

Report of the Public Consultations on the Labour Amendment Bills, dated 5 April 2012 held at Fountain Hotel, Cape Town

1. Introduction

The proceedings started at 10 am as scheduled.

Parties present were introduced and included :

Chief Director DoL WC : Thembani

DDG of DoL : Les Kettleidas

CD of DoL : Thembinkosi Mkalipi

Director : Ian McCun

Director : Mswaki

DD Inspectorate and Enforcement : David Esau

Packs were provided with the slideshow as well as the Bills.

There was a fair turnout of attendees, however these arrived in drips and drabs and were predominantly representative of unions and the Department of Labour.

The format was explained : Mr Mkalipi will go through slides then Q&A followed by closure. It was made known in no uncertain terms that the sessions were to inform members of the public of the contents and then the questions are for points of clarification. Last year was the time for inputs.

Mr Mkalipi then was introduced to present. This is a summary of what he presented :

- Last year they promised they would give feedback
- They are not taking input but answering questions
- Bills should be in parliament next week
- It is up to Parliament to decide what to do
- This is not an opportunity to change the bill contents
- The point is to give their understanding, then clarify and have rounds of questions.
- The questions were to be limited to the 2 bills and not the Employment Equity and Employment Services Bill which are going to be debated.
- Process started a long time ago- he doubts that any other negotiation has been as thorough and lengthy and emphasised that this was a one year engagement.
- **He then went on to make a strange statement that BUSA said they did not have an opportunity, despite the fact that BUSA has been engaging on the Bills.**
- The NEDLAC agreement has not been signed off, but the content is finalised.
- According to Mr Mkalipi there was no requirement that there is a NEDLAC report. All the law requires is that there is a negotiation at NEDLAC.
- The Bills were submitted together with RIA. Before any Bill is released there must be a RIA done to see if the proposals are feasible. That report was taken into consideration. Almost everything in the Bill is part of RIA.
- The only issues not part of RIA : Violence in strikes, 189 and essential services. These area were not recommended by government and RIA not done on it.
- **Another bold statement made by Mr Mkalipi was that instead of business saying that government didn't take the changes to RIA, they should have taken it to RIA themselves.**
- The Department received around 390 individual submissions. The input has been no different to what has been seen in the papers.
- There have been 2 distinct groups : 1)Ban labour brokers;2)Regulate. All the others there have been no extensive comment.
- The Department has considered the input and reached a decision.
- NEDLAC started in 09 and the Bills should be at Parliament next week
- The purpose of the sessions are to correct interpretation issues.
- **Besides the above the Department also had to consider what the ruling party promised. They have to implement what the ruling party has promised.**
- After the public hearings, these Bills are different.
- The Department asked themselves what to correct regarding Labour Brokers and identified that there were the following 5 areas :
 - 1) Roll over of contracts of employment, which creates permanent temporal employment

- 2) Workers employed by Labour Brokers get paid less than permanent staff, except where there is a Sectoral Determination
- 3) Issue of enforcing awards of employees of labour brokers. Also other employers. Around 60% of employees are not represented by trade unions, therefore they have no money for enforcement. Dealing with the issue of labour brokers, we have made it easier to enforce.
- 4) Medical aid : No access to medical aid, etc.
(Comment : Strange that he only mentioned 4)
Then the Department thought of any other abuses and could not find any. And they feel that they could solve any issues without banning labour brokers.

The purpose of the amendments to 198 is that employees can bring a claim against the client or the labour broker. If the employee can show he worked in this particular company, he can then approach the CCMA against them even if employed through a TES.

A discussion on this point then ensued.

They are looking at giving these protections to individuals who earn less than R172K per year not higher.

Mr Mkalipi then discussed the deemed provision stating that temporary employment should be deemed to be permanent employee. Still employed by labour broker but for purpose of rights, you can exercise rights as client. Benefits are then the same as client(i.e. if provident fund then provident fund or no less benefit eg money should be given.

Either one should work or retrench and keep in pool.

Why 6 months? Mkalipi believes that the law should be flexible enough to allow business to operate,

Mr Mkalipi then went into the presentation and a summary of points expanded upon or added are set out hereunder

2. Summary of the presentation of the slideshow :

- 10 areas of justification re: temporary employment on slide 10 : Comment – after 24 months contract need to retrench and pay severance pay
- Treat employees same after 6 months. Renewal of fixed term contract can take place in writing.
- **Mr Mkalipi then said that the Department was accused of the amendments not being business friendly, however some of the changes do not apply to businesses with less than 10 staff and for 2 years if the business has less than 50 employees. According to his statistics, businesses succeed or fail in 2 years. Therefore the Department is giving business enough time to succeed.**
- Mr Mkalipi then had a general discussion on the retail sector. This view on part-time employment is in compliance with the ILO. Discussion of slide 12.

Dispute Resolution

- CCMA to provide assistance to those who ask. Slide 14 discussed.
- An award will be final and binding. Review cannot suspend enforcement of an award.
- Director may intervene in a strike if in the public interest
- General discussion on slides
- Easy to dismiss high earners. If the employer gives 3 months notice then can go to CCMA but very little chance for success. This is in place to unblock CCMA cases and also because the Department believes it is very destructive for a company to fight with its directors.
- **Mr Mkalipi then went on to say that it is easy to dismiss employees and that this is evidenced by the fact that the CCMA is the biggest dispute institution in the world its volumes.**

- **He further went on to say that they do not accept that SA is inflexible.**
- 2 Questions which in his mind dispute the above :1)Why is the CCMA the biggest in the world?
2) Why are the results of the CCMA 60/40 in favour of employees?

Trade union representation :

- The Department must consider vulnerability in terms of lowering percentages
- Administrators to be appointed where unions cannot manage their own affairs

An interesting general statement was made by Mr Mkalipi – he stated that business threatened to go to court regarding the Minister of labour’s discretion re : Trade union percentages.

If the Minister feels it is difficult to organise , therefore a lesser test for representation will be implemented. (and here Mr Mkalipi contradicted himself) : The LRA encourages centralised collective bargaining

This is particularly necessary in farming and domestic sector, so the DoL is opening door for representation at less than 50% representation.

The DoL believes they made a mistake in 05 to remove the ballot. They believe that In majority of strikes there is no ballot and now a ballot will need to be held ito the Union’s constitution. The problem with the original ballot is employers would take up Technicalities.

Mr Mkalipi then went on to say that business is requesting that the ballot must Be based on majority of those entitled to vote. He disagrees drawing Comparison to the national vote.

Mr Mkalipi said that he does not know what the fuss is on picketing rules Any party who breaks the picketing rules will lose protection,

A big area concern for writer was the portion dealing with picketing in malls Parties are able to bind third parties(i.e. mall management) – a discussion Ensued

- Essential services were then discussed
- Security for review(i.e. 24 months if the original award was reinstatement) - discussion
- Undertaking taken away. Compliance order to specify date wrt representations.
- Process streamlined by DG
- Penalty increased by 200%
- **Minister may decide that no labour brokers may be in certain sectors**
- **Slide 22 is an attempt to show flexibility**
- **Summary on slide 23**
- Mr Mkalipi closed by saying, business and labour are violently unhappy so it seems the DoL has struck a balance.

3. Questions/comments raised by floor and DoL feedback :

Name, organisation and summary of question/comment	Summary of DoL response
<p>Pascal Musi</p> <p>Group CEO – Khanya Human Development</p> <ul style="list-style-type: none"> • Bills do not protect the rights of musicians 	<ul style="list-style-type: none"> • Bills protect where there is an employer/employee relationship
<p>Michael Bagraim</p> <p>Labour Attorney</p> <ul style="list-style-type: none"> • RIA done on old Bills, why not on these? • Is R172 000 threshold law? • Wrt streamlining CCMA: you say 60% won by employers. Half of those should not have been at the CCMA. • Question around picketing- what happens if landlord says not entering debate at all 	<ul style="list-style-type: none"> • If we have to RIA every time changes are made where will it end. Why have business not referred these to RIA • BCEA threshold does increase • Did not respond to CCMA comment • Parties will come out with an agreement. We do not know. That is part of collective bargaining.
<p>Unidentified</p> <ul style="list-style-type: none"> • Where do you put farm workers who are seasonal every year? • You say you will facilitate the process iro unionisation in vulnerable sectors How? 	<ul style="list-style-type: none"> • You can be employed on a fixed term contract if a seasonal worker • Law sets the framework for the protection of vulnerable workers eg even if only 20% representation you will be entitled to majority rights as a trade union
<p>Grant Wilkinson</p> <p>Obo CAPES and business</p> <ul style="list-style-type: none"> • With the equal treatment clause, increase on actual rates and other similar proposals, do you not foresee the risk of wage curtailment?(i.e. employees moving downward rather than upward its salary) • Question around the minority representation of unions – i.e. proliferation of union in workplace, contrary to one workplace one union principle • S 187 affects the ability of business to adapt to changing conditions eg Fry's Metal 	<ul style="list-style-type: none"> • Mkalipi went into the history of the country and said we cannot separate the history from the proposal. If there is any objection to equality, then it raises the question of morality <p>Long rambling discussion then followed.</p> <p>WRT the issue of increase on actual wages the DoL does not intend to extend this to all sectors. We hope business' heart is in the right place.</p> <p>(NOTE : Both portions of the question were taken out</p>

<ul style="list-style-type: none"> Is security for review only for business or also for union and if a one way street, why? 	<p>of context and an emotive response was provided – clearly with a particular motive)</p> <ul style="list-style-type: none"> Question around union rep not answered Issue of Fry’s Metal – we believe that the Fry’s Metal type situation is not what is intended by the legislation Not intention for union to pay security. There is a power difference. There is a call on the DoL to protect workers. Things we are doing are to protect workers. If the argument is that we are not striking a balance, you can raise this at the parliamentary sessions.
<p>Unidentified</p> <ul style="list-style-type: none"> Unclear question around ballot 	<ul style="list-style-type: none"> Ballot is as per union’s constitution
<p>Unidentified</p> <ul style="list-style-type: none"> Believe it is a wrong assumption to say that there is violence in strikes because of no ballot Does ballot apply to s77 ? 	<ul style="list-style-type: none"> No response No
<p>Community Care Worker</p> <ul style="list-style-type: none"> Very unclear – issue around seasonal 	<ul style="list-style-type: none"> Can’t be volunteer and community worker
<p>Trade union</p> <ul style="list-style-type: none"> Thanks Dept for changes What do you mean by further independent review bodies in bargaining councils? 	<ul style="list-style-type: none"> No response Independent is independent so there is no need to worry if there is an independent body
<p>Jarred</p> <p>Pick n Pay</p> <ul style="list-style-type: none"> Would a party who goes outside picketing rules be able to be interdicted? Equal work and pay in retail sector, where do we see porters? Labour brokers – are we talking 6 consecutive months? How do you view distribution centres? 	<ul style="list-style-type: none"> Starts with a response which is not relevant Law does not stop you interdicting. Not saying workers should picket in malls – discussion ensues on court interpretation Minister must issue guidelines, It will be published and then sent to NEDLAC Vague reference to AVUSA case. Consecutive days – NOTE : question not really answered We are not in a position to say

<p>Carel Dirker</p> <p>Pick 'n Pay</p> <ul style="list-style-type: none"> • If a compliance order goes to the Labour Court, where does it leave the employer as to costs? 	<ul style="list-style-type: none"> • We are here to protect workers. Long emotional discussion follows. A single case not referred where there is merit is a travesty. IF an inspector has malice then he should be disciplined.
<p>Mark van Buuren</p> <p>Woolworths</p> <ul style="list-style-type: none"> • Equal work for equal pay – question of costs :do you work on minimum, medium or top 	<ul style="list-style-type: none"> • Only last question answered • We don't know if will change. You will know after parliament
<ul style="list-style-type: none"> • How do we do calculation? • Impact on economy • What is the formula? • Question around representivity? • Building on mall question – unclear • Ito strategy – boards want to plan. Is there going to be a major change again to this text or will it go ahead roughly as is? 	
<p>CWU</p> <ul style="list-style-type: none"> • Will issue of same payment apply to collective agreement? 	<ul style="list-style-type: none"> • Refer to upcoming guidelines
<p>Unidentified</p> <ul style="list-style-type: none"> • S 68 Appeal. Should have undertaking. Long discussion on inspectorate and the need to have qualified and skilled inspectors. We need to work together – the inspectorate should not wage war on business 	<ul style="list-style-type: none"> • Should argue at Parliament (then a long discussion with little purpose)
<p>Dianne</p> <p>IOS</p> <ul style="list-style-type: none"> • Will it get rid of contract cleaning industry? 	<ul style="list-style-type: none"> • Don't want to get rid of any industry. You have right to lobby Parliament to correct
<p>Unidentified</p> <ul style="list-style-type: none"> • Inaudible and questions do not make sense 	<ul style="list-style-type: none"> • Answer out the blue but may relate to this question. If an employee is reinstated must be placed back at same site by LB. If client does not want him, then move to other site and compensate eg transport.

<p>Haroon</p> <p>NUMSA</p> <ul style="list-style-type: none"> • National key points needs to be answered • Wide ranging powers given to Parliament • Alignment of Info Bill and Labour Law • Last question inaudible 	<ul style="list-style-type: none"> • NUMSA had 12 months to raise – go to Parliament • Provident fund : Top up rand value if provident fund not accept temporary workers
<p>Sylvia</p> <p>Skills Portal</p> <ul style="list-style-type: none"> • Query iro 6 month provision. Could you employ – order, another order for contract, etc. As long as there is an order which the employer can indicate 	<ul style="list-style-type: none"> • Abusive practice

4. Closure

Session closed and thanks

5. Comments

Whilst the DoL has made it clear that inputs would not make a difference, I feel it does serve a purpose being there and providing comments and questions. Firstly it shows an interest and protection of members' rights. Secondly, it indirectly allows us to educate other attendees by raising the pertinent issues which the Department may gloss over. Also, if one arrives early enough and stays on a bit, it allows face to face meetings with business people of similar mind who we might not be able to access for these face to face's otherwise and in such a way start drumming up support for the overall cause. There are a few businesses from the CT sessions who have now requested to be updated and will look at hanging their flag on our mast going forward. They often are looking for bodies to stand alongside but do not find same. Now this is the opportunity.

I await your instructions.

COMPILED BY GRANT WILKINSON

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