

Pensions Statement

Statement on Pensions: Private Sector Pensions Update

Madame Speaker, I would like to address the topic of Private Sector Pensions, and the nature of the work that has been undertaken in recent years to tackle long-standing deficiencies in the private sector pension regime, including those identified in the Own Motion Investigation Report of the Complaints Commissioner of which a press release was issued by the OCC and reported in the press on Thursday, 10 October 2013.

Madame Speaker, the report by the Complaints Commissioner in September 2010, was produced within a context of much-needed reform of the pensions regime. There has been no major revision enacted to the National Pensions Law since 1998. Long-standing concerns included:

- A culture of non-compliance;
- A long-standing significant backlog of complaints; and
- Limited attention to regulation of pension plans and plans providers.

Madam Speaker, Honourable Members of this House are aware that the Department of Labour & Pensions was established in early 2012, and is an amalgamation of the Labour Investigations, Inspections, and Occupational Safety

Pensions Statement

Units of the old Department of Employment Relations, along with the former National Pensions Office. The Department now administers the Labour Law and the National Pensions Law. Matters relating to Work Readiness and Training, and employment placement services are now handled by the National Workforce Development Agency. On 29 May of this year having been sworn in as a Member of this honourable House and as a Member of Cabinet, the Department of Labour and Pensions became part of my responsibility as the Minister for Employment. But, Madame Speaker, it is important to note and the record to reflect, that this problem didn't start with my tenure as Minister of Employment.

On 29th January 2010, the Office of the Complaints Commissioner (OCC) launched an Own Motion Investigation (OMI) into the ability of the National Pensions Office to effectively investigate, charge, and convict companies who are non-compliant with pension contributions as mandated under the National Pensions Law. In September 2010 the Report, styled "Penny Pinching Pensions", was published.

Since the publication of the Report, I have been informed that the Ministry (and by extension the National Pensions Board and the National Pensions Office) provided regular updates on the status of the outstanding recommendations to

Pensions Statement

the Office of the Complaints Commissioner, the last formal update given just this week on Monday 7th October 2013.

The Commissioner has confirmed that the Ministry and Department of Labour and Pensions are in compliance with 10 of the 21 recommendations in her report. Of the remaining 7 of the 11 recommendations yet to be complied with, 7 of them will be cured by a revised National Pensions Bill.

The Law

Madame Speaker, the National Pensions Bill 2012 was issued for public consultation. I have been told by my Chief Officer that extensive feedback has been received from the public consultation that took place previously, and that some areas of the Bill has been amended since it was initially gazette as a result of the feedback received during the consultation period.

As the new Minister of Employment, I have already given instructions, in fact, having done so almost immediately upon taking up office, to revisit the National Pensions Bill and have provided initial guidance as to the policy considerations and amendments that need to be made to the Bill in order for me to bring it back to Cabinet and then to this honourable House for approval. Whereas the Bill

Pensions Statement

contains provisions to redress the concerns identified in the 7 recommendations which the Complaints Commissioner identifies as being addressed in the Bill, of which we intend to keep, the current Bill also contains provisions which are inadequate or not in keeping with the policy direction of this Government. Thus, the Government is committed to bringing forward major legislative changes through a revised National Pensions Bill which addresses the Commissioner's concerns AND reflects our policy position as it relates to the private pensions regime.

Madam Speaker, it appears that the Complaints Commissioner has taken umbrage to the fact that the National Pensions Bill 2012 was not passed by the previous administration and is still not yet passed. I agree, Madame Speaker, it is indeed unfortunate that the revision to the National Pensions Law has taken such a long time to enact, since the initial OCC report of 2010. Clearly, legislative enhancements to strengthen the pensions compliance regime are obviously much needed. But, Madame Speaker, I cannot accept responsibility for the previous UDP Governments' actions, or inaction, in relation to advancing the draft legislation beyond the stage that it is at. But I will make a commitment that this Government will look to bring amending pensions legislation this fiscal year which

Pensions Statement

addresses some of the concerns identified by the Complaints Commissioner, among other critical areas of concern for this Government.

As the new Minister, I believe that some of the changes proposed in the 2012 Bill are critical to protect and educate pension plan members and the general public as a whole, and to modernize our pension regime. However, it is only reasonable to recognize and expect that this draft legislation will need to be scrutinized and amended to ensure that it reflects the policies and priorities of this new Government. The issue of severity of non-compliance will be addressed by differentiated penalties in the proposed legislation.

Madame Speaker, there is a clear commitment by the current government to advance the legislation and the pension regime. I look forward to laying on the table of this Honourable House the first set of amendments to this key legislation within the current financial year.

Decoding and Contextualising Statistics

Madame Speaker, it is also important to note that what is missing from the Complaints Commissioners release, is the acknowledgment of the hard working and diligent efforts of the lean staff complement of the Department of Labour, the

Pensions Statement

volunteer National Pensions Board and the Ministry to positively address a significant number of pension complaints to date. It is important, Madam Speaker, to put the numbers issued in the Commissioner's release into context of the working reality.

Madam Speaker, please allow me to now speak briefly to this Honourable House concerning a few key statistics in relation to delinquencies. For six (6) months covering the period November 2012 to May 2013, the Department of Labour & Pensions (of which the National Pensions Office is a Unit) was able to hire temporary staff that focused on addressing the backlog of Pension issues, to work alongside of the existing NPO staff. The following statistics are worthy of note:

- In February of 2013, the NPO reported that 1108 employers/companies were delinquent in their pensions contributions, i.e. they were in arrears for 45 days or more;
- As a result of a robust delinquency special projects exercise, letters were sent in relation to all 1108 delinquencies
- As of June 28th, 2013, 562 companies were removed from the delinquencies list, and C\$1.5 million paid into the employees pensions accounts. This was made possible through the efforts of the hard-working staff of the NPO,

Pensions Statement

including: numerous telephone conversations, personal visits and inspections of workplaces, and meetings with delinquent employers where necessary and possible;

- As at June 30th 2013, the NPO statistics reveal that there were 1,144 delinquent employers/companies, as well as 167 companies on Payment Plans with their Administrators;
- Despite the **resolution of 562 delinquencies**, between February and June 2013, there has been an **increase in 598 NEW delinquencies**, these new delinquencies represent those that are delinquent for a shorter period (average of 45 to 60 days) and who traditionally regularize themselves on a short-term cyclical basis.

Subject to the approval of Finance Committee, the Department of Labour & Pensions hopes to increase its staff complement in this fiscal year, in an effort to supplement the resources to ensure its effectiveness. The Department has managed to secure funding for an additional Senior Pensions Officer in the 2013/14 budget and will be making steps to recruit to this post. The filling of this post will help to ensure that the Department is able to continue efforts to address the backlogged items as well any new pension related items occurring. In addition the Department has secured funding for an Assistant Director - Labour

Pensions Statement

and Pensions, which will allow for existing Pensions staff to not be involved in administrative processes outside of those directly related to investigations/inspections. In this way, even more time will be available to deal with pension matters.

Some notable improvements have already been made since I took office, Madame Speaker, that should be shared with the Members of this honourable House and the public:

- A new Inspections Unit has been established at the DLP. After an internal recruitment process, the Head of Inspections has now been identified. The unit is developing formal Standard Operating Procedures and expects to roll-out a new pro-active inspections regime to include Pensions inspections by January 2014. In addition to the Head of Inspections, the unit is also staffed with two officers in Grand Cayman and one officer in Cayman Brac.
 - The work of the new Inspections Unit will augment the work of the existing Labour investigations and compliance unit and the Pensions investigations and compliance unit.
 - The new unit will undertake onsite and offsite inspections of workplaces, covering both labour and pensions laws and regulations

Pensions Statement

(and best practices) testing, audits, and remediation, for the 3 Cayman Islands.

- There is now a formalized expectation and agreement regarding training for Pensions Officers and inspectors.
 - As part of the 2013 performance management process, the performance agreement for each employee of the DLP houses requirements for programs such as the certified fraud examiner course, forensic accounting, and conduct of investigations. In addition to this the Department will be developing a training plan for all employees during this financial year.

Other Recommendations Deemed Outstanding

Madam Speaker, it should be further noted that the implementation of the remaining 4 recommendations of the Commissioner's Report is largely outside the immediate control of the Ministry and the DLP.

Specifically, Madame Speaker, Recommendation 2 (Power to enter private residences used for business) requires consideration and confirmation from the Attorney General's Chambers in light of any privacy rights or issues given the Bill

Pensions Statement

of Rights, and the cooperation of the T&BL Unit. The Ministry is awaiting the formal view from the AG's Chambers. The Ministry of Employment, the DLP, Ministry of Financial Services and T&BL Unit have agreed to work cooperatively in a coordinated effort to address this issue. The Ministry intends to use this positive working relationship to fuel a restructure of the business regulatory function, and, through the DLP, has joined an inter-agency working group in order to do so. The group consists of the Immigration Department, National Workforce Development Agency, Trade and Business Licensing Unit, and the Health Insurance Commission. While the sharing of information and work to create a culture of compliance in the Cayman Islands has been ad-hoc so far, it has taken positive strides. This year, Madame Speaker, the Ministry will push to ensure that the group is formally established and structured.

Madame Speaker, the implementation of Recommendation 14 (Reclassification of pensions non-compliance in negligent versus deliberate) poses some practical challenges. In the 7th October 2013 update to the OCC provided by the Ministry, the DLP has given a commitment to amend its Standard Operating Procedures to allow for the classification of pension non-compliance into negligent versus deliberate categories to take place, for work prioritization to take the classification into consideration, and for the use of stronger interventions when

Pensions Statement

dealing with an intentionally non-compliant employer. However, Madame Speaker, it is important for this House to note that, as has been explained to the Complaints Commissioner on a number of occasions, the difficulty with this recommended approach is the ability to prove intentional non-compliance versus negligence, and in many cases this is only borne out by completing an already in-progress investigation, so the classification exercise can only take place after the fact.

As has been advised to the Complaints Commissioner, Madame Speaker, the difficulty with implementing Recommendation 15 (Tracking of non-compliant employers who continue opening new businesses) is that the persons who engage in this type of activity are usually knowledgeable about how to avoid being caught via registration of the offending company under a partner's name not listed in the previous T&BL. As previously indicated by the Ministry, it is our view that this would be best achieved under the Trade & Business License Law, as opposed to the National Pensions Law. In our discussions with the T&BL Unit, the point was made that the system currently in use does not allow for tracking of shareholders of companies, only directors, and that any move towards accomplishing this would require fundamental changes, changes to the way their system works and improvements in technology.

Pensions Statement

Therefore, the agreed interim practical suggestion and solution was that this could be achieved through cooperation between the two departments, with the Department of Labour and Pensions providing regular updates to the T&BL unit on companies that offend the Pensions Law. It should be noted that at present there is a staff shortage in the T&BL unit that would limit the extent of cross-referencing at least in the short-term.

Given the T&BL unit response our view is that the best approach would be for the DLP to provide regular reporting for its own purposes, and to the T&BL Unit for its purposes, on non-compliant companies including known shareholder names, and have the T&BL Unit cross-reference with new T&BL applications, with the understanding that efficiencies in this exchange likely will not occur until the unit is T&BL Unit is sufficiently staffed.

In line with our commitment to an inter-agency working relationship the Department currently regularly shares the list of delinquencies for the 6 Multi-Employer Pensions Plans with the T&BL Unit, the Immigration Department and the Health Insurance Commission.

Pensions Statement

The Ministry has therefore investigated the implementation of this recommendation. However, the ability to implement the recommended change does not lie squarely within the remit of the Ministry and will require interagency cooperation which this Government is committed to achieving.

The Department of Labour and Pensions will continue to jointly develop relevant policy and procedure documents with the T&BL Unit via the inter-agency working group.

Recommendation 20 – Compliance with the NPL as a requirement for award of Government contracts

Madame Speaker, the Complaints Commissioner was advised that the implementation of Recommendation 20 (Compliance with the NPL as a prerequisite for award of Government contracts) is beyond the scope of the National Pensions Law, but rather is a matter of central policy for the Government as a whole, and likely best placed in the procurement section of the Public Management and Finance Law. As indicated during the February 2013 update this matter was subsequently raised at the Deputy Governor's meeting with Chief Officers in order to make them aware of the need for such a

Pensions Statement

centralized policy. Madame Speaker, the Government has committed to reviewing the PMFL, and this recommendation will be considered as part of that review.

In the interim, the Ministry of Education, Employment and Gender Affairs is currently working on a formal policy to ensure compliance with all labour related laws as part of its own tender processes and instituted the requirement for compliance during its most recent round of tenders with value greater than the C\$50,000 threshold established in the PMFL.

The Ministry understands that one of the concerns of the OCC is the ability for persons to 'plan-jump' from a plan in which they are non-compliant to a new plan shortly before submitting a tender for award of Government contract. As a matter of industry best-practice, when pension plan administrators receive requests for opening of new plans they should enquire with other administrators to ensure that the requesting company is in good standing. This type of collaboration and information sharing is therefore most effective when taking place between the plan administrators and not necessarily between administrators and the DLP only.

Pensions Statement

While the current NPL does not specifically require this collaboration between pension plan administrators, the duty of care requirements placed on plan administrators applies and would allow the DLP to address any departure from this type of due diligence.

Closing:

Madam Speaker and Honourable Members, the subject of national pensions is one which I, as Minister of Employment, and this Government, places great importance and attention, as it is the basis for long-term sustainability through income replacement of hard-working employees who hope to be healthy and sufficiently self-reliant retirees well into their golden years. Effective regulatory oversight and supervision is therefore important to achieve this national objective, and a robust and efficient regulatory framework, which leverages technology and other innovations is crucial. This is especially critical when considering and examining the total number of employees enrolled in the 16 Registered Pensions Plans in these Islands, representing Single Employer and Multi-Employer Plans, represent a total figure of 50,888 employees (including retired and inactive members) as at 31st March 2013, not to mention the 100s of Millions of dollars in value of the assets under management of the various pension plans.

Pensions Statement

It is therefore incumbent on the Ministry, the National Pensions Office, the National Pensions Board, and all stakeholders to continue making progress, to listen to constructive criticism, to build relationships to share knowledge and intelligence, and to work diligently to build the confidence in the marketplace and the industry, while adamantly protecting the rights of all parties.

Madam Speaker, it is therefore fitting to reflect on the words of Rudyard Kipling in “The Elephants Child”, when he said: “ I keep six honest serving men, they taught me all I knew, their names are What and Why and When and How and Where, and Who”. In regards to Pensions in the Cayman Islands, these 6 principles may be described, at a time such as this, as:

What – repair the delinquencies and improve members’ pensions security;

Why – ensure that there is vigorously protected and sufficient money for pensioners;

When – always;

How – by agreeing to a clear roadmap to minimize risk, detect fraud, and discern unethical practices;

Where – locally or globally, always remain alert, visionary, and vigilant; and

Who – all stakeholders, team members, and constituents.

Pensions Statement

Madam Speaker and Honourable Members, I thank you for your attention, and I look forward to your support in the future in approving needed amendments to the National Pensions Law once presented to the House, and your support in approving the regulatory and compliance resources requested in this Appropriation Bill before the House in order to achieve our common goals of protecting our workers and ensuring a strong socio-economic future for generations to come.