BUSA CONSOLIDATED FEEDBACK ON NMW REPORT

The Report places the NMW in a policy context:

- It is explicitly seen as one mechanism among several to reduce poverty and inequality
- It is not seen as a substitute for policies to promote growth and employment
- It insists that the setting of NMW should be 'cautious, balanced and evidence based', and that any increase from the initial level should only be contemplated from 2020 and on the basis of solid research conducted by an evidence based, independent Commission

However, the Report adopts a one-size fits all approach and fails to take into account the vastly different formats of business as well as the need for certainty and the extent to which the NMW destabilises this. It further fails to adequately deal with the following items from the terms of reference (Report, page 15):

- Consider the potential impact of the levels of the NMW on employment.
- Consider the impact of the levels of the NMW on bargaining council agreements, collective agreements and sectoral determinations.

Some of the key issues of concern are set out below.

KEY ISSUES

1. Jobs v Pay Trade Off (and productivity)

The Report indicates that there have been three modelling exercises conducted with one showing positive impacts and two showing negative impacts. It concludes that the impact of the proposed level is benign without indicating why it reaches such a conclusion (Report, page 74). The media reaction to the report has already indicated there is both a wide range of opinion about and significant uncertainty as to the job impact of the proposed national minimum wage.

It is both appropriate and necessary for the panel to be more direct and specific about the estimated level of job losses at the wage levels they have proposed from the date of implementation. Not only will this have a direct bearing on employment, but it will also have a direct impact on taxation and the State's ability to effect social transfers.

This figure should be cognisant that South African businesses do not operate in a vacuum, and particularly take account of the impact on the competitiveness of tradeable sectors; as well as the possibility that a number of firms that can make adjustments might do so in order to compensate for higher wage costs. The impact of and on migrant labour should also be considered.

We have seen the consequences in agriculture, where a lack of research of a 52% increase in minimum wages resulted in adjustment, job loss and reduced hours of work. This illustrates the need to evaluate the expected job impact, realising that this is by no means an exact science. This will enable all the stakeholders to make an informed decision as to the appropriateness of the proposed NMW and enable us all to manage and monitor the risks, and ensure policy objectives are realised.

One of the other key issues that should be made explicit in the report is the issue of productivity. Key to competitiveness is the ability to ensure that productivity and pay are closely related. This requires careful tracking and monitoring of productivity when reviewing the NMW.

2. Impact on 'Fragile' Sectors

The report identifies sectors of our economy that will be more drastically impacted by the proposed minimum wage. The information, however, is not overlaid with the findings on youth, skills, business size and labour intensity. Strategies to mitigate potential negative effects are proposed, although they are somewhat vague.

The clothing industry experience has clearly demonstrated that we should be clear about the consequences of non-compliance where the minimum wage is unaffordable. There is a Hobson's choice in relation to compliance and shutting down of fragile firms that cannot afford to stay in business unless other solutions can be found. The challenge is highlighted in relation to tradeable sectors such as agriculture and manufacturing that cannot easily pass costs onto consumers for fear of losing these customers, and are likely to become less competitive relative to their trading partners if they have to sustain higher labour costs than their competitors.

This is an area where either the executive or legislative arm of government needs to engage with these sectors in substantial consultation to determine mitigating actions that will be appropriate in order to safeguard growth and employment in these fragile industries. There is the possibility, that if properly structured, the employment tax incentive can designate certain sectors, thereby supporting vulnerable sectors to be able to afford to supplement wages.

Fragile sectors need to be clearly identified in the report, with a view to such engagement taking place as a basis to mitigate negative consequences of the NMW on these sectors.

3. Impact on Collective Bargaining and existing Sectoral Determinations

There are a number of areas where the report has not adequately explored the proposed level in relation to existing co-determination and determination instruments.

a. Bargaining Council Agreements: It is not possible to identify where this is addressed in the report. A fuller understanding of the impact is required in this regard. By way of example of the adjustment period required, however, one need only to look to the Road Freight Bargaining Council agreement that has just been signed for a further 3 year period. The agreement contains a careful balancing of interests, including taking into account wage levels, participation by migrant workers, and atypical working patterns.
b. Impact on other Collective Wage Agreements: Other than a useful description demonstrating that minimum wage setting should not crowd out collective bargaining (Report, page 29); emphasis that collective bargaining is important; and recommending it as a useful area of future analysis, there is no analysis of the impact on the proposal on collective agreements. Given the Constitutional right to collective bargaining, it is critical that the impact of the NMW be properly understood in this context.
c. Impact on Sectoral Determinations: The Report identifies that a number of sectors will be disproportionately impacted upon by the NMW (Report, page 76), and correctly points out that sector specific impacts need to be understood. There has been little consideration of the cascading effects of the NMW at paid jobs, as well as the impact of compression of salaries on skills and performance. Several of these sectors are distressed and will therefore require exemptions as provided for in the report, failing which a very careful transition plan with maximum caps placed on the increases. We would like several sectors to be granted exemptions before the end of the phase-in period. Most importantly, we seek clarity on the continuation of sectoral determinations and the role they will assume post the implementation of the NMW.
d. Youth, geographical areas and skills carve outs: A number of bargaining council, collective agreements and sectoral determinations have careful, evidence based, carve outs in this regard. The Report has, in our view, not sufficiently explored the rationale thereof and how this translates into the NMW.

4. **Start-up enterprises, micro and small businesses and the Informal Sector**

Start-ups, micro and small businesses are correctly identified as heterogeneous and requiring differential treatment. However, in the formulation of the proposal by the panel they are treated in a homogenous way with SMMES confined to micro enterprises of less than 10 employees. This formulation is clumsy and does not dovetail with the definition of the Small Business Amendment Act (26 of 2003), nor generally accepted labour law definitions of small business. Moreover, it does not take into consideration emerging black business and the Black Industrialists' policy; nor the emerging policy imperatives pertaining to transition to formalisation and SME development. Further, the compliance and enforcement challenge in these types of firms requires specific consideration.

The report correctly points out that particularly in developing countries the impact of the NMW on formality has to be carefully considered in order to guard against higher levels of informality. This does not appear to have been considered by the Report in the South African context.

Illustratively, smaller retailers operating franchise stores and independent stores have indicated that the increased costs could result in 10 – 20 % higher costs. In this regard, we would recommend that consideration be given to the normal definition of small business for employment related issues i.e. 50 employees, and that there be a 3 year provision for new start-ups.

5. **Technical issue with the rate per hour of the proposed.**

The relationship between the hourly, weekly and monthly numbers is confusing. It appears that the Report evaluates the level on the basis of R3 500 per month, but this does not cleanly translate into R20 an hour in many of the most labour intensive, low paying sectors. Agriculture, for example may be able to sustain the monthly proposed rate by 2019, but would not be able to adjust to the much higher hourly rate. Road freight, would also not be able to work back to a 40 hour work week, as this is unworkable given extended driving hours for long journeys.

The BCEA provides for a 45 hour work week, with an intention to reduce this to a 40 hour work week over time. (Report, page 9 and 59). This disregards the practical reality of some sectors where there are longer hours by necessity. Many sectoral determinations provide for a 45 hour week with domestic workers, agriculture and security, for example ranging up to 48 hours a week. The Panel has correctly indicated its role is to consider both the social and economic impact; however, in the calculation to the hour, the cost implications have not been taken into account. Cost implications are as follows:

	Per Hour	Per Week	Per Month
Correct calculations	**R17.78**	R800	R3440
Impact of incorrect hours per week	R20	R900	**R3870**

We are very much in favour of the NMW being identified at an hourly rate as proposed by the Report as this is most appropriate given different types of work and adaptability requirements required in many industries that are seasonal or have highly varied trading patterns. However, if the hourly rate is not correctly calculated, this could have very damaging consequences for those that are lowest paid, with the lowest skills, as well as for vulnerable, trade exposed and labour intensive sectors of the economy. If it is not possible to argue for a reduction in the hourly rate, our recommendation would be to reframe the definition being: the minimum of R20 p/ hour or R800 p/week or R3440 per month, whichever is the lower amount.

6. **Compliance and Enforcement**

The report meaningfully proposes a progression from awareness raising, support through to fines. It correctly highlights the resource constraints in the Department of Labour. Given considerations of affordability and the significant levels of non-compliance with current sectoral determinations, collective agreements and bargaining council agreements, and the role of the Department in this regard, this challenge cannot be underestimated. A firm recommendation is required as to what resources will be required.

7. Policy Development and Institutional Arrangements

The implementation timetable needs to be considered given the time required for:

- drafting of the legislation
- consultation on the text in Nedlac
- the Parliamentary processes
- institutional establishment
- adjustment times for collective bargaining agreements and sectoral determinations that have between 1-5 year agreements or determinations,

We cannot afford to raise expectations that cannot be met and would request that we ask Government to provide a realistic outline of the reasonably expected timeframes.

We support the proposal to establish a well capacitated, independent Commission with the necessary research capacity. Further consideration should be given to ensuring the independence of the Commission and Commissioner.

8. Recommendations

In view of the above, BUSA is to make the following broad recommendations to the Panel:

1. Identify the employment impact and include this into the report, failing which motivate for an impact assessment.
2. Insert productivity considerations into the monitoring and adjustment mechanism of the NMW.
3. Identify a provisional list of fragile sectors, and recommend an engagement plan for such sectors or sub-sectors with the relevant government departments over the next 18 months, with a recommendation for government to designate vulnerable sectors for employment tax incentive if necessary.
4. Using the model on page 29 of the Report, overlay the impact of the NMW in 2019/20 on collective bargaining and bargaining councils and include this in the report.
5. Recommend a process within the Department of Labour to identify and propose a plan to manage the impact on bargaining councils and collective agreements.
6. Request the ECC to put together an implementation plan for each sectoral determination for consultation with social partners over the next 2 years.
7. Re-frame the definition of SMEs to include SMEs and start-ups, and consider a more nuanced and sustained strategy to support implementation of the NMW and SME compliance.
8. Commission a more detailed study to consider the cost, economic and employment impact of the hourly rate on labour intensive, low skill and higher hour industries with appropriate recommendations.

9. Request Government to put together an implementation plan and budget required for the Department of Labour's campaign within the next 3-6 months.
10. Government should be requested to outline a realistic implementation time frame, inclusive of the institutional establishment and the associated costs.

BUSA will further explore the possibility of obtaining funding to support sector specific work on the impact of the NMW, as to industrial or economic strategies that could be adopted in order to adjust thereto without compromising employment.

28 November 2016