



NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA

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The Hon. Ms L.E Yengeni (MP)
Chairperson: Portfolio Committee on Labour (National Assembly)
Parliament RSA
Cape Town

RE: National Union of Metalworkers of South Africa (NUMSA) Submission on the Unemployment Insurance Amendment Bill [B 25– 2015]

Dear Ms. Yengeni

The National Union of Metalworkers of South Africa (NUMSA) welcomes the opportunity to submit on behalf of metalworkers comments on the Unemployment Insurance Amendment Bill [B25 – 2015]. Our submission is attached to this letter.

Yours sincerely

Prakashnee Govender (Ms)

NUMSA Parliamentary Office



NUMSA Submission on the Unemployment Insurance Amendment Bill [B 25-2015]

1. INTRODUCTION

South Africa is amongst a minority of developing countries that has in place a contributory unemployment insurance regime. Before the enactment of the “Unemployment Insurance Act” in 2001 (hereafter the UIA), unemployment insurance was implemented through a previous 1966 version of the Act, which excluded African workers. For this reason, as well as the fact that unemployment insurance is intended to provide a temporary economic safety net in the event of a worker becoming unemployed, the UIA represents a significant gain for workers.

According to data from Stats SA, official unemployment rose to 25.5% in the third quarter of 2015, whilst unemployment as per the expanded definition (including discouraged work seekers) was considerably higher at 34.9%. Taking into account discouraging economic expectations for 2016, including a likely recession, these statistics are likely to worsen. This underlies the importance of the role of the UIA.

Notwithstanding this, as a contributory insurance, it has minimal redistributive effects. Its beneficiaries are limited to those who have been employed in the formal sector, who have been able to contribute towards the unemployment insurance fund (UIF), and who may experience short-term cyclical or frictional unemployment as opposed to prolonged periods of unemployment.

However, unemployment in South Africa tends to be structural in nature, with many of the unemployed never having been previously employed. Informal sector workers are excluded. Further, those most vulnerable to unemployment tend to be in precarious work arrangements such as temporary contracts. Repeated periods of unemployment means that even those who have contributed to the UIF may exhaust their rights to unemployment benefits and consequently will be subject to waiting periods before being able to once again claim benefits.

The disaggregation of the statistics continue to indicate that the burden of unemployment is disproportionately reflected along the lines of race and gender, with black youth (particularly African youth) being the most severely affected. This highlights the need to investigate how the UIA and the implementation of a broader comprehensive social security regime may be employed to ensure a more redistributive impact.

Whilst the bulk of our comments here are limited to the narrower contributory-oriented benefits, we are calling on the Portfolio Committee to take on board the need to engage stakeholders as well as key government departments in a longer-term holistic review linked to the introduction of a comprehensive social security system.

It should be borne in mind that with the exception of a few limited amendments in 2003, the Act has not been subject to a comprehensive review. While we confirm the “Unemployment Insurance Amendment Bill” (hereafter “the Bill”) was in fact considered at NEDLAC as reflected in the memorandum, we have serious concerns regarding the lapse in time between the completion of the NEDLAC process in 2013 and the inexplicable delay in the tabling of the Bill in Parliament. This has had the knock-on effect of delaying other further reviews of the UIA that had been agreed to as part of the NEDLAC process.

In this submission we outline the NEDLAC process, which will contextualise much of our comments here. On process we also consider the implications of the omission to also table consequential amendments to the 2002 Unemployment Insurance Contributions Act, without which it will not be possible to implement the Bill’s provisions extending benefits to public servants and learners. Our substantive comments are divided into two parts, namely:

- provisions in the Bill that are consistent with the agreements reached at NEDLAC, and which constitute the bulk of the Bill; and
- proposals to delete two provisions from the Bill that were not considered at NEDLAC, and which entail problematic content which we are unable to support.

1.1. On the NEDLAC Process

A draft version of the Bill was tabled at NEDLAC in mid-2013. At the time the Organised Labour constituency noted the following concerns:

- The draft Bill tabled at NEDLAC had not been revised to take into public comments, a process which normally precedes negotiations at NEDLAC.
- The process was being rushed and the proposed amendments in the draft Bill had been based on an actuarial study with very limited terms of reference that had excluded consideration of the impact of introducing longstanding demands from labour, such as the denial of benefits to workers who had resigned from employment. Labour at the time called for a new actuarial study with broader terms of reference that would be determined by NEDLAC parties.

Eventually Organised Labour was forced to compromise on the basis of Government claims that the amendments were urgent in order to expand the relief for unemployed contributors, given the incidence of prolonged unemployment. As part of the compromise, assurances were provided that a second round of amendments would be possible. Accordingly the NEDLAC constituencies agreed to initiate a review within 18 months after the implementation of the first round of amendments (largely reflected in the Bill). However, inexplicably the Bill was only tabled in Parliament almost two years after the completion of the NEDLAC process, which raises serious concerns about bad faith as it confirms that there would have been sufficient time for a more comprehensive round of UIA amendments.

The key deferred proposals that are not reflected in the Bill entail assessing the potential impact (amongst other things) of introducing the following:

1. Removing the exclusion of **unemployment benefits for those who have resigned** from employment, as opposed to being retrenched or dismissed.

*Historically, the motivation for this qualification has been related to the concern that higher income earners would deplete the reserves of the UIF. Little consideration has been given to the impact that this blunt instrument has had for lower income earners, who may be forced to resign for such reasons as to care for aged or ill family members or as a result of being constructively dismissed. Apart from the fact that there is a ceiling and a flat rate imposed on benefits for higher income earners, the UIF has for some time been generating substantial surpluses. **Accordingly we are calling for the CURRENT round of amendments contained in this Bill to remove the exclusion of benefits to workers who have resigned.** This is notwithstanding the fact that we had originally agreed to defer this issue to a subsequent round, which as per the NEDLAC agreement should have been imminent anyway had Government not unduly delayed the process.*

2. Extending benefits to workers who have **fixed-term or seasonal contracts** as well as to those in the informal sector.

Informal sector workers are currently completely excluded as they are not UIF contributors, whereas fixed-term or seasonal contract workers are often not employed long enough to be able to withdraw full unemployment benefits. In both cases this reflects a shift to extending solidarity and increasing the redistributive impact of the UIF to what are essentially vulnerable sections of the labour force.

3. Alignment of the review process with the **draft comprehensive social security** policies.

At the time it had been anticipated that the National Treasury would have released the long awaited proposals on a comprehensive social security model. This would have facilitated a more informed discussion on the intersection of different forms social security and the strategic application of UIF reserves.

4. **Addressing administrative blocks** preventing asylum seekers from claiming unemployment benefits, such as the refusal of the Department of Home Affairs to issue identity numbers.

1.2. Amendments to the Unemployment Insurance Contributions Act

According to the South African Constitution, bills that impose taxes or levies should follow the procedure set out for money bills under section 77. It is for this reason that employer and employee contributions (essentially taxes) are enforced separately in the Unemployment Insurance Contributions Act (UICA) as opposed to the UIA. As the current UIA excludes public servants (namely those employed in provincial and national government) and learnership agreements, the UICA likewise currently does not require the UIF contributions for public servants or workers in learnership agreements. Therefore logically the Bill's proposed extension of unemployment benefits to these two groups, should be accompanied by the tabling of similar amendments to the UICA that would levy their contributions to the UIF. This concern was in fact raised by Organised Labour in the NEDLAC process more than two years ago.

2. SUBSTANTIVE COMMENTS ON THE BILL

2.1. Provisions Consistent with the NEDLAC Agreement

NEDLAC had managed to achieve a maximum amount of consensus on the version of the Bill that was tabled before it, which is the basis for our general support of the Bill. Some of the key NEDLAC agreements as reflected in the Bill are outlined below with our comments:

1. Clause 1 of the Bill amends section 3 of the UIA to now include previously excluded groups of learners in learnership agreements, public servants employed by national and provincial government, and recipients of the state old age pension (SOAP).

This provision is supported. Learners in learnership agreements are especially vulnerable. The historic exclusion of public servants from the UIA has always been discriminatory, relying on the problematic assumption that unemployment insurance is not needed as they are not as vulnerable to retrenchments. However, this has left public servants with no unemployment insurance protection in the event that they are dismissed. It has also deprived the UIF of valuable source of revenue that would have increased its sustainability considerably. As regards the SOAP recipients, these are in line with a

longstanding call from vulnerable sectors, such as domestic workers, who are forced to work beyond retirement age due to conditions of poverty.

It should be noted that this provision in the Bill needs to be accompanied by a corresponding amendment to the UICA to enable collection of contributions

2. Clause 2 of the Bill amends section 5 of the Act by enabling the UIF to finance schemes aimed at retaining UIF contributors or facilitating their re-entry into the labour market.

Our support for this provision is qualified on the basis that the criteria for implementation should be developed in consultation with stakeholders and NEDLAC in order to avoid abuse of the UIF reserves.

3. Subclause 5(a) inserts a new section 12(aB) of the UIA by providing for a new benefit for workers whose income is reduced as a result of short-time.

This is aimed at alleviating the hardship experienced by workers when experiencing partial unemployment.

4. Subclause 5(b) inserts section 12(3)(c) into the UIA so that maternity benefits will in future be paid at a flat rate rather than the current sliding scale.

This provision is supported as it will alleviate what has historically been a disproportionate economic burden for women.

5. Subclause 5(b) inserts section 12(3)(c) into the UIA. While the current sliding scale of 38-66% will be maintained for the calculation benefits for the first 238 days, thereafter benefits will continue to be paid up to the remaining 365 days at a flat rate of 20%.

This provision was supported as it would alleviate hardship associated with prolonged and/or repeated periods of unemployment.

6. Subclause 6(a) amends section 13(3)(a) of the UIA so that entitlement to benefits will in future accrue at a reduced rate of one day's benefit for every five days worked, as opposed to the current rate of accrual based on six days. The maximum benefit days that may be accrued will also be increased to 365 days as opposed the current 238 days.

This enables workers to build up credits at a faster rate and to be able to withdraw benefits for a longer period. Notwithstanding this, it should be noted this is one of the areas where there was an agreement (based on Labour's proposal) there be a further impact assessment of the implications of further reducing the accrual rate to four days.

7. Subclause 6(b) inserts subsection 13(5)(b) which provides that were a worker has already withdrawn maternity benefits, she will in addition be able to subsequently withdraw the unemployment benefit should she subsequently become unemployed within the four year waiting period.

*The aim of this provision is to delink the provision of maternity benefits from unemployment benefits, in order to reduce the disproportionate economic burden imposed on women workers for taking maternity leave. While this provision is supported we wish to note that there might have been an oversight in the NEDLAC process as a strict reading of the proposed amendment would not allow for an implementation of this clause should the sequence of the withdrawal of the different benefits be reversed. In other words, it would not permit the withdrawal of maternity benefits if this occurs **subsequent** to a period of unemployment in respect of which unemployment benefits were withdrawn. We call on the Portfolio Committee to address this in its deliberations.*

8. There are various amendments contained under clauses 8, 11 and 12 which respectively address administrative problems affecting maximum periods within which unemployment benefits, maternity benefits and dependant's benefits may be applied for.

These amendments are supported since they are more sensitive to practical limitations that prevent beneficiaries from submitting applications in time. They will not affect the reserves of the UIF considering that beneficiary rights are not substantively increased.

2.2. Amendments Not Considered at NEDLAC – Call for Deletion

We are calling for the deletion of amendments proposed under clause 4 and subclause 10(b) of the Bill. Neither of these included in the version of the Bill considered at NEDLAC or made subject to public comment despite their problematic content.

i) Ministerial Powers to Designate Accounting Authority

According to the current wording of the UIA, the Director-General is the accounting authority. Considering the responsibility associated with this function it is standard practice for its allocation to be determined by law and not an administrative act. However, clause 4 deviates from this and inserts a new section 11(1A), which will provide the Minister with the discretion to designate the unemployment Insurance Commissioner or any “other” official of the UIF or the Department as the accounting authority. No qualification is provided regarding questions of incapacity or other factors that may prevent the Director-General from fulfilling this function.

NUMSA has gone on record regarding concerns about previous instances of political interference by the Minister of Labour, specifically in relation to the recent dismissal of the Registrar for merely doing his job, namely enforcing compliance by trade unions with the Labour Relations Act (LRA). We believe that this constitutes yet another instance of political interference likely as a spinoff from historical differences that the Minister has had with a previous Director-General.

The UIF is a reserve built on hard earned income from workers and is intended to advance a singular objective of reducing the impact of unemployment or loss of income. The overall regulation, oversight and financial accountability of the fund is of paramount importance, which cannot be sacrificed in order to serve alternative agendas. Accordingly we are calling for the deletion of clause 4, which in any event we believe is likely to be in conflict with the Public Finance Management Act and the Constitution.

ii) Exclusion of Maternity Benefits for Women Who have Voluntarily Terminated a Pregnancy

Section 24(5) of the UIA, as currently worded, extends maternity benefits to women who have miscarried or had a still born child during the third trimester. Clause 10(b) now inserts a new subsection 24(7) precluding section 24(5) from being interpreted to allow for the extension of maternity benefits in the event of a voluntary termination of pregnancy.

Since 1997 legal termination of pregnancies has been available in South Africa through the “Choice on Termination of Pregnancy Act”, reflecting it as a specific public policy choice that emphasises a woman’s right to choose and make decisions about her reproductive health. All other public policies and legislation should be consistent with this public policy orientation. Whereas this amendment directly contradicts this position. Moreover the maternity benefit would have been linked to a third trimester termination of pregnancy, during which legal access to terminations is more restricted and is based on whether the health or life of either the mother or foetus is at risk.

While access to legal termination of pregnancies remains controversial across many sections of South African society, it is problematic to use the UIA as a mechanism to impose moral discipline against women for exercising their rights in respect of reproductive decisions. Accordingly we are calling for the deletion of this clause.

3. CONCLUSION

In our submission we have commented in detail on both process and substantive issues. For the most part we have supported the bulk of the Bill, reflecting the extent of consensus that was reached at NEDLAC. However, we have chosen to deviate from the agreement with regards to our call for the immediate introduction of unemployment benefits for workers who have resigned. This is owing to the fact that we believe that Government not only reneged on its agreement to speedily table the Bill, but won the subordination of our demand on the basis that a further round of amendments would follow within 18 months of the Bill being enacted. We remain committed to taking forward a further review on other outstanding issues both in respect of the UIA and comprehensive social security.

We are also calling on the Portfolio Committee to enquire into the omission to table amendments to the UICA, without which it will not be possible to implement the Bill’s extension to learners and public servants. Here we are concerned where similar delays by the National Treasury in introducing the “Skills Development Levies Act” as a money bill led to the delayed implementation of the Skills Development Act.

Finally we have noted serious concerns regarding two provisions that were only recently introduced, and which we believe need to be deleted.