



# SAEFA

SA ENGINEERS AND  
FOUNDERS ASSOCIATION

12 September 2022

MR T W NXESI, MP  
MINISTER OF EMPLOYMENT AND LABOUR  
Per email c/o. Ms Sellinah Mahlangu and Annelie Niemandt  
[Sellinah.Mahlangu@labour.gov.za](mailto:Sellinah.Mahlangu@labour.gov.za) and [annelie.niemandt@labour.gov.za](mailto:annelie.niemandt@labour.gov.za)

Dear Minister Nxesi,

**REPRESENTATION BY THE SOUTH AFRICAN ENGINEERS' AND FOUNDERS' ASSOCIATION (SAEFA) IN RESPONSE TO THE NOTICE IN TERMS OF SECTION 32(2) READ WITH SECTION 32(5)(C) OF THE LABOUR RELATIONS ACT, 1995: THE CONSOLIDATED MAIN COLLECTIVE AGREEMENT OF THE METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL.  
NOTICE NO. R. 2403 GG NO. 46759 DATED 23 AUGUST 2022.**

1. The South African Engineers' and Founders' Association (SAEFA), on behalf of its members, hereby lodges a strong objection to the extension of the Consolidated Main Collective Agreement of the Metal and Engineering Industries Bargaining Council (2021 Main Agreement) to non-parties.
2. SAEFA represents well over 200, mainly small-to-medium sized companies in the metal and engineering industry, all of whom would be very adversely affected by the extension of this collective agreement.
3. SAEFA is not a party to the 2021 Main Agreement.

The challenge to SMMEs' survival in South Africa

4. The National Integrated Small Enterprise Development (NISED) Masterplan, states (at page 6) that "[t]he environment in which small enterprises operate has become increasingly hostile to business, SMMEs carry a higher regulatory compliance cost burden than that of their larger counterparts."
5. The NISED Masterplan goes on to state (at page 10): "Skills shortages, coupled with strict labour laws, have limited the ability of small firms in South Africa to raise competitiveness and employment. South Africa's rigid labour laws have come under increasing scrutiny over the years by both the domestic and international community. **Particularly, collective bargaining wage agreements made between big business and labour and then being extended to non-parties (i.e., small businesses).** Even though exemptions do apply in some cases, exemptions are often reported to be difficult to apply for, and cumbersome to administer. Mandatory wage increases do not consider the unique characteristics of small firms and the viability of



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small businesses to survive and compete with their larger counterparts. As highlighted in the 1995 White Paper and again in the NDP the necessity for labour market policy reform, specifically its impact on SMMEs ability to absorb new labour entrants, especially women and youth, is a key action of this masterplan.” (My emphasis).

6. The majority of SAEFA members fall into the SMME category.

## Unemployment

7. According to Stats SA, South Africa has over 10 million young people aged 15-24 years and, of these, only 2,5 million were in the labour force, either employed or unemployed. The largest share (7,7 million or 75,1 %) of this group of young people are those that are out of the labour force (i.e. inactive). The main reason for being inactive is discouragement, i.e. they have lost hope of finding a job that suits their skills or in the area they reside.
8. South Africa’s total unemployment rate, as you are aware, is currently 33.9%, with the unemployment rate amongst the youth (people between 15 – 24 years) is currently 63.9%.
9. A number of SAEFA members have employed entry-level employees over the past three to four years, many of whom have now risen in the grades within their employment (please see letters from members and table attached). However, should the Main Agreement be extended, those members will be compelled to revisit their employment numbers.

## The vote to request the Minister to extend the Main Agreement

10. Clause 8(12) of the MEIBC Constitution was applicable in carrying out the Council meeting and vote on 29 June 2022. The President ruled that non-parties to the 2021 Main Agreement would not be allowed to vote for purposes of section 32(1).
11. A disagreement over this ruling ensued and the President was removed from the meeting and the Vice-President presided over the meeting. The Vice-President then ruled that non-parties to the 2021 Main Agreement could vote on the request for extension.
12. Though not party to the 2021 Main Agreement, the Plastics Converters Association of South Africa (PCASA) representatives voted in favour of the extension of the 2021 Main Agreement to non-parties. SAEFA did not vote.
13. We are of the opinion that, in terms of clause 8(12) of the MEIBC constitution, the President only had a discretion on whether to allow representatives of parties which had not signed the



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agreement to *speak* on any matter relating to that agreement, and that he had *no discretion* to allow non-parties to *vote* in favour of on possible extension.

14. If clause 8(12) had been complied with, the PCASA would not have been permitted to vote and there would not have been a majority for purposes of section 32(1)(b).
15. The LRA does not expressly regulate whether a party who is (or whose members are) altogether excluded from the ambit of the agreement and thus has no interest in the collective agreement, is entitled to participate in the decision whether to extend the agreement to non-parties.
16. The terms and conditions of employment in the plastics industry are governed by the Consolidated Main Plastics Agreement. This agreement has entrenched wages and other terms and conditions of employment that are below those of the 2021 Main Agreement until 30 June 2025. Members of the PCASA and their employees are not affected by the 2021 Main Agreement which, obviously, would be more onerous on their members and more favourable to their employees than their PCASA agreement. Yet the employees of members of the PCASA have been counted towards the vote in favour of the extension of a more onerous agreement on the rest of the industry, 90% of whom are non-parties. The Plastics' industry will remain unaffected by the 2021 Main Agreement, whether it is extended or not.
17. The creation of a sub-chamber for the plastics sector in substance puts the plastics sector employers and employees outside of the sector to which the bargaining council relates for purposes of the 2021 Main Agreement.
18. PCASA representatives should not have been entitled to vote in favour of the extension of the 2021 Main Agreement. A vote by, and the say of, unaffected parties is the mischief that clause 8(12) of the MEIBC constitution aims to prevent.
19. The MEIBC's constitution limits which of its members may take decisions on its Council and, through clause 8(12), further limits the voting on a collective agreement to parties to the collective agreement.
20. A party who has declined to be a party to the agreement is reasonably assumed to be against its extension. Interpreting section 32(1) of the LRA as allowing the majority to be made up of parties to the bargaining council whose members are not subject to the agreement is a perversion of the principle of majoritarianism and would result in a manifest absurdity, which the legislature could not have intended.
21. This is so constitutionally unfair as to smack of unfair competition on a grand scale. The anger felt by numerous small and medium enterprises who, should you extend the 2021 Main



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Agreement, will be compelled to incur wage bills far in excess of PCASA members, and which may, or in many cases *will* cause their demise, is explosive. The cost to the country is unreckonable in terms of lost enterprises, jobs, and manufacturing revenue.

## Phase-in Exemption

22. At annexure “J” to the 2021 Main Agreement is a new “phase-in exemption”. This exemption, if granted, allows an employer experiencing financial difficulties, and who has been paying below 60% of the 2020 wage rates, to increase its wages over the duration of the agreement term (i.e. until 30 June 2024) until the wages it pays are 60% of the 2020 wage rates.
23. This exemption is only available to employers who are members of parties that are signatories to the collective agreement. The exemption is not available to non-signatories, to whom the agreement will be extended.
24. As we understand it, the primary reason why exemption provisions are mandatory in collective agreements which are to be extended to non-parties is to safeguard the interests of non-parties, who have played no part in negotiating the terms of an agreement which is later forced upon them.
25. The phase-in exemption at annexure “J” infringes the rights to freedom of association of non-party employers. It furthermore directly or indirectly violates the right of non-party employers in that it requires a non-party employer not to be a member of an employers’ organisation, or to give up membership of an employers’ organisation and it prejudices a non-party employer because of its past, present, or anticipated membership of an employers’ organisation (which rights are protected by sections 6 and 7 of the LRA). Such a provision in a collective agreement is invalid.
26. Limiting the phase-in exemption to signatories also promotes unfair competition and undermines sector-level collective bargaining.
27. There is no rational basis for the differential treatment of non-party employers in this instance, particularly where they will be bound by an agreement to which they did not agree. The phase-in exemption is directly, or indirectly, discriminatory against non-parties, the great majority of which are smaller employers than the large employers belonging to the employers’ organisations that are signatories to the 2021 Main Agreement.
28. Sections 32(3)(dA) and 32(3)(e) of the LRA require that the Minister must be satisfied that there are adequate protections, in the form of exemptions, in place for non-parties. Section



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32(3)(g) of the LRA requires the Minister to be satisfied that the terms of the collective agreement do not discriminate against non-parties.

29. The phase-in exemption is contrary to the provisions and objects of the LRA and is unlawful. The phase-in exemption is obviously unfair to non-signatories if the 2021 Main Agreement is to be extended. Again, the decision to request the extension of a collective agreement, which the MEIBC knows contains unfair provisions which are contrary to the LRA and cannot pass the requirements of section 32(3) of the LRA.

### Errors in the 2021 Main Agreement

30. In addition to the reasons set out above as to why the extension request is reviewable, there are errors in the 2021 Main Agreement which require amendment in terms of clause 10(3) of the Constitution.
31. Clause 23(1)(c) of the 2021 Main Agreement refers to bargaining council's exemption policy and states that this policy is annexed as "Annexure J", whereas the exemption policy is in fact annexed and marked as "Annexure K" to the 2021 Main Agreement.
32. On page 79 of the 2021 Main Agreement, the new wage rate for apprentices from 1 July 2022 to 30 June 2023 is incorrectly referred to as "*Minimum hourly wage rates*" when the wage rates reflected are the minimum *weekly* wage rates. This has the potential to cause confusion and could lead to unnecessary disputes.
33. Whilst these are errors which are capable of rectification, the process in clause 10(3) must be followed in order to effect the necessary amendments. As a result, the section 32(1) vote was conducted prematurely and *any extension of the 2021 Main Agreement to non-parties would be irrational and unreasonable until these errors are corrected.*

### Irreparable Harm

34. Should the 2021 Main Agreement be extended to non-parties, a substantial number of small enterprises who are members of SAEFA will suffer irreparable harm.
35. The pending industry negotiations between SAEFA and the trade unions will come to an abrupt halt.
36. In previous years, the MEIBC has sought to enforce its main agreement against non-parties, including SAEFA's members (through compliance proceedings), pending review applications to set aside the extension of such agreement. If the Minister proceeds to extend the 2021



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Main Agreement to non-parties, SAEFA's members will be required to comply immediately with the terms of the 2021 Main Agreement. Should SAEFA's members commence paying their employees at the higher wage rates stipulated in the 2021 Main Agreement, only for the extension to later be set aside on review, it will be impossible for SAEFA's members to recoup the higher wages paid to their employees.

37. Further to this, the 2021 Main Agreement contains terms and conditions which are unaffordable in the industry, that being the reason why SAEFA has refused to agree to such terms and conditions. These include significant wage increases that could lead to business failures and/or to massive job losses.
38. South Africa's labour market institutions over several sectors have caused the elimination of a host of lower paid jobs and opportunities, particularly in the manufacturing sector. In a working economy with an excess of surplus labour such as ours, the normal progress of factors would cause entry-level wages to drop to absorb this labour and then rise again as workers acquired on-the job skills and experience and progressed to higher grades.
39. The extension of the 2021 Main Agreement will disastrously lead to further job losses, further discontent and unrest and further misery to countless people who might have been employed but as a result of the extension, will not be.

## Conclusion

40. Input from specific member companies accompanies this submission. 26 of those members that commented have indicated that the extension will result in 920 people being retrenched. 26 members represents just 10% of our members and 0.2% of the industry. If one extrapolates that forecast, extending the agreement may result in tens of thousands of employees losing their jobs.
41. For all of the reasons explained above, SAEFA, on behalf of its members, vehemently objects to the extension of the Main Agreement and appeals to you, in the strongest possible terms, not to extend the 2021 Main Agreement to non-parties.

Yours sincerely,

Gordon Angus  
SAEFA Executive Director