NEASA
NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA

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The Chairperson of the Select Committee on Economic and Business Development
Mr Mandla Isaac Rayi
Attention: Ms Noziphiwo Dinizulu

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COMMENTS ON PROPOSED AMENDMENTS TO LABOUR RELATIONS ACT AMENDMENTS TO SECTION 32

1. Insertion of new section 2A

The amendment states that the Minister must publish a notice of extension within 90 days if the Registrar has determined that the parties are sufficiently representative for purposes of section 32(5)(a). However, section 32(5) currently has additional criteria contained in sections 32(5)(b-d) which the Minister must satisfy herself of before she may decide to extend or not. It is unclear whether these criteria are still applicable from the wording of the proposed section 2A. The intention of the amendment apparently is to set time frames; however, the proposed wording is certain to cause confusion as it is seemingly contradicting the current section 32(5).

2. Substitution of subsections 32(3)(b) and (c)

The insertion of the word "or" between subsections (b) and (c) has the effect that the Minister must in future extend agreements to non-parties in circumstances where only the employer parties or the labour parties to a bargaining council represent the majority of employees, either by way of employment or membership.

This amendment flies in the face of the majoritarianism principles which collective bargaining is based on. It is clearly aimed at benefiting large employers at the expense of SMME's and to protect entrenched interests. The proposed amendment is in all probability as a result of the increasing discontent expressed by employers regarding the current collective bargaining model. However, instead of addressing the cause of the discontent and the underlying issues, the election was made by the Minister to simply paper over the cracks. This amendment will cause even more discontent and we believe will lead to further business closure and unemployment as SMME's, which are subjected to completely different economic realities, cannot survive in an environment where they, in terms of wages and other conditions of employment, are dictated to by big business with the intention of eliminating SMMEs' competition. In this regard, we wish to state the following examples:

- the wage versus turnover ratio of a small business may be as high as 60%, whereas in the case of a big business, it may be as low as 5% and even lower;
- the operational realities of a SMME in a rural area cannot be compared to that of a big business situated within an economic hub;
- SMME's do not enjoy the benefits of economies of scale; and
- in a certain sense big business can be regarded as 'price givers', with the ability to pass on wage increases, by means of the pricing of their products, to the downstream, which comprises mainly of SMMEs. SMMEs, in contrast, are limited in passing on any price increases to customers, resulting in SMMEs effectively paying for both their wage increases and those of big business.

Furthermore, we believe that a second reason for the amendment is the dwindling representativity figures of unions across all sectors. Seemingly the Minister has realised that the unions will not be able to regain the losses in membership they have experienced over the last number of years, which places collective bargaining under threat. This proposed amendment might in fact have the unintended consequence of causing further decline in union membership as the need for recruitment, in the context of collective bargaining, has now been removed. The bizarre situation may now arise where a union party representing 10% of employees in the industry can agree with a majority employer party and extend that agreement to 90% of employees the union does not represent. This will seriously compromise the legitimacy of collective bargaining. It is our submission that this proposal will not pass constitutional muster.

3. Deletion of paragraph 32(6)(b)

The deletion of this paragraph effectively allows the Minister to extend the period of operation of agreements (excluding Fund Agreements) without having to adhere to the provisions of sections 32(3) and 32(5). Therefore, the Minister may extend any agreement, which is not a fund agreement, indefinitely without taking into account the levels of representativity of the parties or having to ask for submissions in terms of section 32(5)(c). This would allow parties with very low levels of representativity to keep agreements alive perpetually without having any legitimate right to do so. It will also impact on the legal right of non-parties to be heard and it will also not pass constitutional muster.

4. Insertion of section 32A

The amendment proposes that the Minister may extend the period of operation of a funding agreement for a period of 12 months at the request of any of the parties to a bargaining council. It is obvious that this proposal infringes on a number of entrenched principles:

4.1 It, without doubt, infringes on the constitutional and collective bargaining principles of majoritarianism.

4.2 It also infringes on the voluntary nature of collective bargaining. The nature of collective bargaining is one of self-determination. It should therefore be up to the parties to decide if and how they wish to fund their council and which benefits they wish to provide. It is not for the legislature to interfere in this dynamic as this interference in itself may cause collective bargaining to become obsolete.

4.3 The Minister may extend the period of operation of fund agreements "where the Minister is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level,…". This seems to be the only criteria of which the Minister must be satisfied. No cognisance is taken of the levels of representativity of parties, which again could create a situation where agreements are kept alive artificially by parties who have no right to do so.

Regards

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CHIEF EXECUTIVE