems really with this sort of concept if it's part of the contract arrangements and I don't see anything in here which provides that in a contract of employment must be in place, and I would have thought, and I may be wrong because I haven't got the full Act before me and I didn't expect this one just to come on today actually. So that is the thing, if it's a part of a contractual arrangement well, and they are signed beforehand, before the employee, but what I'm concerned about is that there's a lot of these arrangements are made apparently after employees reach the island and they are in a catch 22 situation at that time, and whether this may be in that arrangement I'm not too sure but I'm a bit gun shy about actually accepting this particular amendment without going into it a little deeper.

MR BROWN Mr Acting Deputy Speaker I can fully understand the Chief Minister's concern and that has been sought to be catered for by the Subsection numbered 5 which states that an agreement to work in excess of the prescribed working week must be contained in a written employment contract otherwise the agreement is void and of no affect, and that Subsection has sought to take account of that concern and to ensure that unless such an agreement is recorded in a written employment contract pursuant to Section 11 it doesn't have any affect.

MR NOBBS As I say I haven't got the full Act before me and so I'm at a bit of a loss at this stage but I just question does this employment contract has for an employee coming to the island, has it to be completed under Section 11 before they actually reach the island here or is it allowable after, and I appreciate that will be changes in circumstances but the additional contract of employment for a person coming onto the island I think should be completed before they come here, the basics of it.

MR WALKER Thank you Mr Acting Deputy Speaker. There's no reference in this amendment to the fact that it has to be somebody coming on island. This could be a long term local resident who is employed and wishes to take up this type of contract. At the moment the Act says that they don't have to have a contract if you are a local resident. The only person who has to have a contract is those who are through the Immigration Act brought in on Temporary Entry Permits, or are on GEP's with conditions through the Immigration Act, and so it is at the moment this House passed that it be voluntary for local residents whether they wish to have a contract or not. What this was endeavouring to do was if the minimum wage was going to be \$10 and so therefore enforce on employers overtime rates in excess of \$15 that they would have the opportunity to contract out of it. That is no longer the case because of the Minister's detail stage amendment which we have just passed. The emphasis on overtime has diminished somewhat by coming down to \$8-50 which means that you have an overtime rate in the vicinity of \$12-65 for time and a half, and so I am quite prepared that if anybody does work over the 40 hours then that the overtime rate is now not as onerous as it was when it was \$10 to \$15 or in the case of the senior who had that respectively higher rate because they were greater, worth more than the minimum rate then you could be up around the \$20 plus for overtime. That is not the case now because of the amendment we have just passed and so therefore that was the reason why I have withdrawn the amendment that I was going to propose. Secondly previous to the amendment that was put before us by the Minister this morning it was automatic that this would go up every year by the RPI. That is now not the case and so therefore the terms of the Employment Act are no longer as onerous on the employer as they were. There is no reason why any employee cannot enter into a contract with their employer provided they meet the minimum rates which have now been set. We've passed the amendment this morning which sets that

at \$8-50 and within the Act in a different section it says that any hours over 40 hours must be paid at time and a half and so therefore the employer is well aware of what the commitment is in working somebody longer than 40 hours. I felt that previously when the Minister had not moved his amendment that it was going to be onerous and so therefore I was going to give the opportunity to the employer and the employee to negotiate that they could contract out of that overtime clause. I no longer see that as being as onerous as it was and so therefore I cannot support that we bring this clause in now or this amendment.

MR SMITH Thank you Mr Acting Deputy Speaker. If Mr Brown was so inclined that he was keen about this amendment going ahead I would be quite happy at the next sitting to have a look at it. I think there's a bit more to this than just meets the eye but with the overtime provisions. I'd hate to see it where we actually make void what we've already done in the amendment that I have in front of the House at the moment which requires the payment of overtime. If it was possible for every employer to contract out of paying overtime it would just negate what we've already done. I won't support this today but I'd be quite happy at the next sitting to bring something forward if we can come up with something that would be suitable so it still gives the employees protection and still works in the favour of both sides, the employer and the employee.

MR BROWN Mr Acting Deputy Speaker I'm quite happy to adopt the course that's suggested by the Minister and to defer this by withdrawing it on the basis that it will be dealt with as soon as possible after today's meeting, and on that basis I seek leave to withdraw my amending Motion.

MR ACTING DEPUTY SPEAKER Leave is granted Mr Brown. We now move to the question that the clauses that have been amended be agreed to. I put that question.

QUESTION PUT
QUESTION AGREED

MR ACTING DEPUTY SPEAKER The question now before us Honourable Members is that the remainder of the Bill be agreed to. Is there further debate before that question is put.

QUESTION PUT
QUESTION AGREED

MR SMITH I move that the Bill as amended be agreed to.

MR ACTING DEPUTY SPEAKER Thank you. Further debate.

QUESTION PUT
QUESTION AGREED