

**DRAFT NEDLAC REPORT ON THE DRAFT CODE OF GOOD PRACTICE FOR WORKERS
ENGAGED IN SPECIAL PUBLIC WORKS PROGRAMMES (SPWP)**

19 JUNE 2001

1. BACKGROUND

- 1.1. One of the greatest challenges facing South Africa is to reduce the massive scale of unemployment and to create sustainable jobs. In an effort to address unemployment and poverty, Government has initiated a Special Public Works Programme.
- 1.2. The Departments of Labour, Water Affairs & Forestry, Environmental Affairs & Tourism and Transport met to discuss an approach that would standardise the special public works programmes. A co-ordinated approach that sought to define specific areas of funding was agreed. It sought to address, among other things, the following:
 - Optimising locally-based labour
 - Targeting the poorest of the poor
 - Creating short to medium term employment
 - Ensuring job development through training
- 1.3. A Special Public Works Programme (SPWP) is a short-term, non-permanent, labour intensive programme that is funded by Government (fully or partially) from public resources to create a public asset.
- 1.4. The Special Public Works Programmes are aimed at creating employment for the poorest of the poor. They aim to create jobs for women (60%), youth (20%) and among disabled people (20%).
- 1.5. A Draft Code of Good Practice for Employment and Conditions of Work for Special Public Works Programmes was tabled at a Nedlac Labour Market Chamber meeting held on 29 March 2001.
- 1.6. The purpose of the Draft Code is two-fold:
 - To provide good practice guidelines to all stakeholders involved in SPWP in respect of working conditions, payment and rates of pay, disciplinary and grievance procedures; and
 - To promote uniformity between different SPWPs within South Africa
- 1.7. The Draft Code applies to all employers and to all workers hired to perform in elementary occupations in SPWPs. Employers in SPWPs are required to comply with the following legislation:
 - Basic Conditions of Employment Act 75 of 1997

- Labour Relations Act 66 of 1995
- Occupational Health and Safety Act 85 of 1993
- Compensation for Occupational Injuries and Diseases Act 130 of 1993
- Skills Development Act of 1998

1.8. The Draft Code is based on international best practice experience which has found that, wherever possible, work should be task-based. In a task-based system the worker is paid a fixed rate in return for a fixed quantity of work. Tasks may be set for an individual or a group of people and only that which is completed is paid for (where this is not possible workers can be paid a fixed daily rate).

2. PROCESS AT NEDLAC

2.1. Government made a presentation on the Draft Code of Good Practice to the Labour Market Chamber of Nedlac at a meeting held on 29 March 2001. Government requested that the Nedlac constituencies provide input on the guidelines as set out by the Draft Code of Good Practice.

2.2. It was agreed that a task team should be established to consider the Draft Code of Good Practice. The task team representatives were:

Government: F. Bhyat, M. Bergman and J. Boulle

Business: C. de Kock, and M. Uys

Labour: S. Gangca and B. Mthombeni

2.3. Meetings of the task team were held on the following dates:

- 19 April 2001 - input by Business was considered; and
- 6 June 2001 - input by Labour was considered.

3. INPUT BY BUSINESS

3.1. Grammatical corrections

3.1.1. The following grammatical corrections to the Draft Code were noted for Government to effect on the Draft Code:

NB: () = *deletion* _____ = *insertion*

(a) **Clause 1.3: "Preamble": first bullet point:** remove article "The".

(b) **Clause 19: "Glossary":** the word "by" should be inserted after the word "bound" in the third column from the top.

(c) **Clause 16.6: "Discipline, dismissal and termination":** delete 16.6(a) as there is no 16.6(b).

(d) **Clause 17: "Disciplinary Procedures": clause 17.3.1 second sentence:** "...a worker may be dismissed if it is a serious offence that would make..."

3.2. Clause 3: Application

3.2.1. Business pointed out that clause 3.2. referred to the Employment Equity Act in general terms. It proposed that it should be specified that it was chapters 1 and 2 of the Act that were applicable.

3.2.2. It was agreed that Chapters 1 and 2 should be stated in bracket next to the Employment Equity Act as follows:
"Employment Equity Act (chapters 1 and 2)".

3.2.3. Business pointed out that the clause listed relevant labour legislation but did not mention the Skills Development Act. It would be appropriate for this Act to be included in the list. It was also appropriate to state that the listed legislation should be read in conjunction with the Ministerial Determination.

3.2.4. It was agreed that the Skills Development Act should be included on the list and that the statement "These are all to be read in conjunction with the Ministerial Determination" should be inserted at the end.

3.3. Clause 7: Duration of participation

3.3.1. Business enquired if Government had confidence that there would be a sufficient supply of workers to ensure that there was no repeated participation in SPWPs within the 5-year cycle.

3.3.2. Government noted the concern of Business and clarified that steps would be taken to ensure that there would be no repeated participation.

3.4. Clause 8: Forced labour is prohibited

3.4.1. Business enquired as to who would be responsible for monitoring employers to ensure that there was no forced labour.

3.4.2. Government clarified that it would be responsible for monitoring and stated that it should be borne in mind that Government was in charge of SPWPs as these were Government funded.

3.5. Clause 12: Attendance

3.5.1. Business enquired if the provision in the last sentence of clause 12.1 was acceptable and stated that it could be appropriate to have time limits specified in the contract for setting out tasks.

3.5.2. Government noted the concern and stated that the contract was worded in a manner that would ensure that tasks were set for workers.

3.6. Clause 13: Health and safety

3.6.1. Business requested clarity as to who would be responsible for maintaining protective clothing and outer clothing in a clean state, as provided for in clause 13.5. bullet point 5. It proposed that the words "where applicable" should be added in the sentence.

3.6.2. Government clarified that the employer would have the responsibility of maintaining clothing in a clean state.

3.6.3. It was agreed that bullet point 5 of clause 13.5. should be amended as follows:

" Provide workers with the necessary protective clothing such as hard hats, goggles, ear-plugs, boots and outer clothing required, where applicable, to complete their tasks in safety".

3.7. Clause 15: Training

3.7.1. Business stated that it felt that the provision for 2 days training per every 22 days, stipulated in clause 15.2., could be unrealistic in terms of costs.

3.7.2. Government clarified that one of the objectives behind SPWPs was to empower workers with skills. Government was responsible for training costs.

3.8. Clause 16: Discipline, dismissal and termination

3.8.1. Business stated that provision should be made in clause 16.9. for each case to be judged on its merits. This would require that the second sentence be deleted.

3.8.2. It was agreed that the second sentence in clause 16.9. that read ("An employer who takes stricter action against one worker than another for the same or similar offences maybe considered to have acted unfairly"), should be deleted.

3.9. Clause 18: Grievance Procedures

3.9.1. Business proposed that a time frame of 5 days should be set for the employer to settle any grievance as stipulated in clause 18.3.

3.9.2. It was agreed that clause 18.3. should be amended to read:

"The employer must listen to the submissions made by the participant and attempt to settle the matter by discussion within 5 days".

4. **INPUT BY LABOUR**

4.1. Clause 3: Application

4.1.1 Labour requested clarity from Government as to the rationale used in clause 3.5 of the Draft Code, which provided for a fixed rate of payment based on a fixed quantity of work done. Labour felt that this did not take into account instances where disasters occurred and affected the job done. It also did not cater for instances where work could not be completed due to the SPWP not providing facilities in time. A comparison of job creation practices had been made locally and internationally. It seemed that the clause could be in conflict with the provisions of the Basic Conditions of Employment Act.

4.1.2. Government responded and stated it was the basic intention behind SPWPs to have participants paid for the work done. It should be borne in mind that these were special employment programmes that would be regulated by a contract between the participant and the employer. Furthermore, the Code should be construed as a guideline to the contract that the parties would enter into.

4.1.3. Labour appreciated Government's response but stated that the contract should be drafted such that it was not in conflict with the BCEA.

4.1.4. Government stated that clause 3.2. made it clear that employers in the SPWPs were bound by all relevant labour legislation, including the BCEA. It also pointed out that clause 12.1. catered for Labour's concern regarding payment based on work done where work could not be done through no fault of the employee. This clause provided that the "no work no payrule" would not apply where the work could not be done due to the employer's fault or where the employee was absent due to illness or injury.

4.1.5. It was agreed that:

NB: () = deletion _____ = insertion

(a) The last sentence in clause 3.2. would be amended to state that the Ministerial Determination should be read in conjunction with the BCEA. This would read:

"Ministerial Determination read in conjunction with the BCEA"

(b) The second last sentence of clause 3.5. should be amended to read:

"Only work completed is paid for subject to point 12.1".

4.2. Clause 4: Beneficiaries of the special public works programmes

4.2.1. Clause 4.1.

(a) Labour indicated that it found clause 4.1 of the Draft Code, which limited participation in SPWPs to the unemployed who received no social security pension, to be restrictive and disadvantageous to pensioners who were breadwinners for a large family. It could be appropriate for Government to explore amending the clause to state that participants should preferably not receive a social security pension.

(b) It was agreed that clause 4.1. would be amended to state that:

"The beneficiaries of the programmes should preferably be non-working individuals from the most vulnerable sections of disadvantaged communities who (do) should preferably not receive any social security pension income".

4.2.2. Clause 4.3.

(a) Labour appreciated the clause but proposed that it should provide for a skills audit to be conducted in the area concerned.

- (b) It was agreed that a sentence should be added as a last sentence to clause 4.3. This should read:

"A proper skills audit should be conducted, where possible, in an area where a SPWP is in operation."

4.2.3. Clause 4.5.

- (a) Labour highlighted that clause 4.5. should be correctly numbered as 4.4. since there was no 4.4., and the following clause should be re-numbered accordingly. It further stated that Government needed to have a practical mechanism to ensure that the data envisaged in the clause was reliable.
- (b) The re-numbering identified by Labour was noted. Government stated that it took note of Labour's suggestion for a practical mechanism for reliable data.

4.3. Clause 6: Selection of Works

4.3.1. Labour stated that clause 6.1. needed to specify that all local community structures should be informed and consulted in establishing SPWPs. This could avert the danger of certain parties collaborating with certain sectors of local communities to win contracts.

4.3.2. It was agreed that clause 6.1. would be amended to read:

"The local community, through all structures available, must be informed of and consulted about the establishment of any SPWP."

4.4. Clause 7: Duration of Participation

4.4.1. Clause 7.2.

- (a) Labour stated that it could be appropriate to set out clearly what is meant by the word "practically".
- (b) Government noted this and indicated that it would attempt to address this.

4.4.2. Clause 7.3.

- (a) Labour stated that it could be proper to replace the phrase "more than 24 months within a 5-year cycle" with "two consecutive programmes".
- (b) Government explained that the set cycle was appropriate as the basic aim was to spread employment.
- (c) Business stated that shortening the participation cycle to two consecutive programmes might be disadvantageous to certain communities as it could negatively affect the objective of spreading employment.
- (d) It was agreed that clause 7.3. should not be altered.

4.5. Clause 8: Forced labour is prohibited

- 4.5.1. Labour stated that it found the clause 8 provision important but felt that it should be amplified to state that any employer found contravening the clause should have their contract terminated.
- 4.5.2. Business and Government stated that there was no need for such amplification, as clause 3.2. stated clearly that employers in SPWPs were bound and guided by all labour laws, including the BCEA.

4.6. Clause 9: Unemployment Insurance

- 4.6.1. Labour stated that it could be appropriate for Government to consider re-looking at the issue of tax. It indicated that Government should explore exempting employees from tax.
- 4.6.2. Government indicated that it was not its intention to change legislation and, therefore, it could not change tax law.
- 4.6.3. Labour accepted the explanation from Government.

4.7. Clause 10: Payment

- 4.7.1. Labour enquired who was responsible for setting rates of payment and whether the rates were negotiable. It stated that employees should not be paid exploitative wages.
- 4.7.2. Government stated that international (in terms of the International Labour Organisation) and national standards would be used in determining rates of payment.
- 4.7.3. Labour stated that national standards should be used as a framework.

4.7.4. Government noted the input by Labour and pointed out that sub-clause 10.4.2. answered Labour's concerns as it stipulated that the rate should be appropriate.

4.7.5. Clause 10.4.1.

- (a) Labour proposed that the words "per sector" should be added to clause 10.4.1.
- (b) Government stated that it would rather concentrate on unskilled workers across all sectors.
- (c) Labour noted Government's response but stated that if the words were not added, it would be difficult to determine rates of payments. It further stated that it would be appropriate to make provision for unemployed skilled workers to join the programmes, and this would demand that their relevant sectors be identified.
- (d) Government pointed out that clause 4.3. made provision for skilled workers to join SPWPs.
- (e) It was agreed that the words "per sector, if necessary" should be added at the end of clause
- (f) The clause would then read:

"The rate set should take into account wages paid for comparable unskilled work in the local area per sector, if necessary."

4.7.6. Clause 10.8.

- (a) Labour pointed out that the clause provided for training costs to be borne by the employer, but made no provision for accommodation.
- (b) Government stated that the reason behind this was that SPWPs were local community-based and there would consequently be no need for accommodation.
- (c) This was accepted by Labour.

4.7.7. Clause 10.10.

- (a) Labour proposed that the payment period in bullet point 3 of clause 10.10. should be altered to 5 working days as 35 days might be too long. A maximum of 30 days would be preferable as an alternative.
- (b) It was agreed that bullet point 3 of clause 10.10 should be amended to read:

"Payment must be within (35) 5 working days of (completing the task) the end of the month".

4.8. Clause 11: Hours of Work

4.8.1. Labour required clarity as to the manner in which work in excess of 40 hours per week would be compensated.

4.8.2. Government responded and stated that no overtime would be paid as SPWPs were special job creation projects and no work would be allowed beyond 40 hours.

4.8.3. Business noted that SPWPs were task-based and that allowing overtime might lead to people prolonging their work in order to cash in on overtime.

4.9. Clause 12: Attendance

Clause 12.4.

4.9.1. Labour proposed that words that provided for a fair procedure to be followed, should be inserted to provide more clarity.

4.9.2. It was agreed that clause 12.4. should be amended to read:

" Workers who do not attend required training programmes without a valid reason may have their contracts cancelled after a fair procedure has been followed"

4.10. Clause 13: Health and Safety

Clause 13.5.

4.10.1 Labour and Business stated that the wording of the second sentence of bullet point 5 of clause 13.5. was not clear. It could be necessary for the point to be reworded.

4.10.2. It was agreed that the second sentence of bullet point 5 of clause 13.5. should be reworded as follows:

"These must be (supplied free of charge and must be maintained, by the worker, in a clean state and) in (a) working order for use".

4.11. Clause 16: Discipline, dismissal and termination

Clause 16.7(c)

4.11.1 Labour proposed that the words "if necessary" at the end of clause 16.7(c) should be replaced with the words "if the worker chooses".

4.11.2. It was agreed that clause 16.7(c) should be amended to read:

"give the worker an opportunity to respond to the allegations. A fellow worker may assist the worker, if (necessary) the worker chooses."

5. PROCESS

All constituencies stated that they had made their input to the Draft Code. It was agreed that Government would amend and correct the Draft Code as agreed and forward it to the secretariat. The secretariat would then forward the document to the other constituencies and the Labour Market Chamber Convenors, and to the Overall Convenors for ratification.

6. CONCLUSION

This report constitutes a Nedlac Report on the Draft Code of Good Practice for Workers engaged in Special Public Works Programmes. It, therefore, completes the consideration of the Draft Code of Good Practice for Workers engaged in Special Public Works Programmes, in Nedlac. The Report and the attached Draft Code of Good Practice are hereby submitted to the Minister of Labour in terms of section 8 of the Nedlac Act, No. 35 of 1994.

APPENDICES

APPENDIX A: DRAFT CODE OF GOOD PRACTICE FOR WORKERS ENGAGED IN SPECIAL PUBLIC WORKS PROGRAMMES

APPENDIX B: SUBMISSION BY BUSINESS

APPENDIX C: SUBMISSION BY LABOUR