

Comments on National Treasury Retirement Funds Reform Discussion Document

**Submitted to the Public Finance and Monetary
Chamber at NEDLAC**

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Introduction and background

The recent publication of the Retirement Fund Discussion document by the National Treasury in December 2004 is welcomed since it begins to comprehensively address many of the long-standing concerns regarding the transformation of the retirement fund industry.

We welcome the opportunity to comment on the Discussion Document. This submission draws from comments made to the PC Finance on 16th February 2005. We pointed out to the Portfolio Committee at the time that our comments and inputs are therefore not binding in terms of NEDLAC Protocol, and we reserve our right to raise issues in an amended form at NEDLAC and to the Portfolio Committee of Finance.

Within the Development Chamber of NEDLAC, the Social Security Task Team is considering proposals regarding the review of Social Security services. Recommendations tabled by the Department of Social Development have a bearing on these recommendations, in particular a Chapter on Retirement and Old Age. It is proposed that the consultative process between government departments and/or clusters be clarified to prevent duplication and or parallel processes.

In drafting these comments on the Discussion Paper, our resolutions with regards to retirement funds, Labour Seminar resolutions of June 2004; the deliberations and declarations of the Retirement Funds Trustees' Conference in late 2004; and the recommendations of the Taylor Committee were considered.

Retirement funds account for R909 billion as per the FSB *forty-fifth* report of institutional investor assets, being the major provider of the equity listed on the Johannesburg Stock Exchange.

Retirement fund contributions from 80 per cent of the formally employed amount to R64,8 billion a year – 14 per cent of total personal remuneration in South Africa. As a result, South Africa rates fourth in the world for retirement fund assets, after the UK, Switzerland and the Netherlands. In terms of private pension fund assets to GDP, South Africa is first in the world.

Powerful vested interests control the insurance and related industries and investment choice. There is limited state capacity to monitor compliance with trustee laws across 13 766 funds – we therefore welcome several of the recommendations in the Discussion Paper to ensure greater compliance, largely through increased powers and capacity of the Registrar of Pensions.

For us the retirement funds reform should be located within a Comprehensive Social Security System achieve the objectives stated in page 4 of the draft discussion paper. It is important to ascertain if these objectives carried out in the detailed proposals to reform this industry.

General Concerns:

The Discussion paper does not refer to the GDS Agreements (2003) or Agreements of the Financial Sector Summit (2002) as they pertain to retirement funds, although several of the amendments proposed are in principle aligned with these Agreements.

Over and above the various broadly progressive recommendations regarding membership control, shareholder activism and powers of the Regulator, further details are required regarding the funding mechanisms, management and implications of the National Savings Fund (NSF) model being proposed.

In particular the proposed 3 pillars of the NSF model, needs to be assessed at several levels that include equitability, redistribution, and cross-subsidisation. International developments, especially the implications of recent developments in the management of CalPers (the largest public pension fund in the USA), and the push by the United States government to privatise social security funds are informative. Current recommendations need to be compared to these trends and avoid any potential for such problematic outcomes.

Developments around the CalPers fund demonstrates the attack of corporations on these committed funds pushing for privatisation and investment on stock exchanges, thereby making benefits to members more vulnerable to the vagaries of the market. It also removes the autonomy of decision-making from elected trustees and compromises transparency with regards to investment decisions.

We are of the view that both the National Treasury document and Ch7 (Social Security NEDLAC document) takes the existence of the 2 economies for granted. This is problematic since it may suggest that economic disparities would remain a long-term feature of the South African economic landscape. In fact, projections on p.21 of the Discussion paper bases its projections on a rate of unemployment that will not be significantly reduced in 20-30 years from now. This flies in the face of labour's call for decent jobs and an economy that would create sustainable, quality jobs.

Arguments by government, such as people moving "up" from the second to the first economy require evidence that this would be possible. At the least, projections and economic modelling should be undertaken, under various employment scenarios, to ascertain what percentages of the total economically active population would populate the various "Pillars" as proposed.

With regards to the above concern, recent research done by the Bureau of Market Research claims that the anticipated and desired transition from the so-called "second" to "first" economy would not be attainable based on their findings. They quote the example of a typical person in the informal sector (such as a vendor) having on average, a turnover of around R3800 per month. However, of his turnover, only R1000 is typically disposable income – a far cry short of being able to save, and make ends meet. It also indicates an almost impossible chance of entering the 'first' economy through his/her honest work and disciplined savings.

It should also be clarified whether the proposals contained in the National Savings Fund suggests that government would want to be less responsible for

long-term challenges of atypical workers. Further details are required on how to expand coverage to include marginalized workers e.g. domestic and farm workers, and fixed term contract employees.

Clarity is sought regarding the investment decisions regarding retirement funds. Over and above the significant absence of relating these reforms to the 5% of investible incomes' GDS commitment – it is not enough merely to discourage low investment in foreign assets and insisting on keeping money internally. Government should be clearer on which investment instruments are preferred to promote socio-economic developmental goals.

Some of the language around who the best investors are, is problematic. Whilst there should be great caution in terms of secure and prudent investment decisions, the proportional representation of investors, over and above the view of trustees who, with time will be adequately trained, and have increased understanding about whether they have been properly advised. Some investors unnecessarily emphasise the need to have “professional” trustees, to the exclusion of ordinary trustees nominated by employees and employers. No one will deny the need for professional and objective financial investment advice. It should however not be exclusionary. History has shown that some of these “experts”, even though they portray themselves as people who know best, many of them have put personal greed and interest above the long-term needs of members.

Whilst the State Old Age Pension provisions in South Africa are relatively high compared to other countries, it is critical to note that the persistently high unemployment rates in South Africa, a crisis by any developing, middle-income country, requires a unique and pro-active response.

Labour is broadly supportive of recommendations regarding improved governance, trusteeship and the proposed increased regulation and oversight functions of the Registrar of Pensions . See details under the relevant headings.

The Discussion Paper also appears to be pushing conversion and transfers of funds largely at the discretion of the employer. Previous experiences have demonstrated that this discretion has resulted in significant leakages and increased costs to the member through many problematic and unacceptable practices of fund managers, other service providers and employers.

Evidence of this is demonstrated on page 13 of the Discussion Paper where The Sanlam Survey comparing contribution rates in 2002 with 2004 of DC funds shows that the decline in savings for retirement is due to a drop in employer contribution, an increase in admin fees of almost 30%, and a 27.4% reduction in the savings component of the employer. Neither National Treasury, nor employers should decide for members which form of retirement funds is best for them. Our position has always been that it is a worker, a member of the fund who should decide whether he/she join a DB or DC. Linked to this, are considerations for a lump-sum monthly annuity payment system. In our submission to the Taylor Commission, we proposed a mechanism which to address this issue.

Labour is also concerned about safeguard mechanisms that should be put in place when funds are placed under administration or liquidation. This may be particularly important when employers hold over payments and allow the benefits of the member to be compromised. We suggest that a minimum handover period of payments be implemented – the exact turnaround time needs to be negotiated with all stakeholders, though Labour would insist that this be as soon as administratively possible, since a delay denies the employee interest on his/her rightful payment. Often members incorrectly assume that their salary advice correctly reflect and guarantee that retirement funds contributions have been paid to the fund by the employer on their behalf. These situations point to the critical need for early enforcement – it should be upfront, at the point of violation with heavy fines and penalties should be applicable. We will come back to this issue under the compulsory Fidelity Cover here below.

National Savings Fund

Pending further details regarding the NSF, we are of the opinion that once the NSF can be shown to be a feasible vehicle to ensure that persons outside of the current retirement fund industry are accommodated; several key issues around the fund need to be further developed.

It is imperative that the fund be administered at very low cost. It is proposed that a Member Administration Company administer this fund. It would therefore be effectively controlled by members, along similar lines such as the model in Denmark, where such a company manages these funds, with oversight by government. The NSF should not be outsourced or administered at all by the private sector. We need to learn from lessons regarding the Msanzi Account – especially the extent to which there has been an uptake of targeted beneficiaries and whether there are sufficient checks and balances in place that would not be exploited by opportunists.

Further details should be provided regarding the proposal and conditionalities around compulsory saving on the NSF. There may be several unintended outcomes that negatively affect the member. What happens, for example, to people that work a few hours a week – should compulsory saving still apply in this situation? There is the very likely situation that the disposable income of people in this situation, if compelled to save, would rob them from addressing their basic needs. Should we consider minimum contributions or minimum wage for compulsory provision? Note – there does not appear to be a recommendation in the discussion paper that suggests that contribution to the National Savings Fund would be compulsory but this paragraph suggests that there maybe we suggest that Cosatu state that it is of the view that the legislation should provide for compulsory savings and then these concerns can follow.

We would therefore caution that a barrier or limit on the compulsion to save, based on income level be established. People in desperate situations, should not be forced into further poverty and destitution as a result of this proposal.

Thirdly, the funding of the NSF is a key question that requires further debate. It is not clear how the NSF would reach economics of scale as soon as possible. We reserve our proposal pending feasibility study on how best to fund this critical fund.

Labour agrees that the NSF be exempted from Retirement Fund Tax and should be determined by a tax formula. It should not be used for tax avoidance by higher income earners.

National Savings Fund and the conditions under which a bonus is payable if moneys are retained until retirement – we agree that a bonus should be payable. However, it is important to determine the criteria that would determine this decision. For example, how much must be saved over a period of years to qualify for such a bonus? What happens in the case of an emergency, such as a house burning down, or if other emergency funds are needed? Should no bonus accrue in these circumstances? We believe that every effort is made by the State to preserve the savings of members who need it most and who are most vulnerable.

Differentiation

It is unacceptable for the National Treasury to reject the feasibility of a single retirement fund, as outlined in the Discussion Paper. The absence of providing for an industrial bargaining council and the establishment of national sectoral retirement funds is highly problematic. Labour has always maintained that we should strive for one industry within one legislative regime, taking into consideration the dynamics of current bargaining council funds provisions. Failure to do so will seriously compromise the impact of collective bargaining agreements. We insist that this is a matter that requires further consultation with unions to develop an acceptable proposal for all stakeholders.

Labour will oppose provisions that interfere with collective bargaining agreements. An individual cannot have more rights than a collective agreement. We are adamant that the gains made in this issue should remain and that alternatives or provisions be made that would ensure the integrity and good faith of these agreements.

We agree with the provision contained in paragraph 3.5.2.2 of the discussion paper as labour cannot support any form of differentiation of benefits paid based on salary level or employment grade as this benefits senior managers at the expense of low earners.

Consolidation/Integration

Currently, the retirement industry in South Africa is highly fragmented, resulting in a multitude of funds, most recently estimated at 13 766 registered retirement funds. This situation is not efficient and sustainable from both an economic and equity point of view. Most small funds find it extremely hard to

survive to the detriment of members and some instances; more than 30% of contributions in DC Funds go to administration and other costs.

The proliferation of Funds makes it extremely difficult to supervise them to ensure good governance and sound investment decisions. The cost structure of the industry is not efficient as service providers charge exorbitant fees on administration, consulting, investments and other services.

Labour proposes that a National Fund and/or Sectoral Industrial Funds be established to deal with the inefficiencies of the current system. Such funds would have the advantage of economies of scale which could be taken advantage of to negotiate better terms for our members. In addition, it would draw a substantial number of workers into the net, particularly lower income workers. In the long run, this would reduce dependence on State Old Age Pensions as the only form of income support for the aged poor. The National Fund should at least have the following elements:

- Compulsory across all industries;
- provide minimum pension
- provide minimum contribution by each member and employer;
- integrate all small funds to enable them to provide reasonable benefits to members;

Table of All registered retirement funds

Fund Type	2003	Additions	Cancellation	Conversions	2002
Self Administered	3 289	69	95	63	3 252
Section 2(3)(a) (exempt?)	10 463	133	594	(63)	10987
Official Funds	4	-	-	-	4
Transnet	1	-	-	-	1
Telkom	1	-	-	-	1
SAPO	1	-	-	-	1
Bargaining Councils	5	-	5	-	9
Foreign	2	-	-	-	2
Total	13 766	203	693	0	14 257

*** Source: FSB forty-fifth report 2003**

A critical step towards the National Fund will be to establish collective bargaining council funds across all industries. This will pull together numerous company funds into a single industrial fund. This should pave the way for the establishment of the National Fund.

Our proposal is that the Retirement Funds Discussion Paper and its relevant regulations be amended to provide for compulsory provision. The Registrar

should conduct research into other countries which are in a similar situation to the Republic of South Africa. The Chilean model, mentioned in the Discussion Paper is an inappropriate and bad example given the privatisation that has taken place there and hardships which workers are experiencing.

We should consider a minimum wage from which this compulsion should be effected for the member, however, compulsion with employers be maintained. One fund with more than 1,1 million members and the other with 20 members only is a very strange environment.

The cost of running retirement funds are very high. Consolidation will create benefits through economies of scales. The Registrar will also know and have a better understanding of the industry.

Eradicate fragmented funds and form Industrial Bargaining Council and Sectoral Retirement funds. We believe that the current system is fragmented and that the current system is not efficient and cost effective. Main beneficiaries tend to be administrators in this situation. Critical steps toward the National Fund will be to establish Collective Bargaining Council Funds.

Form of Benefit

The New Retirement Funds Act prescribes the payment of only a modest proportion of the benefit in the form of a lump sum, with the balance being used to secure an annuity. Again we draw attention to discuss the proposal for lump sum vs monthly annuity options.

The lump sum from provident funds was achieved through the worker's struggle and it must therefore be the right of workers to choose a preferred option. No legislation should interfere with this choice unless certain steps are followed as mentioned under Preservation and Portability ***unless the following are addressed which in our view are part of the stated objectives on page 4 of the draft paper:***

- ***provision of a minimum pension***
- ***a minimum contributions***
- ***comprehensive social security system***

We reject National Treasury proposal in page 62 paragraph 6.5 that an employer be given a unilateral right to convert a DB fund into DC or transfer employees from DB to DC. As mentioned here under general concerns, an employer will not have rights on worker's deferred wage. Talking democracy and acting in favour employers is unacceptable.

National Treasury proposes a linkage between retirement funds and medical aids. The fact that in past this practice was condoned does mean that is the right thing to do. During the Pension Fund Second Amendment Act we discovered some improper use of pension fund surpluses occurred through this linkage.

Labour reject employers using retirement funds to pre-fund their medical aid contributions which is obliged to make in respect to pensioners. Medical Aids are governed by a separate legislation, with a separate Registrar. While they have everything to do with benefits, they have nothing to do with retirement funds. Labour proposes to separate any pre-funding for medical-aid from retirement funds.

Compulsory Provision

Intimately linked to the integration of the retirement funds industry is the question of compulsory provision. Currently the Pension Fund Act does not compel employers and or employees to make provision for retirement and yet most low income earners would not afford to save for retirement without some form of support or cross-subsidisation. Consequently, the majority of workers depend on the State Old Age Pension for income support in old age. A National Fund would pull together a wider pool of contributors, including low-income earners could manage risk better than the current scenario.

Labour therefore proposes that the Pension Fund Act and the relevant regulations be amended to provide for compulsory provision. The Registrar should conduct research of other countries which are in a similar situation to the Republic of South Africa. In this regard, the Taylor Report makes similar recommendations.

We propose that the Department of Labour with Bargaining Council funds, Social Development with SOAP, and local government for the 70 funds in the municipal sector should work together under the auspices of National Treasury.

Furthermore, integration of different legislation regarding retirement funds towards one legislative framework should be encouraged.

Preservation and Portability

Labour agrees that punitive and exploitative charges on transfer prevent members from voting with their feet. Several of these costs are extremely unfair and excessive fees should be banned and not left to the freedom of the market to decide.

Whilst 3.12.3.1 states that – “If an employee changes jobs and ceases eligibility to be part of his/her retirement fund – the benefit payable from old fund must not be available in cash – but be transferred to new retirement fund or retirement fund of the *employee’s* choice”. It is not clear whether this applies equally to a retirement annuity, a preservation fund e.g. umbrella fund, and/or the NSF. On the surface this provision may appear fine, it is imperative to guard against facilities that to allow privileged/wealthy members of the Funds to transport their shares of funds to where they can make decisions to prevent socially responsible investments (SRI’s). It is critical to find mechanisms to guard against this practice.

We agree that leakage should be addressed as retirement funds are meant for retirement and not for any thing else. However, we do not believe it is advisable at the moment to implement compulsory preservation without adequate support during periods of unemployment. Given the massive unemployment rates facing South Africa, the chances of someone finding a job after retrenchment is very slim. It is unreasonable to expect a young middle age worker to wait until retirement age before accessing their benefits, in the meantime being unable to support their family, start a small business, improve their qualifications etc.

Therefore, the question of compulsory preservation depends on the restructuring of UIF benefits, the implementation of a Basic Income Grant and other forms of income support during periods of unemployment, as well as meaningful progress towards eradicating large scale structural unemployment. Currently, withdrawal benefits are used for a number of reasons including supporting the family, bond repayments and so forth. Without income support it will be difficult for workers to support compulsory preservation. In the medium term, Labour could only support some form of partial preservation in the context of a comprehensive social security system, in particular a universal basic income grant and adequate unemployment insurance.

There is a need for further extensive discussions on this issue, including the proportions that should be partially preserved and income support to workers during periods of unemployment.

Unclaimed Benefits

We believe that every effort must be made to trace the rightful beneficiaries of retirement funds, including family members, especially children. The provision that unclaimed benefits be held by the State and ultimately accrue to it is fraught with problems. The management of retirement funds have a moral, fiduciary and legal obligation to trace beneficiaries with vigour and consistency.

Several organizations offer services to trace beneficiaries that are very costly to the member, and we would argue that these 'services' are exploitative. When a principal member dies, it is often that poor rural families do not have recourse to the fund, unless fellow workers like those in unions and informed civil society structures raise awareness of entitlements of families. There is an urgent need to address these shortcomings. Moneys should be used for retirees' beneficiaries ONLY.

We do not believe that these recommendations are fair to the deceased employee. Furthermore, service providers who are paid exorbitant fees must also play their contractual role by making sure that benefits are paid to right full owners and that the "DO NOT CARE ATTITUDE" must come to end. We are also aware that it's service providers who are the main drivers of this

proposal. Where there are funds with dormant members only, we can talk about unclaimed benefits fund.

The establishment of a central fund can create another bureaucracy – part of this problem can be addressed by compulsory and regular updating of data. Both small funds and large funds are constrained by a lack of up-to-date information. Members also need to be educated regarding the importance of responding to requests for information, since it is critical to good management and administration. We reject the notion that beneficiaries can be better looked after and properly traced by an institution of which the former members are not members. Trustees and service providers must carry out their fiduciary duties and responsibilities when the member exits from the system.

Cosatu may wish to make proposals though on what happens if after all reasonable steps have been taken, members cannot be traced. This is important because often these monies just sit in the funds with administrators charging exorbitant fees for administering dormant members' accounts. You may also wish to consider proposing some sort of penalty for administrators who do not trace members as an incentive to do their job properly.

Governance, Trustee & Service Providers' Conduct

Whilst we support the commitment to reform with aspect of the retirement fund industry, the current recommendations are somewhat limited in the scope of their provisions. The kind of training that was and is proposed on empowerment is limited to management of a fund on a day-to-day basis.

There is also a need for training of all stakeholders in the industry. This training should focus on issues around the bigger economic and socio-economic challenges facing South Africa. A greater need for information and training of the social and economic challenges facing us is needed. It will be fatal if these factors are considered casually. The national needs of the country are critical and should be prevalent in the decision-making process of trustees. These decisions should promote socially responsible investment decisions among other.

On the governance of umbrella funds, there appears to be a rapidly growing interest around these recommendations by business. Mechanisms need to be developed to ensure that employees get involved in the management of umbrella funds. The track record around high costs and problematic management of umbrella funds are shocking. These concerns have been echoed in previous submissions to the Committee and this was also demonstrated in the recent rulings of the Pension Funds Adjudicator..

Claims by investment managers that funds are too big, too complex, or that it contains too many members, with no hope for representative management, are unacceptable and problematic. If these conditions and attitudes are allowed to persist, the focus will remain on mere profit maximization of these funds, with no commitment to access by lower-income earners at affordable

rates. Maintenance of the status quo would also fail to realize the objectives of the discussion document and broader goals of transforming the industry.

Every trustee should carry out their duties conscientiously and with due care. A Code of Conduct should be ***developed collectively to provide guidance in the performance of trustee duties and service providers***. This Code will identify concrete elements of fiduciary duties of every trustee and other stakeholder.

Such a code of conduct should deal with a commitment by every Trustee that they will properly prepare for all meetings and ensure that:

- there is no conflict of interest between their role as Trustee and their private financial and social relations,
- there should be full and clear guidelines on declarations and disclosure by Trustees of any potential conflict of interest,
- provisions to prevent service providers buying favours through gifts,
- full disclosure of any freebie obtained from or through a current or potential service provider (e.g. free tickets to soccer world cup) and,
- there should be a commitment to and, duty to take due care in all
- Governance
- Code of Conduct
- Code of Ethics
- Conflict of Interest decision-making.

The Code should provide that trustees should not receive any payment for performance of trustee duties, except for reimbursement of travel and other reasonable out-of-pocket expenses. This should apply to and include professional trustees, where it is applicable.

Trustees should be allowed and released on a fully paid basis to attend trustees meetings and other fund activities.

We support full disclosure of all cost including hidden costs.

Independent / Professional Trustees

Under *consolidation* the issue of cost is raised and the discussion document asks how best we can eliminate unnecessary cost to running retirement funds. The idea of the “Professional Trustees” is surprising as funds are expected to compensate them. Where do these trustees come from? Why this proviso after there has been a democratisation of the retirement fund industry? What role and value will they play here? We are of the view that we are not running a money-making business for the industry and we reject this proposal in principle.

Funds are paying huge moneys to service providers, and a duplication of services is not necessary. A capacitated trustee does not need to be supervised by someone from the industry except the Regulator. Contrary to

the promotion of “independent/professional” trustees, there is a need to increase member elected trustees to at least 60% to all retirement funds.

One Stop Shop

The notion of a one-stop shop popularly known as a shopping mall is very worrying insofar as proper governance and service delivery issues to retirement funds are concerned. We are also very worried about auditing firms who provide consulting services whilst simultaneously providing auditing services to the same funds.

Enron, WorldCom and others have taught us that a “shopping mall or one stop-shop” system is very dangerous as this can expose funds to huge problems. Business will always be concerned about the bottom-line at the expense of good corporate governance. Some of the insurance companies provide most, if not all the services to one retirement fund. It is not good for growth and development of the industry, since it has been our experience that big players takes everything, with very little transformation, if any.

Umbrella Funds

Insurance Companies are and have been putting small and weaker funds into umbrella funds and then elect themselves as trustees to these funds. As a result, they are able to take decisions in the interest of their businesses and appoint themselves to provide most if NOT all services that the funds need. This practice also contravenes section 7(A) of the Act in our view. One of the biggest umbrella funds is Old Mutual Orion Fund.

As part of the industry’s campaign to get a piece of this “business” some administrators are advising employers aggressively to participate in these funds. By doing this, they exclude the democratic appointment of trustees. As a result, members will spend more time in factories or at their work stations, as opposed to the necessary task of attending boards of trustees meetings which are “costly” to employers. This is a well-calculated, problematic strategy by the industry to undermine our gains completely, in particular the democratisation of the retirement funds industry.

Some arguments put forward by the industry is that “employers and employees do not have time to waste on retirement funds, they want to get on with their business”: Many employees, according to some within the industry, in fact do not want to get involved in the day to day running of these funds. They say this so that big business can continue to attempt taking control of the industry. However, we see this argument as part of the old strategy, which has been used by the industry to circumvent section 7(A) of the Act.

In order to address this situation, we demand that the FSB acts against these institutions and that all umbrella funds be de-registered unless there’s clear compliance with Section 7(A) and services are also spread to more than one

firm. Further, we argue that election of trustees take place within a stipulated time frame. The Registrar should also investigate all investments and related decisions taken by institutions on behalf of members without their consent.

Funds exempted from Section 2(3)(a) of the current Act, be withdrawn and compliance be imposed to all these funds because this proviso condones these umbrella funds indirectly.

Investments

Labour endorses the comment in paragraph 7.2 of the discussion paper that shareholder activism in South Africa should be encouraged.

Labour endorses the view in paragraph 7.3 that shareholder activism is appropriate and can contribute to the country's financial security and economic growth.

Member Investment Choice

Labour is of the view that unregulated member choice can be extremely dangerous for members.

Mandatory Investments

Regulation 28 should be amended to limit off-shore investment, and make investment in certain sectors of our economy compulsory to all retirement Funds.

Underwritten Funds

We suggest the issue of funds which do not invest monies on behalf of monies but rather place the monies with underwriters who insure the benefits of the fund. (such as the old Fedsure funds) be addressed . These funds are under regulated and members are often badly informed or misinformed about how the benefits work. For example members often do not know that there is a portion of the benefit bonus declared each year which does not vest, that means that if the fund does badly in future years the bonus can be taken away. This often means that these funds can promote their fund saying that they are getting excellent returns when in fact the monies do not necessarily get paid (as happen to the Fedsure fund members). Underwritten funds should be prohibited and all existing funds converted to normal funds.

In fact there is nothing guaranteed about these funds.

Other concerns with Draft Discussion Paper:

Several comments were flagged by our legal advisors, who participated in an earlier strategy workshop:

- Benefits available from a retirement fund: p.34 para 3.4.1 – discussions are necessary to assess the impact of proposals to reduce risk benefits and not pension benefit if contributions are not sufficient, particularly in view of the HIV/AIDS pandemic.
- p.35 para 3.4.1.4 - this proposal changes current obligation of trustees to ensure that a death benefit is paid to dependants – it reduces the trustees' obligation and may lead to dependants not receiving benefits when necessary. Requires clarity and further discussion.
- Interest on late payment of benefits - p.40 3.13 – there must be a definite time frame within which payment must be made and clarify when interest starts to run.
- Access to retirement savings during employment - p.41 – para 3.15 – there has been a change on access to housing loans – new proposals suggest that the member can only get a guarantee, not a loan from the fund. This may impact on costs for members, further details required prior to a comprehensive response.
- Intersection of Labour Law and Pension Law - p.62 para 6.5 – this proposal is extreme and gives the employer absolute power to change the nature of the retirement fund benefits. Labour strongly rejects this proposal and will respond in detail on this proposal
- Funding and calculation techniques - p.68 para 8.4.5 – this proposes removing the obligation on an employer to fund the shortfall if liquidation occurs. Previously, there was a victory for members in the Pension Fund Second Amendment Act, 2001 and now this draft wants to change and take it away – we strongly oppose this provision and will engage on this matter urgently!

Impact of HIV/AIDS on Retirement Funds

HIV will reduce the size of the working population and hence the size of the available contributing members. This will put pressure on members to increase costs of insured benefits due to high claim experience. Insurance companies are also taking advantage of retirement funds trustees here. Alternatively, trustees are forced to reduce benefits.

There is a need to commission a report on the extent of the HIV/AIDS impact on retirement funds and ascertain to what extent insurance industry is raising costs unfairly and discriminates against those who suffering from this pandemic.

Fidelity Cover

Retirement Funds, through their trustees have been experiencing huge difficulties in claiming from Fidelity Cover, whilst high premiums are expected from these funds. The policies are also usually extremely badly drafted and there is no regulation of the content of the cover that should be obtained.

We propose that a National Fidelity Fund be established to compensate funds that experience loss for any reason.. We call on the FSB to address this issue as a matter of urgency.

Tax on Retirement Funds

Tax on Retirement Funds is an integral part of retirement funds reform. A piece meal approach must be avoided as it may result in difficulties as experienced in the amendments to the Pension Funds Act. Part of this process should a total review of all taxes emanating from retirement funds including all levies and other charges.

While members should finance the Office of the Registrar we deserve better service all levies that we pay including charges paid by members annually to the Registrar.

Powers of the Regulator

The integration of different legislation regarding retirement funds towards one legislative framework should be encouraged. This will assist members of retirement funds to have one (1) Regulator, one (1) Pension Funds Adjudicator from which assistance should available.

For the Registrar to be able to carry all the above complex work, his powers should extended as proposed in the draft discussion paper. Members should finance the office of the Registrar and the State should subsidized them.

The Registrar's limited enforcement powers are a major concern to members of these funds. Therefore we agree with National Treasury that the powers of this office be expanded.

However, the Regulator should transform the Pension Funds Advisory and other committees or board to include members' representatives on these structures. That these structures are populated by industry groupings and this is unacceptable and wrong.

Self-regulation has failed members of retirement funds and we reject it. A strong regulatory framework is what is needed in this industry.

Pension Funds Adjudicator

The multiplicity of *fora* which can adjudicate disputes is not only a major concern to us but is detrimental to members of the retirement funds. That some disputes can be referred to many forums while the poor members is waiting probably with nothing to eat is grossly unfair. However, creating another forum without clarifying further the role of the Adjudicator in our view, will not address the problem.

What we need is one Regulator, and one forum that hears retirement fund disputes from funds registered in terms of the Pension Funds Act as well as government funds.

End