

EMPLOYMENT (AMENDMENT NO. 2) BILL 2011

EXPLANATORY MEMORANDUM FOR BILL AND INCLUDING DETAIL STAGE AMENDMENTS TO BILL

The intended effect of the Bill is to remove the setting of the minimum wage from the Act to the Regulations. At present there is a difference between the amount specified in the Act and that set by regulation which can only be confusing and is rectified by this Bill.

The purpose of the Bill is for the Act to simply provide that the rate be set by regulation. The intention of the change is to enable the provision of a regular annual review of the minimum wage rate for those employees covered by the Act. It is anticipated that these changes will be made to take effect each year on 1 October in line with the RPI for the previous year ending 30 June.

The Bill will ensure that the minimum rate does not reduce if the criteria used to determine it should fall but must always either remain unchanged or increase. Additionally it is provided that a different system for determination may be used. In addition it is provided that responsibility for determination of the minimum rate might be given to an independent authority subject to some directives.

The Bill provides in the first 4 clauses for the short title, commencement, reference to the principal Act and the primary amendment provision making reference to the Schedule.

Clause 5 of the Bill expressly ratifies the minimum rate as set by regulation in 2008 and retains it until change in accordance with the Act following the amendments made by this Bill.

The Schedule provides in Item 1 for removal of the minimum wage amount from the Act and for it to be made from time to time by regulation.

Item 2 shifts the issue of the minimum rate to a new subsection 108(3) within the regulation making powers.

Thus the new subsection 108(3) while being general, provides various mandatory matters that must be included in any regulation concerned with the determination of the minimum rate.

Paragraph 108(3)(a) provides that the minimum rate must be either an hourly rate, a working week or both.

Paragraph 108(3)(b) provides that the minimum rate must either remain the same or be increased (and for emphasis states that it must not be reduced). The paragraph further provides that the method of determination be by a prescribed authority, or by a different methodology other than only the RPI (that may include the RPI but need not).

Paragraph 108(3)(c) deals with the case that an independent Authority is designated to determine the minimum rate. In that case the authority must be directed to make its determination having regard to various matters that are set out, namely—

- The review must be annual;
- It must consider the RPI;
- If another methodology for consideration other than, or including the RPI, has been prescribed, that methodology must be taken into account;

- It must consider any submissions made by interested parties (that may include employers or employer groups, employees and employee groups, the Administration, representatives of non-government organisations having relevant interest, and others);
- It must have regard to the prevailing social and economic circumstances of Norfolk Island (that may include social matters unique to Norfolk Island and its inhabitants and the then and foreseeable economic conditions);
- If any other matters are prescribed they must also be considered.

7 December 2011.