Private Member’s Motion No. 2/2013-2014: Amendment to the Labour Law
(2011 Revision)

Thank you, Madame Speaker.

Madame Speaker, I rise in reply on behalf of the Government as the Minister who has been given constitutional responsibility for Employment.

Madame Speaker, for many years prior, recently during the 2013 Campaign for office and up until most recently in the media the idea of setting a national minimum age has been the subject of fierce debate in the Cayman Islands. The Member from North Side has brought several Private Member’s to be considered and discussed by this honourable House on a number of occasions since 2001 asking for the introduction of a Minimum Wage, the latest being the private member’s motion which was brought (and passed) on 8 September 2011 under the previous UDP Administration. Yet, no Minimum Wage was introduced under that administration. Why then, Madame Speaker, are we (as a Legislative Assembly) here once again debating this Motion? The answer is simple Madame Speaker – as long as we continue to have discussion and debate in a vacuum, as long as our dialogue of this issue is limited to the opinions and views of the many “armchair economists”, we will only continue to talk, discuss and debate the issue of a minimum wage without making any significant progress towards enacting one. (Madame Speaker, for the benefit of the listening public and members in this
Chamber, when I refer to “armchair economists” I am referring to persons who offer up very strong views and opinions about what the minimum wage in the Cayman Islands should or shouldn’t be, without putting forward sound economic research and analysis in the Cayman Islands context to support the arguments.)

Madame Speaker, we are all entitled to our opinions. However, major public policy decisions such as the introduction of a National Minimum Wage, the level of detail such as the rate of such wage and the frequency of review of such rate, should not be based solely on opinion, especially that of few individuals.

Madam Speaker, the introduction [or the re-introduction] of a National Minimum Wage structure in the Cayman Islands should only come as a result of sufficient economic research and analysis that considers how best and at what level or levels to introduce such wage or wages, and considering how best to mitigate the potential negative, unintended consequences of introducing a legislated minimum wage, while achieving the primary goals that a National Minimum Wage or wages aims to achieve.

With all due respect, Madame Speaker, this motion does not do this. This Motion represents the movers’ views on how and what the minimum wage in the Cayman Islands should be and how often it should be reviewed. It is for that reason, Madame Speaker, that this Government is not prepared to accept the Motion as presented. Complex economic and labour policy, Madame Speaker, cannot be
made on one person’s whim or fancy, no matter how popular the idea may or may not be, and no matter how passionately the argument is made.

Madame Speaker, it is our view that the introduction of a National Minimum Wage structure should complement and underpin this Government’s wider employment policies and strategies, which includes the introduction of a welfare-to-work regime, the introduction of training and development initiatives such as a National Apprenticeship Programme and a National Internship Programme, and the strengthened, more efficient, more collaborative and more transparent working relationship between the NWDA and the Immigration Department as it relates to the work permit process. Madame Speaker, since taking office at the end of May 2013, a lot of work has begun and is taking place on these various employment initiatives, and I have a number of exciting announcements to make in this regard in the very near future.

Madame Speaker, it is essential for us to understand what a National Minimum Wage will mean for individuals and businesses across the various industries and islands. A National Minimum Wage structure must address the worst cases of exploitation that exist in our society. A National Minimum Wage must provide a real incentive to make work pay, without necessarily jeopardising job opportunities. A National Minimum Wage structure must be enforceable, and not plagued by loopholes which could be exploited by unscrupulous competitors. In essence, Madame Speaker, a National Minimum Wage should support a
competitive economy, be set at a prudent level, be simple and straightforward, and make a tangible difference in the lives of low paid workers in our society.

Madame Speaker, before we move to introduce a legislated minimum wage to become a part of our economic reality in the Cayman Islands today, we must be clear as possible in our answers to a number of very important questions:

1. What do we mean by the term “Minimum Wage”, what does it entail? Does it mean base salary? Should it include payment by results, commission, gratuities, tips, bonuses? What about benefits-in-kind and other non-cash payment (such as housing, food, etc.)? How do we account for these forms of “payment” in the proposed minimum wage structure? This Motion does not help to address this fundamental question.

2. What should the pay reference period be in determining whether the minimum wage has been paid by the employer? – one day, one week, one month, 3 months, 6 months, one year? The suitable reference period will in large part depend on what type of remuneration (e.g. straight salary, bonuses, commission, gratuities, etc.) is considered part of a “minimum wage” determination.

3. How will it impact training and development programmes aimed at improving people’s employability prospects and ability to command higher pay and career progression? How will it impact young people’s ability to find employment? It is a well-known fact that young people are more likely than older people to be unemployed and in low-paid jobs - just look at the rate of unemployment among youth in the Cayman Islands ages 15 – 25 according to
the 2012 Labour Force Survey: over 21%, more than double that of the national unemployment average.

Madame Speaker, the introduction of a National Minimum Wage regime must not be a barrier to the development of structured training programmes which this Government is diligently working on developing and introducing in conjunction with private sector, initiatives such as the Hotel Training School launching this September, which is a joint initiative of the Ministries of Tourism and Employment, UCCI and the hospitality industry. In addition, two new initiatives which my Ministry has been working on since taking office in May 2013 are the development of a National Apprenticeship Programme and a National Internship Programme which, the latter is expected to launch this Summer 2014. More details of these and other initiatives will be forthcoming in the near future.

Nor should the introduction of a minimum wage provide a disincentive for employers to train employees on the job. In relation to unemployment, as with other countries, we have seen that our young people are disproportionately affected, especially our young men. It is incumbent upon the Government to take proactive steps to ensure that our youth have every opportunity for employment so that they can build the skills necessary to support themselves and this country as our older workers move into retirement. Consideration needs to be given as to whether or not there should be separate minimum wage regime for young people and trainees in accredited training programmes. This is what is done in many countries the world over that have
legislated minimum wages, including the US and the UK; however, this Motion does not contemplate nor make any provision for this at all. The carve-out mentioned in this Motion speaks only to students of compulsory age for secondary school.

4. What is the likely effect of the proposed minimum wage rate or rates on low paid persons’ ability to meet the demands of the cost of living and providing for their families? On the other hand, what are the risks posed by the proposed minimum wage rate or rates as it relates to jobs being lost, or goods and services becoming more expensive as a result of the introduction of a minimum wage regime? For example, how will the introduction of a minimum wage for domestic helpers affect the single mother or single father who is barely making above the minimum wage his or herself?

Madame Speaker, if careful consideration isn’t given to the determination of these questions, we can end up with a situation whereby the introduction of a minimum wage that is set too high in relation to the economic reality that exists, could end up having an immediate inflationary affect, causing the price of goods and services sold to increase, which would completely negate the purpose of introducing a minimum wage in the first place – which is to increase a person’s ability to pay the bills. In other words, Madame Speaker, for example if you are making $3 an hour and the cost of milk is $5, if by introducing a minimum wage of $5 an hour, all of a sudden the cost of milk increases to $7, are you any better off? On the other hand, Madame Speaker, if the rate introduced is too low given the economic reality, then it will have
little or no effect on combating poverty. The National Minimum Wage regime should be introduced at a rate or rates which offers real benefits to the low paid workers, while avoiding unnecessary risks to businesses, cost of living or jobs. That rate has yet to be determined in the Cayman Islands context.

5. What, if any, is the potential or likely effect that a National Minimum Wage would have on public finances? How will it increase the Government’s wage bill, if any? The Minister of Finance will likely address this in more detail in his contribution to the debate.

6. How will the National Minimum Wage regime be implemented and enforced? Introducing a National Minimum Wage at present without considering and making provisions for the necessary resources and mechanisms to enforce the law would result in a **toothless lion, a fireless dragon**. How do we get verifiable data about what employees are being paid in an economy such as Cayman that does not require income reporting, as is the case in direct taxation jurisdictions? Do we simply rely on persons making complaints as to what they are or are not being paid? What about those unscrupulous employers that would intimidate their workers against filing such complaints? Careful consideration must be given to how a National Minimum Wage regime should be implemented and enforced, and what is the knock on effect, such as public sector resource and financing requirements, that would be required to do just that – implement and enforce the law.
Passing the Minimum Wage Law without the necessary institutional resources to ensure proper implementation and compliance may lead to further public mistrust and disappointment in the delivery of service by the Government agencies, and repeated song that the, “Government does not enforce the laws.” And, Madam Speaker, and I can almost assure you several persons in this House will likely be the ones leading the chorus in this regard, even though implication for the implementation and compliance is not contemplated in this motion.

7. How should the Government assess the impact of the introduction of a National Minimum Wage regime? What are the monitoring and evaluation mechanisms that need to be put in place, which will in turn inform when and how often the minimum wage structure should be reviewed and adjusted? How did the movers of this motion arrive at 5 years intervals, as opposed to 3 or 7, or 10, for example? What is the economic rationale for such a decision?

Madame Speaker, it is important to stress that there are a number of potential benefits that a National Minimum Wage regime could bring to businesses and the Cayman Islands as a whole. These include:

- Helping to reduce inequalities of income for the working population by removing the worst cases of exploitation, thereby ensuring greater decency and fairness in the workplace;
- Promoting equal opportunities between the sexes. Madame Speaker, as Minister with constitutional responsibility for Gender Affairs it would be
remiss of me not to include a gender perspective while making my contribution to the debate here today. It is a known fact, Madame Speaker, based on a gender analysis of the 2010 Census of Population and Housing, on average, women make over KYD$5,000 less per annum than their male counterparts, which admittedly is less of a gap that existed in 1999, which was over KYD$9,000 less than men according to the National Policy on Gender Equity and Equality. Unfortunately, the 2010 Census also reports that females earn an average of 17% less than males per year; and at every education level, females earned less than males with the widest gap experienced for those with a university degree. Madame Speaker, discussing gender in relation to labour and minimum wage is not a new approach. In fact, the National Policy on Gender Equity and Equality which was accepted and adopted in this honourable house in 2004 advocates for a clear minimum wage by job classification as one of the many methods that supported the government’s goal of achieving gender equality. Yet, Madame Speaker, this motion does not speak to the issue of gender equality, or the lack thereof, when it comes to wages, nor does it contemplate the prior recommendation adopted in this house advocating for minimum wage by job classification as opposed to a straightline national minimum wage which is what is being suggested here today;

- Encouraging firms to compete on the basis of quality as well as price, by preventing unfair advantages due to inappropriately low salaries;
- Motivate and encourage employees to work harder, improve employee commitment, reduce staff turnover. Coupled with an investment in
training, businesses have a real chance to boost productivity and company competitiveness.

On the other hand, there are also a number of potentially detrimental effects that the introduction of a Minimum Wage regime could bring if it is not sufficiently well thought out, not well researched and supported by empirical data in the Cayman context, and not well timed in its introduction. These include:

- A rise or increase in the level of unemployment. Madame Speaker, Congress of the United States Congressional Budget Office (the “CBO”) has just published a report this month entitled “The Effects of Minimum-Wage Increase on Employment and Family Income” where they have found that in the context of the US economy, raising the Federal Minimum Wage to $10.10 would reduce the total employment by about 500,000 workers, or 0.3 percent. The report goes on to say that with any such estimate, the actual loss could be less or greater, ranging from slight reduction to 1.0 million jobs lost.

  Madame Speaker, the CBO report claims that increased earnings for some workers would be accompanied by reductions in the real (inflation-adjusted) income for those people who became jobless because of the minimum-wage increase, for business owners, and for consumers in general facing higher prices as a result. The report goes on to present a detailed analysis of the effect on family income overall and at various income groups.
Madame Speaker, what would the potential effect of a $5 per hour minimum wage have on the number of jobs lost in the Cayman Islands economy? What would be the effect on family income overall or for the various income groups, particularly those low paid workers that a minimum wage is aimed at reaching? This Motion, and the rational presented as for the need to adopt it at this time and implement by June 2013 as suggested by the mover in his debate, does nothing to help the Government determine the answers to these fundamental questions. Madame Speaker, in an era such as this, where (according to the 2012 Labour Force Survey, which is itself outdated to some degree due to its backward looking approach) the Cayman Islands has the highest reported levels of unemployment among Caymanians in our history – roughly 1 in 10 Caymanians - can we afford to introduce a minimum wage which has not contemplated or accounted for the potential job loss among Caymanians that may happen as a result? Can we afford to play Russian Roulette, not knowing or anticipating the likely outcome of a decision such as this to be taken, with the lives of those same persons that we are aiming to protect?

Put another way, Madam Speaker, if you are experiencing chest pains, may have been for some time yet, would you proceed to have open heart surgery based on the views or opinion of one or a few, or even many, members of your family? No, Madame Speaker, I venture to say that you would not, no matter how good the Shetty Hospital will be. You would at least go to the doctor to do an assessment of the situation, to run the
relevant tests to determine exactly what is or isn’t causing the problem, and to determine what the appropriate treatment should be. I dare say, Madame Speaker, you would probably go to get a second medical opinion prior to making a decision such as whether or not to proceed with open heart surgery if that was indeed recommend by the first physician.

So, Madame Speaker, the same applies in the context of the introduction of a National Minimum Wage. We, the Elected Members of this LA, should not self-diagnose the answer to an issue such as this. And even if, Madame Speaker, the results of the economic research that is to be conducted in conjunction with and to inform the introduction of a minimum wage regime comes back with a recommendation of $5 per hour, at least Madame Speaker, the Government will be able to speak with some degree of confidence as to the likely impact of such a minimum wage on our economy and on the lives of those most vulnerable low paid workers that we are aiming to protect. To accept and implement this Motion now without doing the proper assessment, Madame Speaker, would be like cutting the chest open and hoping for the best.

- Another situation that appears to happen as a result of the introduction of or increase in a minimum wage is that small businesses tend to be more negatively affected than large business which may be better at absorbing the increased costs of doing business as a result. The Small business sector is the lifeline in any economy and the provider of many jobs in this economy, Madame Speaker, so it is incumbent on Government to try to
determine what the potential effects of introducing a minimum wage at the prescribed rate would have on this sector.

- As previously discussed, the introduction of a minimum wage if not correctly pitched or determined, may cause price inflation thereby erasing the positive effect that any such increase in a minimum wage aims to achieve as it relates to a person’s or a family’s purchasing power, making it harder, not easier - for people to pay their bills.

- Benefits some workers at the expense of the poorest and least productive, and may result in the exclusion of certain groups of workers, such as young people or the disabled, from the labour force if not carefully considered and accounted for.

- May also discourage further education among the poor and therefore lessen their prospects for career advancement in the long run by enticing people to enter the job market prematurely.

These factors, Madame Speaker, must be considered when trying to determine an appropriate Minimum Wage regime to be adopted.

... Madame Speaker as I said before, the National Minimum Wage structure should be simple and straightforward, prudent and supportive of a competitive economy. The National Minimum Wage structure should fully recognise business realities, while also removing the worst cases of exploitation that exist and
making a difference to the widest group of workers possible. However, Madame Speaker, taking a simple and straightforward approach does not mean taking a simplistic approach – by just arbitrarily setting the National Minimum Wage at $5 per hour and a review period of every five years – as is suggested in the motion before the House currently. The determination of an appropriate National Minimum Wage regime must be based on solid economic research and data analysis and pragmatic recommendations addressing at the bare minimum those questions I posed earlier, and being cognizant of and providing for the Cayman Islands socio-economic reality.

Although, Madame Speaker, the Government is not accepting this Motion before us today, I am happy to report to this honourable House that work has already begun by this Government, led by my Ministry, as it relates to the introduction of a National Minimum Wage regime that is suitable for the Cayman Islands’ socio-economic context and experience.

In order to carry out the work needed to establish a National Minimum Wage regime in the Cayman Islands, the project to investigate the effect and appropriateness of various price-points for a National Minimum Wage structure, to be presented to Cabinet for adoption in the first instance, has begun. Madame Speaker, this is similar to what the Congress of the United States has just done in their report entitled “The Effects of Minimum-Wage Increase on Employment and Family Income” dated February 2014 wherein they considered the effect of
raising the Federal Minimum Wage by two options - $10.10 an hour and $9 an hour - on both Employment and Family Income.

In order to carry out the minimum wage project pursuant to the law, the Ministry will establish the Minimum Wage Advisory Committee enshrined in Section 21 of the Labour Law and the Committee will work to present its findings and make recommendations to Cabinet on the potential implications associated with setting the minimum wage at varying earnings-levels. Madame Speaker, this type of economic analysis is conducted in many, if not most, of the other countries with respect to their Minimum Wage, why is it unreasonable to suggest that the Government should not strive to make an informed decision about an appropriate Minimum Wage regime in the Cayman Islands?

The Government intends to ensure that employees and employers are equally represented on the Committee. We also intend to include a number of independent members with specific skill-sets relevant to the process. Finally, participation of key agencies and personnel within the Civil Service has already been identified and agreed by the Government.

The Ministry has already engaged in discussions with the regional office of the ILO in Trinidad and the UK Government’s Low Pay Commission for guidance and assistance in the project. We have been provided with valuable information from these entities to aid our research thus far. In addition, the Ministry is pursuing the
engagement of a labour economist expertise to guide the work of the Minimum Wage Advisory Committee. Quite frankly, not having embarked on implementing in earnest a National Minimum Wage in the Cayman Islands in many decades, the Government simply does not have the in-house expertise at our disposal to adequately guide the process. The Minister of Finance shares this view and I’m sure he will talk more about it from an economic perspective during his contribution to the debate.

Finally, the Ministry will ensure that the project includes ample participation by the private sector, service sector and the general public to ensure that a wide cross-section of people, companies and industries are consulted, so that the final result is one reflecting the principles of social partnership that is essential to the successful identification of a National Minimum Wage structure that is workable and acceptable. We want to hear from as many people as possible and it is intended that the Committee will canvas the views of the public through a variety of mediums. With the help of a labour economist guiding the process, more formal surveys may need to be developed and conducted, depending on the amount and type of relevant data and information available currently from ESO and the Immigration Department.

In making recommendations as to what the appropriate Minimum Wage Structure should entail, the Minimum Wage Advisory Committee will have regard to the wider economic and social implications; the likely effect on the level of unemployment and inflation; the impact on the competitiveness of business,
particularly small businesses; and the potential impact on the costs of various industries and the public purse.

I want to stress here, Madame Speaker, that the Government is committed establishing a minimum wage regime which seeks to protect the most vulnerable in our society. The Government is also committed to ensuring that business is not significantly adversely affected by the introduction of a minimum wage. We are looking to work with private sector to ensure that what we end up with is workable for business, and encourages growth. Well-paying business owners should rest assured that one of our aims is to level the playing field by removing unfair advantages currently enjoyed by some employers who pay wages below what would be deemed an acceptable level. The Minimum Wage should therefore be set at a level that offers real benefits to the low-paid workers, while avoiding unnecessary risks to jobs and businesses.

So, Madame Speaker, the Government is not accepting this Private Member’s Motion today, not because we do not support the idea of having or introducing a Minimum Wage regime in the Cayman Islands, but primarily because this motion does not assist the country in any way to help determine the necessary answers to the many important questions that need to be answered before the introduction of any National Minimum Wage should occur. As I have said before, Madame Speaker, the National Minimum Wage structure to be adopted should be simple and straightforward, and made from an informed perspective; however, Madame Speaker, adopting a simplistic approach, from an “armchair”
economic perspective, does very little to move the process forward in a meaningful way.

The determination of an appropriate National Minimum Wage structure for the Cayman Islands must be based on well informed socio-economic principles, research and analysis. That is what this Government, through the work of my Ministry, has already begun to do.

In trying to determine an appropriate minimum wage regime, the Government must seek to identify and listen to the various sectors of business and to the people for whom the National Minimum Wage might have the greatest impact – these include women, young people, single parents, part-time employees and persons with disabilities, to name a few.

It’s simply not good enough to pluck a figure out of the “blue sky” and hope for the best.

Thank you, Madame Speaker.