Department of Employment and Labour

NO. R. 2871 **15 December 2022**

NATIONAL MINIMUM WAGE ACT NO. 9 OF 2018
INVESTIGATION INTO THE NATIONAL MINIMUM WAGE

INVITATION FOR WRITTEN REPRESENTATIONS

I, Adriaan van der Walt, Chairperson of the National Minimum Wage Commission, hereby present the Commission's report and recommendations on the annual review of the national minimum wage and hereby invite written representations in respect of the recommendations in accordance with section 6(2) of the National Minimum Wage Act, No. 9 of 2018.

Such representations should reach the directorate: Employment Standards, Department of Employment and Labour, Private Bag X117, Pretoria, 001 or be sent to nmwreview@labour.gov.za by 13 January 2023.

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Prof A. van der Walt
CHAIRPERSON: NATIONAL MINIMUM WAGE COMMISSION
DATE: 9 December 2022

National Minimum Wage Commission proposal for 2023 adjustment

Report of the National Minimum Wage Commission on the review and adjustment of the national minimum wage for year 2022	2022

National Minimum Wage Commission proposal for 2023 adjustment

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List of acronyms

BER	Bureau of Economic Research
COVID-19	Coronavirus Disease
CPI	Consumer Price Index
DPRU	Development Policy Research Unit
GDP	Gross Domestic Product
ILO	International Labour Organisation
NMW	National Minimum Wage
NMWC	National Minimum Wage Commission
QLFS	Quarterly Labour Force Survey
SEDA	Small Enterprise Development Agency
SME	Small and medium enterprises
SMME	Small, Medium and Micro-Sized Enterprises
Stats SA	Statistics South Africa
UCT	University of Cape Town

1. MANDATE

Section 6 of the National Minimum Wage Act of 2018[1] requires that the National Minimum Wage Commission (NMWC) "review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage." The Act mandates that the Commission's review report to the Minister must reflect alternative views, including those of the public. The Commission, therefore, invited written representations in respect in accordance with section 6(2) of the Act and received varied comments from trade unions, interested parties, employees' representatives, and employers' representatives.

The National Minimum Wage Act also mandates the NMWC to consider a range of actual and potential economic factors impacting the adjustment, specifically:

- Inflation, the cost of living and the need to retain the value of the national minimum wage;
- Wage levels and collective bargaining outcomes;
- Gross Domestic Product (GDP);
- Productivity;
- The ability of employers to carry on their businesses successfully;
- The operation of small, medium and micro-enterprises (SMME) and new enterprises; and
- The likely impact on employment or employment creation.

The report is structured as follows:

- Outlines the evidence, as required in the Act;
- Annexure A gives preliminary findings of a descriptive overview of the minimum wage increases. Annexure B represents a summary of public inputs.

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[1] The National Minimum Wage No 9 of 2018. Hereinafter referred to as the Act or the National Minimum Wage Act.

2. AIMS OF THE ACT AND FACTORS TO CONSIDER IN THE ANNUAL ADJUSTMENT

a. Promoting aims of the Act

i. Medium-term targets

The Commission has not yet set medium-term targets for the national minimum wage. It anticipates finalising targets before the end of the financial year. The notice requesting representations from the public will be published in the Government Gazette. The Commission accepts the principle implementing an adjustment that the real value of the NWM should not be reduced.

ii. The alleviation of poverty

Statistics South Africa's 2022 National Poverty Lines are summarised below:

- The food poverty line is at R663,00 per person per month, or R2 325,00 for the average-sized household (which has between three and four members). The food poverty line covers only the resources required to meet the minimum required daily energy intake.

- The lower-bound poverty line is at R945,00 per person per month or about R3 308,00 for an average-sized household. This poverty line encompasses a minimum of non-food essentials in addition to the food poverty line.

- The upper-bound poverty line is at R1 417,00 per person per month or R4 960,00 for the average-sized household. This poverty line includes the cost of non-food items typically consumed by households that are able to afford the basket of foods utilised in setting the food poverty line.

According to these results, many households continue to live below the poverty line even with the present minimum wage. Therefore, a gradual real increase is needed to lift employees earning the minimum wage out of poverty.

Employees submitted input that the cost of living has increased to the point where an average South African cannot afford to meet their basic needs, thus the lives of many workers would improve with an increase in the minimum wage.

Organised labour made the assertion that a number of low-wage workers in vulnerable sectors, notably those in agriculture, domestic work, construction, and retail, have experienced a positive impact as a result of the minimum wage.

iii. The reduction of wage differentials and income inequality

Wage differentials in South Africa remain amongst the highest in the world, according amongst others to data published by the International Labour Organisation (ILO). National Minimum Wage Act, section 2 (a) aims to reduce wage inequalities by increasing wages for the lowest-paid workers. In consideration of wage inequalities that exist between different sectors, the Commission was tasked to recommend a national minimum wage which would be applicable to all employees.

While median wages in the agriculture sector increased slightly in 2022, there seems to be a marginal decline in domestic work (Table 1). Despite the progressive minimum-wage increases for the domestic and agricultural sectors, the median hourly wages paid continue to be below the minimum wage. In these sectors, there is little evidence of any collective bargaining and the workers remain vulnerable.

It is the view of the Commission that these are precisely the most vulnerable workers that the Commission is required to proactively protect in setting the national minimum wage that seeks to protect the real value of the purchasing power of the national minimum wage – see the next section on Inflation.

Table 1: Median real hourly wages: 2020Q1-2022Q2

	Median hourly wage	
Period	**Agriculture**	**Domestic work**
2020Q1	20,21	19,49
2020Q2	20,80	20,05
2020Q3	19,87	19,93
2020Q4	19,89	19,85
2021Q1	19,62	19,62
2021Q2	20,18	19,58
2021Q3	21,16	19,56
2021Q4	19,78	19,35
2022Q1	20,17	20,14
2022Q2	20,73	19,43

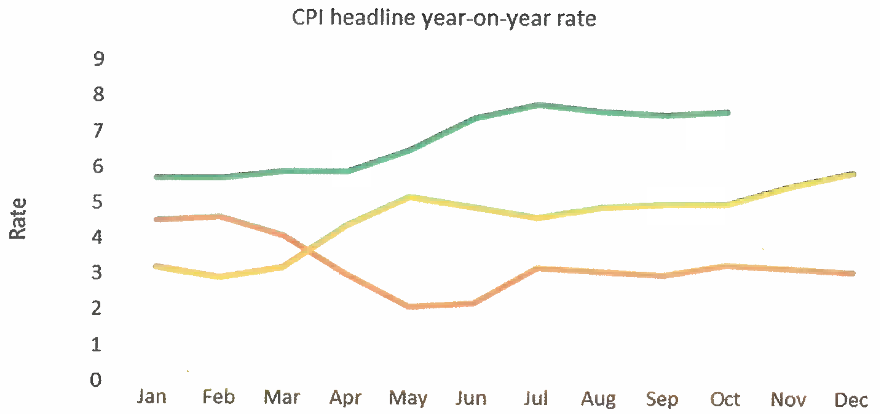
Source: QLFS 2020Q1-2022Q2 (StatsSA). Calculations by DPRU

b. Factors to consider in the annual adjustment

i. Inflation, the cost of living, and the need to retain the value of the minimum wage

One of the imperatives of the National Minimum Wage Act (section 2(c)) is to preserve the value of the national minimum wage in a way that overall rises in prices over time do not reduce the purchasing power of consumers. Therefore, the Commission is concerned about the significantly higher consumer inflation in 2022 than it was in the preceding two years. The consumer price index (CPI), a key inflation barometer, rose to 7.6% in October 2022, breaching the South African Bank's upper band of the inflation target (Figure 1). This means that a basket of goods and services that cost R100 a year ago would now cost R107,5.

Figure 1: CPI headline inflation year-on-year rate, 2020-2022



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2020	4.5	4.6	4.1	3.0	2.1	2.2	3.2	3.1	3.0	3.3	3.2	3.1
2021	3.2	2.9	3.2	4.4	5.2	4.9	4.6	4.9	5.0	5.0	5.5	5.9
2022	5.7	5.7	5.9	5.9	6.5	7.4	7.8	7.6	7.5	7.6		

Source: Statistics South Africa. Consumer Price Index P0141 October 2022

The National Minimum Wage Act strives to improve the wages of the lowest-paid workers in the country. Data which tracks the inflation experience of various economic groupings of South Africa's expenditure groups shows a vast inflation experience of the rich compared to that of the poor. It is the lowest spenders who face disproportionately higher rates of inflation than the rich. While the inflation rate for the poorest decile was 9.3%, it was 7.2% for the richest decile (Table 2). This difference in inflation experience between these groups is attributed to the fact the poor and the rich have different baskets of consumption. Whereas the poor tend to spend a significant portion of their income on food, the rich are likely to include luxury items in their consumption. Food inflation was 12.3% compared to headline inflation of 7.6%.

Table 2: CPI per expenditure decile

Decile	Expenditure	September 2022 inflation rate
Decile 1	up to R 20 140	9.7
Decile 2	R 20 141 up to R 33 61	9.3
Decile 3	R 33 620 up to R 48 673	8.5
Decile 4	R 48 674 up to R 65 213	7.7
Decile 5	R 65 214 up to R 84 698	7.5
Decile 6	R 84 699 up to R 109 163	7.4
Decile 7	R 109 164 up to R 143 174	7.6
Decile 8	R 143 175 up to R 199 920	7.8
Decile 9	R 199 921 up to R 312 246	8.0
Decile 10	R 312 247 and more	7.2

Source: Statistics South Africa. Consumer Price Index P0141 October 2022

Transport (2.4%) and food and non-alcoholic beverages (2.1%) are the biggest contributors to the annual percentage change in inflation (Table 3). October transport inflation decreased from 17.9% to 17.1% year-on-year, whereas food and non-alcoholic beverages inflation decreased from 12.3% to 12.0%. The Commission is mindful that food and transport are consistently running ahead of average inflation and it remains committed to ensuring that the real value of the minimum wage is not eroded, despite these inflationary pressures.

Table 3: Contributions of the different groups to the annual percentage change in the CPI headline

Group	October 2022
All Items	**7.6**
Transport	2.4
Food and non-alcoholic beverages	2.1
Housing and utilities	1.1
Miscellaneous goods and services	0.7
Alcoholic beverages and tobacco	0.4
Restaurants and hotels	0.3
Household contents and services	0.2
Recreation and culture	0.2
Clothing and footwear	0.1

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Group	October 2022
Health	0.1
Education	0.1
Residual	-0.1

Source: Statistics South Africa. Consumer Price Index P0141 October 2022

ii.Wage levels and collective bargaining outcomes

Wage levels

Considering how an increase in the national minimum wage increase may have impacted wages, Bhorat, Stanwix, and De Villiers (2022) found that no large wage changes were evident following NMW increases in 2021 and 2022. This was as expected, particularly for general workers as the legislated real increases in the minimum wage were marginal.

In the agricultural sector, the study noted a small rightward shift in the wage distribution in 2021, following a substantial increase in the NMW, but the effect is not obvious in the sector's median wage, suggesting a limited wage response. The domestic sector showed very little evidence to suggest that wages increased significantly in response to the minimum wage increases

Collective bargaining outcomes

Wage agreements within some of the major bargaining councils are tabulated below, many of which span for a period of two years (Table 4). Agreements range from 3.0% to 13.0%, with most councils settling at about 6%, marginally below the rate of inflation at the time of drafting.

Table 4: Bargaining council wage increases for the period 2022 to 2023

Bargaining council	Agreement period	Increment 2022
Building North+ West Boland	Signed in 2020 and the agreement will end on 31 October 2022.	2020 -2021 (2.9% - 3%)
Hairdressing, Cosmetology, Beauty& Skincare		Across-the-board increases of 5 % on actual wage shall be

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Bargaining council	Agreement period	Increment 2022
		awarded to all employees, mentioned in grades 3, 5, and 6, who were in the employ of an employer prior to 1 March 2022. (b) On 1 September 2022, a further 1% across-the-board increase.
National Bargaining Council for Electrical Industry(NBCEI)	1 February 2022- 31 January 2023.	Employees earning minimum wage 6% other employees 5%.
Metal and Engineering Bargaining Council	17 October 2022- 30 June 2024.	5% - 6%
SARPBAC	4 July 2022- 31 March 2023	6% across-the-board Wage increase from 1 April 2022 until 31 March 2023.
Road Freight Bargaining Council	1 March 2022- 29 March 2024	5% March 2022- September 2022. 1% September 2022 – 28 February 2023; 5% March 2023.
Bargaining Council for the Restaurant, Catering and Allied Trades	21 February 2022- 31 December 2022	5% Wage increase for the employees who earn above the minimum wage. Employees who are below minimum wage are entitled to the minimum wage according to the area category.

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Bargaining council	**Agreement period**	**Increment 2022**
Building Cape Of Good Hope Council	1 November 2021- 31 October 2022.	CPI percentage provided that the minimum increase shall be 4% for the period 1 November 2021 to 31 October 2022.
National Textile BC	1 October 2022- Agreement is amended.	9.14% for grade 1 employees. 7% for grades 2,3,4 and 5.
Motor Ferry BC	1 January 2022- 31 December 2024.	Employees who are on higher rates than the minimum 680,00 per month from 1 January 2023.
Private Security BC	14 June 2021- 1 March 2023.	13 % wage increase in the first year.
Contract Cleaning BC KZN	Wages are effective until a new agreement is signed.	From 1 March 2022 employees should earn R25,58 per hour
Canvas BC Gauteng	8 August 2022 until the Agreement is amended.	6%
FBC WC	18 June 2021 – 31 March 2023	Between 3% - 5% hourly wages depending on the category.
Clothing Bargaining Council	1 September 2022- 30 August 2023 (Year 1) From 1 September 2023	7 % wage hike from September 2022. CPI plus 1%

Bargaining council	Agreement period	Increment 2022
National Bargaining Council of Leather Industries	1 July 2022 – 30 June 2023	7.25% Increase

Source: Department of Employment and Labour, Collective Bargaining 2021-2022

Median settlement levels in collective bargaining are presented in Table 5 below. The data suggest that the median settles for a majority of industries was about 6%. Mining & Quarrying tended to have the highest median at 8%, followed by manufacturing at 7%

Table 5:Median wage settlement levels in collective bargaining in South Africa (%), Jan –Oct 2022

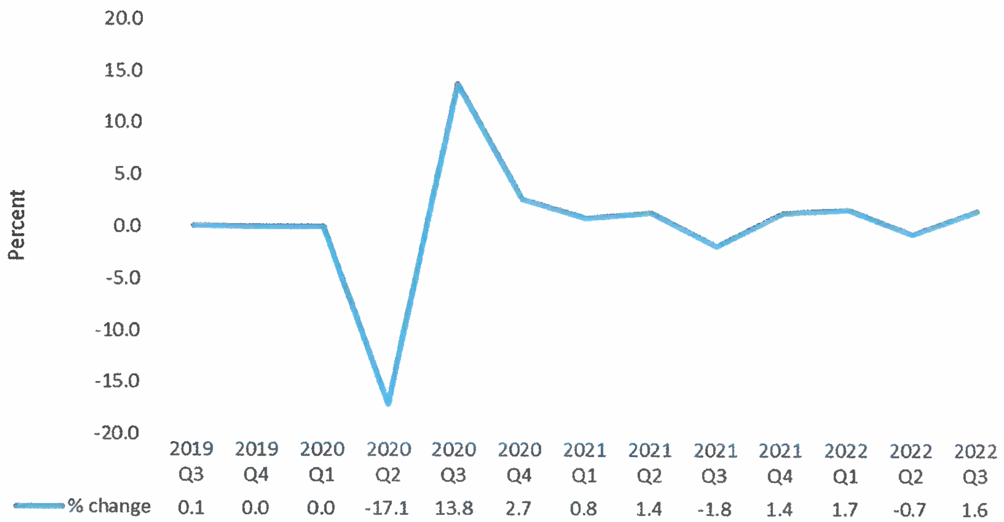
Industry	Sample Size	Median increase (%)
Agriculture, Hunting, Forestry & Fishing	36	6
Community, Social & Personal Services	37	6
Construction	6	6
Electricity, Gas & Water	13	6
Financing, Insurance, Real Estate & Business Services	15	6
Manufacturing	200	7
Mining & Quarrying	26	8
Transport, Storage & Communication	11	6
Wholesale & Retail Trade, Catering & Accommodation	51	6.5
Median Benchmark (across all agreements)	**395**	**7**

Source: Labour Research Service, 2022

iii.Gross Domestic Product

Real gross domestic product (GDP) increased by 1.6% in the third quarter of 2022 after dropping by 0.7% in the second quarter. The commission noted the National Treasury forecasts positive growth in the future, albeit moderate. GDP is projected to have an average growth of 1.6% and 1.7% in 2023 and 2024. This muted growth is limits production.

Figure 2: Gross domestic product at market prices (% change)

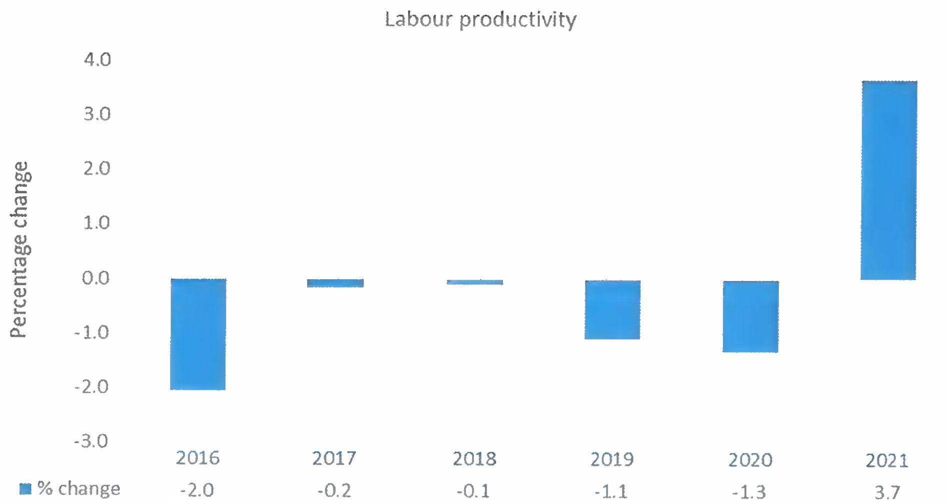


Source: Statistics South Africa. Gross Domestic Product P0441 Quarter 3 2022

iv.Productivity

In 2021, annual the rate of labour productivity depicts growth of 3.7 percentage points (Figure 3).

Figure 3: Annual percentage change in labour productivity

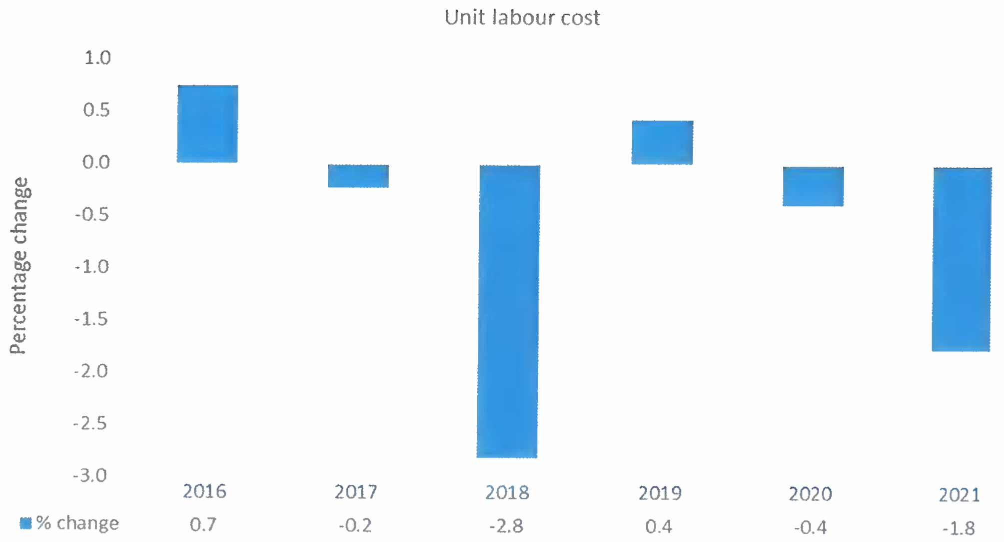


Source: Productivity SA Productivity Statistics 2021.

Unit labour cost is a measure of the average cost of labour per unit of output produced. The variation in the unit labour cost is not only determined by wages. In fact, rising wages do not necessarily lead to higher unit labour costs. Some of the key factors such as inflation, the bargaining power of workers, and changes in labour productivity have an influence on the average cost of labour per unit of output produced.

We note that in 2021 labour productivity increased while unit labour cost decreased by 1.8 percentage points.

Figure 4: Annual percentage change of unit labour cost



Source: Productivity SA Productivity Statistics 2021.

v. The ability of employers to carry on their businesses successfully

The Commission recognises that it is crucial for businesses in South Africa to keep operating successfully, as business acts as a catalyst for economic growth.

While the National Minimum Wage Act (section 2) aims to advance economic development and social justice through the application of the national minimum wage, the Act considers the effect that annual minimum wage adjustments may have on employers' ability to carry on their businesses successfully. Because of this consideration, the Act makes provision for a process that exempts deserving employers from paying the national minimum wage where successful applications are made.

vi. The operation of small, medium or micro-enterprises and new enterprises

Small and medium and micro enterprises (SMMEs) can contribute to a rapid expansion of the economy. These businesses were hit hard by the lockdown restrictions imposed during the COVID-19 pandemic, this can be observed in the Small Enterprise Development Agency (SEDA) SMME quarterly publication that showed a decline in the number of SMME's decline from the first quarter (Q1) of 2020 to the first quarter (Q1) of 2021.

For the third quarter of 2021, the SEDA SMMEs quarterly publication shows a recovery in the number of SMMEs. The report estimates that there are 2.4 million active SMMEs in South Africa; which is 1.7% more than in 2020 (Table 5). The (SEDA) SMME Quarterly update draws attention to the following:

- Although the total number of SMMEs increased in 2021, the employment created decreased by 3%, which represents about three-quarters of overall job losses.
- Turnover generated by SMMEs increased by 15.7% in the third quarter of 2021, compared to the third quarter of the preceding year. The rate of SMME turnover growth (15.7%) is higher than the turnover growth by larger enterprises (11.4%). Small and medium enterprises (SME) contribution to all enterprises increased to 39.5%

Although COVID-19 restrictions have been lifted, the Commission notes that this is still a volatile environment for businesses to operate in, hence the exemption procedures can help to ease those difficulties.

Table 6: SMME key indicators

Indicator	**2021Q3**	**Year-on-year change**
Number of SMMEs	2 404 564	1.7%
Number of formal SMMEs	677 786	3.7%
Number of informal SMMEs	1 641 859	3.9%
Number of jobs provided	9 758 313	-3.0%
% operating in trade and accommodation	38.1%	-0.9%
% operating in community services	13.5%	0.6%
% operating in construction	13.1%	-1.2%

% operating in finance and business services	16.0%	2.9%
% black-owned formal SMMEs	73.6%	-1.6%
% contribution of SMEs to turnover of all enterprises	39.5%	0.9%

Source: Small Enterprise Development Agency, SMME Quarterly Update, 3rd Quarter of 2021

vii. Impact on employment or the creation of employment.

The Development Policy Research Unit (DPRU) of the University of Cape Town (UCT) conducted an economic study to assess the effect of the 2021/2022 national minimum wage increases. Preliminary findings detail the following:

Employment

No major shifts in employment were observed following the two NMW increases and note that where significant variation is observed, the effects of COVID-19 are likely to be a more direct driver at the aggregate level.

For Agriculture and Domestic Work, where NMW increases have been unusually large, no significant changes were observed in employment during the periods that follow these increases.

Employers shared a concern that excessively high minimum wages might have a negative impact on the employment rate and prompt mechanisation.

Hours of work

Similar to trends in employment, no significant changes to weekly hours of work are observed in general, for particular industries, or among low-wage workers who were likely to be most affected.

The Commission noted Stats SA's Quarterly Labour Force Survey (QLFS) for 2022-Q3. The QLFS indicates that year-on-year job gains were observed in the formal sector (up by 235 000) and the informal sector (up by 6 000), while losses were observed in Private households (down by 36 000) and the Agricultural sector (down by 1 000) in Q3: 2022. Compared to a year ago, total employment increased by 1.5 million persons (or 10.4%). The number of unemployed persons increased by 82 000 (or 1.1%).

Quarter on quarter the number of employed persons increased by 1.3%, and the number of employed persons increased in six of the ten industries. The largest increase in employment was recorded in Manufacturing (123 000), followed by Trade (82 000), Construction (46 000), Transport (33 000) and Community and social services (27 000). Decreases in employment were recorded in the Finance (80 000), Private households (36 000), Mining and Agriculture (1 000 each) industries.

3. NON-COMPLIANCE

A study by the University of Cape Town's DPRU assessed the national wage increases for the years 2021/22, measuring the percentage of workers in each industry earning less than the NMW, as well as how far below the NMW these workers are now earning. Data suggests that non-compliance with NMW increased to more than 40% between the two years. Non-compliance is highest in agriculture (67%) and domestic work (52%). The depth of non-compliance across industries is also highest in agriculture and domestic work, at 21% and 20% below the NMW, respectively.

Table 7:Non-Compliance, by Industry: 2021/22

Industry	Headcount		Change	Depth		Change
	2021Q1	2022Q1	(%)	2021Q1	2022Q1	(%)
Agriculture	0.59	0.67	13.56	0.17	0.21	23.53
Mining	0.01	0.04	-	0	0.01	-
Manufacturing	0.26	0.28	7.69	0.07	0.08	14.29
Construction	0.43	0.5	16.28	0.15	0.19	26.67
Trade	0.4	0.45	12.5	0.12	0.14	16.67
Transport	0.38	0.44	15.79	0.14	0.18	28.57
Financial Services	0.34	0.32	-5.88	0.09	0.08	-11.11
CSP	0.26	0.34	30.77	0.1	0.13	30
Private Households	0.41	0.52	26.83	0.14	0.2	42.86
Total	**0.34**	**0.41**	**20.59**	**0.11**	**0.14**	**27.27**

Source: QLFS 2020Q1-2022Q2 (StatsSA). Calculations by DPRU

4. THE ANNUAL ADJUSTMENT OF THE NATIONAL MINIMUM WAGE

Following careful consideration of the current economic state of the country on both employers and employees, also having given thorough regard to publicly available data on key indicators and the submissions by stakeholders, eight of the twelve commissioners propose that the national minimum wage increase by CPI plus 2%. Three of the Commissioners propose that the national minimum wage be increased by CPI. One commissioner proposes is that the level of the NMW be adjusted within the range of CPI+0.5% and CPI+1%. In October 2022, annual consumer price inflation was 7.6%; therefore, the adjustment should be around 9.6%. However, the precise amount will vary depending on the rate of inflation in the month the adjustment is implemented.

In 2021, the NMW increased from R20, 76 to R21,69 per hour. In 2022, minimum wages were revised from R21,69 to R23,19 per hour. This set a floor below which no worker must be paid, including workers in the agricultural and domestic sectors. These two sectors were previously exempted from paying 100% of the national minimum wage, but they were later equalised where one minimum wage was applied across the board.

The Commission is conscious of the economic challenges facing South Africa, but the modest improvement proposed for the national minimum wage should not prove unduly disruptive to the economy. Moreover, failing to address inequality and poverty in itself fosters contestation and unrest, which poses a significant risk to the overall recovery.

The Commission notes the high non-compliance rates and encourages employers to comply with the Act. In the case of unaffordability, the Act makes provision for an employer or employer organisation to apply for an exemption from paying the NMW. Instead of not complying with the NMW, employers are encouraged to make use of the exemption system if they cannot afford to pay the NMW.

The following Commissioners were in support of the CPI plus 2% adjustment for 2023:

Dr. Neva Makgetla (Independent expert)

Prof. Sarah Mosoetsa (Independent expert)

Mr. Solly Phetoe (Labour)

Mr. Edward Thobejane(Labour)

Mr. Trenton Elsley (Labour)

Ms. Isobel Frye (Community)

Ms. Conti Matlakala (Community)

Mr. Tumelo Zwane (Community)

5. OTHER RECOMMENDATIONS

Recommendations from the business constituency

This section serves as the view of the three NMW commissioners from the business constituency and is expressed as part of the minority view of the report submitted by the NMWC.

We believe the national minimum wage should not increase more than **the CPI as expressed in February 2023.** The rationale for our proposal rests on the factors that the Commission is enjoined by the Act to consider in respect of its analysis and recommendations. These include:

1. The research received by the Commission from the DPRU indicates high levels of non-compliance and this is supported by the recent report of the Department of Employment & Labour's own inspectorate. While increased inspectorate capacity may be necessary, we believe that non-compliance with the NMW increases when employers struggle to afford the wage levels. In a battered economy such as ours, increasing the NMW with anything above inflation will only fuel non-compliance, which is undesirable and should be avoided.

2. The economy is in a fragile state and all indicators point to a continuation of that fragility through 2023.

3. Most businesses, especially small businesses, are battling to survive and as we have seen in 2022, higher increases in these circumstances will just result in higher non-compliance and more business liquidations and resultant job losses or reduced employment opportunities.

4. The national minimum wage moved above inflation in 2022 (CPI plus 1% and even higher for domestic and farm workers due to the equalisation factor). Although the research by the DPRU did not indicate massive job losses, the research does

indicate that the QLFS sample shrank, which likely reduced the accuracy of the estimates worked on. The effect on employment of an increase generally takes more than a year to come through in respect of the impact on jobs and, therefore, it is our view that the research is still an interim report and ongoing. As it stands, we do not have final research in order to make an informed recommendation for higher increases. We would be remiss in our function if we did not recommend restraint.

5. If one studies major Bargaining Councils in the document submitted to the NMWC for 2021 and 2022 increases, we have seen many increases between 5% and 6%, well below inflation. In addition thereto, we also see Government only giving a 3% increase, which is well below inflation. These are indications of market conditions.

6. The recent Transnet settlement was 6%. This is 1.5% below current inflation levels. These are bargained outcomes that cannot be ignored.

7. This CPI figure in February 2023 is likely to be high based on the research we have conducted in comparison to the months that follow in 2023. Inflation is projected to decline during the year 2023.

8. When we look at what the Commission needs to consider when reviewing the NMW and we rank these factors for 2023, then we see the following:

   i. inflation, the cost of living and the need to retain the value of the minimum wage (*very significant*);
   ii. wage levels and collective bargaining outcomes (*very significant*);
   iii. gross domestic product (*significant*);
   iv. productivity (*significant*);
   v. the ability of employers to carry on their businesses successfully (*very significant*);
   vi. the operation of small, medium or micro-enterprises and new enterprises (*very significant*);
   vii. the likely impact of the recommended adjustment on employment or the creation of employment (*very significant*); and
   viii. any other relevant factor.

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From the above, in our opinion, there are five very significant factors and two significant factors that should be considered. It is our considered view and submission that the five very significant factors strongly favour a cautious approach to raising the NMW, while the other two significant factors also support that approach.

Cognisant of the mandate of the Commission to protect the value of the NMW, we believe that increasing the NMW by CPI is not inconsistent with this mandate. It is also necessary and prudent in the prevailing economic climate.

The following Commissioners were in support of the CPI adjustment for 2023:

Mr. Kaizer Moyane (Business)

Ms. Jahni de Villiers (Business)

Mr. Jonathan Goldberg (Business)

Recommendations from an independent expert

This sub-section is prepared by Professor Imraan Valodia and serves as a second minority report. The document argues that the appropriate level of increase in the National Minimum Wage (NMW) for 2023, balancing the cost of living increase faced by workers and the challenging economic environment faced by employers is in the range of CPI+0.5% and CPI+1%.

According to the International Labour Organization (ILO), setting the level of the NMW and adjusting the level "is perhaps the most challenging part of minimum wage fixing. If set too low, minimum wages will have little effect in protecting workers and their families against unduly low pay or poverty. If set too high, minimum wages will be poorly complied with and/or have adverse employment effects" (see ILO Minimum Wage Policy Guide, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_508566.pdf.)

The ILO recommends:

> A balanced and evidence-based approach which takes into account, on the one hand, the needs of workers and their families and, on the other, economic factors. An appropriate balance between these two sets of considerations is essential to ensuring that minimum wages are adapted to the national context, and that both the effective protection of workers and the development of sustainable enterprises is taken into account.

Strategic Considerations

South Africa introduced a NMW in January 2019. Following careful research and consultation, the level was set at a realistic level of R20 per hour, appropriately balancing the need to address low wages in the economy, and at a level that did not impose an undue burden on employers. In two sectors of the economy, domestic work and agriculture, where wage levels were extremely low, a three-year adjustment to the level of the NMW was provided for. Each year since 2019, the level of the NMW was increased in real terms, but at a level that was realistic. The evidence to date is that the NMW has not had any negative impact on employment.

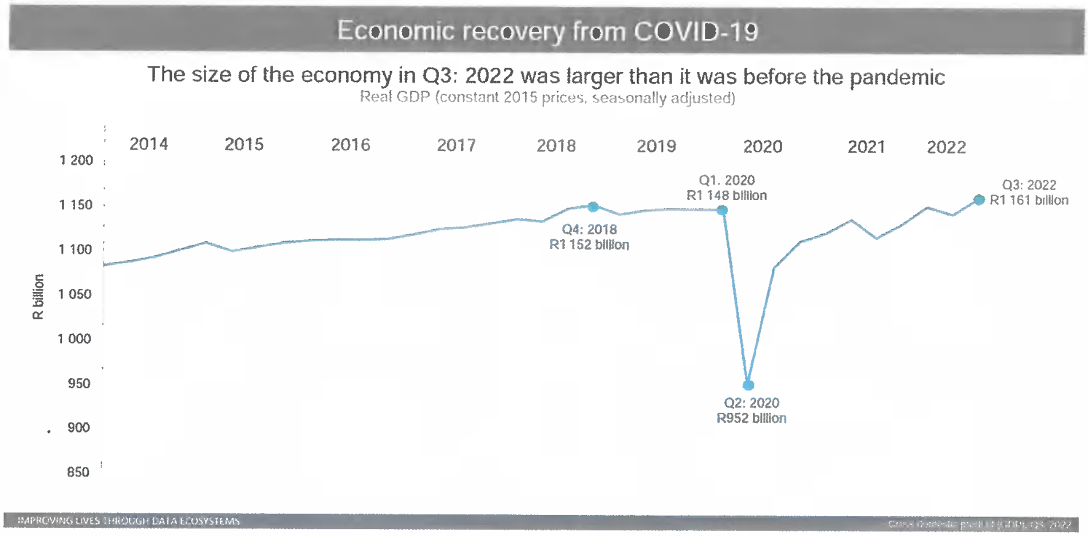
Unless there are exceptional conditions, at the very least, policy should aim to maintain the real value of the NMW. Where conditions allow it, because the NMW aims to protect the most vulnerable segment of employed workers, policy should endeavour to increase the real value of the NMW. However, this has to be done in a responsible way, that does not place an undue burden on business, takes account of economic conditions, and has due regard for possible unintended consequences.

Considerations for 2023 adjustment

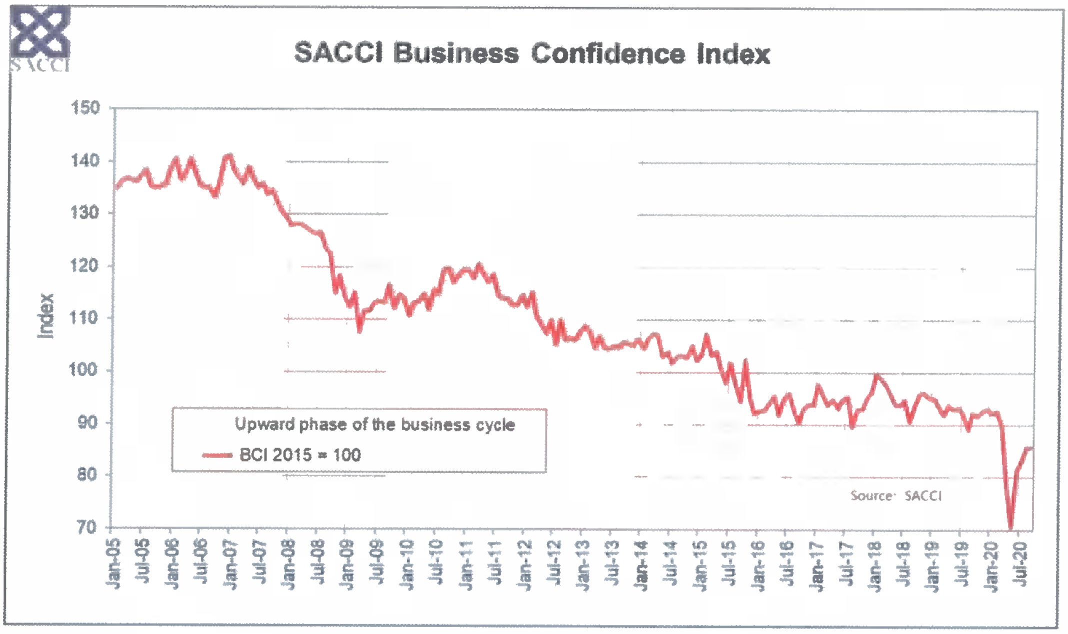
The following key considerations should inform the level of the increase in the NMW for 2023.

The National Minimum Wage Act requires the Commission to consider the following, when conducting an annual review of the NMW:

1. **Inflation**. In line with developments in the global economy, inflation has risen significantly in South Africa. The latest inflation rate (October 2022) is 7.6%. Significantly, as a result of the rise in food prices, the level of inflation for low-income deciles is higher than the overall rate of inflation.
2. **Wage levels and collective bargaining outcomes**. As outlined in the majority report, bargaining outcomes are at levels around 6-7%. Thus, the majority proposal of an adjustment to the NMW at the level of CPI+2% is out of line with collective bargaining trends.
3. **Gross Domestic Product**. Although there is some basis for cautious optimism about the most recent GDP data for the third quarter of 2022 which shows that the economy has grown by 1.6%, as the figure below shows, the level of the GDP is only slightly above that of the level pre-COVID level. GDP growth has been very low since 2018.



4. **Productivity**. In my view the data on productivity in the majority report, from Productivity SA, are totally unreliable and any suggestion that unit labour costs have fallen, and that to labour productivity has increased by 3.7% in 2021, is at best, a statistical artefact. These data should not, in my view, inform the adjustment to the level of the NMW.
5. **The ability of employers to carry on their business successfully**. Assessing employer's ability to conduct their businesses in a complex matter, and we don't have unambiguous data to determine this matter. We do, however, have access to some proxies that give us an indication of the pressure that businesses are currently under. The South African Chamber of Commerce and Industry confidence index below shows that levels of confidence are extremely low. The Bureau of Economic Research (BER) confidence level data confirm that levels of confidence are very low.



We don't unfortunately, have reliable data on liquidations and insolvencies but, as the confidence data above suggests businesses under high levels of stress. An increase in the level of the NMW that is inappropriately high, will have negative effects on business.

6. **The likely effect of the increase on employment and the creation of employment**. While it is encouraging that the existing research does not show any evidence that the NMW has led to negative employment effects, this is not a basis for not being cautious and prudent about setting the level of the NMW. Excessively high adjustments to the level of the NMW, could well have negative consequences. Moreover, it is very likely that the introduction of the NMW has not had any negative consequences because the process and adjustments were managed in a careful and prudent manner.

Conclusion

As the ILO suggests, setting the level of the NMW requires carefully balancing the need to protect workers against poverty and low wages, with taking account of the state of the economy and the ability of employers to develop sustainable enterprises. The South African economy is fragile and growth rates have been low. As shown above, business confidence is low. On the other hand, wage levels at the bottom of the wage distribution are low and it is important to protect the real value of workers' earnings. Furthermore, policy should seek to increase the level of the NMW, but this should be done in a considered and careful manner. Thus, appropriately balancing all of these considerations, my recommendation is that the level of the NMW be adjusted within the range of CPI+0.5% and CPI+1%.

The Commissioner in support of the range CPI+0.5% and CPI+1% adjustment for 2023:

Prof. Imraan Valodia (Independent expert)

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ANNEXURE A: SUMMARY PRELIMINARY RESEARCH RESULTS OF THE RESEARCH STUDY BY THE DPRU.

Background

The research was conducted in order to understand the impact of the National Minimum Wage. The research used data from the Quarterly Labour Force Survey to provide a descriptive overview of labour market trends during 2021Q1-2022Q2, a period that includes two increases in the NMW – in March of each year. The study examined the trends in employment, wages, hours of work, and non-compliance, and singled out the Agriculture and Domestic Work sectors for specific focus given that the NMW was increased at much higher rates for these two sectors.

Key Results

The key results from the research are summarised briefly below:

Employment

- The study did not observe any major shifts in employment following the two NMW increases and with regard to the significant variation observed, the effects of COVID-19 were most likely the driver at an aggregate level.

- For Agriculture and Domestic Work, where NMW increases have been unusually large, the study did not observe significant changes in employment during the periods that follow these increases.

Hours of Work

- Similar to trends in employment, no significant changes to weekly hours of work are observed in general, for particular industries, or among low-wage workers who were likely to be most affected.

Wages

- On aggregate, the study did no large wage changes following NMW increases in 2021 and 2022. For general workers, this is unsurprising given that the legislated real increases in the NMW were marginal.

- In Agriculture, we note a small rightward shift in the wage distribution in 2021, following a substantial increase in the NMW, but the effect is not obvious in the sector's median wage, suggesting a limited wage response.
- In Domestic Work, there is very little to suggest that wages increased significantly in response to the wage increases required over both years, which exceeded 20%.

Non-Compliance

- The limited wage responses to increases in the NMW have led to rising levels of non-compliance. Figure A, below, plots the proportion of workers earning sub-minimum wages over the period, and identifies employees in Agriculture and Domestic Work separately.
- Aggregate non-compliance increases over the period, and our analysis suggests that just over 40% of workers report earnings below the NMW, in 2022Q2.
- The observed increase in aggregate levels of non-compliance is largely driven by Agriculture and Domestic Work, where the proportion of sub-minimum wage workers is higher than average.
- Notably, the trends in non-compliance for these sectors reveal clear spikes following large increases to the minimum wage – in 2021 for Agriculture, and in both years for domestic workers in Private Households.

ANNEXURE B: SUMMARY OF PUBLIC INPUT

In alignment with the Batho Pele Principle I.e. Consultation, the Commission published a government gazette requesting the public to submit inputs on the possible increase of the NMW to a designated email address of the Department of Employment and Labour. This process ensures informed policy decision-making and allows public participation. The inputs were collated into a report and presented to the National Minimum Wage Commission (NMWC) to aid the discussions around the NMW annual review and adjustment. A total of 46 submissions/comments were received. The report indicates views from 46 respondents, trade unions (4), interested parties (8), employees' representatives (6) and employers' representatives (28).

Employer representatives

The majority (63%) of employer representatives were against the increase in wages, whilst 30% agreed to some level with some wage increase. The key concerns from employers and employer representatives were the legislation governing over the labour market and how it affects business productivity. A consensus exists that the government does not take into consideration the GPD of the country and the productivity when it passes and enacts legislation and regulations. There is a fear that higher wages will affect the rate of employment and that many companies might let go of their employee as a result. There is concern about mechanisation especially due to the effects of COVID-19, the increase in fuel prices, the weakening economy, the increase in fertiliser prices, the aftermath of the conflict between Ukraine and Russia, the impact of load shedding, the impact of COVID-19 in South Africa and worldwide, the rise in global freight rates, locust outbreak, riots, floods, fires and drought

The proposals laid for the commission are that the NMWC should ensure increases start on 01 January 2023, to avoid employers being liable for back pay of wages. It is recommended that the government should focus on measures to grow the economy and attract investors. The commission is urged to consider a variety of factors, such as inflation, cost of living, the GDP, employers' ability to do business sustainably, the likely impact of a wage increase on employment, creation of new businesses, rewards of sustained employment, and general growth of the national economy. Some are of the opinion that the NMW should be done away with completely, while others felt that the Act could be amended to include the exemption certificates for employees seeking to enter the job market even below the NMW. The upskilling of employees to ensure that wage increase is linked to training and experience is another recommendation that comes up often.

The suggestions coming up were that employers should be given adequate notice of the final decision of the adjustment to the NMW. Employers require time to update their payrolls and internal processes to ensure that they are compliant with the NMW. There was also a suggestion that government should allow an unemployed individual to apply for a certificate exempting him (and therefore the business employing him) and the focus to shift towards upskilling of employees, which will lead to increased wages.

Employee representative

The majority of employee representatives (67%) are in agreement with the wage increase, while 33% were not in agreement. The employee representatives indicated that the cost of living has risen so high that many South Africans are struggling to make ends meet, while those not in support of the increase were concerned as to where the funds will come from to pay such high wages. It is apparent from the above responses that with rising prices and an ailing economy, most workers are struggling to make ends meet. There is a feeling that an increase in wages would make the lives of many workers better.

Organised labour

Fifty percent (50%) of labour organisations agreed with the increase in wages, while the other 25% were not in agreement. The remaining 25% did not clearly state their stance on whether the NMW should be increased, stay the same or be abolished entirely. The sentiments of organised labour were that the NMW has had a positive impact by significantly raising the wages of more than 6 million impoverished workers, especially farm-, domestic-, construction-, and retail workers. The trade unions in support of the increase also cited an increase in wages since the introduction of the NMW. The leading reasons given for the support for an increase in the NMW were as follows:

- The NMW has a significant effect on raising wages

- The local economy has benefited from the NMW
- The rising cost of fuel, electricity, food and interest makes it harder for workers to afford basic needs

The trade unions that were against a possible rise in the NMW cited the following as the leading concerns why the increase was not affordable:

- The riots that took place in Gauteng and Kwa-Zulu Natal
- The floods
- The effects of Covid-19 on the economy
- The high rise in unemployment
- A drive towards mechanisation to avoid labour costs

The proposal laid on the table was that the government should look at the bigger picture when setting wages and study how they affect the productivity of the company. The was also a proposal for the government to rather focus on growing the economy in order to attract investors instead of raising the NMW. The need to focus on upskilling citizens in order to increase wages was stated overtly. There were further recommendations for the commission to fast-track the drafting of a road map on the EPWP/CWP, the BCEA threshold and the medium-term targets. The Department of Employment and Labour's enforcement wing is to monitor and enforce the National Minimum Wage Act by linking reporting hotlines, punitive measures for defaulters and greater care to be taken in involving all stakeholders prior to granting exemptions to companies.

Interested parties

The interested parties that were in support of the increase of the NMW highlighted the need to ensure wages be adjusted with inflation in order to keep up with the rising cost of living. The majority of respondents (87%) were against any increase in the NMW. Only 13% agreed with the increase. Most interested parties felt that the government should be focusing on other methods of growing the economy and creating employment instead of increasing the NMW. There was a recommendation that unemployed people be allowed to choose whether or not to accept a wage. The concerns raised against the increase of the NMW were as follows:

- It is against the capitalist basis of a free market;
- Supply and demand should at all times be the basis on which any prices are established;
- It causes a decline in economic activity;
- It creates an atmosphere where unschooled labour becomes more attractive than schooled labour;
- It is shutting the doors of employment opportunities on the faces of unemployed people permanently; and
- It takes away the right of the unemployed people to choose who to work for and at what cost.