

A CRITIQUE OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2015

MP Olivier* and A Govindjee**

SUMMARY

The contribution critically reflects on the proposed amendments to the *Unemployment Insurance Act Act 63 of 2001* (the UIA / the Act), introduced via the provisions of the *Unemployment Insurance Amendment Bill of 2015* (B25-2015). Several shortcomings and deficiencies are addressed and improvements introduced by the proposed amending legislation, including the extension of coverage to a wider range of beneficiaries, the extension of the period of benefits (to a maximum of 365 days), the increase of the rate of maternity benefits of a (female) contributor's earnings, the adjustment of the accrual rate of a contributor's duration of benefits from 1 day for every 6 days of employment to 1 day for every 5 days of employment, and some attempt to provide for employment retention and the re-entry of unemployed contributors into the labour market.

And yet, despite these important contributions to the development of unemployment insurance in South Africa, several matters appearing from the Bill point towards inconsistent, inadequate and inappropriate treatment of core elements of the unemployment insurance system. Recommendations have been made to address these matters, which among others relate to:

- The insufficient alignment of the UIA with ILO, UN and SADC standards in key areas of concern;

* Marius Olivier. BA LLB (UP) LLD (UNISA). Extraordinary Professor, Faculty of Law, Northwest University (Potchefstroom), South Africa; Adjunct-Professor, Faculty of Law, University of Western Australia (UWA), Perth, Australia. E-mail: olivier@isl-p.org.

** Avinash Govindjee. BA LLB (Rhodes) LLM (*cum laude*) (UPE) LLD (NMMU). Professor of Law, Head of the Department of Public Law and Deputy Head of the Labour and Social Security Law Unit, Nelson Mandela Metropolitan University, South Africa and consulting attorney: Cliffe Dekker Hofmeyr. Email: avinash.govindjee@nmmu.ac.za.

- Unclear or absent provisions in relation to the coverage and/or application of the UIA in relation to public servants, migrant workers, and the self- and informally employed;
- Inadequate provision for employment promotion, the prevention, combating and reduction of unemployment, and reintegration into employment;
- Inappropriate provisions relating to benefit rates and periods, among others concerning the Minister's power to set/amend the Income Replacement Rate and to vary the benefit period by regulation;
- Inconsistent and discriminatory provisions requiring a 13-week qualifying period for accessing maternity benefits;
- Inappropriate provisions regarding dependants' benefits, including the strengthening of the existing claims hierarchy in favour of spouses and life partners at the expense of children;
- The absence of an independent appeal institution; and
- Poorly formulated provisions, with evident discord between the provisions of the Bill and the Memorandum settings out its objectives.

KEYWORDS: dependants' benefits; employment promotion; employment reduction; employment reintegration; independent appeal mechanism; international standards; maternity benefits; regional standards; social security; unemployment benefits; unemployment insurance; *Unemployment Insurance Act*, *Unemployment Insurance Bill* 2015; unemployment insurance coverage; unemployment promotion; unemployment rate.