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# Labour Law Review 2012 Position Paper

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Synopsis of proposed  
changes & the impact  
on the SA economy

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Confederation of Associations  
in the Private Employment  
Sector (CAPES)

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## Introduction

South Africa currently sits on a precipice and the manner in which the Government, together with the other social partners, tackles the ever-increasing scourge of unemployment, especially amongst the youth, will define how we enter the next decade.

The global economic downturn has already had a severe impact on South Africa with more than a million individuals losing their jobs since 2008. Despite the poor showing of the more developed countries, the African continent is poised to become a leading economy powerhouse in the globe and South Africa, as the largest and most developed of the continent's countries, should be taking full advantage. However, South Africa will not be ready to take advantage if we don't deal with our poor competitiveness rankings.

South Africa currently performs dismally in terms of productivity, educational standards and labour market efficiency, according to the 2011 World Economic Forum's Global Competitiveness survey. We rank only marginally better than our neighbouring countries and are therefore not seen as an attractive destination for foreign direct investment that is job-rich.

The National Development Plan (NDP), released in 2010 seeks to address these problems, particularly focusing, as many other Government plans do, on creating millions of jobs and reducing unemployment. Whilst we, as Business are fully in support of these plans, we are also cognisant of the fact that unless the economy grows these jobs will not become a reality.

The current proposed labour law review, rather than driving the national job creation plans, is likely to achieve the opposite. Countless research and expert opinions, including that of Professor Paul Benjamin, Government's legal drafter, as expressed in the Regulatory Impact Assessment (RIA) commissioned in mid 2010, conclude that the proposed amendments will lead to massive job losses and stymie any attempt at creating large volumes of new jobs.

In this paper, we seek to identify the impact on the economy, and in particular on Government's ambitious job creation plans, of the proposed labour law amendments. Using local and International research, we seek to consider the following:

- South Africa's competitiveness, and in particular, how we compare to the other BRICS countries;
- The ideal scenario for a well-functioning labour market;
- The case for flexibility 2012 and beyond;
- The contributions of Business, and in particular the Services Sector including the Private Employment Agency industry, in driving the Decent Work Agenda

Recent research, commissioned by the International Confederation of Private Employment Agencies (CIETT) proves that countries with well-regulated temporary employment services (TES) sector, have fared better during the economic downturn and this has been included throughout this paper.

We also hope to highlight the frustrations experienced by Business during the past two years when the NEDLAC negotiations have struggled on, despite real commitment to social dialogue, from all social partners. It is of concern that, due to Government's need to push legislation through, poorly drafted legislation is at risk of coming into law. Again, there is countless opposition, from several well-respected quarters, against these bills and we hope that, through this consolidated document, to bring these to your attention.

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# Executive Summary

**Extraordinary solutions are required to achieve the desired results and we wish to highlight that the traditional methods, including social dialogue, have failed to achieve, to-date, workable solutions.**

The Confederation of Associations in the Private Employment Sector (CAPES) is an umbrella body, formed in 2002, when the need for a unified voice for the South African staffing industry became apparent. CAPES was created specifically to act as the lobbying organisation for the four primary staffing associations, who represent thousands of SME staffing businesses, and several of South Africa's largest corporate staffing companies. CAPES, as a member of Business Unity South Africa (BUSAs), has been at the forefront of the negotiations in respect to the staffing industry (since 2006) and extensively during the current broad labour law review.

## CAPES in a nutshell:

- Represents more than 1200 independent staffing businesses across all major sectors;
- Represents in excess of 10 000 employees;
- Represents a daily average of over 900 000 temp workers;
- Through its largest member association, APSO, is affiliated to the International Confederation of Private Employment Agencies (CIETT)

## **The Labour Law Review**

In 2009 the Government first mentioned their intention to alter the labour laws and in June 2010 they presented to Cabinet their first drafts of the Labour Relations Amendment Bill, the Basic Conditions of Employment Amendment Bill, the Employment Equity Bill and the newly created Employment Services Bill. These were rejected by Cabinet who called for a Regulatory Impact Assessment (RIA) to determine the impact on the economy, and in particular the Government's plans for mass job creation.

The RIA, commissioned by the Department of Labour, was undertaken by University of Cape Town law professor Paul Benjamin. This document was originally released in September 2010 and predicted that the new laws would have a profoundly negative effect on flexibility in the labour market and hamper the ability of South African companies to compete in the global market. Throughout the nearly 200 page document, the RIA highlights the fundamental flaws in the proposed bills including the unconstitutionality of some provisions, including the suggested ban on labour brokers, inconsistencies between the bills themselves, and practical issues relating to Government's lack of resources to effectively implement and enforce the proposed legislation, amongst others. Business endorsed much of the RIA comment, yet throughout the negotiation process, Government has ignored its own research findings.

It is an indictment on the process that this RIA document was published simultaneously with the four original draft bills on 17 December 2010. The timing could not have been worse for Business, many of which had closed for the festive period, leading to a highly shortened commentary period.

It soon became apparent that the bills were so poorly drafted – they were riddled with errors and inconsistencies, and in numerous areas were unconstitutional and contrary to Government's own RIA. The process suggested by the Minister at the time was halted and the Bills were referred to NEDLAC for negotiations before the bills could be presented to Parliament.

At the outset of the NEDLAC process, Business made it clear that they were unwilling to engage on the bills given that they were so poor. Instead, the social partners agreed to set aside the Bills and rather focus on the principle issues, clustered under six themes, being those that cut across all four bills.

These six themes were:

- A-typical Employment Relationships;
- Dispute Resolution;
- Compliance & Enforcement;
- Collective Bargaining;
- Access to Employment; and
- Employment Equity

Despite the extensive evidence provided by the RIA report, the recommendations made by the Business delegation, have been ignored throughout the process.

### **To agree, or not to agree, that is the question**

The NEDLAC negotiations have been highly frustrating, particularly for Business, who believes that the social partners have not been committed to true social dialogue and seeking compromise. Throughout the nearly two-year-long negotiations, COSATU has been consistent in its organised call for an outright ban on temporary work, and for labour brokers to be banned, despite the representatives of labour agreeing in the discussions that regulation, rather than prohibition, was the way to go. Department of Labour too has not been constructive in the process and forced Business to make a lot of concessions whilst allowing the other social partners to stick to their original position. The process of negotiation during 2011/12 at NEDLAC is a bad reflection on the state of social dialogue in the country.

Since the outset of the NEDLAC negotiations, several new proposals have been tabled and Business believes that as a minimum, a new Regulatory Impact Assessment (RIA) study should be commissioned on any Bill to be released. The new RIA should seek to understand the impact of the proposed changes in light of the global economic downturn and Government's ambitious job creation goals set out in the various transformation plans, such as the National Development Plan.

### **ILO concurs that job creation, not legislation amendment, is more critical for SA**

In an article "*The International Labour Organisation has lauded South Africa's decision to set job creation targets but is concerned that the country remains internationally uncompetitive, particularly against the Asian countries against which it competes with in terms of labour*" written by Alistair Anderson and published on 24 January 2011, Vic Van Vuuren, the ILO's South African director, said the organisation wanted companies to make a social pact with the government and labour to implement methods with measurable job targets and not to focus on energy-sapping legislation.

The organisation said amendments to our labour legislation were taking too long to be finalised. SA's labour laws did not require overhauls but rather that business and government focus more directly on job creation, Mr. Van Vuuren said.

"The debate around the amendments to our labour legislation is heated. They need to be made more carefully. But I will say that the labour legislation we have will not be made much more or less

onerous by the amendments. It complies to the requirements the ILO sets for SA and some other countries,” he said.

### **Mission Critical: Reduce Unemployment**

At the heart of South Africa’s many problems lies the ever-increasing scourge of unemployment. All of Government’s plans, most especially the National Development Plan, released in mid 2010, focus on the need to create millions of jobs in the next decade. This will not be possible if the proposed labour legislation amendments were to be passed. South Africa already struggles to compete favourably with our African neighbours and BRIC counterparts in respect to education standards, labour relations and productivity, and unless we create an environment that businesses – both local and International – believe is conducive to economic success, we will not stimulate the economy and attract the much-needed foreign direct investment required to have a real impact on job creation.

In fact, the National Development Plan and Finance Minister Pravin Gordhan both indicate the need to relax labour legislation in order to stimulate the economy and create real jobs. This is now more critical than ever as the world hobbles through the largest economic downturn since the 1929 Great Depression and companies operate in highly unstable and uncertain times.

### **Enforcement is the real issue**

South Africa is recognised to have some of the most rigid labour legislation in the world. The 2011 World Employment Forum ranks South Africa 138<sup>th</sup> (out of 139 countries) in both Flexibility of Wage Determination and Cooperation in labour-employer relations. We also rank worst, 139<sup>th</sup>, in respect to Hiring and Firing Practices. This clearly outlines the fact that our existing regulations are already too stringent in this economic climate.

The real issue however is in relation to compliance and enforcement. Currently, those companies who operate outside of the legislation, are not being investigated and punished and there is no real effective deterrent for non-compliance. The RIA report clearly indicates that lack of enforcement is a key problem in the current labour market. It further explains that increasing legislative compliance will only serve to exacerbate the problem unless significant resources are employed within the Government departments responsible for implementation and enforcement.

Extensive research, conducted globally by the Boston Consulting Group, proves that over-regulation of any labour market – established or emerging - leads to a direct increase in the number of non-compliant “black market” operators and a decrease in employment in the formal sector where the highest levels of compliance exist.

Business is highly concerned that attempts to further regulate the South African labour market, resulting in over-regulation, will only serve to increase the cost burden on the already compliant and drive more businesses underground, thereby increasing the non-compliant element.

This will have a severe impact on the number and quality of the jobs in South Africa. As costs increase, compliant businesses will seek opportunities to reduce the number of people employed through automation and mechanisation, thereby resulting in the loss of decent jobs.



## **The “f-word” - Flexibility**

Government and unions in South Africa, and elsewhere in the world, are struggling to come to terms with the changing world of work and the increasing use of flexibility within the labour market. Gone are the days that an individual was employed ‘for life’ at a single employer with full benefits and a gold watch on retirement. Chronic skills shortages, increasing global competition and improving technology have created a labour market that favours flexible, project-based employment. This more flexible labour model need not mean precarious work. “Flexicurity”, a concept coined in Europe, promotes the balance between flexibility and security for the employee through effective regulation and the availability of suitable social protection schemes.

Companies, in order to remain competitive, are choosing to outsource their non-core functions and to bring specific skills, for specific projects, in “just-in-time”. The nature of these employment relationships varies but is most often defined as “a-typical”. To effectively manage the sourcing, recruiting, assessing and administering of flexible labour, businesses have turned to specialists, in the form of Temporary Employment Services (TES) companies. And South Africa is no different.

## **Adapting to Change – International research**

In 2011, the International Confederation of Private Employment Agencies (CIETT), commissioned the Boston Consulting Group to undertake global research on the impact of the Private Employment Agency (PrEA) sector and their role in facilitating adaption to change, better labour markets and decent work. The results were overwhelmingly clear. PrEA enable adaption – for both businesses and workers – in increasingly volatile and complex labour markets. The research clearly indicated the need for appropriate regulatory frameworks to govern the PrEA sector, so as to ensure that they continue to provide services that enable an efficient labour market, drive skills development and the Decent Work Agenda. The Key Findings of this research are available in this paper.

## **PrEA is a significant contributor to the South African economy**

The Private Employment Agency Sector, including Temporary Employment Services (TES), is a significant contributor to the South African economy. In addition to facilitating smooth transitions for workers between jobs, assisting employer companies to remain competitive in tough economic times, it is also one of the largest contributors to skills development in the country.

### A snapshot of the South African PrEA sector:

- Introduced 5.4 million people to the world of work since 2000
- Gateway to the world of work: Profile of work seekers/candidates:
  - Never previously employed: 57%
  - Youth aged 18-35: 83%
  - Previously disadvantaged: 93%
- 994 000 people deployed (via TES) on a daily basis

- Of those initially employed as a temp, each year significant numbers are permanently deployed:
  - 30% within 1 year
  - 42% within 3 years
- One of the largest contributors to skills development – R415 million paid over in skills levies
- 17,400 registered learnerships facilitated (30% of SETA total)

### **Way Forward**

CAPES is committed to meaningful social dialogue and to achieving an appropriate regulatory framework for the private employment services sector in South Africa. However, we are concerned that the current proposals will not achieve the goal of reducing non-compliance and driving job creation, but rather the opposite. We hope that this position paper will seek to highlight our primary concerns and address the real issues at hand and provide some clarity on the required actions to be taken by the social partners to achieve the universal goal of all South Africans, namely the reduction of unemployment.

# The Bigger Picture: SA's National Initiatives

## ***Job Creation & Global Economic Environment***

Job creation has been on the South African agenda for many years and continues to be the most critical priority for the country if we want to eradicate poverty and reduce inequality. The ambitious goals set by the government were always going to be difficult to reach but the global economic crises, started in 2008, has not made it any easier.

Although in some aspects South Africa was spared the full force of the global economic crisis, perhaps due to our world class banking and financial structures, the job losses have been significant. Since the start of the global melt down, South Africa has shed more than 1 million jobs, 900 000 of these in just one year, 2009. As we continue well into 2012, the end is not yet in sight.

To drive economic recovery and reduce the unemployment statistics, South Africa requires a flexible, competitive labour market. South Africa currently ranks poorly, 95 out of 139 countries, in respect to labour market efficiency and unless something is done to improve this, we will continue to be a poor choice for foreign direct investment and the unemployment crisis will worsen. The Temporary Employment Services (TES) sector has proven to be an important component, in South Africa and across the world, of an economy that can react quickly to the erratic nature of an economy in financially unstable times.

Abebe Selassie, Africa mission chief for the International Monetary Fund (IMF) believes that high and inflexible wage demands by South African workers is the likely reason for the massive job losses experienced. He said:

*“What is striking is that declining employment in South Africa has been of the same scale as seen in the United States, which was at the epicentre of the global financial crisis. The scale of job shedding in South Africa has been very large. We are trying to understand why this has been the case. In other countries you don't see the job losses you saw here. ...*

*One of the characteristics of the economy here is that you have flexibility in the labour market in the volume direction, but perhaps not in the wage dimension. A lot of companies are faced with a crunch when demand for their output declines and they have to reduce costs. ...*

*When you see the economy being hit by a large shock, you see a lot of jobs being shed, but at the same time you see a lot of wage agreements that are very high. It sits incongruously with all the job losses that are going on.”*  
[IMF: High wages cost SA jobs' – I-Net Bridge, 3 December 2010]

The gravity of the unemployment situation in South Africa should not be laid on the door of the global financial crisis. Over the past two decades, South Africa's unemployment has spiralled. According to statistics provided by Loane Sharp, labour market analyst, one of South Africa's greatest post-apartheid disappointments is the economy's failure to create jobs when one compares unemployment figures of 13% in 1994 with the staggering 25% today. More frightening is the fact that

nearly half of the economically active population is idle, with a staggering proportion (74%) of these under the age of 24. In addition, 2.7 million people, more than a quarter of the total number of unemployed, have been out of work for more than a year.

Brian Kantor of the University of Cape Town comments, “the link between unemployment on this massive scale and the influence of regulation of the labour market on the profound and probably unique inability of the SA economy to provide employment, especially for the young and unskilled, would seem obvious.”

The global financial crisis is far from over and economists predict that 2012 will be tough for most businesses. Without balanced labour regulation and the opportunity for companies to make use of flexible labour in order to capitalise on business opportunities during economically uncertain times, the likelihood of South Africa escaping the effects of the global crisis and reducing unemployment is slim.

## Economic Outlook for South Africa 2012

According to the Economic & Business Outlook for South Africa 2012 presented by Business Unity South Africa (BUSA) on 5 December 2011, 2012 promises to be another tough year.

The global economy has entered a dangerous new phase. Global economic activity has weakened further and become even more uneven, confidence has dropped, and the downside risks are increasing.

Prospects for emerging market economies have also become more uncertain again, although some economies counter the effect on output of weaker foreign demand with less policy tightening. Emerging countries are forecast to achieve relatively rapid growth of 6.8% in 2011 and 6.4% in 2012 and expectations of African economic growth next year remains positive. Even after revising the 2012 forecast because of the downturn in developed economies, the IMF still expects Sub-Saharan Africa's economies to expand by 5.75% next year.

A bird's eye view of the global economy therefore suggests that this remains a delicate moment for it, and the crisis is not over until the key economies are creating enough jobs.

In recent months there have been regular downward revisions in growth forecasts for South African economy in 2011 by the National Treasury, the SA Reserve Bank, BUSA and other analysts. Growth forecasts have had to be trimmed. This has also meant adjustments to growth expectations for 2012 and beyond.

The SA economy is therefore underperforming. The economy is presently operating below its potential, with manufacturing capacity utilisation at only about 80%, office vacancies over 10% and a high margin of unemployment among the youth.

There is a strong feeling in the business community that too many previous commitments to well intentioned policies and programmes such as the RDP, GEAR, GDS and ASGISA and JIPSA have lead to much talk and little action. Whilst the need for a well designed long-term growth plan such as the NDP is fully supported, there is a need for concrete action by highly capable teams involving government, business, [community] and labour to design programmes and projects that make an immediate impact.

What remains important now for SA is therefore to implement effectively what has been agreed and funded, and to deliver on our promises by building on our economic strengths, identifying our vulnerabilities and addressing our weaknesses.

[EXCERPTS: BUSA Economic & Business Outlook for SA in 2012]

The World Economic Outlook report concurred that South Africa has not recovered as well as other Sub-Saharan African countries and it speculates that our ever-increasing unemployment rate is to blame.

The International Monetary Fund (IMF) conducted research into job creation drivers and applied this specifically to South Africa. The results indicate that the current South Africa situation, highlighted by tight labour legislation, above-inflation annual increases and unstable employer-employee relations, is lagging behind even the median of “slow job creators”. This is worrying and should be considered when developing policy going forward.

The difference among our sample countries in terms of job creation is remarkable. The key outcome variable we are interested in is the average annual job creation during 2000 – 2009. While top performers added new jobs at a rate of some 3 percent per year, Hungary at the bottom of the list, actually lost on average 0.2% of jobs each year. South Africa’s performance is on the lower end of the list, with its annual job growth rate of about 1 percentage point below the median of this group of countries (1.7%). Although this difference in percentage points seems small, the difference in absolute terms is sizable. If South Africa performed as well as the median country, it would have had some 1.3 million more jobs during this period.

Relative to other countries, two things stand out for South Africa. First, South Africa’s growth fell short of even the median of slow job creators, but its average inflation exceeded the median of slow job creators. Second, South Africa saw its real effective exchange rate depreciate more than most other countries, but still has a much weaker current account balance and a lower export-to-GDP ratio.

Union density (union members in percent of total employment) differs significantly between the two groups – fast and slow job creators. The union density of slow job creators is 2.5 to 3 times higher.

The slow job creators also tend to have substantially higher wage levels by number of indicators. Fast job creators also tend to be less restrictive in terms of worker hours and have higher severance packages. The share of public sector employment is similar between slow and fast job creators, suggesting that most job creation is in the private sector.

South Africa seems to be firmly on the wrong side. Its union density and hourly pay in the manufacturing sectors are higher than the median for slow job creators by 25 and 12 percent respectively. South Africa’s ratio of minimum wage for youth workers is about four times that of fast job creators. South Africa is also much less flexible in terms of working hours. On the other hand, the cost for redundancy dismissal in South Africa is much lower than in most other countries. Finally, the share of public sector employment in South Africa is significantly higher compared with other countries in the sample. [EXCERPTS: IMF ‘What do fast job creators look like? Facts & perspectives on South Africa, June 2011]

South Africa desperately needs to implement job-friendly economic policies.

## The Case for Flexibility 2012 and beyond

Flexibility is essential in today's labour market environment. Projects are a key component for Government who require specific skills for a limited period, for example, infrastructure development. In South Africa, Government has made extensive use of flexible labour over the past several years, particularly to achieve the infrastructure development to meet the demands for FIFA World Cup 2010, the road system upgrades and Gautrain, for example.

Equally, businesses today seek to outsource non-core functions and to bring in specific skills "just in time" to meet individual project demands. Without effective legislation that provides the opportunity to make the best use of flexible labour, businesses would be hard-pressed to compete globally. The Temporary Employment Services (TES) sector provides business – and government – with a cost-effective, efficient and specialist service in sourcing, assessing and scheduling flexible labour solutions.

Flexibility in the labour market has also proven to be critical for growth out of economically difficult times. The global research conducted in 2011 on the impact of agency work (temporary employment services) by Boston Consulting Group on behalf of The International Confederation of Private Employment Agencies (CIETT), indicates that private employment agencies enable adaption to change in increasingly volatile and complex labour markets.

Cyclical fluctuations are increasingly a fact of life with national economies and indeed the global economy alternating between periods of positive and negative growth. The impact that these fluctuations have on employment and society presents a significant challenge for governments and companies.

As a leading economic indicator, the private employment services industry is one of the first to recognise the onset of a downturn but also the first to perceive a recovery when it comes.

It is the industry's ability to respond quickly to changes in GDP growth that sets it apart and makes it such a vital component in economic growth. Recovery of GDP and agency work are mainly recorded in the same quarter, with OECD figures on GDP growth showing an almost simultaneous correlation with growth in the agency work market in 2009 and 2010. This can be attributed to organisations experiencing growth to look to the private employment services to provide them with the manpower to meet increased demand.

There is an inevitable time-lag between economic recovery and a decrease in employment levels. Thanks to their capacity to react quickly and their knowledge of where skills are available, private employment services are ideally placed to plug this gap and provide workers with jobs and companies with the manpower they need to take advantage of the economic upswing.

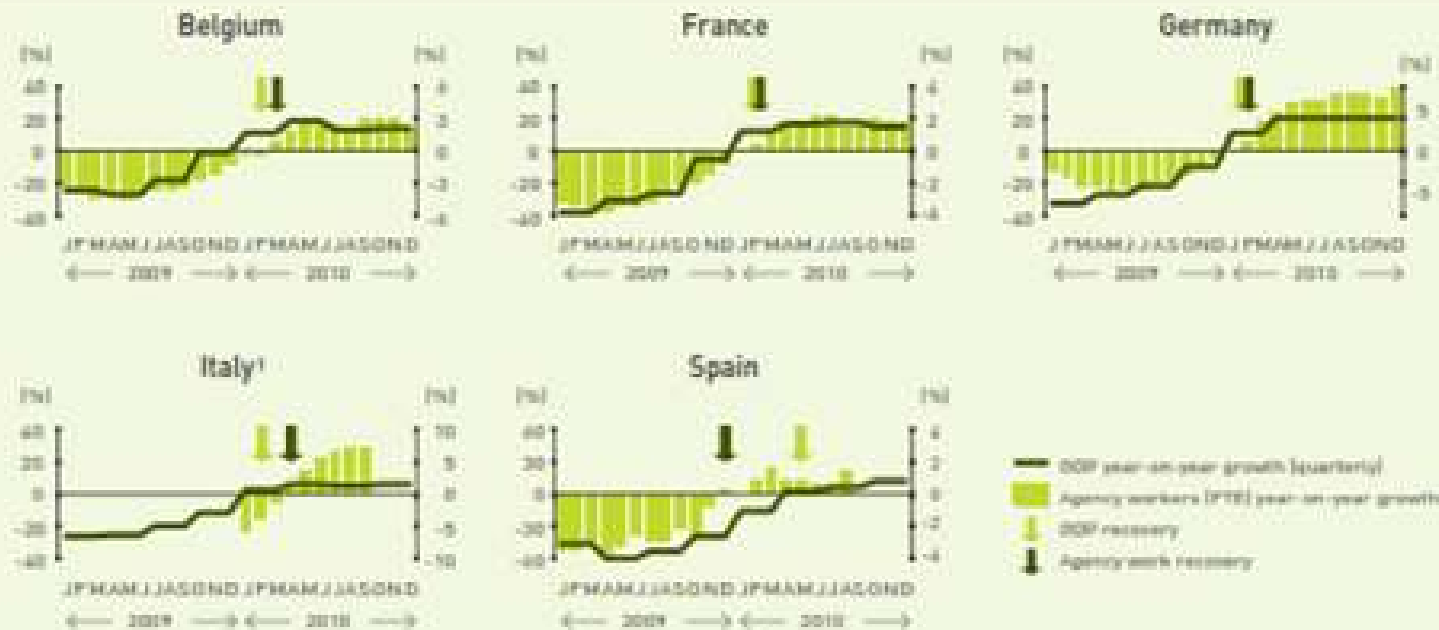
As an engine of job creation, private employment services are particularly effective in speeding this process during periods of economic recovery because they literally draw jobs out of the market.

[EXCERPT, *Adapting to Change* pg24]

Figure 3

## Agency work quickly responds to changes in GDP growth

Recovery of GDP and agency work happens mostly in the same quarter



Agency work is following economic cycles,  
but with a much wider amplitude compared to GDP

No monthly Agency figures available before 2010  
Source: OECD, Cefi



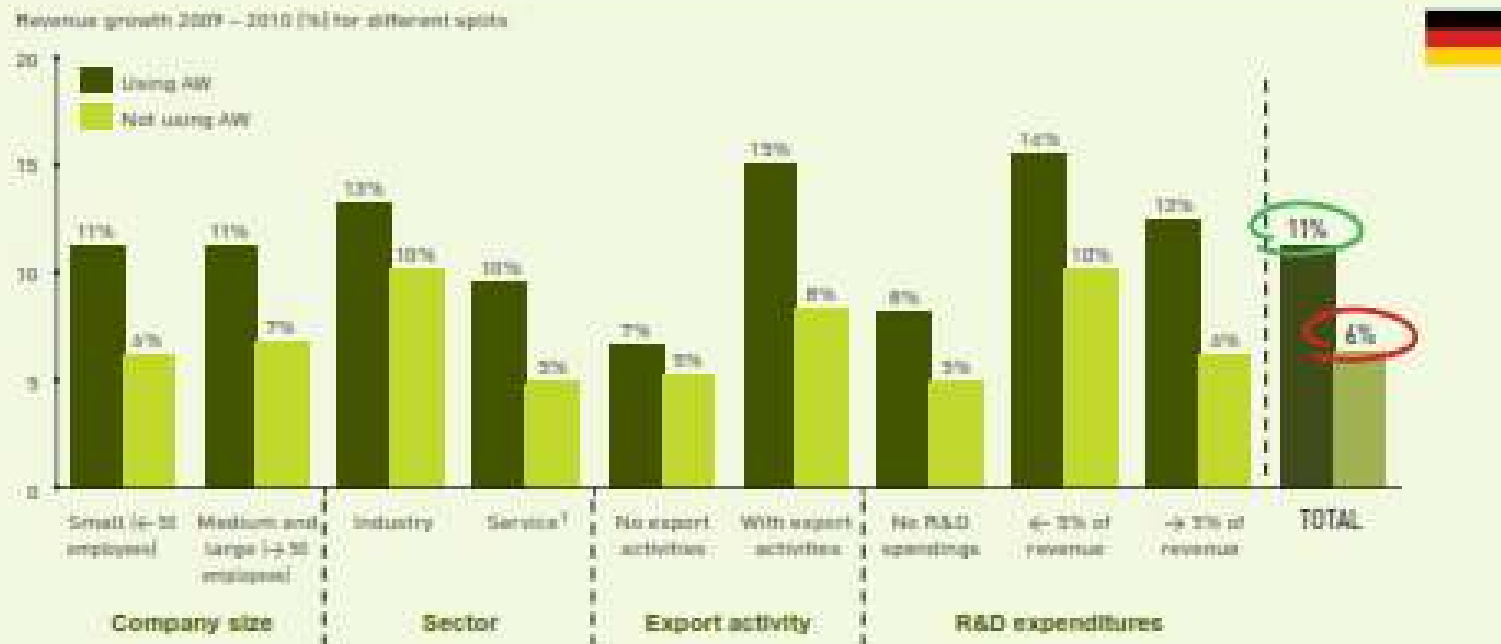
The research also concludes that use of private employment services can mitigate the impact of economic crisis in labour markets and **companies that use agency work can be seen to accelerate faster out of the downturn**. A multitude of surveys and studies carried out in Europe and the United States concur.

An IW Consult study carried out in Germany covering the 2009-2010 period demonstrates how those organisations using agency work recorded revenue growth a full 5% higher than those who did not. The study clearly demonstrates that the ability to reach to increasing demand quickly results in higher revenue growth and a better financial performance.

Figure 6

## Companies using agency work accelerate faster out of downturn

German study shows higher revenue growth for agency work user organizations compared to other firms



Ability to react to increasing demand quickly results in higher revenue growth and thus better results

<sup>1</sup> Including construction and other sectors  
Source: IW Consult GmbH study "Datenland in Deutschland" 2011

# South Africa's Global Competitiveness

## World Economic Forum (WEF)

The World Economic Forum is an independent international organisation committed to improving the state of the world by engaging business, political, academic and other leaders of society to shape global, regional and industry agendas.

The 31st edition of The Global Competitiveness Report (2010-2011) series continues to stand out as one of the world's most comprehensive and respected assessment of countries' competitiveness. Produced in collaboration with leading academics and a global network of research institutes, The Global Competitiveness Report 2010-2011 provides users with a comprehensive assessment of their strengths and weaknesses related to national competitiveness using the Global Competitiveness Index as the main methodology.

In addition to statistical data the index also features data from the Executive Opinion Survey carried out by the World Economic Forum. The 2010 Survey captures the perceptions of over 13,500 business leaders from the featured 139 economies. The full version of the Report can be consulted online at: [www.weforum.org/gcr](http://www.weforum.org/gcr)

In the section focusing on Sub-Saharan Africa, South Africa's ranking out of 139, including current areas of strength and weakness is discussed:

South Africa ranks 95<sup>th</sup> in labour market efficiency, with rigid hiring and firing practices (139<sup>th</sup>), a lack of flexibility in wage determination by companies (138<sup>th</sup>), and significant tensions in labour-employer relations (138<sup>th</sup>).

[EXCERPT *The Global Competitiveness Index 2011-2012*, pg 39]

The rankings associated with labour market efficiency are definitely deterrents to foreign direct investors who might otherwise be attracted by South Africa's high (positive) rankings in respect to financial stability and corporate governance – SA ranks 1<sup>st</sup> in “Strength of auditing and reporting standards”, 2<sup>nd</sup> in “Efficacy of corporate boards” and 2<sup>nd</sup> in terms of “Soundness of banks”.

## Competing with our BRICS counterparts

The BRICS Forum is an independent international organisation encouraging commercial, political and cultural cooperation between the BRICS nations.

BRICS is an international political organisation of leading emerging economies, arising out of the inclusion of South Africa into the BRIC group in 2010.

As of 2011, its five members are Brazil, Russia, India, China and South Africa. With the possible exception of Russia, the BRICS members are all developing or newly industrialised countries, but they are distinguished by their large economies and significant influence on regional and global affairs.

As of 2011, the five BRICS countries represent roughly one-third of the world's total population.

## Why South Africa is unlikely to increase employment

If one compares our rankings directly, it is clear that South Africa is not necessarily the best option for foreign direct investment and this will have a definite impact on our ability to create employment at the levels required to achieve Government's ambitious goals.

	<b>B</b>	<b>R</b>	<b>I</b>	<b>C</b>	<b>S</b>
Burden of Government Regulation	142	132	96	21	112
Efficiency of legal framework for settling disputes	75	123	64	42	16
Efficiency of legal framework in challenging regulation	66	123	51	44	19
Quality of Primary Education	124	58	86	31	127
Quality of Educational System	115	82	38	54	133
Quality of Math & Science Education	127	50	32	31	138
Extend of Staff Training	33	33	63	45	27
Cooperation in labour-employer relations	79	125	46	51	138
Flexibility of Wage determination	115	83	58	52	138
Rigidity of Employment	118	94	81	82	90
Hiring & Firing Practices	128	85	66	44	139
Redundancy Costs	84	29	93	118	46
Pay and Productivity	83	61	39	13	130
All rankings out of 142					

## Productivity

South Africa's productivity, if nothing else, is a major factor when it comes to foreign direct investments and resulting job creation. The statistics show that annual wage increases far exceed productivity levels and this, simply put, means it costs more to produce less in this country.

*Over the past decade, wage increases have outstripped inflation and productivity by 2%. This means that wages are essentially 25% higher than ten years ago.*

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Looking at the WEF statistics, referred to above, South Africa is the 12<sup>th</sup> least productive country in the world, only marginally better than our neighbours Mozambique, Swaziland, Lesotho and Zimbabwe. When compared to our BRICS counterparts we perform dismally.

Suggestions that wages be linked to productivity have been rejected by the majority of the trade unions who don't seem to appreciate that if they continue to expect unparalleled wage increases annually, without the corresponding increase in production, that businesses will have no option but to retrench workers and mechanise wherever possible. This, of course, will have a direct and dire impact on the levels of unemployment now and into the future.

According to the Adcorp monthly Employment Index for October 2011, throughout 2011 labour productivity growth has been negative, with an all time low reached in October – the lowest level in 40 years. Chief analyst, Loane Sharp said “this negative trend in labour productivity suggests that adding more workers does not necessarily translate into material increases in business output. In 2011, South Africa labour productivity growth has been negative (-0.1%) and Sharp insists that this is a critical indicator of employment. “When adding workers yields greater output (i.e. when labour's valued-added is positive), employers have an incentive to employ more workers.”

## **Employer – Employee Relations**

South Africa's productivity is also hampered by the disruptiveness caused through industrial action, primarily due to the unstable relationship between employers and employees.

The country ranks 138/142 in respect to "co-operation between labour-employer relations" and this can be attributed to the millions of lost work days each year due to strikes.

*In 2010, 14.2 million work days were lost due to strikes and work stoppages and in 2011 this number is estimated to rise by 22% to at least 17.8 million work days lost.*

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To make matters worse, the nature of strikes in South Africa is becoming ever more violent and destructive, causing massive losses to infrastructure, equipment and even human lives.

**The current NEDLAC negotiations require a delicate balance between the protection of workers' rights and the necessary productivity that business requires to remain globally competitive. Business is committed to finding an equitable solution that achieves these desired goals through meaningful social dialogue. The NEDLAC 2011 process has not reflected meaningful social dialogue engagement.**

## **Youth Unemployment**

Youth unemployment is a global issue and is reaching crisis stages. If one simply looks northward and considers the social upheaval caused in 2011 by the revolutionary actions of disaffected youth, South Africa needs to pay careful attention to the disproportionate levels of unemployment amongst local youth.

According to the International Labour Organisation (ILO) Global Employment Trends 2011 report, in North Africa, an alarming 23.6% of economically active young people were unemployed in 2010, the year preceding the major upheaval. If one compares to the South African situation, that indicates that more than 40% of young people between the ages of 25 and 34 years old are unemployed, we're sitting on a powder keg.

Data, produced by the Human Sciences Research Council of South Africa (HSRC), for the first quarter of 2011 for unemployment rate in South Africa by age. The key features of the data include that:

- The biggest proportion of unemployed are concentrated in the age groups 15-24 years (29.5%) and 25-34 years (42.8%).
- Unemployment for those 34 years old and younger is 72.3% of unemployed South Africans.

The data amplifies the problem of youth unemployment highlighted by the National Planning Commission in the National Development Plan document, which argues that:

*“The social cost of long-term unemployment is staggering. In South Africa, if young people fail to get a job by the age of 24, they are almost never likely to get full-time formal employment. As a consequence, about 60 percent of an entire generation could live their lives without ever holding a formal job. This time bomb is the greatest risk to social stability in South Africa.”*

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National Development Plan, pg 85

### **PrEA and TES are a Gateway to Employment**

The Private Employment Agency Sector (PrEA) including Temporary Employment Services (TES) has contributed significantly to enabling young people to enter the world of work.

Since 2001, PrEA/TES has introduced 3.9 million people, of which:

- 72% are youth under the age of 35 years
- 83% are previously disadvantaged individuals
- 57% have never worked before in their lives

Details of the role and contribution of PrEA as a gateway to employment are addressed in detail in NEDLAC Theme 5: Access to Employment.

## **National Development Plan**

The National Development Plan (NDP) culminates from the Diagnostic Report released by the National Planning Commission in June 2011. The report sets out South Africa's achievements and shortcomings since 1994 and the NDP was subsequently developed to form a blueprint for overcoming these challenges to achieve a successful democracy.

The extensive 444-page document is ambitious, yet pragmatic and makes several recommendations for reducing poverty and improving the lives of everyday South Africans. It proposes several labour market "experiments" that it believes will drive economic growth and encourage much-needed job creation.

The key priority areas include:

- **An economy that will create more jobs;**
- Improving infrastructure;
- Transition to a low-carbon economy;
- Reversing the spatial effects of apartheid;
- **Improving the quality of education, training and innovation;**
- Quality healthcare for all;
- Social protection;
- Building safer communities;
- Reforming the public service;
- Fighting corruption; and
- Transforming society and uniting the country

In an article written by Mariam Isa for the Business Day, the key factors linked to employment creation are effectively highlighted:

The National Development Plan (NDP) unveiled on Friday (4 Nov 2011), does not lose sight of its primary social aims of reducing inequality and supporting the country's poor majority. But it is also business friendly, **suggesting that some labour regulations be loosened to encourage companies to hire more easily**, as well as lower entry wages to enable young people to get jobs.

The NDP shares the goal of full employment set out in the New Growth Path launched by Economic Development Minister Ebrahim Patel last year, and **is equally, if not more, ambitious in its job creation goals.**

But the plan, drawn up by the National Planning Commission, chaired by Minister in the Presidency, Trevor Manuel takes a more pragmatic and broad-based approach to the challenges South Africa faces in tackling chronic unemployment.

The NDP acknowledges the need for action, saying that it is critically urgent to introduce labour market policies it has proposed as it will take time for them to have a meaningful effect.

**"This will require decisiveness on the part of the state and a strategic approach to negotiations on the part of, and building trust between, business and labour."**  
*[EXCERPT 'Manuel's plan moots new approach to lift investment – Business Day November 2011]*

## National Development Plan: A Responsive Labour Market

The NDP sets out clear objectives to achieve the desired goal of reducing unemployment:

The labour regime needs to be more responsive to the challenge of simultaneously expanding employment opportunities, raising living standards and reducing inequalities. The labour environment operates in the context of slow growth, insufficient levels of employment, and weak skills. Issues that need attention include:

- Improving access to lifelong learning and career advancement;
- Stabilising the labour environment, improving dispute resolution and shop-floor relations;
- Clarifying dismissal and retrenchment provisions in the Labour Relations Act (1995) Code of Good Practice and its management;
- Strengthening the labour courts and resourcing the Commission for Conciliation, Mediation and Arbitration (CCMA);
- Reviewing regulation and standards for small and medium enterprises;
- Address public employment labour relations, wage setting, performance and the management of essential services

Labour relations involve buyers and sellers in a highly contested terrain. In South Africa, there are extreme income and wage inequalities. Achieving desired social objectives is a challenge, particularly given competing interests of reducing mass unemployment, raising living standards and closing the earnings gap. In the earlier phase of the plan, emphasis will have to be placed on mass access to jobs, while maintaining standards where decent jobs already exist.

Several labour experiments will be put into action from 2012. The following proposals will strengthen labour matching and increase skills development and supply:

- Driver training for school leavers;
- Offer a tax subsidy to employers to reduce the initial cost of hiring young labour market entrants; and facilitate agreement between employers and unions on entry-level wages;
- Give a subsidy to the placement sector to identify, prepare and place Matric graduates into work opportunities. The placement company will be paid upon successful placement;



- Extend the non-state sector Expanded Public Works Programme's employment incentive, aimed at increasing employment in non-profit organisations;
- Expansion of learnership and making training vouchers available directly to work seekers;
- Employee retention schemes, which offers short-term work during periods of low demand;
- Provide access to lifelong learning that improves employability and measures to expand further and higher education throughput and quality;
- Adopt a more open approach to skilled immigration to enable expansion of high-skill supply in the short-term, in a manner that obviates displacement of South Africans

### ***Labour Market Regulation***

To achieve the decent work agenda, a balance is needed between enabling faster expansion in employment opportunities and the protection of human rights. There is evidence that policy intervention is required to improve employment creation and labour protection. The main areas that require attention include:

- An approach to handling probationary periods that reflects the intention of probation;
- An approach that simplifies dismissal procedures for performance or misconduct;
- An effective approach to regulating temporary employment services;
- Monitoring compliance to statutory sectoral minimum wages;
- Implementing and monitoring health and safety regulations;
- Strengthening the CCMA and the labour court in dispute resolution and in support for trade unions and employers in managing shop-floor relations;
- Limiting the access of senior managers who earn above R300 000 to the CCMA, given that their employment contracts better regulation dismissal procedures.

*[EXCERPT National Development Plan pgs 111 and 113]*

## **New Growth Path**

The Minister of Economic Development first announced the New Growth Path on 26 October 2010 commenting that the main focus of the plan is to create 5 million jobs over the next 10 years, thereby reducing unemployment from 25% to just 15%.

According to a media statement made by Collins Chabane, Minister in the Presidency for Performance Monitoring and Evaluation, the new growth path aims to address unemployment, inequality and poverty by unlocking employment opportunities in South Africa's private sector.

*"The new growth path is a broad framework that sets out a vision and identifies key areas where jobs can be created. The **growth path we are announcing today places employment at the centre of economic policy.**" [Collins Chabane, 26 October 2010]*

During a video link to the Parliamentary Portfolio Committee, Minister Ebrahim Patel said:

*"This document **reflects Government's commitment to prioritising employment creation in all economic policies.** It lays out strategies to enable South Africa to grow in a more equitable and inclusive manner in the future, fulfilling the promise of our democracy." [Ebrahim Patel, 23 November 2010]*

**Throughout the document calls are made for broad pacts between Government, business and labour aimed at fostering employment creation whilst enhancing competitiveness, social equity and development goals.**

Addressing the 15<sup>th</sup> NEDLAC summit in September 2010, Deputy President Kgalema Motlanthe lauded the new growth path, saying:

*"An obvious but necessary starting point will not only be to acknowledge the importance of finding solutions, but also **being prepared to rise above partial interests in constructing shared solutions that are in the public interest.**" [Deputy President Kgalema Motlanthe, 9 September 2010]*

It is interesting (and disappointing) therefore to note that less than three months later (December 2010), the Department of Labour published the three amendment bills and the new employment services bill, sparking a labour law review that, if all proposals were to be accepted, would make South Africa's labour legislation framework even more rigid, having dire negative consequences and discouraging business from creating much needed jobs.

Thankfully there do appear to be voices within Government that understand that contradictory policies will scupper any real attempts at job creation and positively impacting on unemployment.

*"**While labour regulations have had several positive effects, most notably the protection of workers' rights, the extension of second tier social security benefits and the ending of unfair discrimination, there have also been negative unintended consequences.**" [National Planning Commission Chairman, Trevor Manuel, June 2011]*

This sentiment was further confirmed by Finance Minister Pravin Gordhan who suggested that South Africa might have to relax labour legislation in order to reach the job creation goals set.

## **Jobs Fund**

South Africa's R9-billion Jobs Fund, launched at the beginning of 2011, aims to help the government create 150 000 jobs over the next three years and opened applications, in June 2011, from companies and non-governmental organisations with innovative job-creation projects. Paul Kibuuka, who heads the DBSA's development fund, added that each job funded should last for at least one year. He said the fund aimed to target between 1 000 and 2 000 projects.

These projects would fundamentally focus on short-term projects, between 1 and 3 years, requiring flexible labour. It is therefore concerning that Government has taken a contradictory stance on the issue of flexibility within the labour law debate. They recognise, particularly in initiatives such as the Jobs Fund, that the role of short- and medium-term employment is critical to reduce the unemployment crisis. A prime example would be the Expanded Public Works Programmes (EPWP) where Government makes use of temporary labour.

Gordhan said the fund would target four areas, namely enterprise development, local infrastructure development, support for work seekers and institutional capacity building. The success of the jobs fund depended on strong co-operation between the private sector and the government, he said.

He said the team had been given directives to process applications timeously. The technical team, which processes applications, would meet weekly and the investment team, which makes the final selection, would meet monthly.

Reviewing the initial – and potential - success of the initiative in late 2011, Duane Newman, lead director for Deloitte Tax Management Consulting said:

*“Government acknowledges that investment in economic infrastructure has to coincide with a more competitive labour market that supports higher economic growth. Transforming the South African labour market can only be achieved through adequate job creation, training and community works projects. These objectives are being pursued by means of the recently launched Jobs Fund administered by the Development Bank of Southern Africa. The Jobs Fund was established at the beginning of the year with a value of R9 billion. So far only R352 million has been spent. A far more effective administrative system is required going forward to assist with job creation.”*

At the time of writing [early 2012] only seven projects have been approved. Broad scepticism from the business community met the announcement of the Jobs Fund with many arguing that it simply seeks to appease the masses and deflect attention from the root cause of unemployment.

But some say the jobs plan misses the point. Loane Sharp, a labour market analyst at Adcorp, said the jobs plan was a red herring that reflected the government's failure to understand the **root causes of unemployment, which are high wages, the skills shortage and the protection the Labour Relations Act provided against dismissal.**

Business Unity South Africa (BUSA) queried the decision to review the labour law with proposals that seek to tighten an already constrained labour market.

“Employment-friendly labour legislation is essential to decrease the high level of joblessness that currently prevails.”

International Labour Research and Information Group director, Leonard Gentle said: “Private enterprises’ job is to make profit. It is not a job creation mechanism in and of itself.” [EXCERPT “Zuma jobs plan draws criticism” *Business Report*, June 2011]

Despite a good theoretical basis, the Jobs Fund has failed. It begs the question: How should Government encourage the social partners to work together, embracing flexibility, to provide employment and skills development opportunities to the masses?

### **National Youth Development Agency (NYDA)**

The National Youth Development Agency (NYDA) is a South African youth development agency aimed at creating and promoting coordination in youth development matters. The NYDA results from the merger of the National Youth Commission and Umsobomvu Youth Fund.

Given that the NYDA is expected to focus on short- and medium-term initiatives aimed at creating access to economic empowerment, it would seem that a labour legislative regime that provides for regulated flexibility would be most beneficial to the success of this initiative.

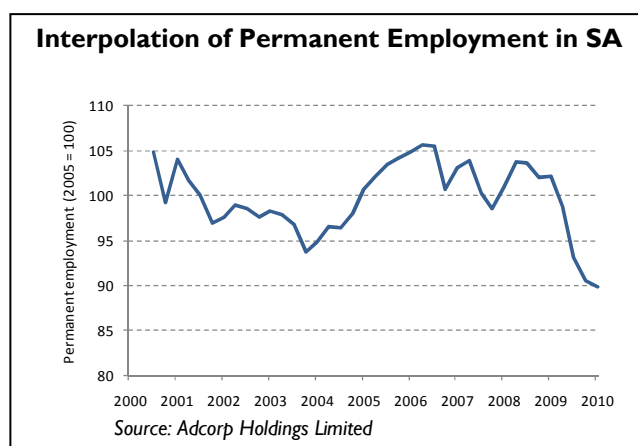
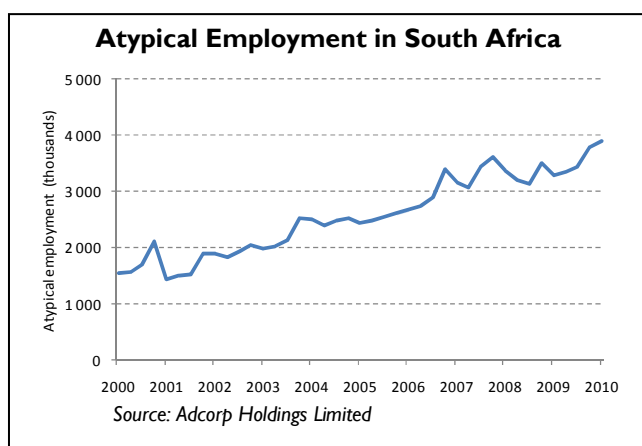
## South African Labour Market

The South African workplace is characterised by an ongoing reorientation from traditional, full-time, permanent jobs to a-typical, part-time, temporary and contract work. Between 2000 and 2010, the number of a-typical employees increased from 1.55 million to 3.89 million, or an increase of 150.7%. Whilst this may seem extreme, the South African landscape aligns with the growth globally of a-typical employment relationships. In almost all economics, both developed and developing, the shift from traditional lifelong employment to more project-based is pronounced and mirrors needs of businesses to remain globally competitive.

As of March 2010, a-typical workers represent 28.4% of total employment. 872 076 a-typical workers (or 25.8% of the total) are employed through employment agencies (“labour brokers”), and the remainder are employed by companies and Government directly without the use of an employment intermediary.

The increased use of a-typical employees may be attributed to sweeping changes in employers’ production methods and service delivery channels that have led to a sharp increase in after-hours shift work and extended branch operating hours, as well as project-driven work.

The increased use of agency (“labour broker”) workers may be attributed to the difficulties that many companies experience in managing large numbers of irregular shift patterns, varied employment contracts, and frequently changing work schedules using their traditional internal human resource infrastructure. As the dramatic growth, outside South Africa, of companies like Adecco and Manpower suggests, this is a worldwide, rather than South Africa-specific phenomenon.



It is possible to isolate the trend of traditional, full-time, permanent employment by removing the effect of growth in a-typical employment from the total employment figures. Apart from periodic damped cycles (for example, during the 2001-2 recession, or during the exceptional 2006-9 growth of financial services employment), permanent employment has essentially stagnated in South Africa since 2000. Even during the buoyant period of job growth prior to the recent recession, permanent employment never exceeded the level reached a decade earlier in 2000.

An interesting conclusion that can be drawn from these figures is that a-typical employment, which has been characterised as precarious due to its apparent short-term and temporary nature, is, rather, part of a long-term and ongoing change in the South African workplace. Certainly, temporary work did not experience any notable decline during the recent recession, in which jobs lost were overwhelmingly permanent in nature. During the present recovery, permanent employment has not yet begun to rise, falling by 0.8% in March 2010. [EXCERPT Adcorp Employment Index March 2010]

More recent reports of employment activity can be found in the Adcorp Employment Index for November 2011.

“By any measure, South Africa’s labour market is in a shambles. Using a broad definition of unemployment (i.e. unemployed, discouraged and under-utilised), the equivalent of about 8.5 million people are out of work or under-employed.

This year, South Africa’s labour productivity fell to the lowest level in 40 years. Over the past three years, wages have risen by 11.5% per annum on average – treble the consumer inflation rate for the period. **Growing numbers of employers are using automation, mechanisation and other labour-saving methods as an alternative to labour**, with the result that the economy’s capital intensity has risen sharply.”

### **Characteristics of a Well Functioning Labour Market**

- Many entry points into the world of work
- Minimum recruitment errors, easily reversed by employer and employee alike
- **Minimum job search time**
- **High mobility between jobs (vertical and horizontal)**
- Wage differences signal relative skill scarcities and productivity differences
- Wage levels and employment levels respond to changing business conditions
- Social protection against personal catastrophe
- **Education options relevant given skill scarcities**
- Workers protected against abusive practices
- Minimum monopoly (employer) and monopsony (employee) practices
- Minimum disparities between insiders and outsiders (e.g. agency/closed shop)

South Africa desperately needs a more effective labour market, one that includes as many of the characteristics listed above as possible. The National Development Plan (NDP) picks up on many of these issues, not least of which is the critical issue of education and skills development. It also embraces the changes in the modern workplace, including flexibility and concludes, on page 111, that a responsive labour market needs a “labour regime [that is] more responsive to the challenge of simultaneously expanding employment opportunities, raising living standards and reducing inequality.”

# Labour Law Review 2011

## *The Process Thus Far*

It's almost a year exactly since Minister of Labour Nelisiwe Oliphant published four controversial labour law amendment bills which, if made law, would have a profound effect on how the labour market in the country is regulated.

On December 17 last year the Labour Relations Amendment Bill, the Basic Conditions of Employment Amendment Bill, the Employment Equity Amendment Bill; and a proposed new Employment Services Bill were released, leaving the public one month – over the Christmas break – to comment on them.

It soon became apparent that the bills were so poorly drafted – they were riddled with errors and inconsistencies, and in some cases clearly unconstitutional and contrary to government's own Regulatory Impact Assessment study. The process suggested by the minister at the time was halted and they were referred to the National Economic Development and Labour Council (Nedlac) for negotiations before they were to be taken back to Parliament. The parties agreed to negotiate on six themes and put the bills aside.

[“Proposed Labour Laws Won't Fly” – The Star, 19 Dec 2011]

Originally when these proposed changes were presented to Cabinet in June 2010 they were rejected and a Regulatory Impact Assessment (RIA) study was called for. This RIA, commissioned by Government, indicated numerous extensive problems with the proposed Bills specifically in regard to their impact on jobs. Despite this, the bills and the RIA were published simultaneously by Department of Labour.

On 17 December 2010 four Bills – Labour Relations Amendment, Basic Conditions of Employment Amendment, Employment Equity Amendment and Employment Services - were published for public comment. These Bills were not related to the 2009 amendments and were different to what was tabled in the previous negotiations. Unlike previously, DOL seemed to take proud ownership of these documents. This was followed by a rushed process of public hearings as well as a limited opportunity for the public to put in written submissions to the DOL in respect of the Bills. Business including Business Unity South Africa (BUSA), the South African Chamber of Commerce and Industry (SACCI), as well as CAPES and other organisations like SEIFSA and APSO made voluminous submissions in respect of the proposed law and the impact they would have on South African employment. The NEDLAC negotiations were scheduled to proceed in January 2011, but BUSA took a position to say that they were not prepared to negotiate on Bills that were unconstitutional and against the Regulatory Impact Assessment Study (RIA) commissioned by Government. BUSA then pulled out of the NEDLAC negotiations based on the ramifications of these intended Bills. The Minister of Labour proceeded to urgently holding a bilateral with BUSA and at that bilateral it was agreed that six themes, rather than the Bills would be negotiated. These six themes covered principles that were crosscutting across all four pieces of proposed legislation and so needed to be negotiated in a holistic manner.

The six agreed on themes were

1. A-typical employment relationships
2. Dispute resolution
3. Compliance and enforcement
4. Collective bargaining
5. Access to employment
6. Equity

There was also a record of understanding between the parties that was agreed and terms of reference were drawn up. These included:

- The scope of work for the **Labour Market Policy Review Task Team** covers the policy considerations of the proposed amendments contained in the Basic Conditions of Employment Amendment Bill, Employment Equity Amendment Bill, Labour Relations Amendment Bill and the Employment Services Bills (LLA Bills) under the following broad themes.
- Reach an agreed outcome through social dialogue that promotes the spirit of tripartism;
- Achieve a settlement that is fair for workers and employers;
- Endeavour to reach an agreement to promote stability and industrial peace and the national objectives of growth, **job creation**, decent work and sustainable business and poverty alleviation;
- Use creative problem-solving mechanisms when challenges arise;
- Give consideration to the regulatory impact assessment (RIA) conducted and the unintended consequences which may arise in an attempt to address such; and to
- Commit to abide by and implement the agreement reached.

Despite Business' acceptance of the terms of reference (above), as a good example of the true spirit of tripartism and social dialogue, the reality of negotiations has been vastly different.

Nearly 12 months of negotiations has passed and the negotiating process has not been a good example for social dialogue. The DOL has stuck to many portions of their own original Bills, disguising them under the headings of the six themes above. Many proposals were put on the table which were very similar in form and intent to the original Bills and taken as a whole not much has changed in respect of a number of positions tabled in the four original 17 December Bills.

The DOL has continually negotiated on a basis that indicates that they would not allow too much dialogue on numerous topics. There are many examples of the non-existence of social dialogue in this whole process. Government tabled new drafts in early November 2011 and did an 'about turn' in areas of Compliance and Enforcement. Essential Services was only discussed substantively in November 2011 and Government expected it to be concluded at the beginning of December 2011.



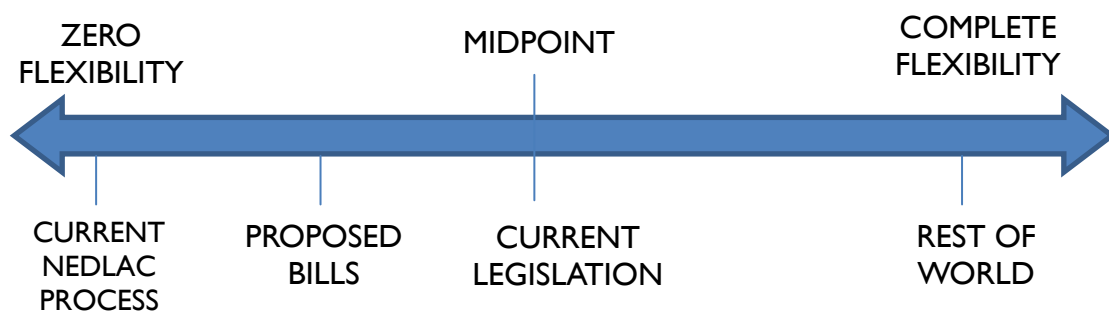
Under great pressure the parties met 7 times in November 2011. Despite warnings that that the process was not working, Government insisted that they proceed to conclude negotiations by 13 December 2011.

Government has not generally shown compromise in favour of business. If business disagrees, it is recorded, if COSATU disagrees, Government attempts to find common ground and compromises further in their favour.

Business has in good faith been in this process for the whole of 2011. Business has made many compromises. COSATU has not compromised at all. The longer Business stays in the process, the more damaging the outcome becomes for Business.

Business has been requesting a RIA since at least September 2011 on new areas of impact that were not originally identified. Government has outright disagreed despite the Terms of Reference (TOR) for the Task Team that provides that regulatory impacts should be considered. (Government has gone as far as to say Business can do their own RIA, but they will object to any funding proposal through EPP if this is made by Business). Government has continued to disagree with Business, despite the evidence presented, that certain proposals will have a negative impact on job creation.

### Graphical Illustration of Proposed Labour Amendments



In the context of a global financial and economic crisis most of the world is moving or attempting to move to more labour flexibility. In South Africa, one of the world's highest levels of unemployment areas, the approach is moving to less flexibility.

### Respect for the Social Partnership Model?

When the draft Bills were first published, just before Christmas in December 2010, there was an outcry from the business community who felt that the timing and content were an indication that the Government was not committed to the social dialogue structures established within NEDLAC.

Michael Spicer, the Business Leadership South Africa (BLSA) Chief Executive Officer is quoted saying:

*“The draft bills are totally different to what labour, business, government and civil society agreed to at NEDLAC. The bill is badly put out and badly crafted and would get a rough reception when it is taken back to NEDLAC.”*

[Quote excerpted from article “Zuma showers workers with early Xmas gift’ – City Press, Dec 2011]

Throughout this process, the business contingent has maintained confidentiality – expressly forgoing opportunities to make statements to the media - and continued to engage with all stakeholders in the hope of securing a compromise that is good for South Africa. Sadly, the other social partners have not done the same.

COSATU, in particular, has continued to tout the “ban labour brokers” slogan in the media, despite acknowledging in the NEDLAC forum that a ban is not acceptable. These attacks, as well as the continued calls for mass action have caused major uncertainty in the marketplace and can be a contributing factor to the unwillingness of business to employ people during these economically uncertain times.

Articles in December 2011 quoted the Minister of Labour, saying that agreement has been reached at NEDLAC and alleging conditions, like criminalisation of labour broking and increases to overtime rates, both of which have not been discussed at all. Whether this is a mis-quote, or an indication that the Minister is uninformed, the result of this article was panic amongst the business community. At a time when business is unsure of the status of the negotiations, statements of this nature are irresponsible and call into question the commitment to the social dialogue process.

## **Outcry from Numerous Respected Quarters Linking Bills to Job Losses**

The opposition party, Democratic Alliance, came out in January 2011 strongly in its condemnation of the drafts published:

On Monday DA labour spokesperson Ian Ollis said the four labour bills were "shockingly badly drafted" and had the potential to cause hundreds of thousands of job losses.

"The four bills that have been announced by the Zuma administration need to be halted in their tracks until the array of problematic provisions they contain are removed," he told a media briefing at Parliament in Cape Town.

Ollis said the bills, if promulgated, would create relatively few new permanent and "potentially unionised" posts, but would destroy hundreds of thousands of jobs in the South African economy.

**An impact assessment, commissioned by the labour department, had found that 2.13 million jobs, classified as fixed term, temporary or seasonal, would be jeopardised by the proposed legislative measures.**

*['Official reassures over labour laws' – Fin24.com, 18 January 2011]*

The Unemployed People's Party (UPP) believes that labour broking plays a critical role in reducing unemployment but agreed that regulation and enforcement is essential. Quoted in a Fin24.com article, UPP General Secretary, Malcolm Gema said:

Labour broking still has a role in South Africa and **banning the practice would deal a blow to the jobless**, the Unemployed People's Party (UPP) said on Thursday. He said there was a need to **look at alternatives to a ban, such as ensuring that all labour brokers adhered to labour legislation.**

*['Don't ban labour brokers: UPP – Fin24.com, 23 December 2010]*

The South African Chamber of Commerce and Industry (SACCI) called for an immediate retraction of the amendment bills, with SACCI President Mr. Chose Choeu stating:

“SACCI feels that **current legislation accommodates all the problems that the Bills aim to address but that appropriate enforcement is lacking.** For this reason SACCI believes that the Bills should be withdrawn.”

*[SACCI Press Release issued 18 February 2011]*

The South African Institute of Race Relations (SAIRR) has been vocal on the proposed changes to the labour legislation and have even advocated some radical changes. During the Gauteng Public Hearing on the Labour Law Amendments, SAIRR spokesperson, Anthea Jeffrey is quoted:

“The country has been losing jobs and **research has shown that these laws will lead to more job losses.**” *[‘Employers against new labour laws’, The Sowetan 1 Feb 2011]*

Ivan Israelstam, well-known labour lawyer is quoted:

“Should the above amendments prevail **businesses are likely to step up their tendency to mechanise and to move their workplaces to the Far East.** Overseas businesses will be more deterred than ever before from investing here.”

*[‘Proposed amendments in labour law frightening, The Star Workplace 31 January 2011]*

Veteran labour analyst, Andrew Levy, said:

“Some of the provisions make Alice in Wonderland look like a serious work of non-fiction and could further **undermine Government’s plans to create 5 million jobs by 2020.** ... The new growth path also stressed the need to make it easier to set up and operate a business, but the **labour package greatly increases the bureaucracy of doing business.**” *[‘Radical redesign mooted in new job laws, The Times 18 December 2010]*

Michael Spicer, the Business Leadership South Africa (BLSA) Chief Executive Officer is quoted saying:

“These bills are so bad that they are **fundamentally contradictory to government’s own stated economic growth path.** They are at odds with our social objectives. In his State of the Nation speech the President said government’s focus would be on employment creation, but the **disastrous implications of these bills are that they will fuel job losses.**” *[‘Labour Legislation needs more work’, Financial Mail 18 February 2011]*

Peggy Drodskie of the South African Chamber of Commerce and Industry (SACCI) confirmed that the organisation’s members were gravely concerned about the implications of the proposed amendments, especially for the smaller sectors that need a more flexible regulatory system to remain competitive. She said:

“We have done a survey amongst our members and there is no doubt that this will result in job losses. It makes it extremely difficult for employers to participate in the economy.” [*Labour Legislation needs more work*, *Financial Mail* 18 February 2011]

Even the second largest trade union in South Africa is unhappy with the proposed labour amendments. United Associations of SA (UASA), a member of FEDUSA, says that the proposed changes to the Labour Relations Act (LRA) could hurt thousands of workers. Leon Grobler, Chief Operating Officer of UASA and chief negotiator for FEDUSA and NEDLAC says:

“Drastic changes to the amendments are necessary. A great number of workers could end up disenfranchised if the latest proposed amendments to the LRA are accepted in its present form. We don’t believe that the amendments have been thought through properly and could have a very negative impact on workers in SA.” [*Labour broking ban slammed*, *ITWeb article* 17 January 2011]

Former President FW de Klerk, in a statement issued immediately after President Zuma’s State of the Nation Address in February 2011, said:

“President Zuma is right: unemployment is our main national priority. ... It is the reason that we have made no progress at all in combating inequality since 1994.

Unemployment levels are also affected by labour regulations – particularly among small and medium size businesses that create 60 – 70% of all jobs in most economies. Virtually everyone accepts the need for reasonable regulations to protect workers’ rights. However, the more intrusive the regulations, the fewer the jobs. Employers will run a mile before creating jobs if labour regulations interfere with their ability to run their businesses – or if they are forced to spend too much time and money complying with onerous regulations. This is exactly what happened in South Africa – and is the main cause of the growth of labour broking.

The legislation will further discourage foreign and local investment with enormously negative consequences for job creation. According to the World Economic Forum’s Global Competitiveness Report South Africa’s labour market is already one of the most rigid in the world. .... Why should any investor accept all these hassles when there are dozens of other investor-friendly countries clamouring for their money?

Whatever its cause, the proposed labour legislation will further exacerbate our most serious national problem – unemployment - and will fatally undermine President Zuma’s efforts to combat it.”

[EXCERPT: *President Zuma’s Job Creation Drive and the Labour Law Amendment Bills News Alert – FW de Klerk Foundation, February 2011*]

## **Regulatory Impact Assessment (RIA)**

### **June 2010**

After Cabinet rejected the proposed amendments to the Labour Relations Act, Basic Conditions of Employment Act and Employment Equity Act and the new Employment Services Bill in July 2010, a Regulatory Impact Assessment (RIA) was instructed to be conducted to investigate the potential consequences if the amendment bills were passed in the original form.

The RIA was commissioned by the Department of Labour (DOL) and conducted by the University of Cape Town team of Professor Paul Benjamin, Professor Haroon Borhat and Carlene van der Westhuizen.

### **December 2010**

Despite the RIA pointing to “the severe risks posed by these draft regulations” (RIA pg 13); the RIA and the different Bills were published for comment on the 17 December 2010.

*“The Bills contains provisions that seek to give effect to the ANC Manifesto in a very literal and flawed manner. These include the repeal of s198, and changes to the definition of employee and a new definition of employer which have the unintended consequences of reclassifying many employees as independent contractors. These clauses dealing with outsourcing and sub-contracting seek to impose invariable consequences on these transactions rather than regulating abuses. The RIA points to severe risks posed by these draft clauses.”*

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Professor Paul Benjamin, RIA pg 12

### **NEDLAC Negotiations (2011)**

Throughout the NEDLAC negotiation process, reference has been made by Business to the concerns raised by the RIA and yet these have not been taken into consideration. Further, because of the changes that have been proposed during the negotiations, Business has called for a new Regulatory Impact Assessment to be conducted on some areas. Business believes that without this vital information on the actual Impact on the economy, and in particular the government’s plans for job creation, the negotiating parties cannot responsibly agree to the amendments. So far, calls from Business have gone unheeded.

# **NEDLAC Negotiations**

## **BACKGROUND**

Government published four Labour Amendment Bills for public comment on 17 December 2010, viz:

- Employment Equity Amendment Bill
- Basic Conditions of Employment Amendment Bill
- Labour Relations Amendment Bill
- Employment Services Bill

Simultaneously, the four Bills were also tabled in NEDLAC for consideration.

## **CONSIDERATION OF BILLS IN NEDLAC**

The NEDLAC 6-a-side Task Team, also referred to as the Plenary, was established to engage on the Bills. At its first meeting, held on 20 January 2011, Government presented the Bills to the social partners for engagement.

The 6-a-side task team met on 05 April 2011 and agreed on the approach to process and content. A Terms of Reference was entered into which is attached to this Record.

A two-A-Side Working Group was established to assist the process.

It was agreed that the process of engagements on the Bills will be expedited under 6 broad themes, in the following order of engagement, viz:

- Theme 1: Atypical Employment Relationships
- Theme 2: Dispute Resolution
- Theme 3: Compliance and Enforcement
- Theme 4: Access to Employment
- Theme 5: Employment Equity
- Theme 6: Collective Bargaining

## **APPOINTMENT OF THE DRAFTING TEAM**

NEDLAC appointed three Labour Law experts to serve in the capacity as the drafting team as follows: Messrs Paul Benjamin for Government, Anton Roskam for Labour and Chris Todd for Business.

## UPDATE ON THE WORK OF THE TWO-A-SIDE WORKING GROUP

The 2-a-side Working Group has met as follows:

07 April 2011;                      15 April 2011;                      06 May 2011;  
21 June 2011;                      06 July 2011;                      21 July 2011; and  
02 August 2011.

## UPDATE ON THE WORK OF THE SIX-A-SIDE COMMITTEE

The Six-A-Side Working Group is made up of the following representatives:

**Business:**                      Kaizer Moyane; Vikashnee Harbhajan; John Botha, Elize Strydom; Tanya Cohen; Elias Monage; Aruna Ranchod; Janette Cumming; Jonathan Goldberg; Elize van der Westhuizen; Dave Carson and Kevin Cowley.

**Labour:**                      Bheki Ntshalintshali; Andre Kriel; Mduduzi Mbongwe; Norma Craven; Leon Grobler; Prakashnee Govender; Patrick Phelane; Bongani Dlamini; Gizelle Conradie; Johan van Niekerk; Neil Newman; Manene Samela; Tuwani Gumani and Thulani Khumalo.

**Government:**                      Les KettleDas; Thembinkosi Mkalipi; Ntsoaki Mamashela; Ian Macun; Zodwa Mabaso; Virgil Seafeld; Stephen Rathai; Christa Rossouw; Zakes Mogwathe; Siyanda Zondeki and Vimla Singh.

The six-a-side committee has met as follows:

11 August 2011;                      16 August 2011;                      26 August 2011;  
01 September 2011;                      8 September 2011;                      16 September 2011;  
21 September 2011;                      28 September 2011;                      12 October 2011;  
21 October 2011;                      26 October 2011;                      03 November 2011;  
11 November 2011;                      16 November 2011;                      17 November 2011;  
29 November 2011;                      30 November 2011;                      09 December 2011; and  
13 December 2011.

The six-a-side Committee deliberated on draft reports by the legal drafters on A-typical Employment Relationships, Dispute Resolution, Collective Bargaining and Compliance and Enforcement themes with a view of finding convergence.

On 4 October 2011, the Minister of Labour requested parties to expedite the process and conclude themes 1 – 4 by 31 October 2011. The parties expressed willingness to attempt to meet this

deadline, but this was not achievable due to delays in the mandating process, drafting and due to the complexity of issues.

It should be noted that Government has proposed three different models in addressing possible solutions on Labour Brokers. (Business model proposed). The first model was tabled in July / August through the plenary. The second model was tabled on 16 September 2011. COSATU initially indicated they would be in a position to reply, but indicated on 12 October 2011 that they were unable to respond to such model until such time as they have mandated their membership at a meeting of 28 October 2011. In the interim a further model was distributed for consideration on 21 October, but has not been formally tabled at NEDLAC for consideration. (FEDUSA agreement proposed)

Drafters presented new drafts on s198 for the social partners to consider at the meeting held on 03 November 2011.

COSATU and NACTU recorded their stance of banning labour brokers.

FEDUSA and Business agreed to the proposal by Government.

The Steering Committee had reached agreements on some of the issues on the Four Themes that are attached as follows:

1. Atypical Employment Relationships;
2. Dispute Resolution;
3. Collective Bargaining; and
4. Compliance and Enforcement.

The details of this are contained in annexures.

Proposed dates for meetings of the steering committee for 2012 had been circulated to members for finalisation.



## **Theme 1: A-Typical Employment Relationships**

Within this theme, the following points were discussed:

- Scope of a-typical employment relationships as per Government's Base Document of 2009
- Addressing problem areas in a-typical employment in a way that is conducive to job creation and decent work

## **Theme 2: Dispute Resolution**

Within this theme, the following points were discussed:

- Effectiveness of the CCMA
- Effectiveness and jurisdiction and power of Labour Court
- Disputes in the public interest
- Essential services
- Capacity of bargaining councils i.r.o dispute resolution
- Accreditation of private dispute resolution agencies
- Operational requirement dismissals

## **Theme 3: Collective Bargaining**

Within this theme, the following points were discussed:

- Protecting vulnerable workers
- Bargaining councils and statutory councils
- Sectoral determinations
- Violence in strikes
- Protest action
- Organisational rights

## **Theme 4: Compliance & Enforcement**

Within this theme, the following points were discussed:

- Strengthening the power of the inspectorate
- Streamlining enforcement, strengthening compliance

- Administrative and criminal sanctions
- Capacity building of the inspectorate
- Public Private Partnerships
- Addressing child labour

## **Theme 5: Access to Employment**

The following theme is yet to be addressed at NEDLAC however the points for discussion include:

- The role and function of public employment services
- Private employment services
- Labour market information & reporting
- Creating decent work
- Public Private Partnerships: Employment Services and PPE
- Promotion of Youth Employment
- Probation
- Cost of doing business/compliance costs

## **Theme 6: Employment Equity**

The following theme is yet to be addressed at NEDLAC however the points for discussion include:

- Equal pay for work of equal value
- Reporting
- Enforcement and compliance issues
- Compliance costs
- Discrimination disputes

**The latter two themes 5 and 6 are yet to be discussed at NEDLAC.**

## ***Recommendations***

There are vast disagreements between the social partners. These are detailed within the attached Annexures and a summary contained below:

## **Theme 1 – A-typical employment**

- The proposed duration of 6 months for temporary employment services, fixed term contracts and part-time employees.
- Equal work for equal pay across all categories of atypical employment after 6 months.
- Deemed employment after 6 months from temporary employment services.
- Compelled retrenchment pay after 24 months even in cases of legitimate fixed term contract projects.

## **Theme 2 – Dispute resolution**

- A proposed absolute provision necessitating employers to lodge security before taking arbitrations on review.
- The fundamental proposed change to section 187(c) which will impact on the right of employers to retrench as an alternative to employers refining operational changes to their conditions of service.
- The potential extension of the consulting period in section 189(a) retrenchments.
- The proposed change to the substantive grounds for retrenchments, making the process even more onerous for employers.

## **Theme 3 – Collective bargaining**

- The proposal of granting non-majority unions rights in clauses 14, 16, 18 and 33 only currently afforded to majority trade unions.
- The extension of organization rights to clients of TES employees.
- The extension of picketing rights to third party property owners (eg mall owners).
- The proposed amendments to allow the Minister of Labour to extend statutory council agreements undermining the principle of majoratism.
- To allow the Minister of Labour to extend a national minimum wage.
- The power of the Minister to determine actual wages in sectors through sectoral determination.

#### **Theme 4 – Compliance and enforcement**

- The elimination of the compulsory undertaking provisions for the inspectorate.
- The stepped up approach to objection to compliance orders being to the Labour Court (adding to the costs to doing business).
- A proposed increase of 200% in the fines.
- The proposed Minister's powers to further regulate atypical work.
- The proposed Minister's powers to change thresholds in sectors.
- The inability of the DOL to address the capacity of inspectorate.

# **The South Africa Staffing Industry**

## ***International Alignment***

Ensuring alignment with International best practice is a key priority for the South African staffing industry, represented by CAPES, the four associations and their respective members. The world is fast becoming a 'global village' and competitiveness, particularly in respect to labour market efficiency, is a key determinant for foreign direct investment and subsequent job creation. Throughout the years, especially in the past two decades, the industry has worked hard to keep abreast of International trends and to determine how best to adapt these to the local conditions.

## **International Confederation of Private Employment Agencies (CIETT)**

CIETT is the authoritative organisation representing the interests of the organised and well-regulated private employment agency industry across the world. Recognised as such by international organisations (e.g. International Labour Organisation, OECD, World Bank) CIETT represents the industry at large (bringing together 46 national federations) and its diversity (representing seven of the largest multinational staffing companies as well as tens of thousands of SMEs).

CIETT recognises the vital role that private employment services plays in helping organisations, economies and individuals facilitate adaption to change, and their capacity to increase labour market participation, reduce unemployment, build better labour markets and deliver decent work. However, CIETT also recognises that inadequate regulation and a small number of disreputable agencies can prevent the industry from fulfilling its potential. The right environment and level of appropriate regulation, collaborating with policy makers, trade unions and user organisations to improve governance and quality standards of the industry across the world.

CIETT operations are organised across the world through regional entities. South Africa is represented by the Association of Personnel Service Organisations (APSO) who holds the seat on the CIETT council for Africa and the Near East.

Representing reputable private employment agencies, members of CIETT refuse to compete at the expense of workers' rights and work hand-in-hand with governments and trade unions to fight illegal work. CIETT also aims to promote and increase quality standards within the agency work industry, through Codes of Conduct and other means of self-regulation. For more, [www.ciett.org](http://www.ciett.org)

## **Industry-specific Research**

Research has been undertaken globally, and locally, on the impact of the Temporary Employment Services industry, particularly in relation to its impact on job creation, skills development and promotion of workers' rights.

### **Topline Research Solutions Research commissioned by Services SETA**

In 2010, the Services SETA, to which the majority of private employment agencies (PrEA) and temporary employment services (TES) belong, commissioned research on the sector. SSETA commissioned Topline Research Solutions (TRS) to conduct a study amongst TES member companies to gather empirical evidence that could be used to better understand the size, scope and impact of the sector and to inform the NEDLAC negotiation process.

**The primary finding of this research was that the TES industry does make a significant contribution to the South African economy.**

#### Key Findings:

1. Temp workers are primarily assigned due to contingency, projects and seasonal increases in labour requirements.
2. TES is a gateway to employment with almost half of the companies interviewed indicating that 60% of their annual temp workforce is made up of first-time workseekers.
3. A significant portion of the temp assignees are currently under learnerships or apprenticeships proving that the TES sector is a primary contributor to skills development in South Africa.
4. More than half of the companies interviewed operate within a bargaining council or sectoral determination and all associated worker's rights are enforced.
5. Temp assignees are sufficiently happy with their working conditions as evidenced through the fact that 77% of TES indicated that 'word of mouth referrals' from existing assignees is their primary source of recruitment.

### **Boston Consulting Group Research commissioned by CIETT**

The Boston Consulting Group (BCG) is a global management consulting firm and the world's leading advisor on business strategy. It partners with clients in all sectors and regions to identify their highest-value opportunities, to address their most critical challenges and transform their businesses. BCG has been commissioned by CIETT on several occasions in the past decade to undertake research specific to the global private employment agency sector.

Previous industry-specific research undertaken by BCG includes:

- Orchestrating the evolution of Private Employment agencies towards a stronger society (2000)
- More work opportunities for more people (2007)
- Adapting to Change (2011)

### ***Adapting to Change***

The formal launch of the “Adapting to Change” programme in South Africa is scheduled to take place in March 2012.

#### Key Findings:

6. Private Employment Services (PrEA) enable adaption to change in increasingly volatile and complex labour markets.
7. PrEA reduce both structural and frictional unemployment.
8. PrEA drive down segmentation of labour markets.
9. PrEA contribute to matching and developing the skills needed in labour markets.
10. PrEA deliver Decent Work.
11. Efficient labour markets need appropriate regulation for PrEA.

#### Primary Recommendations:

1. Policymakers should ensure that the regulatory framework in place for the PrEA sector is appropriate thereby enabling it to play its role fully.
2. Policymakers should recognise that the PrEA industry is a sector on its own.
3. Appropriately regulated PrEA should be involved by policymakers in the designing and implementation of active labour market policies.

#### The Sector commits to:

- Working alongside all relevant stakeholders including social partners in order to optimise regulation on PrEA.
- Ongoing action to improve the governance and quality standards of the industry around the world.
- Becoming an active career agent for workers.
- Greater communication efforts to explain the role that the industry plays in contributing to effective labour markets and to fight against the unethical and illegal side of the industry.
- Expanding its role as a labour market intermediary.

## Global Dialogue Forum

The International Labour Organisation (ILO) regularly hosts global dialogue forums in their headquarters in Geneva. Whilst the subject or topics of these forums changes, the format remains essentially the same in that the global dialogue forum is a platform for the social partners – government, labour and business – to get together from around the world to discuss issues of mutual interest.

The ILO has recently hosted two specific global dialogue forums for the private employment agency sector, the first in 2009 and the most recent in October 2011.

### Workshop to promote ratification of the Private Employment Agencies Convention c181, 1997

- Held 20 & 21 October 2009
- Attended by 108 participants
  - 28 Government representatives (South Africa was absent)
  - 18 Advisors
  - 26 Worker representatives (labour) – including SA reps
  - 34 Employer representatives (business) – including SA reps
- Summary Overview:

The participants left with several key areas of consensus. The social partners agreed that the private employment agency sector did contribute towards labour market efficiency and that effective regulation and enforcement mechanisms (such as those proposed within c181) were essential. It was agreed that the social partners would continue to engage in bi-laterals to determine ways to promote job creation, even within the economic crisis. ILO would assist in driving ratification endeavours in the various countries.

### Private Employment Agencies, promotion of Decent Work and improving the functioning of labour markets in private services sectors

- Held 18 & 19 October 2011
- Attendance by SA business representatives but noticeably SA government and unions absent
- Summary Overview:

The participants left without having achieved any points of consensus. The ILO Governing Body will have to decide on any further engagements re sectoral activities. Draft points had been proposed but countered by the other social partner. It was extremely evident that the atmosphere had changed in the past two years and the Employers' delegation chair stated they had operated "in the belief that we were working in a spirit of co-operation".

**International Labour Organisation (ILO)** is a non-governmental organisation, based in Geneva, founded by the United Nations with the primary goal of securing worker rights across the world by encouraging social dialogue between Governments, employer organisations (business) and worker organisations (labour) and the ratification of a range of conventions based on global best labour practice.

South Africa is a member of the ILO and has so far ratified 23 of the ILO conventions.



## Investigation of Global Best Practice Models

The South African staffing industry has expended effort and resources to investigate the variety of regulatory frameworks in place across the world. Extensive study tours have been conducted in a variety of countries to fully understand the models, the implementation and most importantly the compliance and enforcement mechanisms at work.

Some of the global best practice models considered:

Self-Regulation	-	ABU (Netherlands)
Self-Regulation	-	BZA (Germany)
Public Services	-	BA – German Federal Employment Agency (Germany)
Self-Regulation	-	Recruitment & Employment Confederation (UK)
Public Services	-	Job Centre Plus (UK)
Co-Regulation	-	Assolavoro (Italy)
Co-Regulation	-	Bemanningsforetagen (Sweden)

Whilst positives can be taken from each of the models investigated, the staffing industry is cognisant of the uniqueness of the South African environment. Critically, there are many lessons that can be learned from the experiences of our European counterparts who have already navigated this process. It should be considered that, rather than make these same mistakes, South Africa can profit from the benefit of hindsight and focus on implementing a system that achieves the desired outcome of greater compliance and enforcement and the resulting protection of vulnerable workers, whilst providing the flexibility the market needs.

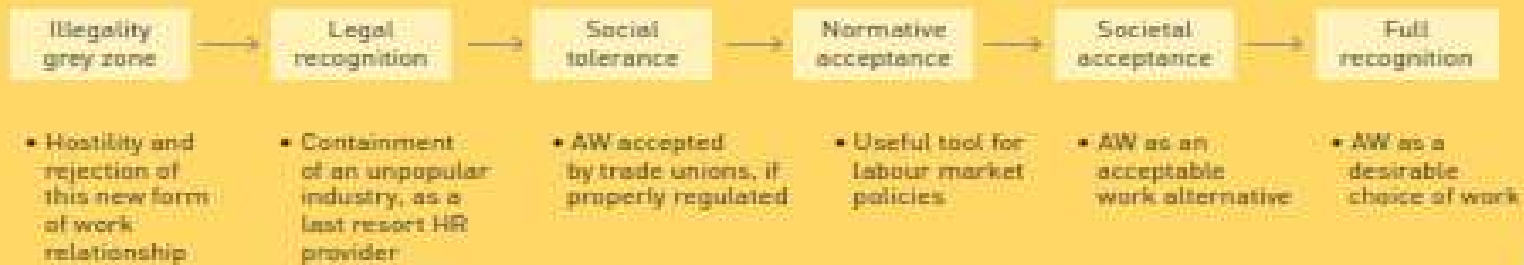
The research “Adapting to Change” conducted by the Boston Consulting Group in 2011, clearly indicates the cycles that most countries have undergone in respect to coping with the changing world of work – including the shift to more a-typical forms of employment and the increase in the number of private employment agencies (referred to internationally as TWA) who manage these workforces – and the methods of regulation.

Figure 60

## Agency work markets tend to go through stages of development

### THE TIMELINE EVOLUTION OF AGENCY WORK ACCEPTANCE

#### Social development



#### Regulatory development



Source: Cefit

## International Regulation Trends: The Need for a Balanced Process

International examples highlight the need for a balance between regulation and enforcement. In countries that have adopted strict regulations but who have failed to effectively implement, the result has simply been the over-regulation of the already compliant and a proliferation of non-compliant operators who simply flout the law.

Similar concern has been raised locally about the potential growth in the non-compliant “black” market, commonly referred to in SA as the “bakkie brigade”, for temporary employment services/labour brokers if the proposed legislative amendments were to be passed.

Veteran labour analyst, Andrew Levy, believes that it’s a given:

“It’s the old story of markets: **over-regulate any market and you get a grey market or a black market.** It will drive things further underground, we will **end up with another whole set of avoidance strategies and the people who are the most vulnerable will bear the brunt.**” [*Radical redesign mooted in new job laws, The Times 18 December 2010*]

According to the International research released by the Boston Consulting Group (BCG), a balanced regulated framework leads to a reduction in undeclared/illegal work.

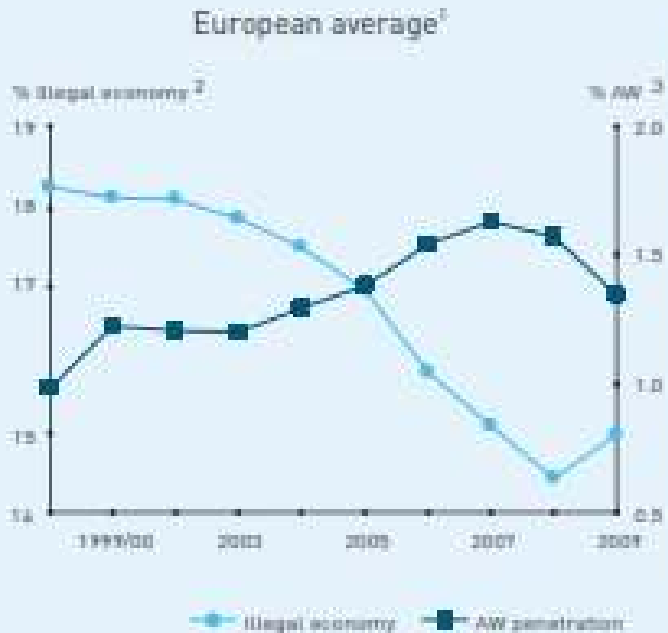
In addition to having a positive impact on employment levels, increased use of private employment services has the added advantage of reducing undeclared work in the economy by providing an organised and regulated form of flexible work. As shown in the figures (below), there is a **strong correlation between the level of agency work penetration and the volume of illegal activities.** Countries with a high penetration rate of agency work have lower levels of illegal economic activity.

Figure 22

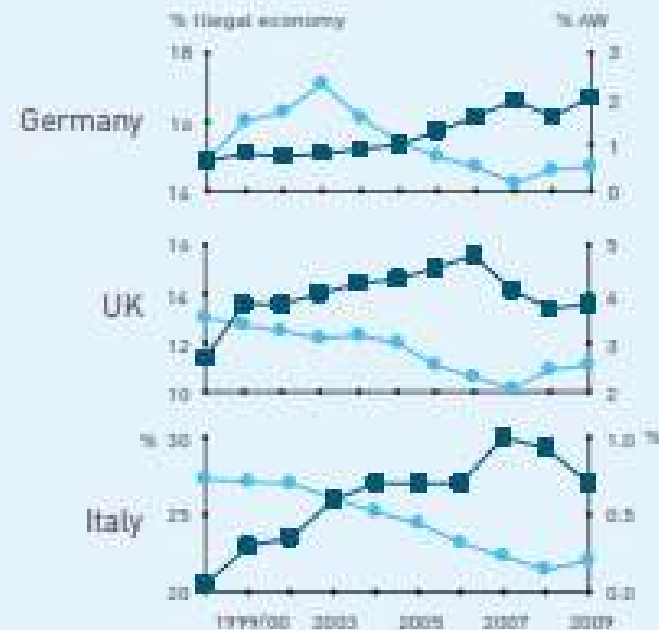
## Reduction in illegal economy relates to increase in agency work

Increase in illegal economy, decrease in agency work in 2009 due to the crisis

### CHANGES IN THE LEVEL OF ILLEGAL ACTIVITY ...



### ... CORRESPOND WITH CHANGES OF AGENCY WORK LEVELS



<sup>1</sup> Average of 15 countries, for full list see appendix 2. Measured as % of total GDP.  
<sup>2</sup> AW penetration  
Notes: Two year averages for 1999/00, 1999/03, and 01/02  
Source: Prof. Dr. Friedrich Schreyer, Department of Economics, Johannes Kepler University of Linz, 2010

The proposals contained within the NDP, concur that an effective regulatory framework is critical:

Private temporary employment and placement services have significantly contributed to labour market matching in the past two decades. This may partly be explained by formal employers seeking to circumvent labour regulations. It may also be caused by the rapid expansion of the services sectors, which have been the main source of employment growth. Borat estimates that 900 000 people have been placed in some work opportunity as a result of the temporary employment services sector. **These services are essential given the fragmented labour market, where low-income households are generally far from economic opportunity with weak labour market networks. Most new opportunities are in services activities, which often involves changing jobs periodically. These employment services raise the chance of achieving more regularised employment, as well as access to skills training for new placements. Such a service provides the opportunity for regulation and access to benefits for workers.**

**The private labour placement sector and temporary employment services need to be effectively regulated, to ensure that the opportunity for labour matching is available to vulnerable workers, while protecting basic labour rights. Some basic provisions would ensure that after six months with a temporary employment services and/or client, they would be jointly and severally liable for unfair dismissal and unfair labour practice. The temporary employment service would be responsible for the employment relationship regarding the Unemployment Insurance Fund, the Compensation for Occupational Injuries and Diseases Act, the Basic Conditions of Employment Act, and the Skills Development Act.**

*[EXCERPT: National Development Plan, pg 1 | 6]*

## ***Private Employment Agencies (PrEA)***

The Private Employment Agency (PrEA) sector in South Africa is difficult to quantify. Due to poor enforcement of existing registration requirements, as stipulated in s23 and s24 of the Skills Development Act, 1998, there is no comprehensive listing of PrEA operating in South Africa.

The databases of the Services SETA, to which the majority of PrEA would be registered, is inaccurate due to a combination of poor administration and the reality that the majority of PrEA would be too small, and therefore exempt, from paying Skills Development Levies.

It is estimated, from desktop research conducted by a variety of sources that the industry comprises at least 3000 recruitment companies, the majority of whom would operate as a business with less than 10 employees. Due to the very low barriers to entry, there is also a significant rate of “start and close in less than a year” in this sector. This phenomenon is not unique to South Africa and the same trend is experienced in places like the United Kingdom and United States where there is a lack of appropriate regulation/registration.

Within the CAPES association members, taking into account the duplication where agencies belong to more than one association, it is fair to say that approximately 1000 private employment agencies are registered. Between them, these agencies run more than 2300 offices across the country.

## ***Temporary Employment Services (TES)***

The Temporary Employment Services (TES) industry is guesstimated to account for around 4% of the economically active population in South Africa and is a small but important contributor to various national strategic initiatives of both the Government and the private sector. In Rand terms, the industry is a R23 billion plus industry providing jobs for around 950 000 assignees on any given day. Of these assignees approximately 15 – 32% obtain permanent employment (depending on job type) and TES therefore acts as a channel for the unemployed, under-employed and outsiders (people who find it difficult to obtain employment such as youth & the aged) into the formal labour market.

The new world of work with its changing technology, short product life cycles and skills shortages, as well as the impact of globalisation on competitiveness, means that life-long employment is no longer a reality. Rather, the TES industry focuses on employment security rather than job security. In addition, it is attempting to balance employment flexibility with benefits security.

Temporary assignees, given the nature of the TES industry, are continually exposed to new technologies, different industries and various positions and this contributes towards their marketability and employment security. The TES industry also engages in learnerships, apprenticeships and is one of the largest contributors to the skills development levy in South Africa via the Services SETA.

## **Current Regulatory Environment**

### **Skills Development Act Amendments**

The current legislation, contained within s23 and s24 of the Skills Development Act 1998 that provides some regulatory framework for the South African private employment agency sector can be found within Government Gazette No 6830. This is currently under review due to the recent amendments to the Skills Development Act and it is assumed that these sections will be incorporated into the Employment Services Bill.

Currently the only provisions made for regulation include:

- Registration as a Private Employment Agency (this results in the issuing of a PEA certificate that is valid for two years or until the agency moves premises);
- Requirement to keep a register of work seekers, vacancies and placements;
- A limitation on the fees that can be charged to a work seeker (carried forward from the Guidance & Placement Act, 1981)

This legislative requirement is not policed effectively and the majority of companies that apply to any of the staffing associations are not in possession of this certificate. It is telling that, as of August 2011, the Department of Labour had less than 1000 private employment agency offices registered on their database. This is concerning in that it is noticeably inaccurate given that other research, conducted by recruitment suppliers including one of SA's largest job portal, CareerJunction, suggests that there are at least 3000 recruitment companies operating in South Africa.

The associations, in particular APSO, work together with the Department of Labour to ensure that all member companies are properly registered in line with the SDA. The lack of enforcement has resulted in uncertainty about the actual size and scope of the private employment agency sector.

The current discussions at NEDLAC, under Theme 5: Access to Employment, have an enormous bearing on the future of regulation for the PrEA sector. In particular the role and function of both the Private Employment Services and Public Employment Services sectors are scoped.

## LRA s198

The Temporary Employment Services (TES) is regulated within existing labour legislation, specifically in Labour Relations Act, section 198 that reads:

### 198. Temporary Employment Services

- (1) In this section, "temporary employment service" means any person who, for reward, procures for or provides to a client other persons-
  - (a) who render services to, or perform work for, the client; and
  - (b) who are remunerated by the temporary employment service.
- (2) For the purposes of this Act, a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
- (3) Despite subsections (1) and (2), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
- (4) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any of its employees, contravenes-
  - (a) a collective agreement concluded in a bargaining council that regulates terms and conditions of employment;
  - (b) a binding arbitration award that regulates terms and conditions of employment;
  - (c) the Basic Conditions of Employment Act; or
  - (d) a determination made in terms of the Wage Act.
- (5) Two or more bargaining councils may agree to bind the following persons, if they fall within the combined registered scope of those bargaining councils, to a collective agreement concluded in any one of them-
  - (a) temporary employment service;
  - (b) a person employed by a temporary employment service; and
  - (c) a temporary employment service client.
- (6) An agreement concluded in terms of subsection (5) is binding only if the collective agreement has been extended to non-parties within the registered scope of the bargaining council.
- (7) Two or more bargaining councils may agree to bind the following persons, who fall within their combined registered scope, to a collective agreement-
  - (a) temporary employment service;
  - (b) a person employed by a temporary employment service; and
  - (c) a temporary employment service's client.
- (8) An agreement concluded in terms of subsection (7) is binding only if-
  - (a) each of the contracting bargaining councils has requested the Minister to extend the agreement to non-parties falling within its registered scope;
  - (b) the Minister is satisfied that the terms of the agreement are not substantially more onerous than those prevailing in the corresponding collective agreements concluded in the bargaining councils; and
  - (c) the Minister, by notice in the Government Gazette, has extended the agreement as requested by all the bargaining councils that are parties to the agreement.

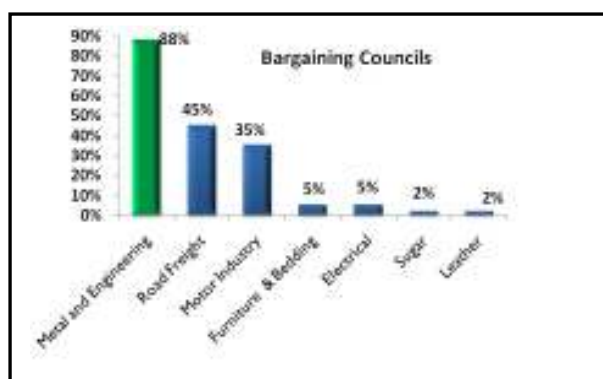
The current Act goes far enough to protect employees in these categories. The abuses occur where there is no proper enforcement of this and other provisions. There is little to no consequences of non-compliance. The National Development Plan introduces a proposed regulatory framework



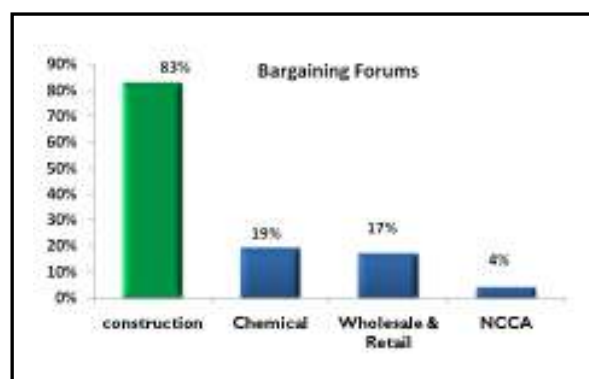
through the introduction of joint and several liability for dismissals after a certain period. This is a clear workable proposal that can be practically implemented.

## Bargaining Council Current Regulatory Environment 2010/2011

According to the results of the Topline Research Solutions (TRS) 2010 research into the Temporary Employment Services (TES) industry, nearly 60% of all workers represented by the TES companies surveyed are covered by a Bargaining Council.



Source: TRS research on TES industry (2010)



Source: TRS research on TES industry (2010)

The vast majority of these are covered by the MEIBC, MIBCO and Road Freight, where the collective rights are extended to third parties including TES assignees.

During 2010 the National Association of Bargaining Councils (NABC) conducted research into the labour broking (or TES) industry. According to Wynand Stapelberg of the NABC, the extent of labour broker activity within the 14 Bargaining Councils who participated in the survey is significant.

“Our survey indicates that labour brokers are generally well controlled by Bargaining Councils. The most important control measure is keeping the labour broker and the client jointly and severally liable.

The MEIBC estimates that 92% of the labour brokers keep contributions up to date at any time where other employers may be as low as 30%.”

[EXCERPT Adcorp Employment Quarterly, Jan – March 2011]

It could therefore be argued that the employees working in a bargaining council environment, via a registered TES, were in fact better protected than their counterparts who were employed directly.

(Bargaining Councils: (14 Councils responded)

Number of <b>Labour Brokers</b>	1 137
Number of <b>employees employed</b> by Labour Brokers (estimate)	50 551
Total number of employers registered with the Councils	34 590
Total number of employees in the <b>various industries</b>	781 134
<b>Percentage</b> Labour Brokers as a percentage of total <b>employers</b>	3,29%
<b>Percentage</b> Labour Broker employees as a percentage of total <b>employees</b>	6,45%

Source: Adcorp Employment Quarterly Jan – March 2011

## Enforcement

It is clear that South Africa's existing labour legislation framework is comprehensive. The World Economic Forum's Global Competitiveness Report confirms that South Africa currently has the 7<sup>th</sup> most restrictive labour laws in the world and this ensures extensive protection for workers.

John Brand, a partner at Bowman Gilfillan says:

“The bills, in their current form, will have profound unintended consequences for SA's labour market. He describes **SA's current labour laws as world class, based on international best practice**, and says that the amendments in the bills will compromise much of the protection and many of the rights of workers. **Our problem is not the legislation, but its application and enforcement. Unfortunately, we don't have a world class inspectorate to enforce these laws.**”

*['Labour legislation needs more work', Financial Mail 18 February 2011]*

The Regulatory Impact Assessment (RIA) commissioned by Department of Labour confirms that government is currently severely under-resourced and so cannot effectively monitor and enforce existing legislation.

The RIA states that:

- Department of Labour (Public Employment Services) currently employs just 559 staff members across the country;
- Department of Labour has 125 labour centres, 9 provincial offices and 19 mobile centres;
- Each South African PES employee is responsible for looking after 25 000 unemployed individuals, this is more than five (5) times the average in other countries including Brazil, Germany, the UK and Hungary.

This is simply too few to effectively provide public employment services and monitor and enforce legislation in respect to the private employment agency sector.

The associations have experienced frustration over the past several years in reporting non-compliant operators to the Department of Labour but nothing has been done to address the non-compliance or shut down these businesses.

In addition, in a report “Enforcement and Sanctions to Promote Compliance with South African Labour Legislation” prepared by Professor Paul Benjamin for the ILO, the lack of resources is evident in the challenge of enforcing existent labour legislation. In the conclusion section, the report highlights key areas of concern, including:

Labour legislation currently provides a range of civil and criminal mechanisms to enforce its provisions. The lack of information concerning the enforcement activities of the labour inspectorate makes it extremely difficult to assess the efficacy of the use of enforcement strategies and sanctions.

Post-Apartheid labour legislation places a considerable burden on the inspectorate as the responsibility for enforcement through compliance and court orders rests directly on the Department.

It is not clear to what extent the implications of this added responsibility and expanded coverage has been taken into account in terms of both numbers and qualifications of staff in the restructuring of the Department.

Currently there are severe issues of resource constraints evidenced by the fact that virtually no prosecutions are instituted for health and safety offences or the unlawful employment of child labour. Reports going back as far as 1997 have proposed that the Departments explore more effective working arrangements with the relevant prosecuting authorities. It is essential that the capacity be created to bring successful prosecutions in high-profile cases in order to have a general deterrent effect.

**There is no doubt that both the law and the practice of enforcing labour standards in South Africa are in need of change.**

[EXCERPT: Enforcement & Sanctions to Promote Compliance with SA labour legislation, pg 30 & 31]

CAPES has long maintained that before legislation is amended, a comprehensive enforcement mechanism should be established to police the existing laws. Throughout the past decade, extensive research has been conducted across the world to identify models that could work effectively within the South African environment. Extensive research and study tours including but not limited to leading industry associations, the International Labour Organisation (ILO) in Geneva and International Training Centre (ITC) in Turin, focusing on best practice in labour inspection, ensuring sound enforcement and advisory services are developed, we believe that this is possible, especially if public-private partnership initiatives are undertaken between the industry and Government to drive compliance and best practice standards.

## Self-Regulation

The South African staffing industry has a long history of self-regulation and continues to work hard to professionalise the industry through compliance, ethics and best practice. Each of the associations that are members of CAPES, have self-regulation mechanisms including:

- Membership criteria driven by compliance;
- Adherence to a Code of Conduct;
- Regular compliance checks;
- A complaints mechanism for clients, candidates and employees;
- Ongoing training and professional development for staffing practitioners;
- Engagement with social partners across various initiatives

Self-regulatory mechanisms vary between the associations and cater to the uniqueness of the membership. For instance, the nursing industry, through ANASA, has secured a Ministerial Determination each year for BCEA through engagement with Department of Labour, the Nursing Council and DENOSA.

### **CASE STUDY: APSO Membership site inspection**

All potential members are required to undergo a vetting process before being considered. The initial part of this process includes an assessment of compliance based on documentation, including compliance with SARS, Department of Labour, CIPC and others.

Once all the documentation has been verified, a site inspection is set up. During this visit, the potential member agency is assessed against the requirements set by Department of Labour and the best practice standards included in the APSO Code of Ethical & Professional Practice. These include clear signage indicating “no fee to candidates”, separate interviewing facilities to ensure candidate confidentiality.

### **CASE STUDY: CEA Annual Audit**

All of the Constructional Engineering Association’s (CEA) members employ workers within Bargaining Councils and are required to undergo an annual audit to ensure compliance. The audits are conducted randomly, by experienced ex-Bargaining Council inspectors, and include a review of their operations and compliance with all applicable collective agreements.

### **CASE STUDY: APSO Entrance Exam**

As a condition of membership, all consultants working for an APSO member agency are required, within 6 months of joining, to write and pass (75%) the APSO Entrance Exam. This exam contains 10 modules and covers labour legislation, ethics and corporate governance, application of the law in recruitment, recruitment best practice, project management and sales marketing. It is designed to ensure minimum embedded knowledge so that APSO members practice compliantly, ethically and professionally.

## Business Participation in the Decent Work Country Programme (DWCP)

The South African Decent Work Country Programme (DWCP) is a culmination of a highly consultative process between the International Labour Organisation (ILO) and the social partners through the mechanism of NEDLAC. The DWCP process in South Africa occurred against the backdrop of the global financial and economic crisis that threatened the significant employment gains made in the country since 1994.

Business actively participated in the process and is committed to the strategies identified to promote employment and job creation.

*The strategies for employment promotion included within the DWCP seek to support ongoing national efforts at **creating an enabling environment for job rich growth**, the promotion of sustainable enterprises and enhancement of national capacities for relevant skills development.*

[Decent Work Country Programme for South Africa 2010 – 2014, pg 4]

It should be remembered that South Africa currently ranks poorly (according to the World Economic Forum) in terms of labour market efficiency and rigidity of labour legislation and this makes it difficult for the country to compete – and secure - labour intensive foreign direct investment. It is our opinion that the proposed labour law amendments would in fact work in direct opposition to the strategies identified and agreed to by the tripartite DWCP national steering committee.

There has been a subsequent debate amongst government officials about the drive to secure “decent jobs” particularly in light of South Africa’s escalating unemployment levels. Throughout the past 12 months in particular, on more than one occasion officials have indicated the need for the social partners to focus on job creation efforts rather than subjective notion of “decent work”.

*“Mr Mantashe told a briefing after an ANC lekgotla that **the jobs the party wanted to see need not necessarily be ‘decent’** – as there is ‘nothing more (degrading) than being unemployed’. ‘Our view is that jobs must be created. Once created, then those people can engage on conditions of employment,’ Mr Mantashe said.”*

[“ANC thinks again on its decent work drive” - Business Day, 18 Jan 2011]

This sentiment was further reiterated within the National Development Plan (NDP):

*“In the earlier phases of the plan, **emphasis will have to be placed on mass access to jobs while maintaining standards where decent jobs already exist.**”*

[National Development Plan, pg 111]

*“To achieve a decent work agenda, a balance is needed between enabling faster expansion in employment opportunities and the protection of human rights.”*

[National Development Plan, pg 113]

Business and the services sector in particular, have made significant contributions towards driving the Decent Work agenda within the country.

## Services Sector: Decent Work Sector Programme

### ***Growth of Services Sector Internationally & Locally***

According to the World Bank “Beyond Economic Growth” report, the services sector has grown exponentially over the past few decades and employment within these sectors is indicative of economic development.

Economic structures can be simply divided into three (3) main sectors – agriculture, industry and services. Initially agriculture would be a developing economy’s most important sector but as income per capita rises, agriculture loses its primacy, giving way first to a rise in the industrial sector, then to a rise in the services sector. These two consecutive shifts are called “Industrialisation” and “Post-Industrialisation”.

As people’s incomes increase their demand for food – the main product of agriculture – reaches its natural limit, and they begin to demand relatively more industrial goods.

As income continues to rise, people’s needs become less material and they begin to demand more services – in health, education, entertainment etc.

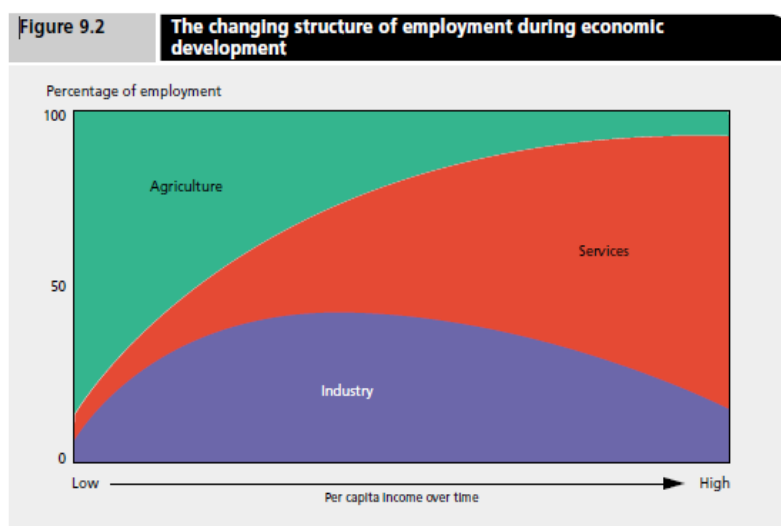


Figure taken from World Bank “Beyond Economic Growth” report

This shift to the services sector has been confirmed by the International Labour Organisation (ILO) through their annual Key Indicators of the Labour Market (KILM) report. In the 2010/11 report, the figures confirmed that in 128 of the 172 countries with available data (since 1995), services is the largest sector in terms of employment. In 59 (including South Africa) out of 128 countries, the services sector actually accounted for at least two-thirds of the total employment.

Recently released research commissioned by the International Confederation of Private Employment Agencies (CIETT) and conducted by the Boston Consulting Group (BCG) confirms these trends.

Economic structural shifts in a cross-section of economies, from highly developed (including US and Europe), Asian markets (both developed & developing) and others representing emerging markets/developing nations (Brazil, Thailand and Egypt) show a similar trend in the loss of jobs

within primary (agriculture) and secondary (industry) sectors and a steady increase in tertiary (services) sector. There is a slight time lag in the shift between developed and developing countries but the trend is definitely evident across all countries surveyed.

South Africa, as a middle-income, developing country is following this trend and a growth in the services sector is apparent.

Research (Labour Demand Trends and the Determinants of Unemployment in South Africa) conducted by Professor Haroon Borhat and Natasha Mayet, published in May 2010 correlates.

*Results suggest that aggregate employment growth in post-apartheid South Africa has been driven by the Financial and Business Services sector on the one hand, and the Wholesale and Retail Trade sector on the other hand. ...*

*The data shows that these two main sectors alone accounted for close to 2.3 million of the 3.4 million new jobs created in South Africa over the 14-year period between 1995 and 2009. [Labour Demand Trends Research pg 8]*

At the recent Bureau for Economic Research (BER) conference, Professor Borhat expanded on this phenomenon:

Borhat says that 66% of all of the country's job creation has occurred in just these two categories but that the categories could be misleading. By digging down into the first category, "Financial & Business Services" he found that nearly all of these jobs were not jobs in finance but classified broadly as "other". This category primarily represents the activities of labour recruitment and employment agencies, including labour brokers, and investigation and security services.

His conclusion is that the labour recruitment and employment agency sector is responsible for about 20% of all job creation in the country. He is quoted as saying, "Any change in regulation that reduced labour broking activity would be bad for job creation."

BER director, Professor Ben Smit shares Borhat's concerns: "Labour broking has played a very important role in employment creation over the past decade and it would be detrimental if [it] were to be further curtailed by the unions."

Borhat says that there is insufficient evidence to suggest that employers are using labour brokers in order to pay workers lower wages. Rather, he says employers appear to be paying the same cash wage but saving on non-wage costs such as those of running a human resources department. If cost is not the reason that employers are now hiring temporary workers, this invites interpretation that there is a problem with the rigidity of South Africa's labour laws.

*[Excerpts above taken from "Laws need to limber up" – Business Report, 1 December 2011]*

## ***South African Services Sector Takes the Lead***

In February 2009, The Services SETA Council mandated a team of representatives from organised labour and organised business, supported by Services SETA, to develop and drive a Services Sector Programme. The aim was to develop a Decent Work Sector Programme for the Services SETA sector members to inform and feed into the Decent Work Country Programme.

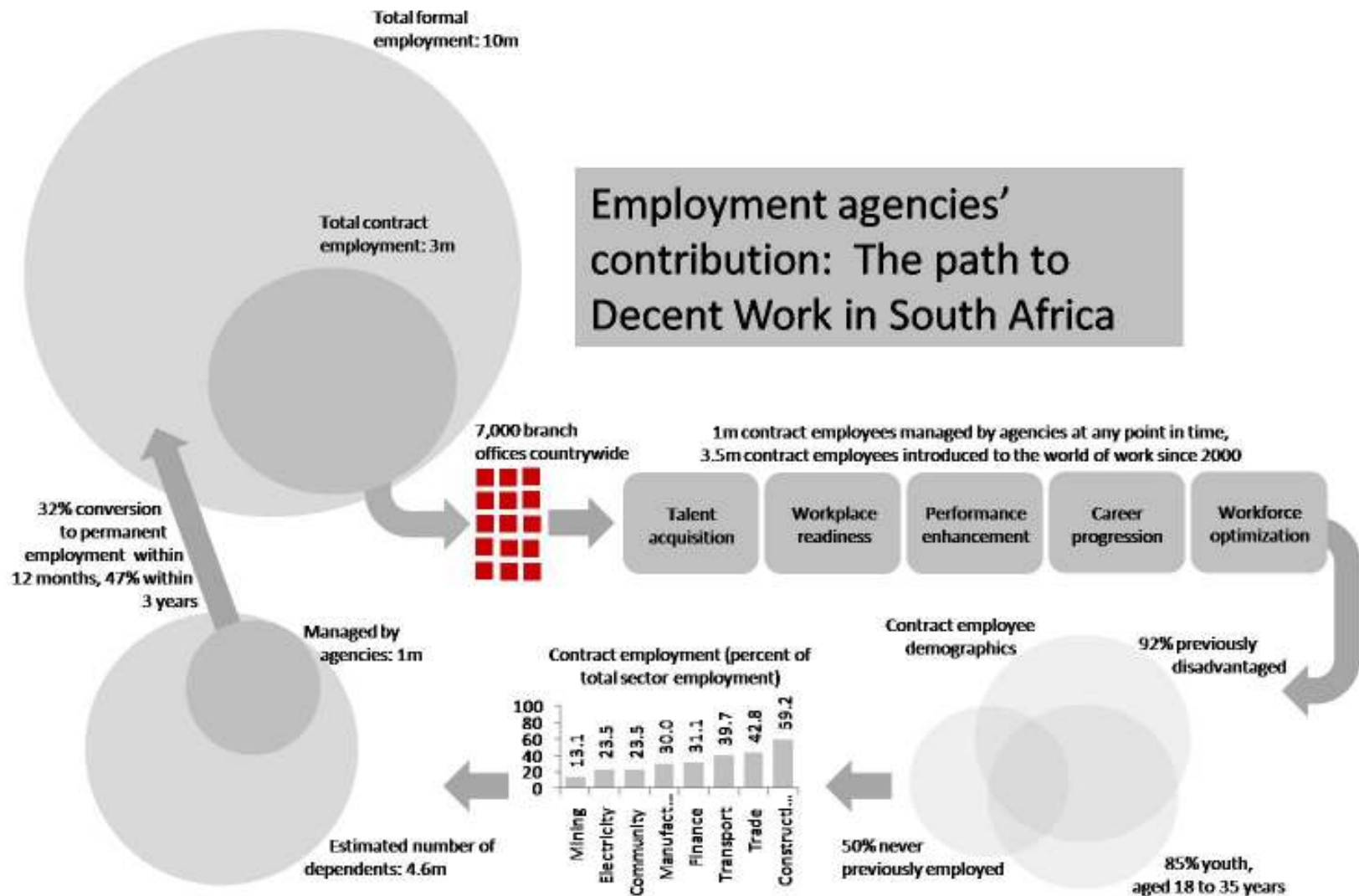
A Decent Work grading system (known as the Decent Work Matrix) has been drafted to provide a framework of good practice to stretch other organisations in their pursuit of meeting and exceeding Decent Work Standards and indicators. The matrix is aligned to international people management and development strategies and is specifically designed to cater for all services businesses, from SMME to large corporate.

The matrix is a self-evaluation tool, to enable organisations to identify strengths and weaknesses and to facilitate planning, to address areas for improvement and measuring productivity gains. This tool was introduced to the South African staffing industry through a national road show, funded by the National Skills Authority and hosted by the Association of Personnel Service Organisations (APSO) in May 2011.

### **Annexure: Decent Work (Services Sector) Matrix**



# Employment agencies' contribution: The path to Decent Work in South Africa



# Decent Work: Initiatives & Impact of the Staffing Industry

## Pillar 1: Creating Jobs

### Skills Development

Skills development is critical for creating jobs. The sad reality in South Africa is many of the young people who find themselves jobless are in fact unemployable, especially within the new services economy that requires high levels of skill and creative thinking.

According to the National Development Plan, improving education, training and innovation are central to South Africa’s long-term development:

Foundational skills areas such as mathematics, science, language, the arts and ethics are essential components of a good education system. Lifelong learning and work experience improves productivity, enabling a virtuous cycle that grows the economy.

*[Excerpt above taken from National Development Plan, pg 261]*

### New World of Work Requires New Skills

The world of work is changing and the skills necessary for success in the 21<sup>st</sup> century workplace are different from those needed in the previous century. In his book “A Whole New Mind” author Daniel H Pink writes that we are “moving from the Information Age to the Conceptual Age”. Pink’s findings concur with those of other experts and researchers who have studied the changing workplace and the skills needed for continued work success.

The enGauge 21<sup>st</sup> Century skills report, “Literacy in the Digital Age” confirms that there are four skills clusters that are essential for every 21<sup>st</sup> century worker:

Digital Literacy	Inventive Thinking	Effective Communication	High Productivity
“various competencies needed to function in the 21 <sup>st</sup> century workplace”	“the ability to think outside the box”	“the ability to communicate with a range of audiences across cultural divides”	“definite requirement for success”
Basic literacy	Adapting & managing complexity	Teamwork and collaboration	Prioritising, planning & managing for results
Scientific literacy			
Economic literacy	Self-direction	Interpersonal skills	Effective use of real-world tools
Technological literacy	Curiosity	Personal responsibility	
Visual literacy	Creativity	Social & Civic responsibility	Ability to produce relevant, high-quality products
Information literacy	Risk taking		
Cultural literacy	High-order thinking and sound reasoning	Interactive communication	
Global Awareness			

## ***Global Perspective: PrEA are primary drivers of skills development***

Global employment markets are facing an increasing demand for highly qualified people with jobs increasingly requiring skills and higher or tertiary education. This request for higher skilled workers also reflects the sectoral shift taking place in many countries, where economies are turning more and more into services.

The private employment services sector is well placed to support this structural shift and deliver the skills needed in two ways. Firstly, by helping workers to move away from declining sectors to in-demand sectors. Indeed, the activities of private employment services not only reflect but also help economies adapt to sectoral shifts.

The second contribution of private employment services to address the mismatch of skills and plug the talent gap is training. The sector is well placed to support the need for greater vocational training and upgrading of skills.

**Training lies at the very core of the sector and is central to its role in meeting demand with supply in employment markets.** The industry stays intrinsically connected to the workplace and is best placed to understand the changing needs of employers and employees, thereby enabling it to step in and train workers to meet these needs.

By acting as an agent to workers it helps them to access the next assignment and ensure that they can transition easily to further employment. Vocational training for agency workers is demand-driven, in unions with the labour market's needs and organised in close cooperation with user companies with a short-term and pragmatic approach catering especially well to lower skilled workers.

**As the data reveals, agency workers receive more training than fixed terms workers and regularly undergo training to find new job opportunities. Due to the heavy representation of younger people in private employment services, 70% of agency workers undergoing training are younger than 35 whereas only 50% of permanent workers training fall within this age bracket.**

Private employment services go above and beyond other employers by providing constant skills training to ensure that their workers are equipped to meet the needs of employment markets. **The correlation between acquired skills and employability stands more than ever and is a key indicator to avoid long bouts of unemployment and better transition to new employment opportunities.**

*[Excerpt above taken from Adapting to Change, pg 65]*

## ***South African Staffing Industry is leading skills developer in SA***

The South African staffing industry's data concurs with that of Boston Consulting Group. The private employment services sector is a key driver of skills development and has had a significant impact on skills development within the country.

In 2008 alone, the staffing industry contributed R415 million in skills development levies to the Services SETA. Whilst the majority of the industry is registered within the Services SETA there are some private employment agencies/temporary employment services who have opted to move to other SETAs, for example MERSETA.

Due to the fact that user organisations (clients of TES) operate in all sectors across the economy, skills development takes place in a variety of skills sets, including those classified as scarce skills, i.e. artisans and drivers.

During the first two decades of skills development, National Skills Development Strategy (NSDS) I and NSDS II, the sector was responsible for completing more than 40 000 learnerships and apprenticeships.

Due to the burden of administering learnerships and apprenticeships, most South African employers view their Skills Development Levy as a tax, and don't take advantage of the grant system to up-skill their employees. Because a TES can manage this administration and ensure, through effective shift rostering, that the user organisation continues to have full production, even whilst their employees are undergoing training, skills development takes place more often via the third party intermediary.

In addition, the TES is well placed to provide workplace learning experiences, a critical component for real skills transfer, for those individuals who have elected to complete a learnership or apprenticeship.

In South Africa the bulk of TES assignees are under the age of 35 and come from previously disadvantaged backgrounds. In addition to being provided with market-related skills and on-the-job training, the work experiences, often across a variety of different roles and sectors, makes TES assignees more likely to secure permanent employment than those who simply seek employment directly. On average, 32% of all TES assignees find a permanent position within 12 months of temping.

Research confirms that the highest rates of unemployment fall within this demographic group and the TES sector is therefore making a significant contribution to reducing unemployment and increasing employability for these individuals.

## **Public Private Partnership (Department of Labour)**

Public-private partnerships are a common component of International Labour Organisation (ILO) initiatives. The cooperation and collaboration between the government (public sector) and business (private sector) is essential to the smooth running of effective labour markets.

### **Empowering Public Employment Services**

The recently established Public Employment Services (PES) located within the Department of Labour has been tasked with reducing unemployment and driving job creation within the broader business community. Previously tasked with handling skills development matters, these government officials were thrown into the deep end when re-assigned to the new role.

As part of our commitment to achieving the broader national goals of job creation and empowering our colleagues within government, APSO formally established a public-private partnership in the employment sector.

In October 2010 APSO embarked on a pilot project with the Gauteng provincial Public Employment Services. During the month 127 individual PES employees were provided with industry-specific training hosted by APSO. The training ranged from 2 to 6 days each, focusing on the various skills and knowledge required to operate effectively. Feedback from the training was excellent and plans are currently underway for a follow-up series of workshops for February 2012.

In addition to classroom learning, one of APSO and CAPES's largest members Kelly Group offered to host the Department of Labour PES officials in their branches to job shadow and experience the daily operations of a private employment agency. This exposure has definitely assisted in clarifying some of the misconceptions about our sector, in particular the manner in which candidates are engaged and serviced.

As a result of the successful pilot project, three other provinces – Free State, Eastern Cape and Mpumalanga – have engaged APSO's services in respect to training their public employment services practitioners. The feedback from these sessions has been excellent and we look forward to offering this support to the other provinces in South Africa.

### **Ensuring Compliance**

In line with both the industry's and Department of Labour's desire to enforce the registration requirements for Private Employment Agencies in the country, APSO and DOL liaise regularly to facilitate first-time registrations and bi-annual renewals.

Due to the lack of barriers to entry, some individuals or companies set up in the industry and attempt to charge work seekers for services. This is contrary to international norms and provides opportunities for con artists to take advantage of vulnerable work seekers. APSO partners with Department of Labour to manage complaints about non-compliant operators, providing guidance and assistance in the investigation of these companies.

APSO continues to provide guidance on their rights to work seekers through regular articles in various publications including newspapers, magazines and online job portals.

## Pillar 2: Protection of Rights at Work

### Compliance: s198 Joint & Several Liability

As indicated earlier, the existing regulation on TES, in the form of the joint and several liability contained with s198 of the Labour Relations Act, serves to effectively govern the triangular employment relationship.

The research conducted by the National Association of Bargaining Councils (NABC) also confirmed that joint and several liability is the most effective means of compliance enforcement.

*“The most important control measure is keeping the labour broker and the client jointly and severally liable.”*

[Wynand Stapelberg, NABC, Adcorp Employment Quarterly Jan 2011, pg 20]

### Content Workforce



The past few years have been littered with inflammatory statements and accusations against the concept of labour broking. Some of the insults hurled are laughable but it nevertheless plays into the emotive centre of the general public and logical, rational fact-based counter-arguments are not easily accepted. (Comment: **The tragedy of this approach has resulted in organisations taking decisions not to employ people and has already resulted in thousands of job losses**)

Contrary to the accusations by unions, research proves that on the Research undertaken during 2010 highlights the low number of incidences of complaints lodged at the Commission for Conciliation, Mediation and Arbitration (CCMA) against labour broking. Whilst labour broker employees represent 7.6% of total employment in South Africa, the complaints lodged against labour brokers (as employers) represent just 0.9% of CCMA disputes. These figures, produced by the CCMA, indicate that the labour broking industry is characterised by relatively few (formal) employer-employee disputes.

This fact was confirmed by the results of the TES research undertaken by Topline Research Solutions (TRS) using the client databases provided by the associations within CAPES. TRS conducted surveys with 110 TES companies, representing 268 777 TES assignees or 29.8% of the industry total.

The overwhelming majority (74%) of the TES companies field fewer than four (4) TES assignee complaints from their entire workforces each month, and this confirms the CCMA data cited above.

In addition, 77% of the TES assignees that are placed by the TES providers interviewed were as a result of “word of mouth referrals”. This indicates that a large proportion of the TES assignees feel sufficiently positive about their work experiences with the TES companies to promote or recommend them to their family and friends. These statistics fly in the face of the assumptions and (mis)perceptions made by the Department of Labour and several trade unions that the TES industry is an exploitative business purely set up to circumvent labour legislation.

## Code of Conduct

All members are held accountable to the CAPES Code of Conduct and the various associations' Codes of Ethics.

The Temporary Employment Services industry (TES) launched the Labour Recruitment Code of Ethics at a function on 24 March 2009, co-hosted by the Services SETA and the Confederation of Associations in the Private Employment Sector (CAPES). The code marks an important commitment by the industry to responsible and committed self-regulation.

“The launch of the industry code of conduct is further proof that, even in the absence of a statutory right to regulate, and given the Department of Labour’s failure to regulate TES, as an industry we have not been idly standing by. The industry has voluntarily opted for self-regulation for many years now to ensure fair and equitable practices by TES who employ the majority of temporary assignees in South Africa via CAPES and its member associations, APSO, CEA, ANASA, and ITA,” explains John Botha, then Chief Operations Officer of CAPES.

“We continue to establish various collective arrangements with unions to demonstrate that TES recognises and underwrites the right to freedom of association and collective bargaining. The reality is that we need to forge a new and innovative arrangement in respect of unionisation, given that the traditional model of the unions is not easily applied to the modern workplace,” explains Botha.

*[Excerpts above taken from launch article in APSOgram - May 2009]*

### Annexure: CAPES Code of Conduct

## Complaints & Recourse Mechanisms

Currently the only regulated mechanism for complaints is via the Department of Labour. Due to inadequate infrastructure and lack of a coordinated approach, complainants generally don't succeed in lodging a formal complaint.

The Temp Call Centre set up as part of the CAPES-FEDUSA Memorandum of Agreement, also provides a mechanism for temps to ask questions, understand their rights and lodge a complaint. These complaints are assessed at call centre level (manned by a UASA staff member) and escalated to the appropriate association or Department of Labour for further investigation and action.

In addition, the different associations that belong to CAPES have their own internal complaints mechanisms to deal with complaints. The power to investigate and take remedial action, or impose sanction, is limited to member companies and whilst it does provide a measure of self-regulation for the industry, it falls short due the higher likelihood of complaints being lodged against non-members.

### **CASE STUDY: APSO Code of Ethical & Professional Practice**

The Code seeks to promote globally aligned best practice and legal compliance amongst members primarily to protect clients and vulnerable work seekers. In the event that a work seeker (or client) receives a service they believe is below par, or they have a dispute with a member agency, they have access to recourse via the APSO Ethics & Compliance mechanism. This service is provided free of charge and is managed by a full-time resource, Advocate Janet Early. Over the past three decades, APSO has assisted countless clients, candidates and work seekers through investigations and enforcement of legal and operational compliance and agreed best practice standards. In the event of a complaint against a non-member agency, the APSO office will forward the complaint to the Department of Labour, providing all details to assist in investigation and sanction.

## **Education of Work Seekers**

Education of work seekers and assignees is a key component of the self-regulation model currently practiced in South Africa by the associations within CAPES. Information and education is managed differently, across a range of platforms, to ensure broad access to individuals, most especially those who can be described as vulnerable.

Due to a lack of clear regulation and effective enforcement, the opportunity for uninformed individuals to be taken advantage of, is increased. Recent media coverage of people falling prey to unscrupulous individuals who pose as employment agents is disappointing, to say the least, not only for the consequences for those caught up in the scams, but also the negative – yet unfair – reputational risk to an otherwise professional industry.

It is therefore critical that information about candidate/work seeker rights is made available in particular the knowledge that payment of fees to recruitment or temporary employment services agencies is unacceptable. As the say goes, “information is power”.

APSO, in particular, works hard at educating work seekers; from tertiary students ready to look for their first job, to rural unemployed and professionals. This is primarily done through articles that are regularly run in publications like *The Workplace*, *Skills Focus* magazine, and *Learnerships Quarterly*. In addition, work readiness presentations are regularly hosted including a train-the-trainer workshop held with the Centre for Employment & Entrepreneurial Development (CEED) at the Central Johannesburg Colleges (CJC) during which time the skills, information and tools were shared with interns who, in turn, could engage with greater numbers of students across the CJC campuses in Gauteng.

A range of articles, focusing on job-seeking, work readiness and interviewing skills, feature on the APSO website and are aimed at empowering individuals to make the most of their job hunt, thereby improving their chances of success.

In the partnership model with FEDUSA, CAPES has been able to utilize the communication channels of the union, to educate and inform their members in order to protect themselves in the world of work.



## **Education & Professionalisation of Staffing Sector Practitioners**

With the ever-increasing complexity within the world of work, staffing professionals need to ensure that their knowledge and experience is current. In order to do this, they need to follow a process of Continuous Professional Development (CPD).

The staffing industry has long acknowledged the need to ensure that practitioners are equipped with the required embedded knowledge to ensure that they practice compliantly, ethically and professionally. This process has been driven in a multitude of ways, including:

### ***Entrance Exams***

APSO has always required its members' staff to write and pass an entrance exam. The first version of this exam, known as the IPSC, was launched in 1981 and was made a compulsory condition of membership not long after. This exam has been updated over the years and in 2010, was officially replaced by the APSO Entrance Exam.

This exam is intended to serve as a basis for an industry-wide entrance exam that will be a condition of practicing within the professional framework established by the South African Qualifications Authority (SAQA) drive for the establishment of industry professional bodies.

### ***Embedded Knowledge Project***

In 2009 the industry secured funding through the Services SETA and ran a formal skills programme countrywide, focusing on the core skill set – primarily labour legislation and performance management including disciplinary hearings – of temporary employment service consultants. During the six-month long project, 1000 learners were enrolled on the programme. Consultants received a full day's training in a workshop and were required to submit portfolios of evidence indicating their experiential training and knowledge acquired. The majority of the learners who enrolled were found competent and certificated.

### ***Qualification***

The Labour Recruitment industry already has a unique qualification, the NQF4 Labour Recruitment. This qualification is offered as a learnership but has also been used to certify experienced recruitment consultants through a RPL process. The industry has also scoped two other qualifications, at NQF5 and NQF7 level, for development in the near future.

### ***Recognition of Prior Learning***

In 2010, nearly 450 recruitment individuals were enrolled on a RPL programme, managed by the Employment Services Certification Institute (ESCI) to certify practitioners with the NQF4 Labour Recruitment qualification.

### ***Professionalisation***

Work is well underway for the establishment of the Institute of Staffing Professionals (ISP) that will drive the professionalisation agenda. Three professional designations have already been scoped and have been submitted to SAQA for registration. A career pathway, combining qualification, workplace experience and continuous professional development (CPD) has been scoped.

## **Lobbying for Ratification of ILO c181**

Adopted in 1997, ILO Convention 181 on private employment agencies recognises the “role private employment agencies may play in a well-functioning labour market”. The purpose of the Convention is to allow the operation of private employment agencies as well as to protect the workers using their services, within the framework of the provisions (Article 2.3).

Since the ratification of ILO c181, the APSO Code has promoted the prescriptions of the convention including no fees or costs to candidates. This exceeds the current South Africa legal provisions stipulated within the Employment Services section of the Skills Development Act, a carry forward of the original Guidance & Placement Act of 1981.

APSO, and CAPES, have long been an advocate for the adoption of ILO c181 in South Africa and industry representatives attended the dedicated conference held at the ILO headquarters in Geneva in late 2009. In October 2011, another global dialogue forum was hosted by the ILO to promote the ratification of ILO c181 and to explore the ways in which the private employment sector can promote Decent Work. The industry sent a delegation of 8 subject-matter experts to actively participate. Despite best efforts to get officials from Department of Labour and unions to attend to ensure a true tripartite engagement and expedite the ratification process within South Africa, only business representatives were present.

### **Annexure: ILO c181 Private Employment Agencies, 1997**

## ***Pillar 3: Extending Social Protection***

### **CAPES Provident Fund**

The CAPES National Provident Fund was established in April 2010. It is a defined contribution umbrella provident fund registered by the Registrar of Pension Funds and approved by the South African Revenue Services.

The CAPES National Provident Fund was established to provide a centralised retirement funding solution for contract workers (as defined in the Labour Relations Act) in the Private Employment Sector in an efficient and cost effective manner. This was deemed critical given that there are a multitude of SME players who, unlike their large corporate counterparts, were not able to offer an affordable retirement benefit to their temp and permanent employees, particularly those who do not fall within Bargaining Council agreements.

In order to provide flexibility, the rules of the CAPES National Provident Fund were designed to allow employers with existing retirement funding arrangements the option of transferring their existing retirement funding arrangements into the CAPES National Provident Fund whilst maintaining the same investment structures, contribution rates and benefits.

The CAPES National Provident Fund is managed by a board of trustees which is currently comprised of two trustees appointed by CAPES and two independent trustees. The fund is administered by Pan African Benefit Services.

Currently the fund has a total of 2115 members although there are several large companies considering moving their existing funding arrangements to the CAPES National Provident Fund.

Extensive work is being done to market this benefit to the TES sector, who in turn engaged with their employees and clients. Feedback has indicated that for the majority of assignees, a provident fund is not seen as an attractive benefit. They would rather have additional income in their pockets each week/month and more tangible benefits, like a funeral policy.

As a result, an additional benefit, a funeral plan, was added effective January 2011, in recognition of the requests from temporary assignees who'd been offered this retirement benefit.

Several of South Africa's leading private employment agencies have their own provident funds. According to research conducted, nearly 20 000 employees from within the private employment agency sector, are covered by corporate funds.

A large portion of TES employees also fall within industries governed by Bargaining Councils. Research conducted in 2010 on the Temporary Employment Services (TES) sector in South Africa, commissioned by the Services SETA and facilitated by Topline Research Services (TRS), confirmed that 59% of the TES assignees working for the companies surveyed, are covered by a Bargaining Council, the majority of these within MEIBC, MIBCO and Road Freight. In most instances, the Bargaining Council also has a retirement provision, either provident or pension, to which the TES employees are required to belong and contribute.

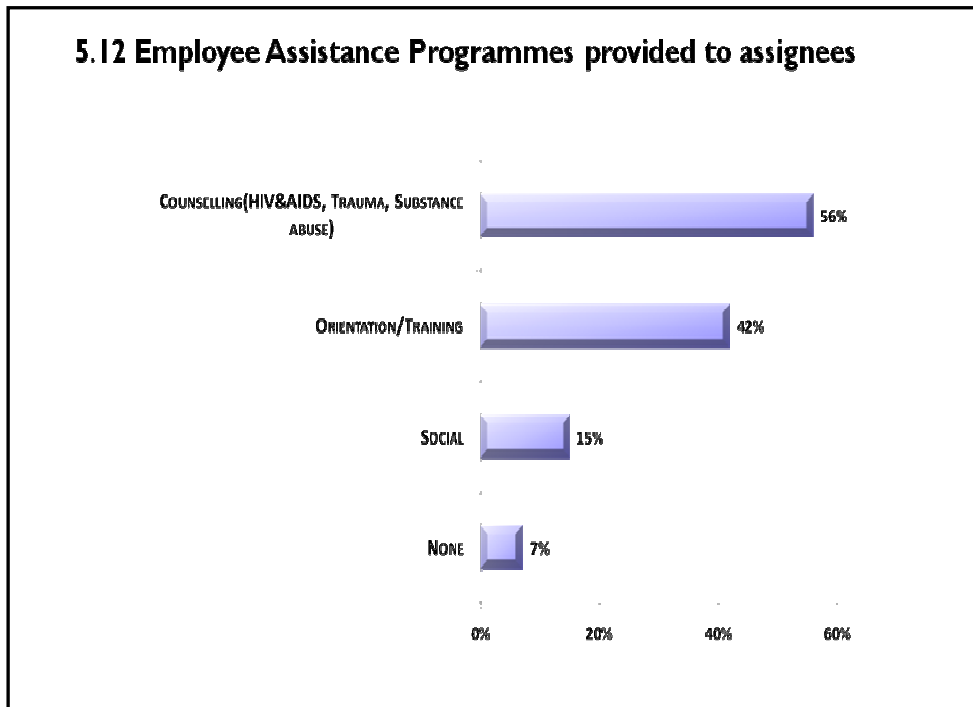
### **Annexure: CAPES Provident Fund brochure**

## Additional Benefits

According to the TRS Research 100% of companies surveyed were compliant in respect to providing statutory benefits including UIF, annual, sick and maternity leave.

Many of the TES companies also provide additional Employee Assistance Programmes to their permanent and temp employees. Almost 60% of the companies surveyed by TRS confirmed that they provide counselling for employees on HIV/AIDS, trauma and substance abuse. In addition almost half provided specific induction and orientation training to all TES assignees.

Additional benefits, i.e. those outside of the statutory requirements and retirement provisions as discussed above varies between providers, but according to the TRS research results, 12% provide medical aid and 80% provide death & disability insurance.



## **Pillar 4: Promoting Social Dialogue**

### **Commitment to NEDLAC**

The difficulties and frustrations experienced at NEDLAC have been well documented throughout this submission. It is a testament to businesses' commitment to NEDLAC that the task team has remained engaged and provided many areas of compromise.

It is therefore disappointing that the other social partners, in particular COSATU, have not moved an inch in nine months and continue to call for the banning of a labor brokers – a move that is not only unconstitutional but will also have a direct negative impact on the economy, including increased levels of unemployment.

Government too has not necessarily handled the NEDLAC processes fairly, often compromising to appease the unions but not considering the requests from business, in particular the call for another Regulatory Impact Assessment (RIA) on the amended proposals.

To say that Government, and in particular the Minister(s) of Labour, have issued mixed messages would be an understatement. Throughout the process, contradictory statements have been issued to the media, most often causing panic amongst the business fraternity or inciting strong reaction from the labour unions, in particular COSATU. Whilst a certain amount of uncertainty is to be expected during a protracted negotiation process on issues as important as labour law frameworks, the constant “to-ing and fro-ing”, most often by way of inflammatory statements, has done much to increase businesses' unease and is likely to have contributed to the increased reluctance to employ additional people.

The current rush to get these bills to Cabinet is of grave concern. Despite lengthy debates and countless hours of negotiation, the social partners are still so far apart that any bills that would be submitted at this stage are bound to be challenged.

At a time when the economy appears to be picking up, it would be inadvisable to worry Business further by continued threat of labour law reform that is frankly “bad for business”. In order to begin to achieve some of the lofty job creation goals set by various Government ministers, and the President himself, it may be best, if the labour framework cannot be relaxed as proposed, to then leave the legislation unchanged rather than increase rigidity.

### **Long History of Engagement & Collaboration on Advisory Councils**

Individuals working within staffing companies have long been involved in volunteering on various local advisory structures including Business Unity South Africa (BUSA), the National Skills Authority (NSA), Services SETA, Decent Work Country Programme National Steering Committee, the Millennium Labour Council, Bargaining Councils and others. Through these channels, the industry has provided insight and input on policy that seeks to promote job creation, drive skills development and ensure that South Africa is seen as a destination of choice for foreign direct investment.

In addition, the industry has actively sought to understand the global picture and to provide input and insight, gleaned by International best practice, into South African policy. These structures include CIETT, the ILO and others.

## **Historical Access to Union Membership**

Contrary to popular belief, the staffing industry has historically engaged with labour/unions and TES assignees have joined. It is true that union membership is low, in some sectors, but this cannot solely be attributed to the TES industry.

According to the statistics gleaned from the TES research conducted by the Topline Research Solutions (TRS) in 2010, on average 5% of the TES assignees within individual TES companies surveyed belonged to a trade union. However, within the nursing sector, almost 100% of assignees did belong to a trade union with the primary reason being attributed to the professional indemnity cover provided as a union benefit.

Several factors have been raised as contributors to the low rate of unionisation including the fact that TES assignees traditionally move between sectors and therefore find it difficult to determine which sector union to join. The majority of TES assignees are under the age of 35 and first-time work seekers, who traditionally don't see the need to join a workers' organisation. In fact, according to both local and global research, membership of trade unions is declining and could be attributed to the out-dated value proposition offered by the unions coupled with the changing requirements of the younger workforce.

In an attempt to get a better understanding of the true barriers to entry for unions in a-typical work environments, CAPES has signed a memorandum of agreement with FEDUSA that allows pilot projects to explore innovative ways of providing access to collective bargaining for TES employees.

## **FEDUSA Memorandum of Agreement**

A memorandum of agreement has been agreed to by UASA, largest union within FEDUSA, and the Confederation of Association in the Private Employment Sector (CAPES) with the objective of our partnering to ensure the provision of decent work with the emphasis on social protection.

The pilot is being undertaken by two of CAPE's largest TES members, Kelly Industrial and Transman, and sees 850 temporary assignees provided with full access to the membership benefits offered by UASA over a twelve-month period. During the course of the pilot, the assignees will have the opportunity to evaluate the benefits of organisational representation and the project should assist in developing unique ways for the TES industry to formally engage with organised labour going forward.

In the main, this Agreement addresses issues of mutual interest between the parties, but more than that, it gives UASA the chance to position itself with temporary workers. In addition, the pilot will provide CAPES the opportunity to better understand the concerns or questions that temporary assignees have and to develop educational and support initiatives to address these.

## Temp Call Centre

Out of the agreement has emerged, amongst others, a unique concept – a call centre dedicated to the needs of the temporary worker, which is a first in the world. What this means in concrete terms, is that temporary workers can call in and request information regarding their contracts and legal rights. The idea is to provide a “free” service to all temporary workers, which hopefully will result in these workers finding a home for representation.

This concept engages the new workforce – Generation Y – and will allow UASA to engage with this new generation of workers to evaluate the UASA value proposition’s appeal and possibly create opportunities to introduce new service offerings to its members.

Leon Grobler, Chief Operating Officer (COO) of UASA, has done extensive research, both here and abroad, with regards to the protection of temporary workers. He states that “UASA has designed a special dispensation for the specific needs of temporary workers in South Africa, which is unique and a first world-wide.”

The Memorandum of Agreement provides a model for self-regulation and self-monitoring, as well as problem solving and advice through the call centre.

“The ultimate aim is to have our own and unique dispute-resolution model for the temporary workers of South Africa,” Grobler says.

Jonathan Goldberg of CAPES says, “CAPES is pleased that the negotiations resulted in the establishment of an agreement that begins to regulate organisational rights of temporary employees.”

In the call centre CAPES will assist with the training material and provide knowledge about the industry itself, while UASA will provide the legal and labour relations knowledge training.

“The partnership is designed to add value to the world of the temporary worker in South Africa and to assist with resolving issues before they become problems,” Goldberg said.

The call centre became operational on 3 January 2011. Monthly meetings are held between the parties to assess the trends and queries emanating from the call centre and to determine ways in which to resolve these.

*[Excerpts above taken from UASA publication “Labour Dynamix” – December 2010 and APSOgram - February 2011]*

This world-first initiative was highlighted within the Boston Consulting Group research as a case study to show the innovative ways that social dialogue can be achieved within the private employment sector.

### CASE STUDY 10: SOCIAL DIALOGUE IN ACTION IN SOUTH AFRICA

The South African Confederation of Associations in the Private Employment Sector (CAPES), has entered into a Memorandum of Understanding (MOU) with The Federation of Unions of South Africa (FEDUSA), the second largest trade union federation in South Africa. The MOU addresses the need to understand the barriers to social dialogue within the agency worker environment. Part of this pilot included access to union membership for more than 800 agency workers – who all receive full benefits of membership – for 12 months paid for by CAPES. The MOU also created a dedicated call centre for agency workers, that cater for agency workers across the country who require advice and assistance about their rights. Social partners continue to meet on a monthly basis to find ways to engage (agency and union) effectively and to find solutions to the issues raised by agency workers through the call centre.

Source: Adapting to Change report, pg 70

## Who is CAPES?

### ***Confederation of Associations in the Private Employment Sector (CAPES)***

In 2002, the need to form a unified body to engage in macro-level activities, to proactively lobby and to form associations with other stakeholders was identified and CAPES was established. CAPES has as its members the four staffing associations referred to hereunder, as well as several of South Africa's largest private employment agencies, and is the single voice for the industry.

CAPES has formalised its relationships with various institutions and associations and these include:

- Membership of Business Unity South Africa (BUSA)
- Direct representation at NEDLAC, via BUSA
- Engagement with Department of Labour and other Ministries
- Relationships with a number of unions including MOU with FEDUSA
- Engagement at the International Labour Organisation (ILO)
- Engagement at Bargaining Councils
- Membership with primarily the Services SETA

For more information, visit [www.capes.org.za](http://www.capes.org.za)

### ***Association of Personnel Service Organisations (APSO)***

The Association of Personnel Service Organisations (APSO) has, since its inception in 1977, worked towards the professionalisation and regulation of the labour recruitment industry in South Africa. Although APSO membership is voluntary, for the past three decades, all of our members have subscribed to strict self-regulatory practices including:

- Full legal compliance;
- Adherence to the comprehensive Code of Ethical & Professional Practice;
- Professional certification of individual recruitment practitioners; and
- Continuous engagement with various key stakeholders, including SSETA, unions etc.

As a member of the International Confederation of Private Employment Agencies (CIETT), APSO is well positioned to ensure that global best practice standards are achieved within the South African context. APSO holds the Africa / Near East seat on the CIETT council and participates actively in various CIETT initiatives.

APSO is also a founding member of the Confederation of Associations in the Private Employment Sector (CAPES) and is actively involved in lobbying and advocacy initiatives for the industry.

APSO currently has a membership base of more than 800 individual companies representing more than 1200 offices across South Africa. The scope of membership is vast and incorporates the large corporate players and small business (80% are SME). APSO members operate across the broad spectrum of the labour recruitment industry – permanent placements, executive search, ad response handling, temporary employment services, and outsourcing. For more information, visit [www.apsso.co.za](http://www.apsso.co.za)



## ***Allied Nursing Association of South Africa (ANASA)***

The Association of Nursing Agencies of South Africa (ANASA) was founded on 23 November 1994 under the auspices of the then South African Nursing Association. Recently, as a way of aligning with the National Health Act of 2004, ANASA changed its acronym to mean the Allied Nursing Association of South Africa, embracing not only nursing agencies but the country's entire healthcare recruitment sector.

For nearly two decades ANASA has played an integral role in improving the South African Healthcare industry, providing healthcare recruitment agencies with a unified voice, building powerful allies in order to assist in positively transforming the South African healthcare environment.

The ANASA Code of Ethics which through the membership of Ethics SA creates an ideal platform for a unified ethical subscription of members. This translates into adherence of the Scope of Practice of various categories of nursing personnel, cognisance of the fair practice procedures in disciplinary and grievance procedures which results in good business governance.

The current ANASA membership consists of 21 healthcare agencies with numerous branches and thus the interest and commitment of members contributes to ANASA's national footprint. ANASA has successfully negotiated a competitive professional indemnity product for all healthcare personnel working in the litigious environment of healthcare. Additional benefits include access to the CAPES provident fund as well as the proposed CAPES medical aid. ANASA has also participated in the development of the healthcare model for ESCI specific to the education and training of specialized recruitment consultants and managers. For more information, visit [www.anasa.org.za](http://www.anasa.org.za)

## ***Constructional Engineering Association (CEA)***

The CEA is made up of employers engaged in the construction engineering industry, operating in the structural, mechanical, electrical, instrumentation, piping and project management fields. The majority of companies who are involved largely in construction and fabrication rely on flexible workforce arrangements, most often managed by labour broker service providers.

As a result of the need for the stakeholders to work together as partners to ensure the success of these projects, the CEA set up two active divisions: the Labour Broking Division and the Temporary Employment Services Division. The CEA is actively involved in ensuring compliance and enforcement of the bargaining council agreements and other sectoral determinations.

The association has close ties to the SA Institute of Steel Construction and the SA Institute of Welding. For more information, visit [www.seifsa.org.za](http://www.seifsa.org.za)

## ***Information Technology Association (ITA)***

The Information Technology Association of South Africa (ITA), was founded in 1934, and merged with the IT Users Council in mid-2000, is the official trade and employer body of the Information Technology Industry in South Africa. The ITA represents companies concerned with the supply of information technology equipment, systems, software and services.

The ITA operates through an elected Management (MANCO) and Executive Council (EXCO) with three specialist sector divisions:

- Information Technology Users Council (ITUC).
- Recruitment Consultancy Services Group (ITARCS).
- Payroll Authors Group (PAG).
- ITA Producer Environmental Group (ITAPEG)

For more information, visit [www.ita.org.za](http://www.ita.org.za)