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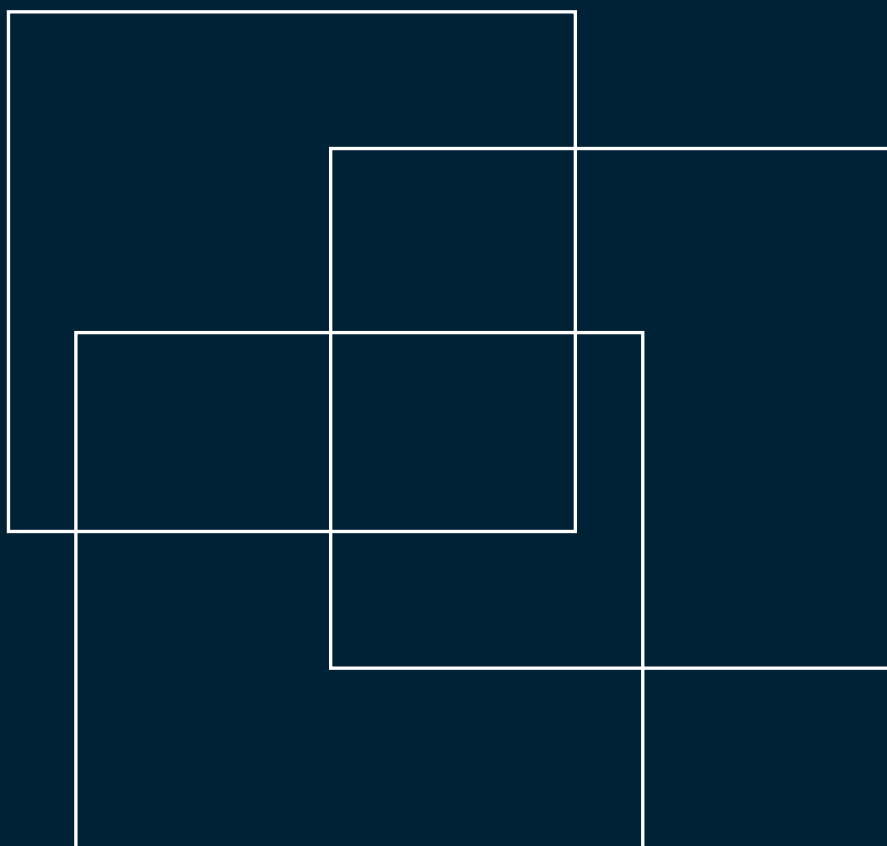


International
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Wages Policy in Fiji

Report of 2011 tripartite workshop series



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Foreword

Wage policies, including processes for establishing minimum wages, are central to decent work. Fiji has utilised a variety of systems for wage bargaining and wage fixing in the last four decades. Since the 2006 passage of the Employment Relations Promulgation, wages have been established either through the industry-based Wage Council and Wage Remuneration Order process, collective bargaining or individual employment agreements. The current Government has also signalled its intention to introduce a national minimum wage.

With national debate around the operation of and relationship between the various current wage mechanisms, as well as the pending introduction of a national minimum wage, the ILO was pleased to work with constituents to explore issues relating to wage policy.

This publication reports on discussions in three separate constituent workshops on wage policy, draws themes from those discussions and makes observations and suggestions to prompt further dialogue on wage policy and the improved operation of the current system.

I would like to acknowledge workshop participants who with colleagues from the ILO provide, in this report, a rich base of experience, ideas, observations and issues on which future dialogue will be able draw.



David Lamotte
Director of ILO Office for Pacific Island Countries
Suva, March 2012.

Background and workshop process

In October 2010 the International Labour Organisation hosted a workshop series on wage policy in Fiji. The series consisted of three workshops - one each for employer representatives, Government officials and independent members of tripartite bodies, and worker representatives.

The workshops arose from tripartite discussion in the Fiji Decent Work Country Programme steering committee in February. At that time the implementation of the 2010 Wage Regulation Orders had been delayed and a vigorous debate was taking place in the media over the merits of minimum wages, their level, the future of the Wages Councils and the introduction of a national minimum wage.

Fiji has a well-established practice of tripartite dialogue on issues of industrial relations and wages; however the formal institutions for dialogue – the Employment Relations Advisory Board and Wages Councils – have not been working as many desired, leading to a growing sense of frustration among their members.

The workshops were conceived as an opportunity for key stakeholders to consider the issues before re-engaging in dialogue. Each workshop heard presentations from an ILO Industrial Relations Specialist, John Ritchotte on global wage trends and on minimum wage policy challenges and developments in Asia.

Participant panels consisting of Wages Council representatives from each group shared their experience and reflections on the process. Work groups and the plenary discussed the wages framework, including the proposed National Minimum Wage (NMW), Wage Regulation Orders (WRO) and Collective Agreements, and the relationship between these elements; Wages Council procedures, purpose and criteria, data requirements and compliance and enforcement.

Laila Harré, Strategies for Decent Work Specialist, ILO-Suva, facilitated the workshops using a common framework to enable areas of common ground between the group, as well as differences, to be identified. This report has been produced by Laila Harré and John Ritchotte, with assistance from Iresh Lal, Programme Assistant ILO Suva. The report is to be finalised following review by the tripartite constituents and then offered to them to support the future development of wage policy in Fiji. The ILO should be viewed as a resource for its constituents in the on-going work.

The opportunity exists to build on the strength of Fiji's labour market institutions including its unions, and employer and industry organisations, Wages Councils, labour administration and social dialogue forums, such as the Employment Relations Advisory Board in the future development of wage policy. In introducing new features, such as the national minimum wage, existing strengths can be utilised.

Protection for those vulnerable workers who currently fall outside the scope of Wage Regulation Orders [WROs] by way of a national minimum wage, need not be at the expense of the industry-based Wage Council system itself. Each of the workshops specifically discussed the continuation of the Wages Councils and WRO system and supported continuation of this system. There were some common, as well as some unique, suggestions for improving it.

Abbreviations

BNPL	Basic Needs Poverty Line
ERAB	Employment Relations Advisory Board
ERP	Employment Relations Promulgation
FCEF	Fiji commerce and Employers Federation
FICTU	Fiji Islands Council of Trade Unions
FTUC	Fiji Trade Union Congress
ILO	International Labour Organisation
MOL	Ministry of Labour
NEC	National Employment Centre
NMW	National Minimum Wage
PS	Permanent Secretary (Ministry of Labour)
WC	Wages Council
WRO	Wages Regulation Order

Snapshots – headline issues from the three workshops

Snapshot: Employer Workshop 21 October 2011

Approximately 25 participants from a range of industries, many of whom sit on wage councils, participated in the workshop which was co-hosted by the ILO and FCEF. Some highlights of the challenges and issues raised include:

- Criteria for selecting members of the councils, esp. in some instances independent members and union members for industries without unions
- Need to better define WC process and objectives, review procedures, number of meeting, time allotted and voting in councils
- Criteria used for determining wages and sources, consistency and trustworthiness of data
- Role of the chair should be reviewed and more clearly defined
- Objections to WROs not brought to the wage councils, but dealt with privately by the Minister – this created a perception of a lack of transparency
- Scope and coverage of the WROs should be reviewed, including the threshold for exclusion and the complexity of many orders resulting from ad hoc changes
- Views ranged from negative to neutral about a national MW; more supportive of wage councils and collective bargaining to determine wages. Fear that NMW will be political tool, and employers' views will not be heard. More information on intended mechanism, scope and coverage of national NMW needed
- Enforcement is key.
- Government should abide by WROs in procurement and public works policies, and improve ethics among inspectorate
- Participants in the process require an understanding of key concepts/data, eg the composition of the Basic National Poverty Line

Snapshot: Government/Independents Workshop 24 October 2011

Around 30 government officials and independent members of wage councils attended, including the Permanent Secretary of Labour. Some additional highlights from panel presentations and group work:

- NMW could compliment wage councils, but a number of challenges remain, such as developing an appropriate formula, use of data, and making NMW and WC complimentary
- NMW should cover workers not already covered by WC or collective bargaining
- According to one participant, WC covers 60% of workers, while unions (through collective bargaining) cover 30%
- WCs should be supported by a qualified Secretariat; research capacity lacking
- Use of and consensus around data remains challenging; employers do not reveal company performance.
- In some cases, employers agree to recommendation of WC, and then allegedly object to government directly. Representativeness, good faith and preparedness of participants is important
- NMW survey will be conducted by MOL, using academics and MOL staff. MOL getting access to tax data to get better idea of company performance and wages, ILO technical assistance requested on methodology
- Role and qualifications of independent members of WC should be examined; a code of conduct for WC members had been developed and would be introduced soon, though most WC members were not aware of it
- Acknowledged shortcomings in the inspectorate, and make specific pledges regarding training, strategy, and accountability

Snapshot: Union Workshop 25 October 2011

Approximately 20 union representatives from both FTUC, FICTU and non-affiliated unions participated. Among the issues that were raised:

- Separate workshops for constituents good, but need to bring all three parties together
- WCs need to meet more routinely and more often; WROs must be issued on a more regular and predictable basis
- Improved representativeness and good faith by employer members
- Challenges with enforcement, risk of corruption within inspectorate
- Inconsistent data between central bank and statistics bureau; need for more reliable research on wages
- Procedures - number of meetings, role of WC members (including independents), and role of government need to be clarified
- WROs used as basis for collective bargaining
- Gaps in WRO coverage, outsourcing in public sector is likely to increase the number of low or semi-skilled occupations without either collective agreements or WROs

The bigger picture – summaries of global wage trends and policy challenges and developments in Asia

ILO advice focuses on a number of key areas in line with ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation (No. 135). The overarching message is to ensure that various wage and income support policies are coherent – collective bargaining, minimum wage fixing, and other forms of income support should support and complement one another. With regard to minimum wage fixing, this begins with clearly identifying the goals – what is trying to be achieved? Examples of goals include: a) protecting the most vulnerable workers; b) reducing poverty by targeting the working poor; c) reducing wage inequality; and d) as a reference point for collective bargaining. Goals should be limited and precise; trying to achieve too many different goals through minimum wages often leads to incoherence. Once goals are identified, the workers to be covered by minimum wages and the criteria to be used should be specified. The criteria must be closely linked with the goals. Criteria will be also closely linked to data, so the availability and reliability of data are vital.

Institutional arrangements vary greatly from country to country, and while the ILO does not specify any one particular arrangement, involvement of workers and employers in the process of fixing minimum wages is strongly recommended. The ILO also allows for flexibility in terms of the number and type of minimum wage rates, from a single national wage to wages set by industry, occupation or region. However the more rates that are created, the greater the complexity, requiring greater administrative capacity and data requirements.

Minimum wage rates should be reviewed regularly and predictably. Ad hoc, random and politically driven efforts to set wages should be avoided. A technical advisory body can help in this regard.

Enforcement of minimum wages is vital. Countries should explore both sanctions-based and incentive-based approaches to enforcement. Workers and employers organisations play an important role in ensuring that workers and employers are aware of the appropriate wage rates.

The main issues, discussion and prompts for action

(i) The wages framework: collective bargaining and minimum wages

Importance: the balance between collective bargaining (which according to ILO Conventions should be promoted as for fixing the preferred form of wages and working conditions determination) and other forms of wage fixing including WROs and a NMW is an important one. A primary focus on minimum wage fixing can “crowd out” opportunities for collective bargaining, while a lack of regulation will leave groups for whom there are access barriers to collective bargaining vulnerable to exploitation. Moreover too strong a relationship between collective bargaining and WROs (with an expectation that percentage increases to WROs will be passed on through collective bargaining) may be limiting the prospects for lifting the lowest rates in WROs and introducing a NMW as employers fear the costs of pass-on throughout the wage scales.

Various figures were given for the significance of the WROs to effective wage setting in Fiji. A common view is that 30% of the workforce in formal employment relationships are members of unions and covered by collective agreements, 60% are not unionised and are covered by WROs, and a further 10% are in formal employment relationships but are not covered by either collective agreements or WROs and are generally not unionised (e.g. domestic workers, printers, media workers and so on). These figures have not been verified.

Collective Agreement wage rates were said to be consistently higher than WRO rates. The greatest direct impact of WROs was in those industries or workplaces within industries that are difficult to organise (small workplaces, dispersed workforces, high labour turnover, vicarious employment, irregular working hours etc). WROs have also been important where major employers have an antipathy to unions and collective bargaining. This explanation was given for the inclusion of mining in the WROs, despite mines being large industrial workplaces with only a single employer at the current time.

As well as their direct impact, WROs also influenced collective bargaining strategy and outcomes, with workers saying that they use the WRO as a platform in bargaining and aim to maintain the differential between WROs and collective agreement rates. Employers noted that the expectation of pass-on of WRO percentage increases through collective bargaining was a factor in their resistance to WRO increases.

Consideration could be given to the currently strong link between WTOs and collective bargaining expectations, which is encouraged by the use of percentages to describe increases. In fact examples were given of attempts to advocate for fixed rate, rather than proportional increases, so as to address the most pressing concerns with low pay while avoiding a cost escalation at higher points in the pay scale (including points above the WRO threshold). According to workers such initiatives had been rejected by either the employers or the Minister on more than one occasion.¹

Prompts for discussion and action

Have the parties achieved a sustainable balance between the promotion of collective bargaining and the delivery of a fair wage floor through minimum wages?

Could the use of fixed rate increases for the lowest paid sometimes help to mitigate employer concerns at the pass on of percentage increases throughout the pay scale?

(ii) Proposed introduction of National Minimum Wage (NMW)

Importance: distinguishing between the policy objectives of a NMW and the role of WROs could help diffuse some of the tension that has surrounded the Wages Council process in the last two years. All have agreed that the NMW should not be introduced at the expense of the Wages Council system. Clarifying the objective of a NMW is necessary to determining criteria for setting and reviewing it.

The introduction of a National Minimum Wage [NMW] is a stated policy of the Government through the Peoples Charter for Change, Peace and Progress. The Charter, which is referred to by Government as its policy platform, was initially developed under the auspices of the National Council for Building a Better Fiji². The Council consisted of social partners (FTUC and some private sector industry organisations), various civil society leaders and representatives of the Government and some quasi-government agencies.

Discussion in the workshops indicated that there was no clear ownership of the NMW policy by either workers or employers. Employer attitudes to the NMW ranged from uncertainty about the policy and its impact to opposition. There was also no particular advocacy from the workers' workshop for the NMW.

The workshops discussed the place of the NMW in a wage policy framework, were it to be introduced. All workshops confirmed that the introduction of the NMW should not come at the expense of industry-specific WROs. The view from the independent representatives was that NMW was likely to reflect the lowest common denominator of WROs, providing no more than a safety net. Employers had, however, linked the aspiration of the Wages Council Chair for a benchmark WRO wage reflecting the BNPL for a household to the likely level of the NMW. They believe that a wage generally applied at that level would impact on employment in smaller organisations and in industries exposed to low-paying competition, such as the garment industry (which currently has the lowest WRO).

Judging by the expectations expressed in the workshops, there is possibly more common ground between workers, employers, and independents on the level at which a NMW could be pitched than the parties have heretofore assumed. Government officials did not express their views on this issue.

The Government advised at its workshop that the Employment Relations Advisory Board (ERAB) had agreed to convene a panel of experts (including academics) to support the NMW setting process. Ministry officials would also be undertaking what was described as a "minimum wage survey". The Ministry had met with officials from the Fiji Islands Revenue and Customs Authority to discuss access to their data for the purpose of undertaking the survey; confidentiality of the data had been assured.³

Comments from each workshop indicated frustration with the policy process around this and related issues. Employers were disappointed that advice provided by the ERAB was not being acted on even where the members were in agreement.

Complex criteria and therefore significant data requirements for setting and reviewing the NMW may be avoidable if the WRO system is maintained and the purpose of the NMW is clearly identified as a safety net providing for at least a minimal level of protection for those low paid workers whose work is not (or not yet) covered by either a WRO or a collective agreement. This approach would require a firm commitment to the continuation of the WRO process and to secure collective bargaining arrangements. If either of those mechanisms is compromised then a NMW is likely to take on greater significance as it would impact on a much larger proportion of the workforce.

¹ It was not clear why this would be the case given that such an approach might help to mitigate employer fears of cost escalation through pressure to pass on relatively high percentage increases for workers on the very lowest wages to those in a better starting position.

² <http://www.fijiipeoplescharter.com.fj/composition.htm> Pillar 8: Reducing Poverty to a negligible level by 2015, includes the commitment to "introduce a national minimum wage and at the same time enhance national productivity."

³ Note that in January 2012 the Ministry of Labour advertised for a consultancy to facilitate the conduct of a National Minimum Wage Survey.

Prompts for discussion and action

Would further direct discussion between stakeholders (worker, employer, independent representatives) outside a formal process help to clarify aspirations/fears/expectations around the likely level of a NMW and thereby simplify the process for introduction? What kind of impact analysis would help parties to find agreement?

Is the goal for the proposed NMW clear, and has it been the subject of tripartite discussion? Is the goal for the proposed NMW distinct from the goal(s) of the WROs? Is the overall wage policy of NMW, WROs and collective bargaining coherent?

What is needed to see ERAB advice considered more expeditiously and momentum maintained?

(iii) Criteria follows scope and purpose

Importance: The criteria or factors to be considered in setting and reviewing minimum wages should be developed in accordance with the purpose of the mechanism (see previous discussion on NMW). Criteria and factors provide a framework for dialogue. No one factor, combination of factors or formula can substitute for dialogue, they can inform it. It is possible that the factors considered in setting effective industry wages through WROs will be different from and more complex than those considered in NMW setting, because these two processes have different objectives.

Much of the debate in the ERAB and public leading to these workshops related to the criteria to be applied for setting and/or increasing the national minimum wage and WROs. When discussing the scope and criteria of the various forms of minimum wage in the workshops, the parties appeared to have more in common than might have been expected.

Participants in all three workshops listed poverty reduction as a primary function of minimum wages. Beyond this other functions identified (by various parties) were:

- Improving the reputation and standards in an industry – e.g. security, where the introduction of WROs has lifted wages from 50c-60c an hour to first \$1.03 and now \$2.20 and is associated with improvements in service quality and reputation
- Protection for workers in smaller workplaces that lack union representation and collective agreements
- Providing a decent living wage and reducing wage inequality

The issue of productivity has been raised as an important factor in wage determination, with the argument commonly made by employers that wages should only increase in line with productivity increases (keeping the share of production constant between worker and employer). In the employer workshop this discussion went in a different direction. There, some participants from the tourism and hotel sector, explicitly promoted a low-wage and low-productivity business model, believing that Fiji's attractiveness to tourists was in part based on the number of people that were available to attend to guests and customers. The logic was that although less people could be employed on higher incomes and produce the same output (thus increasing productivity without increasing labour costs) this would change the tourism culture and also reduce employment levels (albeit increasing the benefits of employment for those who remained in jobs).

While all agreed that wage policy should contribute to poverty alleviation, participant views varied on how much reliance should be placed on wages for this. Workers generally felt that full time employment should enable a worker to support their family at or above the poverty line and that the NMW should ensure this is so. They noted that although increases of around 20 per cent might sound large, they were not large in dollar terms for the lowest paid. Employers, on the other hand, did not feel it was realistic for wage policy to be relied on as the primary tool to alleviate poverty, even among workers. They felt that the ability of the business to sustain a particular wage (productivity) should be given greater weight, and was as important as poverty alleviation. They emphasised the role of job creation, investment levels, access to education and other factors impacting on poverty.

Government officials said that the Cabinet has agreed to the criteria set out in ILO Convention 131 and Recommendation 135. Government officials also referred to the need for a formula for calculating minimum wage increases. It was not clear how a formula would relate to the criteria in C131 and R135, nor whether it would be the same for WROs and the NMW.

Prompts for discussion and action

What do the parties aspire to in terms of productivity improvement? If the same output were achievable would the parties prefer to have one person employed for \$10 an hour or 5 people employed for \$2 an hour? Do some of the comments in the workshops represent a widespread preference for a low-wage, low-productivity model in some industries?

How can the contribution of wage policy to the alleviation of poverty be maximised without compromising other development goals including private sector development?

Overall, are higher wages a shared objective or not?

(iv) Data requirements

Importance: once the purpose, relevant factors and criteria have been determined, decision makers must have access to data. This means that the sources of data should be identified and that there should be a capacity for its analysis. As far as possible the consideration of factors/criteria should be a technical process, which makes a shared and accurate understanding of the relevant facts critical.

Each workshop identified similar concerns with access to data and analysis of labour market information. Issues included:

- Data on actual hourly wage rates is not collected or available through official statistics making it impossible to model or assess the impacts of minimum wage changes
- Basic industry data is not available – for instance on the number of employers, size of workplaces
- There is more than one source of CPI data (Fiji island Bureau of Statistics & Reserve Bank)
- Productivity data is only available as a proxy at a national level (GDP growth)
- industry productivity data is not available
- Employer claims of inability to pay are not supported by data and Government does not access public records to verify these claims

Fiji does collect data that would be of real value to the various minimum wage processes provided the WCs had the capacity to access and analyse it. Further the constituents themselves are a rich source of information and data. Through their constituencies they may have access to collective agreement terms, wage and time records, profit and loss statements, productivity information, and wage distribution in firms, among other things.

The workshops identified a requirement for the WCs to have a research capacity and access to expert advice (perhaps provided by a panel) to assist them to consider the relevance of data and to weigh the evidence relevant to the factors being considered.

Government officials said that they were undertaking a minimum wage survey to support the introduction of a NMW and would like ILO technical assistance with this. There was also a suggestion in the employers' workshop that an industry study be undertaken (e.g. in the hospitality industry) to inform the relevant WC and identify available sources of data and methods of collection and analysis that could be applied in other industries. Such a study would draw on related studies and previous WC investigations.

Prompts for discussion and action

What is the aim of the NMW survey and what technical assistance is required to complete the work?

Would the parties support an industry study (for instance in the hospitality industry) that could refine the model for data gathering and analysis to inform WC processes?

Could employers provide more data from their own records to inform the processes in the wages councils?

What sources of data are available to understand current actual hourly pay?

Is there industry productivity data available and if so how can it be used?

(v) Membership of Wages Councils and the Chair

Importance: WC members need to be qualified for the task they are undertaking and clear about their role in the process. When consulted on their representation worker and employer organisations should promote participants that they trust both to advocate effectively for their constituency and also to engage constructively in the process. There is a need to clarify the role of independents and ensure they, and other reps, have or can develop specific knowledge relating to the specific industry. The role of the Chair has become controversial.

All workshops discussed the membership of the Wages Council and a variety of concerns were discussed.

The role of the independent members came under scrutiny at both the workers' and employers' workshops, with both workshops questioning the qualification and contribution of some independent members. The independents themselves had a range of views as to their role in the process, but in general saw themselves as either guardians of the vulnerable for whom the Wage Council system was designed and/or honest brokers and facilitators between worker and employer interests. There was a view among some workers that the inclusion of the independents was unnecessary, although having an independent and neutral chair was seen as important.

There was also discussion among employers regarding worker representation, with some finding that that worker representatives (as well as independents) lacked sufficient industry knowledge to come to an informed view. This was not an issue in industries with a mixture of union and non-union workplaces, but in industries with no union presence.

Workers questioned the commitment of some employer representatives to the process, and believed that on occasion employers did not attend WCs in order to collapse the quorum and prevent progress being made. For their part the employers said it can be difficult to find representatives, with a lack of interest or willingness to participate, in part because of dissatisfaction with the WC process itself.

The role of the chair is controversial. Employers have expressed publicly and repeated in the workshop their concern regarding his impartiality. Workers are generally supportive of the way he carries out his role. The Chair himself views his role as an advocate for achieving the stated goals of the WCs, including reducing poverty. However, the definition of poverty reduction and the precise role that wages and the WROs should play in this regard have not been subject of discussion.

Prompts for discussion and action

How can the industry knowledge of all participants be enhanced?

Are there approaches that would facilitate greater consensus?

Would a discussion on the relationship between wages and poverty reduction help build a common understanding among all stakeholders, including those outside of the WCs themselves?

(vi) Conduct of Members

Importance: Wage discussions are complex and controversial, and a smooth process and good support for decision-making is needed to avoid frustrations that impact on dialogue. This is a responsibility of all representatives. The Ministry of Labour also has a responsibility to provide support and to facilitate, rather than direct, the process. WCs are independent statutory entities, administered by the MOL with an advisory role to the Minister, and must be able to undertake this work unimpeded.

When generalising, employers tended to consider themselves as bit players in a process driven by the Chair utilising majorities of workers and independents. Workers, on the other hand generalised that employers never supported increases and operated to frustrate the process and then to undermine decisions once they had been made.

Although these generalisations might lead one to think that WC meetings are dysfunctional, this impression was not backed by participants in the workshops. The government and independents workshop estimated that 80 per cent of the time a consensus is reached by WCs. We heard of constructive submissions by both employer and worker representatives and also that some independents do considerable research of their own.

Nonetheless the conduct of members has created tensions. All workshops agreed with the notion of a Code of Conduct and in the Government and Independents workshops it was advised that a Code of Standards and Practice had been drafted for consideration of the ERAB. Interestingly none of the non-ERAB WC representatives present at the workshops had been informed of this development. There had been no WC meetings to enable this and ERAB representatives did not seem to have discussed the issue with their own constituents.

Some of the conduct and practice issues raised in relation to WC members and officers included:

- Perceived deliberate non-attendance at meetings in order to prevent a quorum
- Perceived lack of independence of the Chair
- Need to stop using voting in WCs
- Conflict of interest of officials serving WCs require declaration (eg family ties to affected businesses)
- Misplacing of minutes by officials serving WCs delaying the notification of proposed orders
- Use of political channels outside the WC process
- Claims of industry hardship made without presenting supporting evidence, employers failing to provide evidence in general (was a concern of all workshops, including employers)
- Representatives acting without consultation with their own constituency and lacking authority or mandate
- Delays in presentation of proposals from WCs to the Minister, and delays at all stages of the process requiring officer action
- Not following process for consideration of representations on proposed WROs - these should be considered by the WC before the proposal goes to the Minister (see later section)
- Dependence on Ministry of Labour to authorise and call meetings – meetings have not been called when requested by Chair, WCs treated as subsidiary of labour administration, not independent
- Lack of a clear timeframe or work programme, this has interrupted the quarterly meeting cycle which consisted of (1) orientation and research; (2) analysis of material; (3) development of proposed WRO for consultation; (4) adoption of recommendation.

The workshops also identified a range of ways in which the capacity of wages councils could be enhanced. These included:

- Job descriptions, improved induction and training for members
- Prior consultations by worker and employer representatives with their constituencies co-ordinated by their national centres. This could help share experience and proposals among WCs and act as an internal group training opportunity on the development of proposals and advocacy
- Access to relevant data (see later section) prior to meetings through email circulation
- Dedicated secretariat including administrative support and experienced researcher
- Sufficient number of and time for meetings to enable all information to be presented, analysed, discussed and consensus reached
- Importance of preparation. Although there were exceptions, the workshops generally regarded the Chair and the workers as the drivers of the WC process. Employers rarely took the initiative to proactively submit data or prepare proposals.

Prompts for discussion and action

What measures can be taken to ensure independence of WCs in practice, and to ensure on-going and efficient administrative and technical support from MOL?

Could constituent (worker, employer) representatives maintain active reference groups of the those they are representing? What reference groups should the independents consult with?

Does the draft Code address the conduct and capacity issues raised in the workshops? How else can these be addressed?

Are briefings on labour, economy and social trends currently provided sufficient to inform all members, and do they include sufficient industry-level information relevant to particular WCs?

Do the representatives of all three parties act consistently within and outside of the WCs? If not, what steps should be taken by each party to ensure greater consistency?

(vii) Process following WC recommendations

Importance: there is a lack of transparency surrounding the process for finalisation of WROs, which generates suspicion of interference in the process, leading to tensions. The process spelt out in the ERP for the WCs to consider representations on the proposed orders does not appear to be followed in practice. A less transparent process of political lobbying seems to be taking place.

What happens after the WCs have made their recommendations to the Minister emerged as a significant issue in all three workshops.

There was a consensus that the process following the recommendation of WROs is not working:

- employers believed that the objections were reviewed by the Minister with or without the involvement of the Chair of the WCs through a non-transparent process and that the objections should be considered by the WCs themselves
- workers believed that the employers were actively lobbying government not to implement recommendations even when employer representatives had been party to those recommendations. They also wanted a more transparent process for objections and for WCs to be involved in considering the objections

Worker representatives reported being contacted by employers following the advertising of their recommendations and blamed for recommendations that were in fact based on employer representative counter proposals.

It appears from the discussion in the workshops that the process set out in the ERP relating to consultation on proposed wage regulation orders is not being followed. While s51 of the ERP requires the Minister to manage the process of objections to the establishment of a WC, through a wages council order, it is the WC itself that is required by s54 to publish the proposed wage regulation order and to consider representations made in respect of it before submitting it to the Minister. The Minister may then refer his/her own reservations or concerns back to the WC. It was stated that WCs had only once been asked to reconsider a recommendation, and this request came from the Attorney General, not the Minister of Labour and was acted on by them (although the relevant order was then further deferred following further employer representations to the Prime Minister).

Delays in the implementation of WROs were not only a concern of the workers and some independent representatives. Employers pointed out that as WROs are usually backdated once they are finalised, the delays mean that employers cannot pass on costs directly to customers for the backdated period. This adds a significant cost in an industry like security where a major cost is labour and increased labour costs are generally recovered through increased customer charges.

Prompts for discussion and action

What measures can be taken to increase transparency in this part of the WRO process and ensure that the statutory process is correctly followed?

Would clear guidelines help promote transparency (an example is provided in the annex appended to this report)?

(viii) Compliance and enforcement

Importance: Poor enforcement undermines both the social justice objectives of the WROs and the competitiveness of ethical employers who are undercut in their labour-dependent operations by those who do not comply.

All three workshops highlighted deficiencies in compliance with and enforcement of WROs. Major issues included:

- Low awareness and little ability among workers to insist on compliance
- Ethics of employers
- Efficiency and ethics of labour inspectorate

All workshops reported the use of “dual book” systems by many employers - one book with actual wages and one for use if inspected. Workers and employers questioned the competence of the Ministry of Labour as an enforcement agency and believed there had been, and was an on-going risk of, corruption.

The incentive for non-compliance will be greatest in those industries with a high proportion of total costs represented by the cost of labour covered by the WROs (the security industry cited 70% of costs associated with workers subject to WROs). It was believed that the MOL were not targeting inspection resources at those most likely to offend.

The Government representatives were also aware of and concerned about the enforcement deficiencies and indicated that addressing them was an organisational priority.

Employers cited evidence of Government Ministries and Agencies contracting service providers at rates which would result in non-compliance with minimum wage requirements.

It was suggested that there should be greater penalties for non-compliance by employers and performance-related penalties for non-enforcement by MOL.

Employers questioned the appropriateness of exemptions, which they believed created a perception that a certain level of non-compliance was acceptable. Exemptions undermined a key purpose of the WRO which was to provide a level playing field for employers, as well as a fair minimum for employees, on an industry basis.

Low awareness by workers covered by WROs was a problem. It is notable that unions do not actively promote membership to workers unless there is a potential for those workers to be party to a collective agreement. This means that although the unions play a substantial role in the WC system, and rely heavily on WRO increases to support collective bargaining, the workers covered only by WROs are unlikely to view WROs as an outcome of organising. Unions do not actively promote WROs to workers.

Prompts for discussion and action

Are current penalties for non-compliance high enough?

How can government, employer organisations and unions promote the WROs broadly and effectively, especially to young people and other vulnerable groups? What steps can be taken to promote shared ownership of WROs by unions, employers organisations and government?

What access could those covered only by WROs have to unions to assist in advocating for their interests both in the determination and application of WROs? How would this be funded?

What is the profile of businesses least likely to comply? Can they be targeted in joint employer-government-union awareness campaigns and for inspection?

How can training and performance management of labour inspection officers be improved?

Should the WCs play a role in monitoring enforcement?

Should the ability to exempt employers from WRO compliance be removed?

List of other issues raised

The earlier sections reflect the major areas focused on at the workshops. There were a number of additional issues raised:

- The process for WCs to review working conditions other than wages (see flow chart). Examples were given of the government rejecting a consensus recommendation from a WC (Security) regarding changes to hours of work and failure to make progress on changes to allowances
- The effectiveness of the current ERAB as an oversight body. Feedback from the workshops suggests that participants find ERAB processes frustrating and there is some view that the way the meetings are run is adding to the tension around the development of wage policy
- The use of contracts for service to avoid wage obligations, WRO and even ERAB coverage of non-standard employment relationships (contracts for service)
- The ceiling for the application of WROs (\$250 per week)
- How to enable multiskilling within the context of the WRO pay scales
- Application of WRO or NMW to NEC recruits
- The inclusion of job classifications and other means of recognising different job demands and experience levels in the WROs
- Developing common classification systems so that the same jobs are uniformly categorised across WROs

Some unofficial observations and suggestions from the writers

We appreciated the frank discussion at the three workshops and offer our observations and suggestions in this spirit also. Wage policy is unsurprisingly controversial, necessitating as it does negotiation over the allocation of resources between employee and employer. The difficulties in the current industrial relations and social dialogue environment seem to have intensified the controversy, creating mistrust between and among tripartite constituents. Some of this can be attributed to the current state of affairs, but there seems to be a degree of "role playing" between union, employer and independent leaders, and of charged rhetoric and positional and adversarial relations.

It concerned us that the labour administration was itself a focus of some criticism from the constituents. The approach of labour administration to the functioning of the WCs should reflect its role as an administrator of the process and respect for the independent statutory nature of the WCs.

The WCs are a relatively good system which could be improved with some fairly easy measures and others that will be more difficult. Any improvements will require the good faith conduct of all parties. The introduction of a NMW should not occur at the expense of the WC system - the two can co-exist. However lot more discussion about the purpose of the NMW is required as neither workers nor employers are currently enthusiastic about the proposal.

Basic information necessary to a good process is missing at the moment. This includes data on the incidence of minimum wage reliance and models of the impact of minimum wage changes. Data collection and analysis would be a "safe" starting point for collaborative work on future policy.

The concept of an industry study in the hospitality sector is a good one. This could allow current sources of data to be tapped and gaps identified in one industry, with the learning from that available across the system. This industry has well developed worker and employer organisations which would allow for a joint study to be undertaken.

We suggest that in order to build on the findings of this report, to facilitate improvement in WC processes, and to smooth the ground for discussions related to the introduction of the NMW, a small wage policy group be established. This would include the principals of worker and employer organisations and key participants in WCs, the WC Chair and a representative of the Permanent Secretary of the MOL (or the PS himself). We would suggest that the steering group be facilitated by a neutral person agreed on by its members.

The group would not have any official status but would help with developing a work plan for the stalled WC process (which is clearly a priority) and provide a forum for trouble-shooting and informal dialogue. To address concerns about non-transparent and "political" interference in the process, such a group might also meet with the Minister.

Resources for the WCs are an immediate priority. Perhaps a shorter decision making cycle (6 months) would help to prevent delays, with the remaining time available for a researcher to undertake data analysis and prepare reports for the next cycle of meetings. There may be scope for a launching workshop for the 2012 WCs at which substantive reports on social and economic developments could be shared with WC members and leaders of workers and employers. As well as the hospitality industry study suggested as a model above, industry representatives (both employer and worker) could follow with introductions to their industries that could better inform specific WC members. Prior discussion within the constituent groups could also assist in gaining a mandate for the approach in the annual WC round.

Improved technical processes would, in our view, go a long way towards alleviating the current tensions.

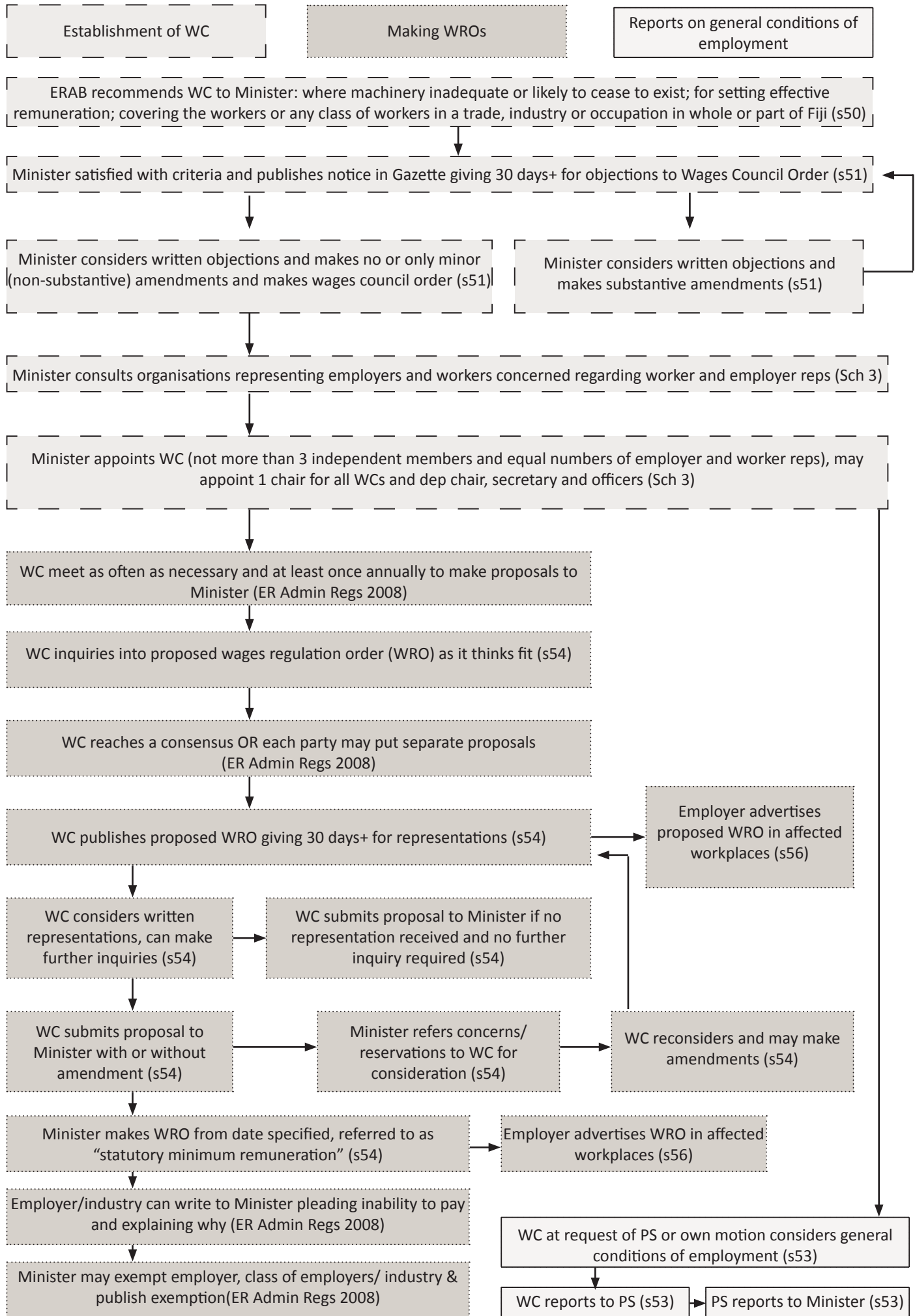
As well as the matters relating to process the workshop discussions did highlight some substantive issues important to wage policy. One we wish to highlight is the issue of productivity. This term is used rather loosely by discussants and there is not necessarily agreement on what it means or even if it is an aspiration of the private sector in Fiji. Underpinning the ILO's approach to wage policy is an assumption that a goal of national development is a more productive use of people's time at work, and that the returns generated through improved productivity will be fairly shared through higher wages, improved working conditions and social protection initiatives. Wage policy is relevant to productivity at both ends – at one end wage policy affects investment decisions in firms, with low labour costs acting as a disincentive to improving work systems and making capital investment to increase productivity; at the other end wage policy influences the distribution of productivity gains (and losses).

If improving productivity is not a goal of management, and if productivity were to be a primary factor in securing wage increases (either through collective bargaining, WCs or the NMW) then this leaves workers in a very difficult position and on a long term low-wage trajectory. This quandary highlights the importance of being clear about the objectives of wage policy in relation to productivity.

There is also the issue of voice for the workers covered by WROs and those currently outside the coverage of either WROs or union-negotiated collective agreements. We think there is scope for the role played by unions in the WC process to be promoted more strongly. It is likely that formal collective bargaining will continue to be unavailable to many workers due to labour market factors outside their own or unions' control. However that does not mean that they need to remain outside the reach of unionism and collective organisation: the WC process, the development of a NMW, the improvement of social protection systems, these all present opportunities for unions to demonstrate relevance to workers beyond their traditional reach and consider how workers outside collective bargaining units can have a voice in the union movement. This is a challenge not only in the developing world but also in the increasingly fragmented service economies of the industrialised world.

As was stated in the introduction to this report, Fiji has a history of strong labour market institutions. The current fragility and tension in some parts of the system can be addressed and the ILO looks forward to responding to requests from its constituents in addressing the many questions and challenges raised here.

The current laws and process



Employment Relations Promulgation 2007

Power of Minister to establish wages council

50.—(1) If the Minister on the recommendation of the Board, is satisfied that no adequate machinery exists for setting effective remuneration of a class of workers, or that existing machinery is likely to cease to exist or is inadequate, the Minister may, by order in the Gazette, make a wages council order to establish a wages council to perform, in relation to the workers or class of workers described in the order and their employers, the functions specified in this Division.

(2) The powers and functions of a wages council may be exercised in relation to the workers, or any class of workers engaged in or working at any trade, industry or occupation, either for the whole or part of the Fiji Islands.

Making of wages council order

51. — (1) Before making a wages council order, the Minister shall publish in the Gazette a notice specifying—

- (a) the place and time where the copies of the proposed order may be obtained or inspected;
- (b) a period of not less than 30 days from the date of the publication, for objections to be made; and
- (c) the place where and to whom the objection is to be sent.

(2) An objection under subsection (1) must—

- (a) be in writing;
- (b) set out specific grounds of objection; and
- (c) any suggested amendments.

(3) The Minister must, upon receiving any objection, consider the objection received within 30 days but is not bound to consider any late objection received.

(4) The Minister, after having considered any objections received under subsection (2), may—

- (a) make an order based on the original proposal subject to minor amendments that do not effect the substance of the original proposed order; or
- (b) if the amendments are substantive, amend the proposed order which must be resubmitted to objection process under this section.

Variation and revocation of wages council order

52. — (1) The Minister may, on the recommendation of the Board, revoke or vary the class of workers of a wages council.

(2) If the Minister varies the class of workers of a wages council, the variation order must comply with the procedures set out in section 51.

(3) Where an order made under this section directs that a wages council shall cease to operate in relation to any workers and that another wages council shall operate in relation to them, the order may—

- (a) provide that anything done by or to give effect to any proposals made by the first mentioned wages council shall have effect in relation to those workers as if it had been done by or to give effect to proposals made by the second mentioned wages council; and
- (b) may make other necessary transitional provisions.

General provisions as to wages councils

53. — (1) Schedule 3 shall have effect with respect to the constitution and proceedings of wages councils.

(2) Subject to any other written law or Parts 13 and 17, a wages council shall, upon request by the Permanent Secretary or on its own motion, consider any matter affecting the general conditions of employment of workers, and shall make a report to the Permanent Secretary who shall, after receiving the report of the council, make a report to the Minister for his consideration.

Power of fix remuneration

54. — (1) Subject to subsection (2), a wages council may submit to the Minister a proposed wages regulation order.

(2) Before submitting a proposed wages regulation order to the Minister, the wages council shall inquire into the proposal as it thinks fit and shall publish, in the prescribed manner, notice of the proposal, stating—

- (a) the place where copies of the proposal may be obtained;
- (b) the period within which written representations on the proposals may be made; and
- (c) the place where the representations may be sent.

(3) The council shall consider any written representations made to it within the period specified in the notice and may make any other inquiries and may submit the proposal to the Minister with or without amendment.

(4) If, before publishing its proposal, the council resolves that—

- (a) no representation is made within the specified period of the notice; and

(b) no further inquiry is required, the proposals must be submitted to the Minister.

(5) Where the Minister receives any proposed wages regulation order, the Minister shall make an order giving effect to the proposals as from such date as may be specified in the order.

(6) If the Minister has some concerns relating to or reservations about the proposed wages regulation order, the Minister may refer the proposals to the council for re-consideration.

(7) The council shall, upon reconsidering the proposed wages regulation order after taking into account the concerns or reservations made by the Minister, re-submit the proposals to the Minister with or without amendment after following the procedures set out in subsection (2).

(8) Remuneration (including leave and holiday remuneration) fixed by a wage regulation order is hereafter in this Division referred to as "statutory minimum remuneration".

Effect and enforcement of wages regulation orders

55.—(1) If an employment contract provides for the payment of less remuneration than the statutory minimum remuneration, the new statutory minimum remuneration shall have effect.

(2) A person who fails to comply with a provision of a wages regulation order commits an offence.

(3) Where proceedings are brought under subsection (2) in respect of an offence consisting of payment of remuneration less than the statutory minimum remuneration—

(a) if the employer or any other person charged is found guilty of the offence, evidence may be given of any like contravention on the part of the employer or such other person in respect of any period during the 3 years immediately preceding the date of the offence; and

(b) on proof of such contravention,

the Tribunal or the Employment Court may order the employer to pay such sum as is found by the Tribunal or the Court to represent the difference between the amount which ought to have been paid during that period to the worker by way of remuneration, if the provisions of this Part had been complied with, and the amount actually so paid.

(4) No evidence shall be given under subsection (3)(a) unless notice of intention to give such evidence has been served upon the employer or the other person with the summons, warrant, information or complaint.

(5) The powers given by this section for the recovery of sums due from an employer to a worker shall be in addition to and not in derogation from any right to recover such sums from the Tribunal.

Notices

56 – (1) An employer shall display a written notice in the workplace for the purpose of informing the workers of any proposed wages regulation order or any wages regulation order affecting them.

(2) An employer that fails to comply with subsection (1) commits an offence.

SCHEDULE 3

(Section 53)

CONSTITUTION AND PROCEDURES OF WAGES COUNCILS

1. The Minister has the power to appoint a wages council consisting of—

- (a) not more than 3 independent members;
- (b) such number of members to represent employers in relation to whom the council is to operate;
- (c) such number of members to represent workers in relation to whom the council is to operate.

2. The Minister may appoint one chairperson of all the Wages Councils, and a member of each Council as deputy chairperson to act in the absence of the chairperson.

3. Before appointing a person under sub-paragraph (b) or sub-paragraph (c) of paragraph 1, the Minister shall consult any organisations appearing to the Minister to represent employers or workers concerned, and the persons appointed under those sub-paragraphs shall be equal in number.

4. The Minister may appoint a secretary and such other officers for a wages council.

5. A wages council may appoint a committee or subcommittee to exercise its powers under this Promulgation (except the powers to submit wages regulation proposals) from amongst its members consisting of such number of persons, as it thinks fit (members representing employers and workers shall be equal in number).

6. The Minister may make rules as to the meetings and procedure of a wages council and of any committee or sub-committee, including rules as to the quorum and the method of voting, but, subject to the provision of this Promulgation and to any rules so made.
7. A wages council committee or a sub-committee may regulate its procedures in such manner as it thinks fit.
8. The Minister may determine the terms and conditions of members of wages councils, subject to other prescribed conditions.
9. The members of a wages council are entitled to remuneration and travelling and other allowances, as the Minister may determine after consulting the Higher Salaries Commission.

[LEGAL NOTICE NO.]
EMPLOYMENT RELATIONS PROMULGATION 2007
(No. 36 of 2007)

EMPLOYMENT RELATIONS (ADMINISTRATION) REGULATIONS 2008
Wages Regulations Orders

- 19 – (1) Pursuant to section 54 (5) of the Promulgation, where the Minister agrees to a Wages Regulation Order proposal submitted from a Wages Council, the Minister shall forthwith make the Order,
- (2) Remuneration (including leave and holiday remuneration) fixed by a Wages Regulation Order shall be referred to as "statutory minimum remuneration".
- (3) The Wages and Time Record with respect to a Wages Regulation Order shall be kept by an employer in a form similar to that provided in Regulation 17.
- (4) All the Wages Councils listed in Schedule 3 shall meet as often as necessary and at least once annually to make proposals to the Minister.
- (5) If the Wages Councils are unable to reach consensus about proposals, each party may put separate proposals to the Minister.
- (6) If any employer or industry affected by a Wages Regulation Order pleads inability to pay, that employer or industry must write to the Minister explaining the reason why it so pleads.
- (7) The Minister may exempt any employer or class or employers or industry from any part of the Order.
- (8) The Minister must publish any notice of exemption in the Gazette.

