

THE NATIONAL WAGE CONSULTATIVE COUNCIL BILL
(No. VI of 2016)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the National Wage Consultative Council which shall, in the discharge of its functions, be mainly responsible to make recommendations to Government regarding –

- (a) the introduction of a national minimum wage in the private and public sectors; and
- (b) the payment of additional remuneration to offset any increase in the cost of living every year,

with a view to improving the living conditions of workers.

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A BILL

To provide for the establishment of the National Wage Consultative Council

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the National Wage Consultative Council Act 2016.

2. Interpretation

In this Act –

“accredited training” means training given to a worker for a maximum period of 12 months –

- (a) by means of a course which is monitored and mentored by a person who is certified by the Mauritius Qualifications Authority; or
- (b) on the job in-house which is specified in his contract of employment;

“Board” means the Board referred to in section 10;

“Chairperson” means the Chairperson of the Board;

“collective bargaining” has the same meaning as in the Employment Relations Act;

“Council” means the National Wage Consultative Council established under section 4;

“Executive Director” means the Executive Director of the Council;

“median wage” means the boundary between the highest 50 per cent and the lowest 50 per cent of wage earners in the wage distribution in Mauritius as determined by Statistics Mauritius;

“member” –

- (a) means a member of the Board; and
- (b) includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of labour is assigned;

“Ministry” means the Ministry responsible for the subject of labour;

“national minimum wage” means such wage as may be prescribed;

“officer” means a public officer designated under section 15(1);

“technical committee” means a technical committee set up under section 12;

“trade union” –

- (a) means an association of persons, whether registered or not, having as one of its objects the regulation of employment relations between workers and employers; and
- (b) includes a federation or a confederation;

“worker” –

- (a) means a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated; but
- (b) does not include a person enlisted under –
 - (i) the Youth Employment Programme and the Back to Work Programme set up by the Ministry; and

- (ii) any other training scheme set up by Government or as a joint public-private initiative with a view to facilitating the placement of jobseekers in gainful employment;

“young person” means a person, other than a child, who is under the age of 18;

“young worker” means a worker aged between 18 to 25.

3. Application of Act

This Act shall bind the State.

4. Establishment of Council

(1) There is established for the purposes of this Act the National Wage Consultative Council.

(2) The Council shall be a body corporate.

(3) The principal place of business of the Council shall be at such place as it may determine.

5. Objects of Council

The Council shall –

- (a) be responsible for the evaluation of the effect of the introduction of a national minimum wage, particularly on pay structures and pay differentials, employment, inflation, competitiveness, the cost of doing business, low paying sectors, small firms and groups of workers, including young workers, women, young persons and persons with disabilities;
- (b) be responsible for making recommendations to the Minister –
 - (i) subject to subparagraphs (ii) and (iii), for the introduction of a national minimum wage calculated on an hourly rate equivalent to a proportion of the domestic median wage of the preceding year for the lowest paid workers;
 - (ii) on a lower rate of national minimum wage for young persons;

- (iii) on a lower rate of national minimum wage for young workers, on accredited training, apprenticeship or probation, having no corresponding job experience, skills and competencies, relevant accredited vocational or technical qualification, relevant and recognised proficiency certificate, diploma, degree or other professional qualifications in the grade in which he is employed;
 - (iv) on the approach to be adopted to address the issue of wage relativity in the private sector that may arise from the introduction of the national minimum wage in Remuneration Regulations made under the Employment Relations Act;
 - (v) for the introduction of a master conversion table to address the issue of wage relativity in the private sector; and
 - (vi) on which pay component to be included or excluded in the national minimum wage; and
- (c) every year, be responsible for making recommendations to the Minister on the payment of additional remuneration to offset any increase in the cost of living.

6. Functions of Council

- (1) The Council shall, in the discharge of its functions –
- (a) collect and analyse data and information on wages and related matters;
 - (b) conduct research on wages and socio-economic indicators;
 - (c) undertake or commission studies on wages and related matters on its own initiative, or at the request of the Minister, and make recommendations thereon;
 - (d) disseminate information and analysis and publish reports on wages and related matters;
 - (e) submit to the Minister a report –
 - (i) on the impact of the national minimum wage within 12 months of its introduction and thereafter, every year;

- (ii) on the evolution of wage distribution in respect of occupations, worker status, gender and sectors every year by taking into consideration collective bargaining.
 - (f) within 12 months of the date of its constitution, recommend a national minimum wage that may be introduced for the lowest paid workers in relation to the median wage;
 - (g) review the next national minimum wage by latest 2020 and subsequently every 5 years;
 - (h) every year, recommend any additional remuneration to be paid;
 - (i) consider and report on any relevant matter that the Minister may refer to it; and
 - (j) make recommendations to the Minister in any other case, at such time as the Minister may request.
- (2) The Council shall, before making a recommendation to the Minister –
- (a) consult such representatives of employers and workers and such other persons as it may determine;
 - (b) have regard to the need to improve the living conditions of the lowest paid workers and promote decent work and living conditions;
 - (c) have regard to the overall economic situation;
 - (d) have regard to the need to increase the rate of growth and to protect employment;
 - (e) have regard to national competitiveness.

(3) The Council may, where appropriate, make recommendations for transitional arrangements for the introduction of the national minimum wage for specific sectors of employment.

7. Powers of Council

The Council shall have such powers as may be necessary to attain its objects and discharge its functions most effectively and may, in particular –

- (a) subject to the Public Procurement Act, enter into any contract;
- (b) issue guidelines for the purposes of this Act;
- (c) receive funds from Government and raise funds from other sources.

8. Determination of national minimum wage and additional remuneration

(1) Where the Minister receives a recommendation under this Act, he may –

- (a) make regulations for implementing the recommendation;
- (b) reject the recommendation and make no regulations; or
- (c) make such other regulations as he thinks fit.

(2) Where the Minister rejects a recommendation of the Council and makes no regulations or, makes such other regulations as he thinks fit, he shall lay a report in the National Assembly containing a statement of the reasons for his decision.

9. Report of Pay Research Bureau following recommendations for national minimum wage

(1) The Pay Research Bureau shall take such administrative measures as may be necessary to implement the national minimum wage and make any salary adjustment, where necessary, to address any problem of relativity distortion that may arise on the introduction of the minimum wage in the public sector.

(2) The Council shall, to enable the Pay Research Bureau to take the national minimum wage as the baseline for the next salary review and thereafter, make its recommendations at latest July 2020 and, thereafter, every 5 years.

10. The Board

(1) The Council shall be administered and managed by a Board which shall consist of –

- (a) a Chairperson, having wide experience in the field of economics, labour and industrial relations, to be appointed by the Minister;

- (b) the Financial Secretary or his representative;
- (c) a representative of the Prime Minister's Office;
- (d) a representative of the Ministry;
- (e) a representative of the Ministry responsible for the subject of agriculture;
- (f) a representative of the Ministry responsible for the subject of business;
- (g) a representative of the Ministry responsible for the subject of industry;
- (h) a representative of the Ministry responsible for the subject of tourism;
- (i) the Chairperson of the National Remuneration Board or a Remuneration Analyst designated by him;
- (j) the Director of the Pay Research Bureau or an officer designated by him;
- (k) a representative of Statistics Mauritius;
- (l) 7 members representing organisations of employers, to be appointed by the Minister after consultation with the most representative organisations of employers;
- (m) 7 members representing trade union of workers, to be appointed by the Minister after consultation with the most representative trade union of workers;
- (n) 2 academics, having wide experience in the field of economics, labour or industrial relations, to be appointed by the Minister; and
- (o) 2 members from consumer organisations, having wide experience in the field of economics, labour or industrial relations, to be appointed by the Minister.

(2) The members, other than the members referred to in subsection (1)(b) to (k), shall hold office for a period of 2 years.

(3) Every member shall be paid such fee or allowance as the Minister may determine.

11. Meetings of Board

(1) The Board shall meet as often as the Chairperson may determine but at least 4 times every year.

(2) A meeting of the Board shall be held at such time and place as the Chairperson may determine.

(3) At any meeting of the Board, 12 members, including the Chairperson and excluding the members referred to in section 10(1)(i), (j), (k), (n) and (o), shall constitute a quorum.

(4) (a) The Chairperson shall chair every meeting of the Board.

(b) Where the Chairperson is absent from a meeting of the Board, the members present shall elect another member to chair the meeting.

(5) In the event of an equality of votes, the Chairperson shall have a casting vote.

(6) (a) The Board may, where it considers necessary, co-opt such other persons with relevant knowledge and experience not already available to the Board to assist it in relation to any matter before it.

(b) The members referred to in section 10(1)(i), (j), (k), (n) and (o) and a co-opted person shall not have the right to vote at any meeting of the Board.

(7) Subject to this section, the Board shall regulate its meetings and proceedings in such manner as it may determine.

12. Technical committees

(1) The Board may set up such technical committees as it may determine to assist it in the discharge of its functions.

(2) A technical committee shall consist of at least 3 members and such other persons as may be co-opted by the Board.

(3) The Board shall appoint a chairperson of the technical committee.

(4) A technical committee shall meet as often as may be necessary and at such time and place as the chairperson of the technical committee may determine.

(5) A technical committee shall submit its report on any matter referred to it within such time as the Board may determine.

(6) The report referred to in subsection (5) shall contain the technical committee's observations, comments and recommendations.

(7) A technical committee shall be subject to the direction, control and supervision of the Board.

(8) The Board may appoint a subcommittee from amongst its members to study and report on the recommendations of a technical committee, or for any other purpose, within such time as the Board may determine.

(9) Subject to this section, a technical committee shall regulate its meetings and proceedings in such manner as it may determine.

13. Executive Director

(1) There shall be an Executive Director who shall be a public officer, to be designated, subject to the Public Service Commission Regulations, by the Secretary to Cabinet and Head of the Civil Service.

(2) The Executive Director shall be the chief executive officer of the Council and shall, subject to this Act, be responsible for the implementation of all the decisions of the Board and for administering and managing the affairs of the Council.

(3) The Executive Director shall also act as Secretary to the Board.

(4) The Executive Director shall –

(a) attend every meeting of the Board;

(b) for every meeting of the Board, give notice of at least 5 clear days of the meeting to the members and keep minutes of the proceedings;

(c) perform such other duties as the Board may direct.

(5) The Executive Director shall, in the performance of his duties, act under the general direction of the Board.

14. Delegation

(1) The Board may, subject to such instructions as it may give, delegate to the Executive Director such of its powers and functions as may be necessary, for the effective management of the day to day business and activities of the Council, other than the power to –

- (a) borrow money; or
- (b) enter into any contract which exceeds the prescribed amount applicable to the Council under the Public Procurement Act.

(2) The Executive Director may, with the approval of the Board, delegate his powers and functions to such officer as he may designate.

15. Staff of Council

(1) The Secretary to Cabinet and Head of the Civil Service may, subject to the Public Service Commission Regulations, designate such public officers as may be necessary to assist the Council.

(2) Every officer shall be under the administrative control of the Executive Director.

16. Protection from liability

No liability, civil or criminal, shall be incurred by the Council, any member or officer, in respect of any act done or omitted by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers under this Act.

17. Powers of Minister

(1) The Minister may give such written directions of a general character to the Council, not inconsistent with this Act, as may be necessary in the public interest, and the Council shall comply with those directions.

(2) The Minister may require the Board to furnish such information, in such manner and at such time as the Minister may determine, in respect of its activities and the Board shall supply such information.

18. Confidentiality

(1) No member or employee shall disclose to any unauthorised person any matter which comes to his knowledge in the performance of his duties.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

19. General Fund

The Council shall set up a General Fund –

- (a) into which all monies received from any source by the Council shall be paid; and
- (b) out of which all payments required to be made by the Council shall be effected.

20. Estimates

(1) The Council shall, not less than 3 months before the beginning of every financial year, submit to the Minister an estimate of the expenditure and income of the Council for the next financial year for his approval.

(2) Subject to subsection (3), the Minister shall, before the beginning of the financial year, signify in writing his approval of the estimates.

(3) Where the Minister signifies his approval under subsection (2), he may –

- (a) approve only part of the expenditure under any item;
- (b) direct the Council to amend the estimates in respect of any item in such manner as he may determine.

21. Execution of documents

No deed, cheque or other document shall be executed or signed by or on behalf of the Council unless it is signed by –

- (a) the Chairperson or, in the absence of the Chairperson, any other member designated by the Board; and

- (b) the Executive Director or, in the absence of the Executive Director, an officer designated by the Executive Director.

22. Annual report and other reports

(1) (a) The Council shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Council, in respect of every financial year.

(b) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and the audited statement of accounts of the Council before the Assembly.

(c) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

(2) The Council shall submit to the Minister such other reports as he may require in relation to the objects, activities, income and expenditure of the Council.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply to the first financial year of the Council after the coming into operation of this Act.

23. Offences

(1) Any person who contravenes any regulations made under this Act shall commit an offence, and shall, on conviction be liable to a fine not exceeding 50,000 rupees.

(2) Any prosecution under subsection (1) shall take place before the Industrial Court which shall have jurisdiction to hear and determine any charges laid under that subsection.

(3) Where an employer is convicted of an offence under subsection (1) which consists in the payment to a worker of a wage lesser than the prescribed national minimum wage or additional remuneration, the Industrial Court may, without prejudice to any penalty which may be imposed under subsection (1), order the employer to pay to the worker the difference between the amount which ought to have been paid as national minimum wage or additional remuneration and the amount actually paid.

(4) The Industrial Court shall have jurisdiction to hear and determine any claim arising out of any regulations made under this Act.

24. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may, inter alia, provide for –

- (a) prescribing anything that is required to be prescribed under this Act; and
- (b) the taking of fees and the levying of charges.

25. Consequential amendments

(1) The Employment Relations Act is amended by repealing section 94 and replacing it by the following section –

94. Power to make regulations to effect payment of additional remuneration and national minimum wage

(1) Notwithstanding sections 91 to 93, the Minister may, following the enactment of any law providing for the payment of additional remuneration or national minimum wage, make such regulations as are necessary in order to reflect any such additional remuneration or national minimum wage in the salary, wage or other remuneration payable under any regulations implementing any Remuneration Regulations governing any category of employees, to whom the additional remuneration or national minimum wage is payable.

(2) Regulations made under subsection (1) may be by way of regulations amending regulations made to implement any Remuneration Regulations.

(2) The Statutory Bodies (Accounts and Audit) Act is amended, in the Second Schedule, in Part II, by inserting, in the appropriate alphabetical order, the following new item and the corresponding entry –

National Wage Consultative Council	National Wage Consultative Council Act 2016
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26. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
