



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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LABOUR MARKET CHAMBER

NEDLAC REPORT ON SOCIAL PLAN REVIEW

1. BACKGROUND

1.1 Cheadle, Thompson and Haysom (CTH) embarked on a consultative process involving stakeholders from Government, business and trade unions to analyse the Social Plan, identify the problems and constraints experienced in implementing the Social Plan and possible solutions to ensure that it can be effectively implemented.

1.2 The Nedlac Constituencies had agreed to look into the recommendations made by the CTH report, and have tabled their comments on the document.

(Annexure A pages 40 - 51)

2. PROCESS AT NEDLAC

2.1. The task team as at conclusion of the report consisted of the following delegates:

Labour: Mduduzi Mbongwe and Siphiwo Gangca.

Business: Nick Smythe and Vikashnee Harbhajan.

Government: Martin Ratshivhanda and Modilati Malapane.

Productivity SA: Mario Govender.

2.2. The task team meetings were held as follows:

- 18 August 2009;
- 29 September 2009;
- 30 October 2009;
- 21 January 2010; and
- 29 March 2011.

3 AREAS OF AGREEMENT

3.1. *Notification to the Department of Labour of pending Retrenchments*

3.1.1. There was an agreement amongst all the social partners that employers should notify the Minister of Labour of any pending retrenchment/s in terms of Section 189A. Such notifications would be served on the Regional offices of the Department of Labour at the time of commencement of consultations, at the same time that the 189 (3) notice is served on the consulting parties.

3.1.2. The notification would be sent in a document format which should be short and in line with the LRA forms. As there were presently no LRA forms for this they would have to be developed. The following should be included in the template, amongst others:

- *Notice of the pending retrenchment;*
- *Details of the employer and trade union parties to the consultations;*

- *Number of employees employed by the employer;*
- *Number of employees potentially involved in the retrenchment*
- *Possible or proposed date or retrenchments taking effect;*
and
- *The reasons for the proposed retrenchments.*

3.1.3. It was also agreed that the obligation to report to the Department of Labour would best be dealt with by way of an amendment to the Regulations in terms of the LRA, but if an amendment to the LRA itself was needed, then it would need to be dealt with in the current labour law review process, and the amendment would apply in respect of retrenchments in terms of Section 189A. In addition it was also agreed that the Social Plan should be dealt with by way of a Code of Good Practice.

3.2. *Threshold for application of Social Plan interventions by DoL or other Government Departments.*

The parties agreed to do away with the current policy requirement that a minimum threshold (500 or 10% of the workforce) is required to trigger a Social Plan intervention by the Department of Labour or other government departments in terms of clause 7.4 of the existing Social Plan Agreements. The Department of Labour or other government departments would be entitled to provide social plan services in all reported/ notified cases based on the available resources

3.3. *Productivity Forums*

The parties agreed on the need for the voluntary creation of enterprise based Productivity Forums. These will focus purely on productivity issues to separate them from any other existing collective bargaining structures.

4. AREAS OF DISAGREEMENT

4.1. Compulsory creation of Future Forums

4.1.1. Based on the positive experiences from the Mining industry where Future Forums are legislated irrespective of the size of the enterprise, both Government and Labour are of the view that some form of legislation is necessary in all other sectors/industries.

4.1.2. Business opposes the compulsory creation of Future Forums since in their view there are administrative and cost implications, a risk that such structures may be converted into collective bargaining forums and could render decision making in companies extremely cumbersome. Business was of the view that while there may be merit in discussions regarding productivity improvement issues in larger companies and in troubled sectors in particular geographic areas, it was opposed to such bodies being introduced by legislation.

5. RECOMMENDATIONS

5.1. This report concludes progress made by the Social Plan Review Task Team on the recommendations by the CTH report.

5.2. It is recommended that the next phase of the task team would be to consider technical amendments to the Social Plan Guideline document and to take the Global Economic Crisis into consideration during the amendment process.

ANNEXURE A



ATTORNEYS

**DRAFT REPORT TO THE DEPARTMENT OF
LABOUR ON THE SOCIAL PLAN**

“Advancing social dialogue for economic growth”

*For comment and discussion with the Department of
Labour*

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ABBREVIATIONS

CCMA	Commission for Conciliation, Mediation and Arbitration
CEPPWAWU	Chemical, Engineering, Paper, Printing, Wood and Allied Workers Union
CHIETA	Chemical Industries Education and Training Authority
COSATU	Congress of South African Trade Unions
CTH	Cheadle Thompson & Haysom Inc.
DOL	Department of Labour
DPLG	Department of Provincial and Local Government
DTI	Department of Trade and Industry
DWAF	Department of Water Affairs and Energy
LED Fund	Local Economic Development Fund
MDA	Mineworkers' Development Agency
NEDLAC	National Economic Development Labour Advisory Council
NGO	Non-Governmental Organisation
NPI	National Productivity Institute
NUM	National Union of Mineworkers
NUMSA	National Union of Metalworkers of South Africa
RRT	Retrenchment Response Team
SACOB	South African Chamber of Business
SETA	Sector Education and Training Authorities
SMME	Small, Micro and Medium Seize Enterprises
SPPAC	Social Plan and Productivity Advisory Council
SPTSF	Social Plan Technical Support Facility

INTRODUCTION

Cheadle Thompson & Haysom Inc. (CTH) was requested to produce a report in terms of which it would:

- assess the problems encountered by the Department of Labour in implementing the Social Plan;
- evaluate the impact of the recent amendments to the Labour Relations Act 66 of 1995 on the Social Plan;
- make recommendations on the amendments to the Social Plan; and
- make recommendations on the implementation of the Social Plan.

In order to draft the report it was agreed that the Department and CTH would work together to gather views and information from various stakeholders involved with the Social Plan.

The Department and CTH compiled a list of stakeholders which included representatives from various government departments, trade unions and business.¹

In April 2002, CTH invited the identified stakeholders to meetings to be held in the first week of May 2002. Stakeholders were also invited to provide CTH with written submissions on the Social Plan and to attend a meeting with CTH and the Department to discuss the problems and constraints that they experienced in implementing the Plan. Some stakeholders made written submissions only, while others provided reports and attended the meetings with the Department and CTH². This process was concluded on 18 June 2002.

The report is structured as follows. After providing a brief background to the Social Plan, we analyse its provisions. We then provide a few examples of success stories and the lessons learnt from them. Thereafter, we discuss the problems and constraints associated with the implementation of the Plan. Lastly, we consider possible solutions and propose our recommendations.

¹ A list of stakeholders that were invited to meet with the Department and CTH is attached as Annexure A.

² Copies of the written submission by some of the stakeholders will be made available to the Department.

EXECUTIVE SUMMARY

CTH embarked on a consultative process involving stakeholders from government, business and trade unions to analyse the Social Plan, identify the problems and constraints experienced in implementing the Plan and possible solutions to ensure that the Plan can be effectively implemented. A brief summary of our findings and recommendations is recorded below.

We were informed that stakeholders are generally in agreement with the need to adopt a Social Plan aimed at assisting workers and communities to cope with employment decline in South Africa. This was illustrated by examples where elements of the Social Plan have been successfully implemented. Unfortunately, the illustrations of success were few and concentrated mainly in the mining sector and in some government departments and parastatals.

A number of problems and constraints were identified as factors that caused or contributed to the poor implementation of the Social Plan.

These include a general lack of awareness of the Social Plan and its contents amongst employers and unions and that even if stakeholders know of the Plan not much is known about the detail of the Plan, its aims and objectives and structures.

It became evident during our consultations with stakeholders that greater commitment is needed from all parties to the Plan if it is to be effectively implemented. The voluntary nature of the Plan was identified as one of the key reasons why Future Forums were not established and why the Plan was generally implemented late in the day when large scale retrenchments were proposed.

The current application of the Plan suggests that there is a lack of focus in regard to the implementation of the Plan. The focus is concentrated on Phase 2 of the Plan. However, the success of Phases 2 and 3 of the Plan depended on an effective implementation of Phase 1 and particularly whether a Future Forum has been established. We have concluded that the focus of the Plan must shift to ensure that Future Forums are established which develop programmes for job retention, job creation and alternative economic opportunities.

The delineation of the Social Plan into three distinct phases, which is sequentially applied has also hampered its implementation. It has become apparent that Phases 1 and 3 of the Plan could and should be implemented simultaneously to be most effective. The responsibilities assigned to parties in regard to the implementation of the Plan do not foster a co-ordinated approach. Different government departments have been

allocated the responsibility of implementing the various stages of the Plan. However, there is no department that is responsible for the implementation of the Plan in its entirety and for its overall co-ordination. Co-ordination of government activities in this regard is a major problem.

5 From our reading of the Social Plan and our discussions with stakeholders, it appears that the Social Plan was drafted using the mining sector as the model sector. As a result, the structures envisaged by the Plan are not universally applicable to all sectors and have contributed to the poor implementation of the Plan.

10 In Phase 1 we identified that the Social Plan approach is not implemented in time to be effective. Therefore, parties do not consider and develop early warning signals, and do not engage with one another to try to discuss creative solutions to ameliorate the effects of employment decline. Future Forums are not established. The SPTSF is not operating effectively. Parties also need to understand the relationship between consultative forums and Future forum type structures.

15 In Phase 2 the Plan was impeded by the fact that the required threshold excluded organisations that should implement a Social Plan. Furthermore, Retrenchment Response Teams (RRT) do not operate effectively and training or re-skilling provided to retrenched workers may not be relevant or appropriate. Concerns were also identified relating to the responsibility to fund Phase 2 activities and the co-ordination between
20 government departments to ensure that the Phase 2 activities are effectively implemented.

The key problems identified in Phase 3 are that parties were not aware of the services provided by DTI and again there was a lack of co-ordination between DTI, DPLG and the Department to effectively implement Phase 3 activities.

25 Stakeholders provided us with some of their ideas of possible solutions to the problems and constraints identified in implementing the Social Plan. This is summarised in the Report.

We recommend that the Department should decide on an appropriate social plan approach to be followed. The Department has two options in this regard, namely:

- 30
- using the Plan as a tool to ameliorate the burden imposed on recently retrenched employees; or
 - using the Plan as mechanism to save jobs, regenerate local economies affected by retrenchments and grow specific sectors where there is a likelihood of job losses or growth.

The further steps that the Department will need to take to encourage the implementation of the Plan will depend on the approach that the Department adopts.

If the Department follows the former approach, it will have to, amongst other things, continue implementing Phase 2 of the Plan following an assessment of the effectiveness of the services currently provided and how the provision of these services will be funded.

If the Department follows the latter approach, it will have to decide whether the Social plan should be integrated into other government strategies on developing and growing the economy and creating employment opportunities or whether it will stand-alone alongside these strategies within a system co-ordinated by the Department.

If the Department chooses the latter approach follows we recommend the following:

- Legislation about the establishment of Future Forums and support services to be provided to Future Forums be proposed to Parliament.
- Future Forums should be tri-partite structures if they are established at a sector level or in a geographic area. They may be tri-partite in character if established in a particular employer.
- The establishment of Future Forums should be done on application by both representative employers and trade unions, by a determination of the CCMA if there is a dispute, or, by the Minister if a sector has been declared a “troubled” sector.
- The functions of Future Forums should be specified in the legislation and we make specific recommendations in this regard.
- Future Forums should be capable of concluding binding agreements.
- The relationship between Future Forums and other collective bargaining structures should be specified in the legislation such that it does not impose further limitations on the right to strike and parties’ entitlement to collective bargaining. Future Forums should complement collective bargaining processes.
- No levy should be imposed by legislation for financing the implementation of the Social Plan programmes. We believe that this should be left to the parties to determine. Parties should however be able to source various funds in government, bargaining councils, SETAs and from employers by agreement.
- The Department should continue to provide the services specified in Phase 2 of the Social Plan. There is no need to legislate these services.
- The Department should provide these services if called on to do so by a facilitator appointed in terms of section 189A of the Labour Relations Act or, if either the employer or worker representatives request this.

- The thresholds in the Social Plan, if they are necessary, should be aligned to the thresholds specified in section 189A.
- The Department should establish a directorate responsible for the overall co-ordination of the Social Plan.
- 5 • The Department of Labour should provide full dedicated institutional capacity in the Department that deals with the establishment of Future Forums and the Phase 2 services.
- The SPTSF should be administered and run by the Department of Labour, although the Department should be able to outsource some of the tasks associated with the
10 services provided by the SPTSF.

BACKGROUND

Structural change in the South African economy has in the last few decades resulted in massive job-losses, with the gold mining industry being particularly hard hit. Individuals,
15 communities and regions were detrimentally affected as a result of the employment decline across industries.

On 12 October 1995, trade union representatives in the Trade and Industry Chamber of NEDLAC proposed that a Social Plan Act³ be introduced. On 13 October 1995, the Management Committee of NEDLAC decided to establish a task team comprising
20 representatives from the Trade and Industry and the Labour Market Chambers of NEDLAC (“the social partners”) to discuss how to best address the effects of the increasing rate of retrenchments.

The social partners accepted that individuals, communities and regions should not have to bear the burden of employment decline alone. The aim of the social plan approach
25 would be:

- to avoid job losses;
 - if job losses are unavoidable, manage the process of retrenchment; and
 - integrate retrenched persons into the economy and revitalise affected local economies.
- 30 The social partners held discussions for over two years. This culminated in the adoption of the Social Plan Agreement at the Presidential Job Summit held in 1998.

³ The proposal from the trade unions was that the Social Plan be enacted. However, it was adopted as an Agreement.

During the discussions, the social partners had different and sometimes conflicting interests. Due to the frequency of the large-scale retrenchments and the high unemployment rate, trade unions interests were to attempt to save existing jobs for their members at all costs.

5 On the other hand, business although understanding the need for a social plan, did not want to have any further rigidities and hindrances imposed when it intended retrenching its employees.

Government recognised the impact of retrenchments on the employment levels and the economies of local and regional areas. Government wanted to be able to intervene and
10 assist the other social partners to save and create more jobs. However, Government recognises that in regulating this area it faces a real tension between prioritising the interests of recently retrenched workers on the one hand, and the unemployed who have recently joined the labour market and long-time job seekers on the other.

15 **ANALYSIS OF THE SOCIAL PLAN**

The purpose of this section is to briefly analyse the provisions of the Social Plan⁴.

The principles and nature of the social plan approach

A social plan approach is applicable where there is a threat of large-scale retrenchments, which impact on sectoral, regional or national interests.

20 The social plan approach:

- aims to ameliorate the social and economic impact of retrenchments on individuals, regions and the economy;
- promotes negotiation about threats to employment security and measures, which can be taken to avoid employment decline;
- 25 • is essential if there is a reasonable possibility that alternatives could be developed to save jobs;
- provides parties with various instruments characterised by focused programmes directed at achieving short, medium and long term goals;
- requires the participation of labour, government and business and will involve
30 interventions at various levels; and
- is subject to the Labour Relations Act, 1995, and the Code of Good Practice on Dismissals for Operational Requirements.

⁴ The Social Plan was published in the Government Gazette number 20305 dated 23 July 1999 in General Notice No. 1590 of 1999.

Parties can follow the social plan approach, which will assist them with appropriate measures and in obtaining government assistance. However, they are not prevented from pursuing alternative strategies to achieve the same goals.

5 The Social Plan does not define what constitutes regional, sectoral and national interests and how these must be affected for the Social Plan to apply.

While this section provides that a Social Plan is necessary if there is “a reasonable possibility that alternatives could be developed to save jobs”, there is no consequence in the event that a social plan approach is not followed in these circumstances.

10 The Social Plan provides that parties are not prevented from pursuing alternatives strategies to achieve the same goals. This provision clearly defines the Social Plan as a guide to assist parties. Parties can choose to follow their own approach if it achieves the same goals. There is no system in place to assess whether approaches followed by organisations are in line with the Social Plan and whether “the same goals” are being achieved.

15 **Phases to the Social Plan**

The Social Plan agreement is divided into three phases.

20 Phase one of the Social Plan is intended to avoid retrenchments. The agreement anticipates that trade unions and employers will form Future Forums at company or industry level to try to anticipate problems and plan strategies to save jobs. Government was given the responsibility to establish the Social Plan Technical Support Facility (SPTSF) to assist parties to prevent retrenchments.

Phase two of the Social Plan is intended to manage retrenchments in the event that the retrenchments are unavoidable.

25 Phase three is intended to operate post retrenchments to ameliorate the effect of retrenchments on individuals, communities and local economies. The Social Plan anticipates that government will co-ordinate the provision of assistance to revitalise local economies and reintegrate retrenched people into the economy through alternative forms of employment and self-employment.

These phases are discussed in detail below.

30 **Phase one – Establishment of Future Forums and the SPTSF**

Future Forums (Clause 4)

Future Forums are discussion groups set up within sectors or companies comprising employer and employee representatives. It is anticipated that the Future Forum will provide parties with a forum to engage in on-going discussions to timeously analyse

problems in a particular sector or company⁵. This will enable parties to set up “early warning systems” that are able to identify problems timeously.

5 The reason for having early discussions is based on the premise that if problems are timeously identified and analysed, it will be possible to explore extensive and appropriate solutions and properly implement them without being constrained by time pressures that arise when retrenchments are imminent.

10 The Plan does not define the status of Future Forums. It also does not specify what are the consequences if companies or sectors do not establish Future Forums. There are also no guidelines to sectors or companies on what the criteria should be for establishing a Future Forum.

There are also no guidelines on:

- what issues should or must be discussed at Future Forums;
- the powers and functions of Future Forums;
- the composition of Future Forums;
- 15 • the information that must be disclosed at Future Forums, etc.

The agreement does not define or give guidelines on what would constitute an “early warning system”.

Social Plan Technical Support Facility (SPTSF) (Clause 5)

20 The Department of Labour established the SPTSF under the auspices of the Social Plan and Productivity Advisory Council (SPPAC).

The Department of Labour has entered into an agreement with the National Productivity Institute (NPI). In terms of this agreement the SPTSF will form part of the NPI and a Program Manager will be appointed to manage it. The SPTSF can access resources available to the NPI, where appropriate.

25 The SPTSF, in consultation with the SPPAC, is required to publish rules of operation and criteria for assistance based on the principles of the Social Plan framework. The Minister of Labour must approve the rules.

30 The main purpose of the SPTSF is to provide technical or advisory assistance to Future Forums by providing a careful analysis of problems facing the company or sector and solutions thereto.

⁵ It is not clear what would be a “timeous analysis” given the internal and external forces that impact on the operation of an enterprise.

Future Forums may agree to approach the SPTSF for assistance. Subject to agreed criteria and the availability of resources, the SPTSF can provide technical assistance or commission experts to do so.

5 The affected employers and employees must agree with proposals made by the SPTSF, before the proposal may be implemented. The SPTSF process must operate within the legal parameters of fair retrenchment procedures.

Functions of the SPTSF

The functions of the SPTSF are divided into three categories:

- Services available to all companies and unions;
- 10 • Services available to “troubled” sectors or industries; and
- Services available to companies outside the “troubled” sectors.

Services available to all companies and unions

The Plan envisages that the SPTSF will:

- operate as a one-stop-shop at which companies and unions can access information
- 15 about government assistance programmes; and
- develop a register of technical experts that can assist parties (where jointly requested) to analyse problems and identify possible solutions.

Services available to “troubled” sectors or industries

20 The SPPAC is tasked with prioritising sectors and industries that are in decline, for social plan services. Employer and employee representatives must jointly apply to the SPPAC to be defined as a “troubled” sector.

The Plan states that resources will be targeted at providing meaningful assistance to “troubled” sectors or industries.

25 The SPTSF is required to meet with sectors or industries that have been identified as “troubled” to agree on a programme to identify and/or address problems.

The SPTSF will provide access to the following standard services:

- an in-depth sectoral or industry study to analyse the underlying reasons for threat and to recommend possible solutions; and
- facilitate access to government assistance programmes where jointly requested to
- 30 do so.

The SPTSF will provide or secure the following additional services on a shared cost basis:

- desk studies for individual companies to analyse problems and identify possible solutions; and

- if the prognosis for saving jobs is good, a more in depth-proposal in this regard will be drafted when jointly requested.

Services available to sectors or industries outside the “troubled” sectors

5 This section makes limited facilities available to companies outside the “troubled” sector that may face large-scale job losses. These companies must apply to the SPPAC for assistance.

The SPTSF will provide or secure the following services on a shared cost basis:

- desk studies for individual companies to analyse problems and identify possible solutions;
- 10 • if the prognosis for saving jobs is good, a more in depth-proposal in this regard will be drafted when jointly requested; and
- facilitate access to government assistance programmes where jointly requested to do so.

15 It is not clear from the Social Plan, when it will be appropriate for the SPTSF to access the resources at NPI. What are the resources referred to?

It is clear from the Social Plan itself that the SPTSF does not play a proactive role in providing assistance to Future Forums.

20 In terms of the Social Plan the SPTSF may only assist a company or Future Forum provided both the employers and employees agree to such assistance. Problems arise where either party does not agree to approach the SPTSF.

Phase two - Ministerial Notification and Department of Labour Services

25 If a retrenchment in excess of 500 people or 10% (whichever is the greater) of the labour force is proposed within a 1-year period, the employer must notify the Minister of Labour. Assistance can be requested from the Department of Labour when large scale retrenchments are anticipated and the procedures contained in the Labour Relations Act have been complied with.

Services offered by the Department of Labour (clause 7)

Retrenching enterprises can approach the provincial offices of the Department of Labour for assistance when large-scale retrenchments are unavoidable.

30 The Department of Labour will offer information and deliver services to retrenched workers to promote re-absorption of retrenched workers into the labour market.

Employers and employees are encouraged to approach the Department jointly to maximise the potential benefit of the services.

Delivery of service (clause 7)

It is clear that there is no obligation on the enterprise to approach the Department.

The Department of Labour will then set up Retrenchment Response Team (RRT) that is competent in:

- 5 • Employment services;
- Human resource development;
- Unemployment Insurance Fund (UIF);
- Labour Relations services ; and
- Occupational Health and Safety services.

} Where necessary

10 The RRT will liase with the enterprise at the request of workers and employers.

The Department of Labour, employer and employee committee

The Department of Labour, workers and the employer will form a committee to determine:

- the type of standard and additional services to be provided to the retrenchees;
- 15 • the financial resources needed to cover additional resources and the extent of resource allocation from each partner;
- the time and people needed to offer the services;
- the technical resources needed to deliver an effective service; and
- mechanisms on how to inform retrenchees on the purpose of the Job Advice Centre.

20 It is not clear from the Social Plan itself whether these committees are part of the RRTs or separate and distinct from them.

The Job Advice Centre (JAC)

25 The Department will open a JAC on or close to the company premises. It is the responsibility of the workers or the employer to find suitable venue for the JAC, where there is no venue available at the employer's premises.

The JAC will offer selected standard and additional services 5-10 working days before the workers leave the employer's premises.

30 The services offered by the JAC will be determined by the number of retrenchees and the agreement negotiated by the Committee comprising the Department of Labour, employers and employees.

Standard services offered by the Department of Labour

These services are offered at the Department's provincial offices or at a Labour Centre for Standard Services. These services include:

- 5 • information packs to workers and managers containing information on UIF benefits, financial management, training and job seeking skills; and
- registration of work seekers; and
- disseminating information on:
 - the labour market;
 - 10 ➤ local economic development possibilities (in conjunction with DPLG); and
 - skills required in the area or the workers home area to assist workers to identify employment opportunities.

Additional services offered as agreed

These services are provided on agreement between the parties and provided that 15 resources are available. Funding must be agreed to between the parties.

The services offered are:⁶

- counselling;
- skills assessment and certification;
- assessment of potential and development of a career plan;
- 20 • training and retraining in line with the Skills Development Strategy; and
- placement services.

Support to Small, Micro and Medium Size Enterprises (SMME)(clause 8)⁷

In the event that persons affected by the retrenchment want to start their own enterprises the following options are available:

- 25 • facilitation by the Department of Links to Local Business Service Centres or appropriate support institutions;
- delivering business support services to workers while they are still at work;
- assisting and mentoring feasibility studies and developing business plans;
- business and technical training for self employment by the Department;
- 30 • providing the workers time-off to undergo training before leaving the workplace;

⁶ These services may be the services that are most likely to ameliorate the effects of retrenchment. The cost of obtaining these services may however be prohibitive.

⁷ This clause does not give the Department the responsibility of supporting retrenched workers to become SMME entrepreneurs. It identifies possible support structures that can be accessed or implemented.

- the company to identifying opportunities within the company to supply it with goods or services;
 - a programme to assist workers to open bank accounts;
 - engaging banks regarding arrangements for providing loans to workers; and
- 5 • approaching Ntsika⁸ for training and support from Local Business Service Centres.

Phase three – Regenerating Local Economies

Once large-scale retrenchment takes place and has an impact on local or regional areas, then the process must be to develop and regenerate the local or provincial economy. Government intends to support communities that drive economic development in their areas. However, this support must be co-ordinated and consistent with other economic and employment strategies in the area.

10

DPLG will co-ordinate mechanism for communities seeking assistance to regenerate their economy after large scale retrenchments.

Developing employment alternatives – stage one

15

As soon as a large-scale retrenchment is anticipated which will negatively affect the local economy, employer and/or workers should inform the local or provincial government.⁹

The local or provincial government may conduct a study that identifies alternative opportunities in the area.

The study should form the basis of a plan to ameliorate the effect of retrenchment. The plan should build on existing information and strategies for local economic development.

20

Government will support this process by a centrally co-ordinated fund.

Implementing plans for alternative employment – stage two

The co-ordinating government department will advise the provincial or local government that has developed a plan of possible forms of assistance (from existing and new support measures available within various government departments) for the implementation of the plan. This will include

25

- DTI supply side measures and activities of IDC, Khula, and Small Business Development Corporation;
 - DPLG measures to support local economic development; and
- 30 • Department of Public Works and Department of Water Affairs and Forestry project support measures.

⁸ Ntsika is the Department of Trade and Industry SMME support agency.

⁹ The employers or employees are not compelled to inform the local or provincial government. It is also not clear how much notice an employer should give to a local and provincial government that it anticipates a large-scale retrenchment.

Social Plan Funds (clause 10)

The social partners agreed that Social Plan funds should be established at enterprise level to assist in funding Social Plan programmes. It is not mandatory that enterprises set up Social Plan funds.

- 5 It was agreed that government will not set up a central Social Plan Fund and that funds will be channelled through departments that implement the Social Plan.

Investigation of Additional Forms of Financial Assistance

- Government made an undertaking to investigate the feasibility of providing additional forms of financial assistance to develop and implement the Social Plan. The investigation was to be conducted within the first six months of the implementation of the Social Plan agreement.¹⁰
- 10

ILLUSTRATIONS OF SOCIAL PLAN APPROACH SUCCESSES

Pering Mine in Reivilo (between Kuruman and Taung)

- In June 2001, MDA was informed that Pering Mine was facing closure. The employers claimed and provided information to the effect that the reasons for closure were depletion of ore, the price of iron and declining profits. It later transpired from an analysis of information subsequently provided that the mine still had three working years left. As a result the mine did not close as anticipated.
- 15

- MDA suggested that NPI become involved in the closure process, although management initially resisted this proposal. However, a Future Forum was set up at the mine, which still meets every two months.
- 20

MDA has requested that the mine conduct a skills audit and establish a retrenchment fund to re-skill miners so that they can survive outside the mining sector.

- Had the mine not extended its life span there would have not been sufficient time to put in place a Future Forum to address issues.
- 25

The Durnacoal Coal Mine

The mine was facing closure and MDA, the Department of Minerals and Energy and local government became involved in the closure process. At this stage, possible industrial action was anticipated at the mine.

- 30 A Future Forum was set up at the mine immediately prior to its closure.

¹⁰ The assistance would be on condition that it is justified within the context of a broader employment strategy, take into account the cost of job loss in respect of taxes lost and insurance paid, and availability of resources. We do not know whether government conducted this study and if so what the findings were.

It was agreed that retrenched employees would be employed during the rehabilitation process. The mine donated huge tracts of land for farming and agriculture to the retrenched workers. All mineworkers were given their houses. Assets in the form of equipment (trucks, tractors, etc) were also donated to the retrenched workers.

5 **The Namaqualand Project**

In Namaqualand many active mines have been brought together in a regional Future Forum. Although these mines are not facing immediate closure, they are putting in place processes and plans to regenerate economies when mines close down.

ERGO

10 The Department of Minerals and Energy was involved in a social plan process at ERGO which resulted in the mine implementing a turnaround strategy.

Broad lessons from these successes

From our discussions with stakeholders and reports received, we were able to identify organisations that have embarked on a social plan process to assist retrenched workers.

15 Examples are drawn mainly from the mining sector as well as government departments and parastatals.

A theme common to all these organisations is that they have used the national Social Plan Agreement as a framework only and have modified the Social Plan to create a process that is appropriate for the needs of their organisation. This suggests that a social plan approach must be flexible enough to accommodate the unique needs of sectors and organisations.

It appears that there is commitment from government departments and parastatals to implement a social plan approach when retrenching workers, which commitment seems to be lacking in the mainstream business environment. Organisations like Telkom, Eskom and the Department of Water Affairs and Forestry, for example, have dedicated institutional capacity focused on implementing a social plan. These “social plan offices” are responsible for creating, monitoring, reviewing and amending the social plan to ensure that the plan is implemented effectively. The Department of Mineral and Energy has also confirmed their commitment to a Social Plan approach through the latest amendments to the Mineral and Petroleum Resources Development Bill.

30 It is also apparent from the examples identified in the mining sector, that management must be amenable to a social plan process in order for it to be successfully implemented. In addition, the social plan approaches that were identified were successful because of

the collaboration between employers, employees, government departments and organisations like MDA and NPI.

5 A shortfall with these social plan successes is that the plans are implemented in reaction to impending retrenchments. The social plans developed do not focus on long-term economic growth and job creation. The plans are insular and may not take cognisance of the various mechanisms like the supply side measure of the Department of Trade and Industry, feasibility studies and social plan funds, which are available and will enhance the effectiveness of the plans.

PROBLEMS AND CONSTRAINTS

10 There were numerous problems and constraints associated with the Social Plan that were identified by the stakeholders. Some were practical; others were clearly motivated by differing ideological positions. We try to steer clear of the latter. We will identify some key and general problems and constraints that are applicable to the Social Plan as a whole. Thereafter we will identify some of the problems and constraints associated
15 with each phase of the Plan.

Key and general problems

The key overall problems relate to:

- The lack of awareness of the Social Plan and its content;
- The lack of commitment of the parties to the Plan;
- 20 • The lack of focus in regard to the implementation of the Plan;
- The phases of the Plan are applied sequentially;
- The responsibilities assigned to parties in regard to the implementation of the Plan do not foster a co-ordinated approach; and
- The structures envisaged by the Plan are not universally applicable to all sectors.

25 Funding of the Plan and the co-ordination of social plan, activities and functions including co-ordination between government departments, are also significant and general problems but they will be discussed under the problems associated with each of the phases of the Plan.

The lack of awareness of the Social Plan and its content

30 Many persons and organisations do not seem to know about the Social Plan. Knowledge about the Social Plan seems to be concentrated in the mining sector, and even then it does not seem to have any impact upon small and medium size mines.

Many businesses do not seem to know about the Plan's details. For example, many businesses and trade unions do not seem to know about the register of technical experts

developed by the SPTSF that may assist the parties in analysing the problems and identifying possible solutions.

We have been informed that the Department of Labour has begun initiatives to market the Plan, but we were unable to evaluate the effectiveness of these initiatives.¹¹

5 Therefore, without the benefit of any scientific survey relating to the awareness in the labour market of the Plan, we believe that it is still safe to conclude that the Plan is not well known amongst employers and unions. Moreover, even if it is known about our impression is that not much is known about the detail of the Plan, its aims and objectives, structures, etc.

10 ***The lack of commitment of the parties to the Plan***

As one may expect, in our consultations with stakeholders, parties accused each other either implicitly or explicitly of not being committed to the implementation of the Social Plan. We do not consider it beneficial for present purposes to consider the veracity of these accusations. However, it is important to try to understand why some parties have
15 not embraced the Plan. Although generalisations can be dangerous it is nevertheless important to have an overview of this nature.

The reasons for Business' lack of commitment, or at least perceived lack of commitment to the Plan, seem to include:

- The Plan is voluntary in nature. It does not oblige compliance from the employer.
- 20 • Some businesses perceive the Plan to be of no benefit to them. Instead they perceive it to be another constraint before they are able to retrench. The latter view was confirmed by Business representatives that we consulted. In some cases businesses perceive the Plan as preventing retrenchments and are therefore not keen to get involved.
- 25 • Some businesses perceive the Plan to be an issue between Labour and Government, which is merely a drain on the employer's resources.

Besides NUM, there does not seem to be great enthusiasm for the Plan amongst trade unions. The reasons for this we can do no more than speculate on:

- During the negotiations leading to the conclusion of the Social Plan in NEDLAC,
30 NUM spearheaded discussions on the trade union side. Very few other unions participated in the process.

¹¹ We are informed that in Mpumalanga and Gauteng North, for example, the Plan was being marketed to unions and employers using information sessions on the Social Plan.

- The structure and processes provided for in the Plan seem to cater for large trade unions and large employers. It is sometimes difficult to see how the Plan applies to other sectors and industries where the mining pattern of operations and employment is not replicated.

5 • The unions' lack of enthusiasm for co-determinist models such as workplace forums, especially where the process envisaged is consultative instead of joint decision making, is also a significant factor. In essence the Future Forums provided for in the Plan are a co-determinative model akin to that of the workplace forum. The number of Future Forums that have been established are pitifully few.

10 In our consultations Government was accused of a lack of commitment to this Plan. In particular the unions felt that the overall responsibility for co-ordinating the Plan was left to individuals and that the Department of Labour had not developed the institutional capacity such as an internal directorate to implement and co-ordinate the Plan.

In our view accusations of this nature mask the real problems, which are the
15 uncoordinated nature of government's intervention, the manner in which it has allocated tasks to the various departments and the fact that many of the structures of government do not clearly know what they should be doing.

The lack of focus in regard to the implementation of the Plan

When a large retrenchment is imminent the amount of antagonism and mistrust between
20 the parties is substantial. In this context it is difficult to negotiate about long-term issues relating to the economic rejuvenation of a community or training of workers who are to lose their jobs. We were often told by those that have been at the coal face of retrenchments that in most cases workers who are about to be retrenched often want to get their severance packages and close this painful chapter of their lives as soon as
25 possible. They are not interested in long-term plans that may or may not have any immediate impact on their lives.

Even in employers like Eskom and Telkom where consultative and bargaining structures have discussed social plans, it seems that those discussions have been limited to the issues as envisaged by phase 2 of the Plan. Very few discussions have taken place as
30 envisaged by phases 1 and 3 of the Plan.

By default it seems as if the focus is on phase 2 of the Plan. This is due to a lack of planning because employers and trade unions do very little about implementing the Plan until retrenchments are looming. By this time it is often too late and the options available to deal with the problem are severely restricted. It also means that most of the time

seems to be allocated to phase 2. But the success of phases 2 and 3 are generally dependant on whether phase 1 has been implemented, and particularly whether a Future Forum has been established.

5 Because most of the work seems to be centred on the processes envisaged by phase 2, the focus of the Social Plan inadvertently is on retrenched workers. Very little attention is therefore paid to the unemployed generally, the recently unemployed, those that have not been employed yet or the community as a whole. This is a very restrictive approach to the issue of job creation and economic regeneration of areas affected by large-scale retrenchments.

10 Therefore more time and energy should be spent on setting up Future Forums and putting in place mechanisms and programmes to ensure job retention, job creation and alternative economic opportunities i.e. on phases 1 and 3 of the Plan.

The phases of the Plan are applied sequentially

15 The Social Plan has been neatly analysed into three distinct phases. Phase 1 is about preventative measures, phase 2 about assisting retrenched workers and phase 3 about ways to assist retrenched workers and communities affected by large-scale retrenchments.

20 However, this delineation is really only helpful for the purposes of analysis. It should not mean, as we think it has come to mean in the minds of many of the stakeholders, that work in relation to phase 3, for example, only happens after phase 2, which only takes place after phase 1. In fact all the phases could be implemented at the same time and the Future Forum, the structure set up under phase 1, could and should deal with most of the issues pertaining to the Social Plan irrespective of whether they are phase 1, 2 or 3 issues.

25 ***The responsibilities assigned to parties in regard to implementation of the Plan do not foster a co-ordinated approach***

Ostensibly because the Plan has been divided into three distinct phases departments were assigned responsibility for the implementation of the Plan. Phase 1 was assigned to the Department of Labour, but was outsourced to the NPI. Phase 2 was assigned to the Department of Labour. Phase 3 was assigned to the DPLG.

30 The questions that immediately arise are who is then responsible for the implementation of the Plan and who is the overall co-ordinator?

In our view this assignment of responsibilities without any effective structures to co-ordinate the implementation of the Plan has further exacerbated the problems of co-

ordination of the government's activities associated with the Plan and the integration of the various phases of the Plan.

5 The assignment of responsibilities in this way has also led to a situation where no particular party is responsible for Future Forums being established. The NPI is tasked with assisting parties in setting up Future Forums but only when they are requested to do so. It is questionable whether they will be established if simply left to employers and trade unions. In the light of the fact that Future Forums are the key structures for the success of the Social Plan it is necessary to campaign more vigorously for the establishment of these forums.

10 In our consultations trade unions criticised the Department of Labour for not taking overall responsibility for the Social Plan.

We believe that it is essential that one Department be made responsible for the overall co-ordination of the Plan irrespective of the phase of the Plan. This should not mean that the overall co-ordinating department could not delegate tasks to other departments and bodies such as the NPI.

The structures envisaged by the Plan are not universally applicable to all sectors

20 Reading the Social Plan it is evident that the drafters of the Plan had one sector in mind, namely the mining sector. It is easy to see how the Plan is applicable to this sector, which generally has large employers and where the future of a mining operation is often predictable. Our concern is that the processes envisaged are not necessarily applicable to other sectors of the economy. Perhaps this is one of the reasons why the Plan has not been enthusiastically implemented in other sectors.

25 This has raised the question of whether Future Forums should be defined on a sector basis, geographically or at a company level, whether such company is regionally based or nationally based?

We believe that a flexible approach to the creation of Future Forums is needed. The industry and the challenges facing that industry should determine the nature and composition of Future Forums. A "one size fits all" approach will not work.

Phase 1 of the Plan

30 In phase 1 the key problems are:

- The social plan approach is not implemented timeously and there is a lack of early warning signals;
- Future Forums are not established;
- The ineffectiveness of the SPTSF; and

- The relationship between consultative Future Forum type structures and collective bargaining structures.

The social plan approach is not implemented timeously and there is a lack of early warning signals

5 The Social Plan is not introduced and implemented in time to be effective. As a result the parties do not consider and develop early warning signals of impending retrenchments. Unions complain that employers do not disclose the possibility of retrenchments far enough in advance so that adequate, well-thought out and creative solutions can be discussed.

10 The fact that these early warning signals are not considered means that plans are usually only mooted when the retrenchments are about to happen and the whole process is therefore severely constrained.

Phase 1 is aimed at preventing job losses. However, because very little is done before retrenchments are on top of the parties it is often not possible to implement turnaround strategies where such strategies would prevent retrenchments.¹² Not a lot can be done when the retrenchments are upon the parties and attitudes of the collective bargaining parties have hardened.

The MDA has found that parties are informed about retrenchments at a stage when it is too late to properly implement a social plan approach. Even if companies provide the Minister of Labour with a one-year notice period of its intention to retrench workers, they argue that this period is not sufficient to put in place a proper Social Plan.

More research has to be done at a sector level into the long-term viability of industries so that early warning signals can be developed and shared with the parties.

Future Forums are not established

25 According to the NPI, 53 Future Forums have been established in various companies. Included in that figure are 13 Future Forums in the Post Office. NPI is currently working on 27 Future Forum projects that are at various stages of progress. Eleven of these projects are in what they call “the nurturing phase”, seven companies are involved in preliminary assessments using productivity rating tools and two companies are setting up Future Forums where the NPI is undertaking in-depth diagnostic studies.

30 From these statistics it seems apparent that very few Future Forums have been established.

¹² According to the NPI the successful development and implementation of turnaround strategies requires about 3 to 6 months lead time.

Paragraph 4 of the Social Plan is worth repeating:

- 5
- “4.1 A social plan approach is most effective when it arises from timeous analysis of problems in a particular sector or company, because this makes it possible to explore appropriate solutions and implement these in a properly planned way.
- 4.2 If attempts at developing a social plan wait until a retrenchment proposal is tabled, then there are often serious time imitations on the process, and the options available are therefore far more limited.
- 10 4.3 NEDLAC parties should therefore promote ongoing discussions between workers’ representatives and employers about the future of their industries, and enterprises, and set up ‘early warning systems’ that can identify problems timeously.
- 15 4.4 The establishment of future forums, whether separately or part of existing bargaining forums, is therefore proposed. These forums will involve employees and their representatives and management, to look ahead at problems, challenges and possible solutions.”

It is therefore clear from the Plan itself that the social partners understood the importance of Future Forums. The fact that they do not exist in great numbers explains part of the problem, and perhaps the major reason, for the lack of success in
20 implementing the Plan.

It appears that a completely voluntary approach to the establishment of Future Forums has not yielded results and employers and trade unions are frequently complacent, focused on short-term issues and content to live in the comfort of the present.. We think that without “nudging” the parties to establish these forums very few will be established
25 and the issues that should be addressed at these forums will inevitably be put on the back burner until once again it is too late.

The ineffectiveness of the SPTSF

Part of the problem is that parties do not make use of the SPTSF because they do not have Future Forums. Moreover, they call upon the SPTSF only when retrenchments are
30 imminent, which curtails the number of available options in terms of the Plan.

NPI also drew to our attention that in their view many large-scale retrenchments are motivated by the need to create shareholder value or reallocate spending to more strategic areas as opposed to declining profitability. In these circumstances turnaround strategies are inappropriate.

NPI informed us that they have compiled a register of about 200 service providers. As we have stated previously stakeholders do not seem to be aware of this facility and how to go about accessing it.

5 NPI has identified a number of sectors as “declining”. They are: mining, deciduous fruit, clothing and textile, footwear and leather goods, furniture, transport and clay bricks. NPI has upgraded its two early warning system modules to detect declining sectors and companies.

10 NPI informed us that they undertook an industry study in the clothing sector, but were unable to successfully continue the initiative because attempts to establish a sector task team failed. NPI identified the need to establish sector Future Forums prior to undertaking these studies to ensure sufficient “buy-in” for a sector turnaround initiative.

NPI has a number of other proposals for other sector studies.

It is not clear why so few sectoral studies, especially in the “troubled” sectors mentioned above, have been undertaken.

15 NPI has completed nine turnaround projects, saving approximately 1120 jobs.

The success of the SPTSF has been limited. The reasons for this relate at least in part more to the structural problems associated with the Plan. However, unions especially praised some of the SPTSF’s interventions where they did take place as it ensured that the parties were able to engage in consultations from a more informed perspective.

20 ***The relationship between consultative Future Forum type structures and collective bargaining structures***

Where consultative Future Forum type structures exist there have been a number of problems. These problems include:

- Disputes about the nature of consultation

25 These forums are defined as consultative forums. Unions have the right to persuade the employer otherwise. Unions frequently accuse management in these forums of not consulting properly and just going through the motions in order to say that they have consulted. Management obviously denies this but is frequently quick to inform a stubborn union that it retains the right to manage and make decisions unilaterally.

- 30 • Bargaining and consultation

The relationship between the collective bargaining process and the processes in the Future Forum type structures is fraught with difficulties. Parties are often in dispute about whether a bargaining issue is a Future Forum type issue or not and the parties jostle with each other to have it sent to this forum instead of that forum depending on

their strength in each forum. There is no clear demarcation between what is a subject of bargaining and what is the subject of consultation. For example, is training a bargaining issue or a consultative issue?

5 There is no legal prescription as to what subjects should be tabled in the collective bargaining forums and what should be dealt with in the consultative forums. In fact they could theoretically all be dealt with in either. One must remember that all issues that are matters of mutual interest between employer and employee are capable of being subjects of bargaining because employees have the right, subject to the limitations imposed by the Labour Relations Act, to strike about all matters of mutual
10 interest between employer and employee.

As soon as the consultative forum becomes perceived as a constraint on the right to bargain and the right to strike about matters of mutual interest, unions begin to perceive them as threat to their power and fundamental rights.

- The resolution of disputes

15 Management frequently argues, and some unions even accept, that the parties have defined Social Plan issues as consultative issues and therefore workers cannot strike about them. They base this notion on the legal fallacy that workers can strike about negotiable issues only and may not strike about consultative issues. Some unions believe that they are relatively powerless because they have the power only to
20 influence management's decision and they suspect that management has decided long before they are consulted. In this context disputes fester rather than being resolved.

- Nature of agreements

25 There also sometimes seems to be confusion about the nature of agreements reached at consultative forums. Some parties seem to labour under the illusion that such agreements are not binding.

Consultative forums of this nature are often a further source of conflict. They will be effective only if the collective bargaining parties are experienced and mature and there is a genuine commitment from all sides to co-operate.

30 **Phase 2**

In phase 2 the key problems are:

- The thresholds excludes organisations that should implement the Social Plan;
- RRTs are not effective;
- Training or re-skilling may not be relevant or appropriate; and

- Funding and co-ordination.

The thresholds excludes organisations that should implement the Social Plan

The threshold contained in clause 6 of the Social Plan refers to retrenchments of 500 or more or 10% of the workforce, whichever is the greater. The threshold is high. In most provinces a retrenchment of less than 500 can have a devastating effect on not only the retrenched but also upon the impoverished communities from where these workers come.

The threshold is problematic for sectors where there are regular and frequent retrenchments that fall below 10% or 500 or more.

10 We were informed that employers such as Telkom and Eskom intend to implement the social plan approach whenever there are retrenchments irrespective of the number of retrenched. It seems to us that it would be appropriate to either do away with the threshold or at least align it to the thresholds set out in section 189A of the Labour Relations Act.

15 ***RRTs are not effective***

According to officials in the Department of Labour the high levels of conflict between employers and unions means that the Department cannot render its services effectively. The Department informed us that their officials are usually approached by the employer provide assistance and unions are not part of the process.

20 The Department usually receives notification of a retrenchment three or four days prior to the retrenchment. This period is too short to allow the Department to put its plans and strategies into place. Moreover, at this stage workers are angry and not receptive to assistance offered by the Department.

In the Department's experience employers frequently do not allow the Department to render services until the retrenched have been retrenched. The Department also finds that once workers have been retrenched they do not see the value of participating in projects that do not guarantee a source of income in the short term.

The Department informed us that the Plan's requirement of obtaining agreement from the employer and trade union to provide the additional services specified in clause 7.5 means that in most cases these services cannot be provided as employers are not willing to share the costs of those services with government.

30 The Department of Labour implements a training voucher system to allow retrenched workers to access services of training providers. The idea of the training ticket was to allow provinces to create a database of providers and to make the voucher transferable

across provinces. However, it seems that this system has not been properly developed in that there is currently no database of service providers and it seems that the voucher is not as yet transferable across provinces. In short, it is unclear whether the system is fully operational.

5 We were informed that the Department of Labour has started a process to obtain feedback from persons to whom it provides services to assess whether RRTs have been effective. The departmental officials that we interviewed believe that there has been lack of support between national and provincial government to enable the effective operation of RRTs. We were also informed that the Department of Labour is currently reviewing
10 the training provided to its personnel who perform RRT functions and is considering the establishment of regional response teams.

The views of other stakeholders regarding RRTs were more forthright. The following is sample of their views:

- RRTs do not provide the services that they are intended to provide.
- 15 • The Department has funds available to implement phase 2 of the Social Plan. However, it is not clear how funds can be accessed for Social Plan activities.
- The Department lacks the knowledge of the areas in which strategic development should be taking place and what jobs are available for retrenched given their skills levels.
- 20 • The Department is under-resourced and under-funded and this hampers implementation of the Social Plan. The training voucher system is not fully developed and the Department is often unable to provide matching funds for training.
- Workers are not aware of the need to be counselled or trained on financial management, life skills and new opportunities and workers want to leave
25 immediately after receiving notice of the retrenchment.
- The Department's services and structures responsible for the Social Plan are not in place and the employees providing social plan services are not skilled to do so.
- Training workshops are poorly attended because of logistical problems (e.g. accommodation, transport and catering for workers situated mainly in rural areas).

30 ***Training or re-skilling may not be relevant or appropriate***

The first key problem that was identified was that the processes embarked upon to determine what skills should be imparted to workers was often haphazard. It seems as though it is usually left to the individual worker to identify the training that he or she wishes to receive after the Department or the employer has provided broad guidelines

on what they think workers should be trained in. It does not seem to be the result of comprehensive or scientific analysis of regeneration research to identify areas of economic growth and future training needs. The result may therefore be that workers are trained in skills where the market is already saturated.

5 It is for this reason that some stakeholders were of the view that providing retrenched workers with a “training ticket” is short-sighted and ineffective. They argued that the Social Plan should follow a “lifetime approach” where workers are equipped with lifelong generic skills.¹³

10 Debates persist about when training should take place. Stakeholders have pointed out that the time when the retrenchment takes place is not the best time for retraining, as workers are often demotivated. However, if it were to take place well before any retrenchment it would probably impact upon production time and accordingly employers would resist this. The question about when training should take place is therefore a complex question that affects the interests of all concerned.

15 The area of training is complicated by the fact that there is no co-ordination between SETAs. We will illustrate the point by way of an example. A mine that is about to retrench adopts a re-training programme for retrenched workers. They are to be trained as tourist guides and taxi drivers. The SETA for the mining industry does not train for these skills as it is tasked to consider training for the mining sector. The parties to the social plan are the mine managers and owners and the trade unions in the mining sector. They are not represented on the SETAs dealing with transport or tourism. They therefore find it difficult to access funding from the SETAs outside their sector.

20 Another key problem relates to who provides the training. For example, the Department of Water Affairs and Forestry informed us that there is a lack of appropriate service providers who understand the forestry target group, where the majority of workers are middle-aged, have worked in forestry all their lives, are usually illiterate and are based in rural areas. They stated that most service providers specialise in standardised business management training, which is theoretical and in English and that limited financial resources and time constraints affects the content of these training courses.

30 Furthermore, training is planned for and executed without considering other factors necessary to enable re-trained workers to exercise their newly found skills productively.

¹³ This debate is obviously complex and beyond the scope of this report. Skills training often does not simply involve imparting particular skills to workers that will enable them to perform another job, but requires them to be grounded in generic skills such as literacy and numeracy. Without these skills some employers have argued that workers are not easily trainable.

In other words, financial resources are made available for training without a clear programme of integration and mobilisation of a broad range of resources like community management processes, land titles, electricity and water supply, access to markets, and long term finance.

5 **Funding**

The first problem identified is that employers are often willing to engage on Social Plan issues, but are reluctant to provide resources to implement these plans, especially if the training has no bearing on their operations. In the view of the MDA employers do not see training as part of their responsibility and the MDA has struggled to obtain funds from employers to train or re-skill workers facing retrenchment. They find this view unacceptable because employers are required to comply with regulations to make financial provision for environmental rehabilitation but are not willing to pay for employee's rehabilitation.

In phase 2 the Social Plan states that funding is as per agreement between the Department of Labour and the employer and trade union. The practice in some sectors or companies is that the employer and the Department contribute equally to enable Social Plan services to be rendered to retrenched employees. This places unnecessary constraints on the Department. The Department should be able to contribute a greater proportion where the employer is in dire financial difficulties, even up to 100% if the employer is, for example, about to be liquidated.

Insofar as funding is provided it is not clear how the Department exercises quality control on the use of the funds.

Phase 3

The key problems in phase 3 are:

- Parties are not aware of the services provided by DTI; and
- Funding and co-ordination.

Parties are not aware of the services provided by the DTI

DTI has not been involved in the implementation of the Social Plan in the past three years. It was envisaged that successful social plans would need to draw on supply side measures of the DTI. Supply side measures are offerings available to DTI's customers. Many DTI programmes that are relevant to the Social Plan are not being optimally used. There is a clear lack of co-ordination between the Department of Labour, the DPLG and DTI to access the services provided by DTI when implementing the Social Plan. The

social plan approach is not currently drawing on all resources available from government.

A DTI representative informed us that DTI would like to become more involved in the Social Plan. Sector managers within DTI would be the initial point of contact for parties
5 wanting to access assistance from DTI.

DTI's emphasis is supporting successful enterprises. Its focus is not on declining companies, which is largely the focus of the Social Plan. This poses a contradiction as it is precisely these sectors or companies that require assistance.

10 ***Funding and co-ordination***

As regards funding in phase 3 of the Social Plan we were informed that the DPLG operates the Social Plan Fund. DPLG is allocated funds each year from the Poverty Alleviation Fund administered by the National Treasury. DPLG is required to target municipalities facing large-scale retrenchments and economic decline to allocate funds
15 for regeneration studies. Funds in the Social Plan Fund must be utilised in the financial year that they are allocated.

DPLG has been working alone to target municipalities and has encountered difficulties when trying to target the municipalities experiencing retrenchments as there is no process to determine which municipalities are affected. Because of the lack of co-
20 ordination between the Department of Labour and DPLG, a request that the DPLG fund affected municipalities may be made when it is too late because these funds have already been allocated to other municipalities.

DPLG views the Social Plan Fund as a mechanism to facilitate the development of economic regeneration strategies and job creation projects. It is of the view that this
25 understanding is in conflict with the Department of Labour which it believes is of the view that the Social Plan Fund is a social intervention mechanism aimed at addressing the socio-economic problems of retrenchees. This is a core policy question that persists and unless there is clarity it will hinder the implementation of the Plan.

We were informed of the following relating to the work of the Social Plan office of the
30 DPLG. DPLG has allowed municipalities to apply for funding by open invitation and has tried to target municipalities facing large-scale retrenchment based on the applications submitted. To date, 108 municipalities have been funded and approximately 90 plans have been drafted.

DPLG has provided municipalities with a once-off grant of R50 000 to appoint consultants to conduct regeneration studies. There seems to be no quality control system in place to ensure that the studies are of a consistent standard. Municipal managers do not know what to look for in the regeneration study, and there is little interaction between the municipalities and the consultants, poor participation by provincial stakeholders and lack of technical capacity in most municipalities.

DPLG has drafted guidelines on how to draft a regeneration study. Municipalities are aware of the guidelines but they are not implemented. DPLG has also introduced capacity building training for municipalities and has tried to work together with municipalities to develop regeneration studies.

Once the regeneration study is completed, municipalities are left to implement projects contained in the study. There is no control in the social plan approach to determine which government department is responsible to provide funds to implement the projects identified by the study.

DPLG is not clear whether their performance is judged on how many plans were produced or how many jobs were created. From the 90 plans that were funded by the Social Plan Fund, seven projects were funded from the Local Economic Development Fund (“the LED Fund”).

DPLG is responsible for administering the LED Fund as well as the Social Plan Fund.

Unlike the approach adopted by the Social Plan Fund, decisions by the LED Fund to fund projects are not based on feasibility studies. The LED Fund invites applications from the public to fund projects aimed at local economic development. Projects identified by using feasibility studies could have been funded by the LED Fund. However, a lack of co-ordination between the Social Plan Fund and the LED Fund meant that and these projects were not funded. In terms of the Division of Revenue Act, 2001 the Social Plan Fund will be consolidated with the LED Fund from October 2002.

It is therefore clear from our consultations that organisations involved in the development of social plans are unaware of the myriad of funds that are available and how to go about accessing them. Funds are not used in a productive manner and there is little co-ordination between the various departments of government about how to best use available funds.

POSSIBLE SOLUTIONS PROPOSED BY STAKEHOLDERS

The stakeholders to this process were invited to propose solutions to the problems and constraints they identified in implementing the Social Plan. Some of their proposals are discussed below.

5 Legislation of the Social Plan

At the time that the Social Plan Agreement was reached, stakeholders were of the view that a Social Plan Act was not necessary because the new labour dispensation would be sufficient to ensure that a social plan approach was followed. This has clearly not been the case.

10 Representatives from trade unions and some government departments are of the view that the current status of the Social Plan means that employees are at the mercy of employers to implement a social plan approach. They believe that the Social Plan is not being implemented because employers are not compelled to implement the Plan and there are no consequences for failing to do so. Therefore a legislated Social Plan is
15 necessary to ensure its implementation.

However, not all stakeholders agreed that legislation will solve the problems of implementing the Social Plan. It was suggested that employers need to commit to the implementation of the Social Plan first and that the focus should be on strengthening industrial relations between employers and employees. Using Germany as example, we
20 were informed that the social plan approach works because there is a relationship between employers and employees. In support of this it was argued that a legislated skills development levy had not worked for SETAs as was anticipated because companies do no more than they are required to by legislation and only spend the stipulated amount on training.

25 A further solution was that only certain parts of the Social Plan should be legislated. One suggestion was to legislate a Social Plan Fund compelling companies to put financial resources aside to finance a retrenchment. This levy may be incentivised by offering employers tax benefits for setting up such a fund. Another suggestion was that legislation should compel employers to prioritise retrenched employees for employment
30 opportunities when they required out-sourced services. It was also suggested employers be obliged to establish Future Forums and that agreements reached at Future Forums be enforceable.

Future Forums

NPI suggests that the Department of Labour or the Department of Trade and Industry should develop incentive programmes that reward the establishment of Future Forums and put in place mechanisms to monitor their effectiveness.

5 NPI has experienced that it is easier to set up the Future Forums at individual companies as opposed to sector level Future Forums where companies operate in competition with one another. However, NPI believes that there are benefits to sector level Future Forums as resources can be leveraged across organisations and companies can share ideas learnt from one another.

10 NPI does not believe that legislated Future Forums are an appropriate solution and has proposed that incentives for the development of Future Forums be legislated. Some suggested incentives are:

- allowing companies to access DTI services only if they are party to Future Forums;
- creating an award programme that distinguishes companies committed to quality and productivity improvement through collaboration.

15

Department of Labour officials proposed that the establishment of a Future Forum should be made part of a condition to qualify for a discretionary grant from a SETA to re-train retrenched employees.

Sector Level Task Teams

20 NPI proposes that a task team be established to develop turnaround strategies for distressed sectors. The task team should comprise representatives from NPI, DTI and trade union and employer federations. Representatives from Department of Labour and sector level structures (like SETAs and export councils) can also participate.

The objective of the task team would be to:

- 25
- conduct in-depth studies and analyse constraints;
 - develop holistic strategies incorporating government assistance programmes at company and sector level;
 - put in place incentives to ensure implementation of strategies; and
 - manage and monitor the implementation of strategies with clear targets for job creation and economic growth.
- 30

Financial provision for retrenched workers and Social Plan levies

Trade union representatives, especially in the mining sector, are of the view that employers should be compelled to make financial provision for retrenched workers.¹⁴

This will be achieved by introducing a Social Plan levy.

5 Some business representatives however do not believe that imposing a further levy on employers will ensure implementation of the Social Plan. They have suggested that the Department of Labour should undertake to provide workers with life-skills during the course of their employment to prepare them for the possibility of retrenchment. This process can be funded using resources from the National Skills Fund and SETAs.

10 Other business representatives were vehemently opposed to a further levy and warned of its implications for investor confidence.

Training

Business representatives proposed that SETAs identify skills that are relevant for economic growth and job creation and establish national skills centres where workers
15 can be trained across sectors in the skills so identified. This will require major government initiatives and a realistic time frame.

Some government departments proposed that the training ticket system should be scrapped because it is short sighted and ineffective.

It was proposed that when employers send employees on training courses, they must
20 ensure that the courses booked are appropriate for each employee taking into account the employee's level of education and language.

Reporting and monitoring framework

Stakeholders proposed that the Department of Labour implement a standardised reporting framework in terms of which organisations are compelled to submit reports on
25 their progress in implementing the Social Plan and can receive feedback from the Department on their progress. This can be achieved through the establishment of a Social Plan Directorate within the Department focused on implementing and co-ordinating the Social Plan.

¹⁴ This solution is problematic. Unlike mines (which have a predictable life-span) most industries cannot predict when they will face retrenchments. Employers will be unwilling to make provision indefinitely for retrenched workers as there is no value for them in doing so.

The Department's officials suggested that the Department enter into a service level agreement with the NPI to deal with the lack of co-ordination and responsibilities between the two parties and to monitor the NPI's performance.

5 Some of the stakeholders proposed that the employers should notify the Department when they intend to retrench irrespective of the number of retrenchments to take place because the impact of retrenchment is the same irrespective of the number of workers retrenched. In other words they proposed that the threshold should be scrapped.

The NPI's model for job creation

10 NPI proposes that a job creation unit be established to facilitate joint venture partnerships between entrepreneurs and retrenched workers. NPI foresees that the unit will bring together private sector partners and retrenched worker partners in an organisation that will design or modify and manufacture new products or provide services.

15 The unit will prioritise sustainable job creation as opposed to financial return and will perform the following functions:

- identify job creation projects according to targets set by stakeholders;
- provide venture capital to retrenched workers in the form of loans to enable them to enter into joint ventures with private entrepreneurs;
- facilitate the skills transfer from private entrepreneurs to retrenched workers; and
- 20 • facilitate a process for the transfer of management of the organisation to the workers.

The unit will assess the marketplace to identify opportunities and projects that will create employment. NPI is of the view that the focus should be on the import and export industry so that existing industries will not be stifled. If the domestic economy is targeted, the impact on the domestic economy must be ascertained.

25 NPI suggests that legislation should be promulgated to oblige employers to contribute to a venture capital fund from which retrenched workers can borrow funds to establish self-employment ventures.

NPI also proposed that the job creation unit is established within the NPI whose profit is determined by the number of jobs created. The unit will, however, require initial start-up
30 funding. The unit will be responsible for providing ideas, entrepreneurial skills and venture capital to retrenched workers. The Department of Labour would then take responsibility to train retrenched workers to participate in the partnerships between private entrepreneurs and retrenched workers. The CSIR would then be brought in as the technical product development partner.

Increasing labour productivity

DTI suggested that ways must be explored to make lower paid workers more productive in their jobs rather than replacing them with machines or skilled employees. The Social Plan would be used as tool to access DTI funds to increase labour productivity.

5 **RECOMMENDATIONS**

In this section we propose a broad way forward. It has not been possible to answer all the questions associated with our broad proposal. Therefore, in some instances we pose the questions that we believe have to be answered.

10 The problems associated with the Social Plan are large, complex and easily become massive ideological debates. We believe that it is easy to become stuck in these debates and never do anything practical. Without wanting to diminish the complex nature of these problems, we believe that some of them will be resolved in the course of implementation. Therefore, it is necessary to focus on and attack the core problem first. In short, we need to take the first step first.

15 The core problem is that we do not have sufficient structures in place at sector, geographic or company level that bring together the social partners and focus their energies on growing their businesses. We believe that once these structures are in place government will be able to encourage and facilitate creative programmes that grow these sectors and create and retain jobs. The Department's energies must be
20 concentrated in putting in place these structures and making sure that they work.

Is the Social Plan approach the correct one?

We have no doubt that the social plan approach is the best approach. The reasons for this are simple and yet worthwhile repeating. The social plan approach:

- facilitates dialogue between the social partners;
- 25 • mirrors the processes that take place at NEDLAC in a particular sector, employer or geographic area
- gives a voice to workers and members of the community;
- makes parties focus on matters that are not simply the immediate, but matters that will grow and develop their businesses and industries; and
- 30 • makes all parties become responsible for social and economic progress.

The social plan approach needs to be encouraged and given impetus. The question is whether this approach needs to be broadened or restricted. In this regard, the Department has two options, namely:

1. to use the social plan as a tool to ameliorate the burden imposed on recently retrenched employees, i.e. to provide services akin to the services that the Department currently provides to retrenched employees in Phase 2 of the agreement; or
- 5 2. to use the social plan as a tool to look at ways to, amongst other things, save jobs, regenerate local economies affected by retrenchments and grow specific sectors where there is a likelihood of job losses or growth i.e. in a broader context than ameliorating burdens associated with retrenchments.

10 If the Department opts to use the social plan as a tool to ameliorate burdens associated with retrenchments, it would:

1. have to assess the services that it currently provides in Phase two of the agreement, with a view of determining whether it should increase and/or improve these services;
2. determine the point at which it will intervene during a retrenchment process at company level to provide these services;
- 15 3. decide whether to set any threshold before it provides these services to recently retrenched employees¹⁵;
4. determine whether it has the capacity to provide these services to recently retrenched employees or whether to outsource the provision of these services;
5. determine how these services will be provided;
- 20 6. determine proper monitoring system to ensure adequate provision of these services; and
7. determine how these services, if improved and/or increased, will be funded¹⁶.

However, should the Department wish to use the social plan as a tool to save jobs, regenerate local communities and create job opportunities in certain sectors, the social plan as it is currently implemented must be broadened. It cannot be limited to the here and now i.e. the next wave of retrenchments as it has been the situation thus far. While parties must obviously pay attention to these issues, they also need to focus on the medium to long term goals.

¹⁵ For example, should the Department determine a threshold, which will determine the level of employees that the Department will provide, services to? Should the Department decide to determine any threshold, an example of a threshold could be the salary level of employees.

¹⁶ The options would be to access the funds available in government or to require retrenching employers to contribute for payment of these services. Most employers provide some of the services provided for in Phase 2 of the agreement, as such there may not necessary be serious objections from employers to contribute to payment of provision of these services.

Obviously, in this instance, there must be a change of focus away from the imminent retrenchments. The entry point for discussions about the future should not necessarily be the impending retrenchments, but rather looking ahead at possible problems, challenges and solutions.

- 5 The Department will have to look into the following issues:
1. should the social plan be integrated into other government strategies on developing and growing the economy and creating employment opportunities¹⁷;
 2. if so:
 - how should the social plan approach be integrated into these strategies;
 - 10 • what will the role of the Department be; and
 - who will be ultimately responsible to co-ordinate these strategies to achieve the broader purpose of the social plan agreement.
 3. is it possible to have a stand alone social plan agreement alongside these strategies with a system that is co-ordinated by the Department;
 - 15 4. is it necessary to have future forums established and if so, at what level they be established; and
 5. whether legislative intervention is required to give effect to the Department's intentions.

Some of the questions raised above are dealt with in detail below.

20 **Should there be legislation?**

Many of the parties that we consulted, including many of the officials of the Department of Labour, were resolute in their belief that the Social Plan needs to be legislated if things are to be more successful in the future. They identified the voluntary nature of this legislation as being the key problem.

25 We have come to a similar conclusion. To date we have had a voluntary process of establishing Future Forums and very few have been established. Without legislation that “nudges” the establishment of Future Forums we cannot see how the social plan approach will be effectively implemented.

But, as can be seen from that stated below, this does not mean that the whole of the
30 Social Plan needs to be legislated.

¹⁷ These strategies include the Integrated Manufacturing Strategy of the DTI and the DPLG's the Integrated Development Planning

The purpose of the legislation

The legislation must facilitate the establishment and success of Future Forums. In so doing, it will facilitate dialogue between the social partners about economic growth, job creation, job losses and ways to ameliorate their effects on workers, the economy and communities.

Government's role should largely be facilitative, prodding the parties through the establishment of Future Forums to plan for the future. Government should also service those initiatives with research and ideas that ensures that the social partners are considering the challenges of the future and developing creative plans to meet those challenges.

Therefore in essence the legislation would promote the establishment and functioning of Future Forums and regulate the ways in which government would service those forums.

The nature of the legislation

The legislation would need to provide for at least the following:

- The establishment of Future Forums
- Functions of Future Forums
- Composition of Future Forums
- Constitution of Future Forums
- Early warning signals and disclosure of information
- Reports to the Minister of Labour
- Binding nature of agreements reached at Future Forums
- Confidentiality
- Funding
- Support to Future Forums

The nature of Future Forums

There is a great need for flexibility. Future Forums could be established at enterprise level, which in the case of a national and large employer may mean quite an extensive Future Forum. They could be established at sectoral level or within a particular geographic or economic zone. The structure must best meet the needs and challenges that confront that sector, industry, enterprise or geographic area.

A purely industrial or sector approach may seem neat, but it tends to exclude small and medium enterprises and does not sufficiently take into account the needs of particular areas. Moreover, as was explained to us by the representatives of the NPI, sometimes it is impossible to get various employers in a sector to agree because of the fierce

competition between them. In these instances it may be better to establish geographically defined Future Forums, where there is less direct competition between employers.

5 The nature of the Future Forum will depend on the nature of the challenges. For example, it may be appropriate to establish a Future Forum for the fishing industry but only for the Western Cape. It may, however, be a good idea to establish a Future Forum for the Northern Cape as a geographical area. It may also be a good idea to limit the Future Forum to a single enterprise when one considers an employer like Eskom, but in the case of the clothing and textile industry it may be better to establish a sector based
10 forum. In short, there is a great need for flexibility.

The Social Plan envisages that Future Forums comprise employers and trade union representatives. In practice government representatives have participated in Future Forums or similar type structures. We believe that Future Forums should be tripartite structures comprising government representatives as well. This will ensure proper co-
15 ordination and provide government the opportunity to drive these structures. Moreover, in most cases when dealing with sectors or industries where regulatory matters or international trade arrangements and such like are being discussed it is important for government to be represented.

However, if many Future Forums are established at enterprise level it may be asking too
20 much to have government representatives on each of these Future Forums. Therefore our recommendation is that if Future Forums are established at sector or industry level or within a particular geographic area they should be tripartite in nature. If, on the other hand, they are established at enterprise level then it would only be important for government to be present in certain cases such as public utilities or key strategic
25 enterprises.

This is obviously a deviation from the Social Plan as it currently stands.

We also suggest that in order to counter-act the proliferation of labour market structures it may also be possible to confer on other structures in a sector, geographic area or enterprise the functions of a Future Forum. In other words we suggest that the Minister
30 may be able to visit the functions of a Future Forum, for example, on a bargaining council, or SETA. In these cases, it may be necessary to carefully consider how the government (as government and not as employer) would participate in these discussions.

The establishment of Future Forums

The difficult question is how a Future Forum is to be established. If the Minister leaves it to the parties to establish Future Forums it is likely that Future Forums will not be established. There are a number of possibilities. These include:

- 5 • Joint applications by trade unions and employers;
- Applications by either the trade union parties or the employer parties;
- Establishment by the Minister exercising a discretion in this regard;
- Establishment by the Minister exercising a discretion that is regulated by the legislation; and
- 10 • Establishment by an arbitrator or court following the completion of a dispute resolution process.

We believe that consensus between the social parties is preferential. However, it may be necessary to “nudge” the parties in a particular direction from time to time. Therefore we recommend that:

- 15 • The Minister should be empowered to establish Future Forums on application by representative employers and trade unions.
- Where there is no agreement between employers and trade unions in a sector, geographic area or an enterprise there should be a dispute resolution process in terms of which an arbitrator from the CCMA determines the dispute.
- 20 • Where the Minister determines that a sector or geographic area is a “troubled” sector he should be able to establish Future Forums after consultation with NEDLAC, representative trade unions and employers in that sector or geographic area and the DTI.

It has been suggested that incentives should be built in to encourage the establishment of Future Forums. The incentives could relate to funding or access to services to be provided by government departments in relation to support for Future Forums¹⁸.

We recommend that the function of establishing Future Forums should remain with the Department of Labour. It should not be outsourced to any particular grouping such as the NPI. However, this does not mean that consultants or groupings such as the NPI should not be used to provide back up in establishing and servicing Future Forums. The Department should task them as and when it is appropriate.

¹⁸ This could relate to access to programmes set up in terms of the Integrated Manufacturing Strategies and/or funding from the Local Economies Development Fund.

The functions of Future Forums

The general functions of a Future Forum should include –

- To promote productivity, efficiency and competitiveness of a sector, industry, enterprise, undertaking or within a particular geographic area;
- 5 • To promote the interests of workers in a sector, industry, enterprise, undertaking or within a particular geographic area, in particular job security; and
- To promote business and worker participation in economic decision-making in a sector, industry, enterprise, undertaking or within a particular geographic area and in the formulation of industrial policy.
- 10 • To co-ordinate and implement government strategies on employment and economic growth and development, including the Integrated Manufacturing Strategy and the Integrated Development Planning.

More specifically the functions of the Future Forum could include promoting consideration and the formulation of policies and agreements on –

- 15 • Restructuring of industries, sectors, enterprises or undertakings;
- Developments that affect the industries, sectors, enterprises or undertakings, including the introduction of new technologies and work methods, early warning signals of impending decline in the industries, sectors, enterprises or undertakings and job losses;
- 20 • International trade agreements or arrangements that affect the industry, sector, enterprise or undertaking;
- Diversification of economic enterprises;
- Assisting in arranging and participating in the sector summits;
- Marketing of South Africa's products and opportunities in international markets;
- 25 • Alignment of skills and training programmes with policies on industrial or sector development;
- Measures to protect and advance designated groups and black economic empowerment;
- Job creation and retention;
- 30 • Measures to avoid dismissals for operational requirements or ameliorate the affects of such dismissals, including developing alternative employment opportunities for retrenched employees;

- Social Plan Funds and other financial assistance to implement social plan programmes;
- Conducting and overseeing research into the above, including plans to regenerate local economies affected by a downscaling of economic activity or retrenchments.

5 There may be a host of other functions that these forums could perform. These will have to be carefully considered.

The composition of Future Forums

The composition of Future Forums would essentially need to be tri-partite in character, except if the Future Forum is one constituted at an enterprise level in which case
10 government representatives may not be required.

The number of labour and employer representatives should be equal. In each case the composition of business and labour representatives will need to be carefully considered so that they are sufficiently representative of their constituencies. Thorough
15 consideration will also have to be given to ensuring that small and medium enterprises are represented in sector based and geographically constituted Future Forums.

Government representatives would also depend on the sector in which the Future Forum is situated. It may be appropriate to place representatives from the Department, DPLG, DTI and other governments departments that may be responsible for that sector. It may
20 even be relevant to include representatives of particular municipalities if those municipalities may in future be affected by a particular development at that enterprise, sector or geographic area.

The constitution of Future Forums

The legislation would need to give guidance on the provisions of constitutions of Future Forums.

25 The constitutions should provide for the establishment of subcommittees such as RRTs and local area regeneration subcommittees.

Disclosure of information

The legislation will need to regulate the issue of disclosure of information in a similar way as it is regulated for workplace forums in the Labour Relations Act.

Confidentiality

30 We suggest that it may be necessary for participants to enter into confidentiality agreements in order to protect sensitive information. This will have to be carefully regulated.

Reports to Minister of Labour

If Future Forums are established, we propose that they be required to report to the Minister of Labour regularly. The reports should at least include key challenges facing the Future Forum's industry, sector or geographic area and any early warning signals for a downturn in that industry, sector or area and of large-scale retrenchments.

Binding nature of agreements reached at Future Forums

It would be most unfortunate if these forums became mere talk shops. In order to avoid this they must be capable of concluding binding agreements. Moreover, clear dispute resolution procedures will need to be included in the constitutions relating to the interpretation or application of these agreements.

Funding

There are two aspects to funding. The first would be funding to administer the Future Forums. The second is funding to administer programmes agreed to in the Future Forum.

With regard to the latter, we believe that this should be left to the parties to decide and agree upon. The parties should be able source various funds in government, bargaining councils, SETA's and, by agreement, from employers. They should also be able to set up and administer funds themselves.

We do not recommend that a further levy be imposed by legislation on parties to fund social plan programmes as we believe that this will be highly controversial and could lead to a reaction that will scuttle the entire initiative.

The funding of the administration of Future Forums is more difficult to deal with. Either government could fund them, or direct that other funds be used for these purposes (e.g. bargaining council funds). The only other alternative is that parties, and especially employers, pay for these structures.

Relationship to collective bargaining structures

Although the Future Forums are consultative in nature they should not prevent any trade union from pursuing a dispute regarding a matter of mutual interest between employer and employee in the appropriate collective bargaining structure. This may mean that a trade union could consult on a particular issue in a Future Forum and also pursue negotiations on the matter in the appropriate collective bargaining structure. The latter could result in the trade union calling workers out on strike in relation to that matter, or, in the case of essential service workers, referring the dispute to interest arbitration.

This is necessary for two reasons. The first is that to limit the social dialogue to mere consultation could result in an unnecessary limitation of workers' constitutional right to strike. Secondly, we do not believe that the Labour movement would agree to the establishment of Future Forums if their power regarding matters of mutual interest between employer and employee was reduced or limited.

Support to Future Forums

The SPTSF and the services that it provides will need to be legislated as these services are key to the establishment and functioning of Future Forums. The SPTSF should be directly administered and run by the Department. However, the Department should be able to outsource various tasks associated with the provision of the services.

Services in the light of impending retrenchments

We believe that the services that the Department of Labour provides in phase 2 are important and should continue to be provided. However, we do not believe that they should be legislated.

When should the Department of Labour intervene? We suggest that its intervention be:

- if the facilitator appointed in terms of section 189A of the Labour Relations Act to facilitate the retrenchment consultations requests the Department's intervention; or
- if either the employer or the workers' representatives request this intervention.

If this approach is followed then there is no need for notification of the retrenchments as presently provided for in the Plan unless the Department wants this information for statistical purposes.

Thresholds

This would also allow the Department to intervene in situations where there are retrenchments that are well below the thresholds provided for in the Social Plan. However, should there be a need for notification, we are of the view that the threshold applicable to the new section 189A may be more relevant.

The Department may also want to determine a threshold on whether or not to provide services to recently retrenched workers. This may be in form of exclusion on the basis of salary levels of retrenched employees, similarly to salary levels determined in section 6(3) of the Basic Conditions of Employment Act.¹⁹

The RRTs

The establishment of RRTs by the Department or as a subcommittee of the Future Forum is important for retrenched persons. However, they cannot become the focus of

¹⁹ Obviously, in this instance the threshold will not be legislated.

any Social Plan. They can only provide limited services and for a limited duration after the retrenchment has taken place. In other words, the services need to be streamlined and the expectations associated with them reduced.

Different phases

- 5 We believe that phases 1 and 3 should be combined. The reason for this is that it is more difficult to begin planning regeneration strategies once the retrenchments are imminent or have taken place because regeneration strategies usually involve long-term planning.

Training

- 10 While determining regeneration programmes Future Forums will be able to identify the skills required in various areas or sectors. They should therefore play a key role in determining training needs. In turn and in order to do this the Future Forums will need the assistance of the Department. They will also have to co-ordinate these programmes with various SETAs.

15 Institutional capacity within the Department of Labour

- Our recommendations mean that the Department of Labour has to play a meaningful and activist role in establishing, monitoring and servicing Future Forums. It also has to continue to provide services to retrenched workers during phase 2. To be able to fulfil these expectations it may be necessary to provide for dedicated institutional capacity in the Department such as a special directorate in the Department.

The task of the special directorate would also include:

- ensuring that stakeholders are aware of other government strategies that can be accessed when implementing the social plan. This will include customised programmes developed in the Integrated Manufacturing Strategy; and
 - consulting with other government departments on possible projects that those departments will be running that aim at saving jobs, regenerating local economies, and/or creating job opportunities.
- 25

Annexure “A”

LIST OF STAKEHOLDERS THAT ATTENDED CONSULTATIONS AND MADE SUBMISSIONS

NO.	ORGANISATION	REPRESENTATIVE	Attended consultation	Provided written submissions
1.	Department of Labour	Mr M Ratshivhanda	4	4
2.	National Productivity Institute	Ms V Toyi	4	4
3.	Department of Provincial and Local Government	Ms T Mashabane	4	4
4.	Department of Trade & Industry	Mr M Nicol	4	4
5.	Chamber of Mines	Mr V Esselaar	4	4
6.	Department of Minerals and Energy	Mr A Cronje	4	
7.	Mineworkers Development Agency	Mr D Mashilo	4	
8.	National Union of Mineworkers	Mr G Masha	4	
9.	Congress of South African Trade Unions	Mr K Moleme	4	
10.	Chemical Energy Paper Printing and Allied Workers Union	Mr T Buthelezi	4	
11.	SA Chamber of Business	Ms C o'Brian	4	
12.	ESKOM	Ms T Moloto	4	
13.	Chemical Industries Education and Training Authority	Mr B Nhlapo	4	
14.	Department of Water Affairs and Forestry	Ms M Dlomo		4
15.	Salstaff	Mr M Massey		4
NO.	ORGANISATION	REPRESENTATIVE	Attended consultation	Provided written submissions

16.	TRANSNET	Mr F Van Rooyen		4
17.	TELKOM	Mr B Bosman		4

The following stakeholders were invited to contribute to the process but declined or failed to do so:

1. Business South Africa
2. South African Breweries
3. DENEL
4. NAFCO
5. Joint Education Trust
6. The Employment Bureau Of Africa
7. Sociology of Work Project
8. Department of Public and Related Enterprises
9. Department of Defence
10. Southern African Clothing and Textile Workers Union
11. FEDUSA
12. National Education health and Allied Workers Union
13. NACTU
14. International Textile Garment Leather Workers Federation
15. NUMSA
16. SATAWU
17. CWU

THE NEW SECTION 189A²⁰ RETRENCHMENTS AND THE RIGHT TO STRIKE

Section 189A gives workers the right to strike about dismissals for operational requirements or refer a dispute about the substantive fairness of their retrenchments to the Labour Court.

Application of the section

Section 189A applies:

- to an employer who employs more than 50 employees; and
- if the number of employees that the employer contemplates retrenching in any 12 month period meets a minimum threshold set out in Table 1.

Table 1

No. employees employed by the employer	Min no. dismissals contemplated for s189A to be applicable
50 – 200	10 or more
201 – 300	20 or more
301 – 400	30 or more
401 – 500	40 or more
500 or more	50 or more

An employer must give a notice in terms of section 189(3) of its intention to retrench employees and call the other party to a consultation. This notice is referred to as “the section 189(3) notice”. The notice must amongst other things, set out the number of retrenchments contemplated and the number of retrenchments that have taken place in the preceding 12 months. This notice triggers the consultation process.

Appointment of facilitator

Either the employer or the trade union may elect to involve a facilitator appointed by the CCMA. The CCMA will appoint a facilitator if the employer in the “section 189(3) notice” so requests or if a consulting party notifies the CCMA within 15 days of the notice. The facilitator is then appointed and the facilitation period begins. The facilitation must take place in accordance with the regulations to be determined by the Minister of Labour.²¹

²⁰ Section 189A is inserted by section 45 of the Labour Relations Amendment Act 12 of 2002.

²¹ The Minister will publish regulations relating to amongst other things, the powers and duties of the facilitator, time periods and variations of the time periods of facilitation.

If a facilitator is appointed, the employer may not dismiss or issue notices of termination before 60 days have elapsed from the date on which the section 189(3) notice is given.

If the employer issues notices of termination after the 60-day period then the trade union may give 48 hours notice of strike action in the case of private employers and seven days notice if the State is the employer.

If a facilitator is not appointed, then the trade union may not refer a dispute to a bargaining council or the CCMA for 30 days from the date on which the section 189(3) notice is given. The employer may not issue notices of termination and the trade union may not give a strike notice for the period of conciliation, which is 30 days. This is again a 60-day period.

If a facilitator is not appointed then the periods cannot be varied.

If the employer dismisses or gives notices of termination before the 60-day period the trade union could immediately give notice of a strike. The union could also approach the Labour Court for an order compelling the employer to withdraw the notices and abide by the provisions of section 189A.

Employees not subject to section 189A do not have a right to facilitation of the consultation process by a CCMA commissioner.

