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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Fair Work Amendment (A Living Wage) Bill 2018

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of

Adam Bandt MP

Fair Work Amendment (A Living Wage) Bill 2018

OUTLINE

The Bill amends the *Fair Work Act 2009* to lift the national minimum wage to a living wage of 60% of the median full-time weekly wage (as determined by the Australian Bureau of Statistics).

The Fair Work Commission (FWC) will determine the phase in period which must be no longer than 6 years and will be required to publish a timetable for the intended phase-in of increases to meet the requirement at the earliest possible time. The FWC must have regard to matters including reducing inequality, the state of the economy and the circumstances of particular industries and classes of employers. After the timetable for the intended phase in has been declared, the FWC will continue to conduct annual wage reviews and issue orders annually but will only depart from the planned phase in if there are exceptional circumstances.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1: Short title

1. This clause provides for the Act to be cited as the *Fair Work Amendment (A Living Wage) Bill 2018*.

Clause 2: Commencement

2. This clause states the whole of this Act will commence the day after it receives the Royal Assent.

Clause 3: Schedules

3. This clause gives effect to the Schedules. It provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 – Amendments of the *Fair Work Act 2009*

Item 1: Section 12

Inserts **median national hourly wage** into the dictionary and defines it as the median weekly total cash earnings for all full-time employees paid at the adult rate of pay, most recently published by the Australian Statistician, divided by 38.

Item 2: After subsection 294(1)

Inserts (1A) as a main provision of a national minimum wage order. (1A) stipulates that the monetary amount per hour produced by the national minimum wage must be at least equal 60% of the median national hourly wage.

Item 3: In the appropriate position in Schedule 1

Inserts – **Part 9 – Amendments made by the Fair Work Amendment (A Living Wage) Act 2018**

40 Definitions

Amending Act which means the *Fair Work Amendment (A Living Wage) Act 218*

Phase in period which is defined in paragraph 42(1)(a)

41 Application of amendments – national minimum wage orders

This subclause deals with orders that come into operation after the phase in period

- (1) Specifies that national minimum wage orders that come into operation after the end of the phase in period must still meet the requirements of the new subsection 294(1A).

These subclauses deal with orders made and that come into operation during the phase in period.

- (2) Specifies that for national minimum wage orders that come into operation during the phase in period, the national minimum wage set by the order must reflect the phase in referred to in new subclause 42(1).
- (3) Clarifies that subclause (2) does not apply to the national minimum wage set by a national minimum wage order, if:
 - (a) Fair Work Commission (FWC) is satisfied that there are exceptional circumstances justifying the departure from the phase in, in relation to that particular national minimum wage order; and
 - (b) The national minimum wage order includes the FWC's reasons for the departure.

42 FWC must phase in increases in national minimum wage

This subsection stipulates the FWC must determine the rate of phase in.

- (1) Specifies what the FWC must set out in the first national minimum wage order that comes into operation after the commencement of the amending Act:
 - (a) The period (the **phase in period**) during which the effect of any increase in the national minimum wage that will be required because of new subsection 294(1A) are to be phased in; and
 - (b) The rate of the phase in during that period.
- (2) States that the phase in period must end no later than 6 years after the commencement of the amendment Act.
- (3) Sets out the matters the FWC must consider in determining the rate of the phase in:

- (a) The need to reduce inequality;
- (b) The state of the economy;
- (c) The circumstances of particular industries and classes of employers;
- (d) Any other matters the FWC considers relevant.

This subsection provides for special rules if a national minimum wage order is made shortly before commencement of the amending Act.

- (4) States that in circumstances where the first national minimum wage order that is to come into operation after the commencement of the amending Act was made before the commencement of the amending Act, the FWC must make a determination varying the order so that it complies with subclauses (1) to (3) before the national minimum wage order comes into operation.
- (5) Clarifies that subclause (4) applies despite paragraph 296(3)(a).
- (6) States that a determination made in accordance with subclause (4):
 - (a) Comes into operation immediately after the order as unvaried comes into operations; and
 - (b) Takes effect at the same time as the order.
- (7) Provides for the following provisions to apply to a determination made in accordance with subclause (4) as if the determination was made under Part 2-6:
 - (a) Subsection 296(2) (publication requirements);
 - (b) Subsection 617(3) (determination must be made by Expert Panel).

43 Application of amendments – other Commonwealth laws

This clause is included so the amending Act will have no financial impact.

- (1) Specifies which payments this clause applies to:
 - (a) The payment is of a kind that is payable by the Commonwealth under a laws of the Commonwealth (other than this Act); and
 - (b) The law requires the payment to be calculated (however described) by reference to the national minimum wage set by a national minimum wage order.

Note: A kind of payment to which subclause (1) applied may be a kind of payment that is also payable by person other than the Commonwealth (for example, parental leave pay under the *Paid Parental Leave Act 2010*).

- (2) Clarifies that a national minimum wage set by a national minimum wage order that comes into operation after the commencement of the amending Act does not apply for the purposes of the calculation of the payment.
- (3) Subclause (2) does not apply if the payment if prescribed by the regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Fair Work Act (A Living Wage) Bill 2018

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The Bill amends the *Fair Work Act 2009* to lift the national minimum wage to a living wage of 60% of the median full-time weekly wage (as determined by the Australian Bureau of Statistics).

The Fair Work Commission (FWC) will determine the phase in period which must be no longer than 6 years and will be required to publish a timetable for the intended phase-in of increases to meet the requirement at the earliest possible time. The FWC must have regard to matters including reducing inequality, the state of the economy and the circumstances of particular industries and classes of employers (such as small business).

Human rights implications

This Bill engages Article 7 of the International Covenant on Economic, Social and Cultural Rights, namely the right to remuneration which provides all workers, at a minimum, with fair wages and a decent living for themselves and their families. In Australia, almost 1 in 4 people in poverty are working full-time and since 2014, the government estimates that the number of adult on the minimum wage has increased by 25%. 60% of the median full-time adult wage is one measure of the poverty line, this means the current minimum wage is not lifting workers dependent on the minimum wage out of poverty. Increasing the minimum wage will positively advance Australia's obligations to provide all workers with fair wages and a decent living for themselves and their families.

Conclusion

This bill is compatible with human rights because it advances the protection of human rights.

Adam Bandt MP