

**Joint Committee on Employment Affairs and Social Protection pre-legislative scrutiny  
of the Payment of Wages (Amendment) Bill 2019**

**Opening Statement of Dr. Donal de Buitléir 10<sup>th</sup> October 2019**

**Overview of the Low Pay Commission**

I would like to thank Deputy Curran and the members of the Committee for inviting me here today to participate in the pre-legislative scrutiny of the legislation which the Minister for Employment Affairs and Social Protection is bringing forward

The primary remit of the Low Pay Commission is to make recommendations each year to the Minister on the appropriate rate of the National Minimum Wage.

The National Minimum Wage establishes a ‘pay floor’ below which no one should be expected to work. The Commission seeks to recommend rates that will help as many low-paid workers as possible without any significant adverse impact on employment or the economy.

**Related matters work of the Low Pay Commission**

While the primary role of the Commission is to make recommendations on the National Minimum Wage we are also tasked, at the request of the Minister, to examine what is referred to as ‘related matters’.

Since its establishment the Commission has reported on a number of issues such as the preponderance of women on the National Minimum Wage, the sub-minima rates of the National Minimum Wage, the allowances provided for board and lodgings and most recently – and indeed the subject of this discussion today - current practices in relation to tips under the National Minimum Wage.

**The Low Pay Commission Report on Tips and Gratuities**

As you know Minister Doherty – in February 2018 - asked the Commission to examine the practice in relation to tips and gratuities as part of our 2018 work programme and to make any recommendations we might consider appropriate.

To help us prepare the report we invited submissions from key stakeholder and individuals. We also advertised for submissions from the public. We also engaged with the Workplace Relations Commission(WRC) and the Revenue Commissioners to gain further knowledge and insight into enforcement procedures and taxation matters respectively. We also examined practices in other jurisdictions and considered how they might be applied in Ireland.

As with all of the Commission's work, the consultation provided us with information which greatly assisted us in reaching our recommendations. Some submissions felt that employees should have more control over their tips, other favoured codes of practice. The Revenue Commissions and the Workplace Relations Commission were able to provide us with advice on the practicalities of introducing legislation in this area.

What was clear from all of our engagement with stakeholders was that legislation or over-regulation in this area could result in a number of unintended consequences, which could result in less take home pay for those employees concerned.

The Low Pay Commission Report on Tips and Gratuities reviews current practices, current legislation, sets out the consultation undertaken, the inputs received from government departments and agencies, a literature review, and then our conclusions. In order to better understand tipping practices and the options available to Governments, the Commission also examined selected international tipping regimes to look at best practice in other countries.

The majority of submissions received by the Commission advocated legislation focussed on the hospitality sector. However, the consultation process has shown that tipping practices are prevalent in a number of other sectors. While there was broad agreement that the withholding of tips by employers is wrong, there was not agreement as to how this should be addressed.

## **Findings of the Low Pay Commission Report**

Let me take you through the conclusions of the Commission's report.

- **Absence of Reliable Data**

While a number of groups have conducted some ad-hoc surveys in this area, the Commission was of the view, that insufficient data exists to show that employers withholding tips is a significant problem in Ireland.

- **Legislation**

The Commission concluded that regulation in this area could result in a number of unintended consequences such as the reclassification of service charges, leading to a potential reduction in the take home pay of low paid employees.

We also received a clear message from the WRC that legislation in this area might not be enforceable. The WRC emphasised that for enforcement to be viable and a conviction to be secured, it was essential to establish and clearly quantify the proportion of tips each employee is entitled to. The WRC has stated that in its view, a better approach than legislation would be to introduce a Code of Practice on tipping.

Furthermore, regarding legislation, while there was some support for legislation for the hospitality sector put forward in the submissions we received, the Commission is of the view that this may not be appropriate for other sectors – essentially a one-size fits all approach is not recommended.

- **The Introduction of a Code of Practice/Sectoral Agreements**

The Commission noted that the advantage of such an approach would be that a code of practice could be tailored to the specific requirements of the industry involved. A code of practice could also ensure that both employer and employee interest groups are able to give input into the development of such a code and may therefore be able to take better account of issues as they exist on the ground. The Commission concluded that, based on the experience in the UK, that there is the strong possibility that if a code of practice were to be introduced in Ireland, it would not have the desired result in terms of ensuring that employees receive a fair share of their tips.

- **Maintain the Status Quo**

The Commission considered that there has not been a great deal of pressure from either employee or employer representative bodies to legislate for tipping or to alter current practices. The Commission noted that this may indicate that the systems currently in place were working relatively well and that any attempt to interfere may lead to unintended consequences or legislation which would be difficult to enforce.

The Commission's report was agreed by all nine members.