



iZiizo PC Labour

## MEMORANDUM

**To:** Hon. M.E. Nchabeleng, MP  
Chairperson: Portfolio Committee on Labour

**COPY:** Secretary to Parliament

**From:** Constitutional and Legal Services Office  
Adv A Gordon

**Date:** 20 November 2012

**Reference:** 308/12

**Subject:** Letter by Business Unity South Africa

1. You requested that the Constitutional and Legal Services Office (CLSO) provide advice on the way forward in respect of the letter by Business Unity South Africa (BUSA) dated 8 November 2012.

### Background

2. The Portfolio Committee on Labour (the PC) conducted public hearings on the Labour Relations Amendment Bill [B16-2012] and the Basic Conditions of Employment Amendment Bill [15-2012].
3. Before commencing with the deliberation on the Bills, the PC invited the Department of Labour to offer direction to the PC in respect of a possible Regulatory Impact Assessment (RIA) on the Bills.
4. In response to the invitation, the Department during the oral presentation to the PC was assisted by Prof. Paul Benjamin as he assisted with the RIA on the previous draft Bills that gave rise to the 2012 version of the Bills. Prof. Benjamin also assisted in drafting the current Bills before the PC.
5. BUSA addressed a letter to the Chairperson of the PC alleging that certain "misrepresentations" were made to the PC by the Department of Labour on 16 and 24 October 2012 in its presentation as reflected in the minutes of the Parliamentary Monitoring Group (PMG).
6. In particular, BUSA alleges that its position in respect of the 12 month period of non-standard employment has been misrepresented, the NEDLAC Report has not been properly disclosed to the PC and that the Department of Labour has not secured funding in its budget to support the implementation of the provisions of the Bills.

7. BUSA also alleges that Prof. Benjamin seems to be correcting more than technical amendments in the Bills and that the technical changes alter the position agreed to within NEDLAC.
8. BUSA requests an opportunity to address the PC in order to correct certain matters.

#### Advice

9. The PMG minutes are not minutes of Parliament.
10. No legal weight can be attached to the minutes of PMG in order to assert a position or point before Parliament. When a party alleges that another party has misled the PC, the minutes of Parliament and any audio recordings of the Committee as recorded by Parliament are to be considered for a reliable and truthful position.
11. However, the above notwithstanding, there are certain aspects in the letter by BUSA which the PC may consider. It should be noted that whilst BUSA alleges that there has been a misrepresentation to the PC, it does not request the PC to act on the allegation but merely to grant BUSA an opportunity to address the PC.
12. Having stated the above, it falls within the PC's competence in terms of NA Rule 138(e) to determine its own procedure. The PC may consider requesting BUSA to address the PC on the matters on which it feels aggrieved.
13. I note that BUSA provided a written submission which was amplified by an oral submission to the PC during the course of the public hearing process. However, BUSA feels the need to clarify its position especially in relation to the fact that it feels aggrieved and misrepresented in the course of the PC deliberations.
14. The facilitation of public participation is a constitutional imperative (see section 59(1)(a) of the Constitution). In the Constitutional Court judgment of *Doctors for Life International v The Speaker of the National Assembly and Others* [2006] JOL 18085 (CC), at page 47 referring to the judgment of *King*, the court confirmed that-

"Public involvement might include public participation through the submission of commentary and representations: but that is neither definitive nor exhaustive of its content. ... It is plain that by imposing on Parliament the obligation to facilitate public involvement in its processes, the Constitution sets a base standard, but then leaves Parliament significant leeway in fulfilling it."
15. In terms of section 59(1)(a) of the Constitution the National Assembly (NA) must facilitate public involvement in its legislative process. Before the PC deliberations on the Bills, the PC already conducted public hearings. However, if the nature of the Bills or the proposed PC amendments is contentious, it may be prudent for the PC to call for further public comments. Further, considering that BUSA has specifically requested an opportunity to address the PC, it is advisable that the PC concede to the request.

16. I take the liberty of once again re-iterating the caution expressed by the Parliamentary Legal Advisers and the State Legal Adviser, in that any new amendments especially the new proposed amendments to sections 193 and 194 as presented by the Department and Prof. Benjamin should be presented for public comment.



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**ADV A J GORDON**  
**LEGAL ADVISER**