Response to issues raised in the Portfolio Committee on Labour Public Hearings on the Labour Relations Amendment Bill and Basic Conditions of Employment Amendment Bill by Transnet.

1. Introduction

The Department of Labour introduced the Labour Relations Amendment Bill (B16-2012) and the Basic Conditions of Employment Amendment Bill (B15-2012) in the National Assembly on 23rd May 2012. The introduction of these Bills followed a two year process during which there were extensive negotiations on the Bills in the National Economic Development and Labour Council (NEDLAC) and two rounds of public meetings on the Bills and the changes to the Bills. After the first version of the Bills were published for public comment in December 2010, the Department commissioned a Regulatory Impact Assessment (RIA) on selected provisions of the Bills.

The NEDLAC negotiations resulted in substantial changes to the 2010 Bills, especially in the way that temporary employment is dealt with. In January 2012, the NEDLAC negotiations concluded on amendments to the LRA and the BCEA. Revised Bills were submitted to Cabinet in April 2012 where they were approved for submission to the National Assembly. While there were areas of difference in the NEDLAC negotiations, there was substantial agreement on many issues dealt with in the negotiations.

2. Response to Transnet inputs

The Public Hearings conducted by the Portfolio Committee on Labour attracted presentations, Transnet is the one of the parties that submitted its inputs. The purpose of this response is to comment on key issues that were raised in Transnet presentation.

2.1 Equal Treatment

The support of Transnet on most of the labour law amendments is acknowledeged and appreciated. However, Transnet concens on equal pay and its impact on employment is contentested. It is a wrong assumption that the labour amendments advocate for equal pay for people with different expereinces and skills. Yes, the amendments advocate for equal pay for work of equal value. For example, this means that people have the same years of expereince, do the same or similar work, possess the same or similar skills and started employment the same time. It is unfair and discriminatory in nature for a comapany to pay employees differently when all is equal. We do not believe that given the history of this country and huge inequalities in our society, Transnet will want to advocate for further discrimation amongst workers who have the same exepereince, skills, do similar work and started employment the same time.

The first important point is that the equal treatment provision only applies after the three months of temporary employment. The impact analysis is not able to make any distinction between employees who work part-time and those who may be deemed to be employees of a client after a six month period. Secondly, the cost of benefits relates to the wage that an employee receives as these are calculated on a percentage basis. Elsewhere the amendments give pointers to grounds for justifiable different treatment, for instance, skill, experience and length of service.

So, wages may differ for justifiable reasons between a permanent worker and a deemed employee who have different levels of skill and experience. The benefit package will differ accordingly. *The impact analysis must, therefore, be treated very cautiously in relation to its assessment of impact of equal treatment provisions on cost to company.*

Again, it is worth recognising that equal treatment needs to be viewed in the context of the history of discrimination in South Africa. The Constitution also has a strong emphasis on equality and prohibiting unfair discrimination. Finally, South Africa is not alone in introducing legislative provisions to ensure equal treatment of temporary workers. In China, labour hire workers must be paid at the same rate as workers in the user firm who are engaged in similar work. In Korea since 2008, employers have been required to provide equal pay and benefits to hired workers.

2.2 Impact on employment

Three general issues need to be borne in mind when assessing arguments about the impact on employment:

- Firstly, legal reform needs to proceed with due consideration to the rights of employees as well as the economic and employment impact of reforms. The Constitution requires that all employees are entitled to fair labour practices. The Employment Equity Act already prohibits unfair discrimination, direct or indirect, against any employee, in any employment policy or practice.
- Secondly, it is complex to predict employment impact on the basis of publically available statistics. In the work done to date on the current labour law amendments, assumptions have to be made about the effect of restricting the operation of labour brokers with little ability to properly test these assumptions. A number of Bargaining Council collective agreements already restrict the operation of labour brokers and there has not been a negative change in employment in the sectors where these agreements apply.
- Thirdly, any assessment of likely job losses should ideally factor in short and medium term adjustments by affected employers. While there may be some job loss in the short term, there could well be a recovery over

time as the temporary employment industry adjusts to new forms of regulation.

2.3 Public interest industrial actions

The right to strike is a right that is protected by the Constitution of South Africa and the State cannot interfere with this right advocated by the supreme law of the land. However, the Government acknowlegde that pro-longed industrial actions have adverse effects on the economy and the country. In the policy aptions, the Government has opted to give the CCMA the power to intervene in all strikes that have public interest. Before, the CCMA would only intervene when parties consent, parties would only consent to the intervention of the CCMA when things have gone out of hand. But with this innoviation, the CCMA can intervene earlier without parties consent.