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Per Email:

To: The Honourable ME Nchabeleng, MP
Chairperson: Portfolio Committee on Labour

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Dear Sir

AGRI SA's SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON LABOUR REGARDING THE BASIC CONDITIONS OF EMPLOYMENT ADMENDMENT BILL AND THE LABOUR RELATIONS AMENDMENT BILL

BACKGROUND

Agri South Africa (Agri SA) is a federally structured organisation with nine provincial unions and 28 commodity organisations. The organisation's value system is based on the principles of voluntarism and democracy and it strives to be representative of the diversity of the South African agricultural community. Agri SA promotes, on behalf of its members, the sustainability, profitability and stability of commercial agricultural producers through its involvement and input on national and international level.

Agri SA took note of and commented on the National Planning Commission's Vision 2030 document. The document sets out the Government's targets in relation to the elimination of poverty through job creation.

Agri SA is a member of Business Unity SA (BUSA) and supports BUSA's submission regarding the abovementioned bills. We would also like to emphasise that although a Regulatory Impact Assessment was done in 2010 on the first versions of the proposed bills, the new bills should similarly be subjected to a RIA. The new RIA should seek to understand the impact of the proposed changes in light of Government's ambitious job creation goals as set out in the Vision 2030.

Agri SA recognises and supports the policy imperative to address abusive practices within the labour market. However, the proposed bills will greatly increase the cost of compliance with an increased administrative and economic burden on farmers, who will

be required to comply with increasingly complex and demanding labour laws, whilst the largest portion of employers in this sector are small or micro-businesses in terms of norms set by the Department of Trade and Industry. Secondly, non-compliance with the new laws will hugely increase these smaller employers' exposure to criminal procedure and the greatly inflated penalties.

The bills are consequently perceived to be employer antagonistic, and especially so to one-man businesses. The proposed amendments may well lead to increased mechanisation and the automation of farming enterprises and job shedding - actions which are contrary to the goals of job creation as set out in the Vision 2030. This Vision is based on the expectation that many new jobs can be created in the agricultural sector. This will however only happen if a favourable policy environment exists. The proposed bills unfortunately make no contribution towards creating confidence among farmers with a view to increasing employment opportunities.

SPECIFIC COMMENTS ON THE PROVISIONS OF THE PROPOSED BASIC CONDITIONS OF EMPLOYMENT BILL

Section 33A: Prohibited conduct by employer: This provision prohibits employers to require from an employee to purchase any goods, products or services from the employer. In many instances, farmers run farm stores on the farm where can workers purchase food and other essential items from. Due to the distances from other relevant facilities, workers often have little choice but to purchase essentials from such farm stores. Such arrangements should not be perceived as transgressions of the Law.

Section 55 (4) (b): The Minister may make a sectoral determination and provide for the adjustment of minimum rates or minimum increases. This gives the Minister the power to determine increases not only of minimum wages but also of actual remuneration levels, even if these are higher than minimum wages. This will encourage some farmers to only pay minimum wages and not above that. Increases in actual payments will increase the cost of doing business which is especially problematic in an industry which is a "price taker" and not a "price maker". This could result in less employment and encourage farmers to apply less labour intensive methods and mechanise their farming activities.

Section 55 (4)(*g*): Strict limitations can be placed on the use of more flexible employment arrangements, thus the Minister will have the power to prohibit or regulate the use of sub-contracting, labour brokering and outsourcing. This could seriously hamper the flexibility of getting certain specific and specialist functions within a farming business, done. In cases where a specialist service is required for a short time, like sheep shearing, this function is outsourced to a service provider. The need for such specialist services exist, but due to the seasonality and brief duration thereof, there are no full time vacancies for such specific services on an individual farm.

It is unclear why the Minister would need, or want, the power to determine that these practices should be prohibited or regulated and this is an unjustified limitation on the right to freedom of trade, occupation and profession.

The first RIA that was conducted also cautioned against the prohibition thereof.

Section 55 (4)(*o*): The Minister could decide, that despite low level trade union representation in an industry such as the agricultural sector, a union should be recognised, which implies that such a union could gain easier access to farms as well as being entitled on membership fees to be deducted from wages. Apart from the extra administrative burden on small- and medium sized employers, we also concur with Forestry SA's views on this matter as expressed in their submission presented to the Portfolio Committee:

"It is likely, given the difficulty that trade unions have in "organising" workers in the agricultural and forestry sectors, the Minister will be pressured by Cosatu and/or its affiliates into lowering the threshold significantly from that provided for in the LRA. Should this happen, given the current level of union representativeness and the fact that the threshold applies to an entire sector rather than a workplace, it could well be the case that many individual employers will have to grant organisational rights even though union representivity in the workplace is either extremely low or indeed, non-existent.

It is our opinion that Sectoral Determinations are essentially in place to determine the basic conditions of employment in a particular sector of the economy. They should not therefore be concerned with industrial relation issues such as assisting trade unions to organise workers in that sector – the Labour Relations Act is there to regulate matters pertaining to this. Notwithstanding this, it is also our opinion that the setting of (read as, lowering) such thresholds and the granting of such automatic rights is neither consistent with good corporate governance nor democratic principles."

The philosophy behind the Labour Relations Act was to promote collective bargaining by providing for organisational rights with a clear distinction between rights that are afforded to a majority trade union and lesser rights afforded to unions that are merely sufficiently representative. Giving the Minister the power to interfere with this arrangement leaves the discretion to impose a significant obligation on farmers (who, it should not be forgotten, reside on the 'workplace') in the hands of a political functionary, rather than Parliament, which is not ideal.

Section 55 (8)(c)(p): Agri SA does not support any provision that will provide rights in terms of the Basic Conditions of Employment or any other labour legislation to labour tenants if no legitimate employment contract exists between an employer and employee. The Labour Tenants Act explicitly states that it is important to clearly distinguish between farm workers and labour tenants, recognising the fact that the Labour Tenants Act applies only to labour tenants. Farm workers are specifically excluded from the definition of a labour tenant. A farm worker is an employee who has an employment contract with an employer and will fall within the scope of labour legislation and the sectoral determination 13 for farm workers.

The Land Reform (Labour Tenants) Act of 1995 falls under the jurisdiction of the Minister of Rural Development and Land Reform. It should not be for the Minister of Labour to determine matters such as the value of land use rights. This is in any event a difficult function, which, if it were to be undertaken, will require input from professionals such as valuers and appraisers. This is not primarily a labour issue, but a land issue. Labour tenants are not farmworkers (as per the definition in the Labour Tenants Act).

The correct interpretation of section 4(3) of the Labour Tenants Act is that the Minister of Rural Development and Land Reform could, after noting the minimum conditions of service of farm workers, publish regulations in terms of the Labour Tenants' Act dealing with the conditions of service of labour tenants.

Sections 69 and 70: These sections amend the functions of labour inspectors. The labour inspection services of the Department of Labour (DOL) need to be professionalised. Currently the inspectorate has limited resources with approximately 1000 inspectors. It is currently not required from labour inspectors to have applicable qualifications or knowledge which lead in practice to unnecessary differences on the interpretation of compliance requirements in the workplace. To give labour inspectors, under these circumstances, the discretion to decide on suitable remedies is therefore problematic. This will lead to a more cumbersome conflict resolution process, with higher costs and additional administrative burdens for employers resulting in fewer new employment opportunities.

Section 16 and 17: The intention to impose heavier penalties for offences is problematic especially when taking into consideration the comments under section 10 above. Also see the comments regarding section 33(A) where a term of imprisonment is prescribed. This will lead to an increase in the cost of employment.

SPECIFIC COMMENTS ON THE PROVISIONS OF THE PROPOSED LABOUR RELATIONS BILL:

Section 21 (8)(a): The same comments apply as captured in **Section 55 (4)(*o*)** above.

Section 198 B: This provision provides for the use of seasonal workers for a period longer than 6 months in terms of which it will be expected of employers not to treat seasonal workers less favourable than permanent workers. The minimum wage, benefits and conditions are regulated by a sectoral determination. Considering that the government wants to introduce a compulsory statutory provident fund for workers working in this sector, it will most likely, in terms of this provision, compel employers to include seasonal workers as participants in this fund. This will increase the cost of doing business and the administrative burden on small- and medium businesses.

If a worker is employed on a fixed-term contract for other reasons than specified in the Bill, these workers will be deemed permanent after six months. This will also increase the cost of doing business.

Although the Bill does provide for the employer to “justify” the fact that he or she is employing somebody on a “fixed term contract”, the following questions need to be raised:

- How and to whom does he or she justify the decision?
- What guarantees are there that DOL‘s decision will be fair and timeous?
- What recourse does the employer have for a review of DOL’s decision?

- Given that the “employee” is already employed by the time the “justification” is made, what will happen if an official subsequently rejects the justification?

Thank you for the opportunity to comment on the proposed legislation.

Kind regards

JF VAN DER MERWE
EXECUTIVE DIRECTOR