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SET 6 – HEARING 2 – DAY 3

**COMMISSION OF INQUIRY INTO
HIGHER EDUCATION AND TRAINING**

PARTIES PRESENT:

The Chairperson
Commissioners
Head of Evidence Leaders
Evidence Leaders
Experts
Secretariat

WITNESSES:

Mr. V. Jack – Empowerdex

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SESSION 1 – 23 FEBRUARY 2017

JUDGE: Good afternoon Miss Pillay.

ADV. K. PILLAY SC: Good afternoon Chair.

JUDGE: Good afternoon Mr Jack.

5 MR. V. JACK: Good afternoon Judge.

JUDGE: It is Mr Vuyo Jack is it?

ADV. K. PILLAY SC: That is correct Chair and Mr Jack will testify in set
6 of the hearing alternative forms of funding Chair.

JUDGE: Yes. Mr Jack do you have any objection to taking the oath?

10 MR. V. JACK: No.

JUDGE: Do you swear that the evidence that you will give will be the
truth the whole truth and nothing but the truth, if you do raise your right
hand and say so help me God.

MR. V. JACK: So help me God.

15 **MR. VUYO JACK**: [d.s.s.]

JUDGE: Thank you.

ADV. K. PILLAY SC: Mr Mabuda will lead Mr Jack's evidence Chair.

ADV. T. MABUDA: Thank you Chair. Chair the evidence that Mr Jack
has is going to give today we requested him to deal with amongst others
20 the issues relating to funding of higher education from BEE transactions.
He has prepared a presentation and we will ask Mr Jack to proceed with
the presentation and we will ask him questions as and when they arise.

JUDGE: As you wish. Yes Mr Jack what have you to tell us, we have
your presentation we have read it, I cannot say that we have understood

it but no doubt we will by the end of your presentation, thank you.

MR. V. JACK: Thank you Chair. I may proceed.

JUDGE: Yes please.

MR. V. JACK: Thank you. The presentation covers the element in the
5 broad based black economic empowerment relating to skills
development and going into more detail around how that would be
potentially utilised and based from some of the comments from the BEE
Commissioner in being able to see that as a potential source. And so in
my presentation I would like to then focus about this skills development
10 levy history in terms of the Act and the Levies Act to provide contextual
background and then move onto the codes of practice because that is a
foundation, the skills development history is a foundation for the codes.
And then look into the numbers in terms of how much is potentially
available utilising the skills development element and then look at the
15 considerations technically that would then need to be considered
potentially and also potential recommendations.

JUDGE: Can I, before you begin can I ask you were you involved in the
ministerial task team and the presentation of their report on the Isfap
model?

20 MR. V. JACK: No I was not involved.

JUDGE: You were not.

MR. V. JACK: No.

JUDGE: You are aware of it though.

MR. V. JACK: Yes I am.

JUDGE: Because you have mentioned it in your ...[intervenes]

MR. V. JACK: Yes I am aware of it.

JUDGE: Have you read it the report?

MR. V. JACK: Yes I have gone through that yes.

5 JUDGE: And know the role that BEE plays in that?

MR. V. JACK: Yes and they have focussed on this particular pillar as a potential pillar?

JUDGE: Thank you.

MR. V. JACK: Okay thank you. So the Skills Development Act of 1998
10 is the critical legislation that helps to be looking at how do we develop
the skills for the South African workforce and also tapping in to the
investigation in education by the private sector as well as the public
sector to be able to say how do we reverse the skills deprivation of the
apartheid era but also then to provide employers to create an active
15 learning environment through the provision of learnerships in terms of
making sure that the learnerships are also enabling people at entry point
to be able to be employed within the company so rather than just full
employment you could be able to stagger it through the learnerships and
this becomes very important because then the codes of good practice
20 utilise these principles in being able to structure how company's can able
to contribute.

And also linked to this was the Skills Development Levies Act
which allows the collection mechanism for SARS to be able to collect the
money and the contributions in terms of these investments from the

private sector and the legislated levy is 1 percent, however when we look at the codes the codes beyond the 1 percent and the reason is company's can actually be able to do more and so with this 1 percent that enables the National Skills Fund and the Seta's to actually be
5 funded and come up with programs that will then accelerate the skills development acquisition by previously disadvantaged people so this Act is also critical when we look at what it contains in terms of the ability of the Commissioner which SARS and also potentially the Seta's or any other bodies designated by the Seta's to effect the collection.

10 So going into the codes of good practice because of good practice then realise that in order for company's to make sure that they are able to have a broad base contribution because In the past ownership was the main element and the ownership element did not actually address the broad based element of helping as many people, it
15 tended to be concentrated in the hands of the few and that in 2003 the Broad Based Black Economic Empowerment Act was then passed in order to allow other elements of the ways that company's could contribute to empower previously disadvantaged people. And so the key elements were ownership, management control, skills development
20 enterprises and supply development and socio economic development.

And so in 2007 these codes were then passed into law and company's were contributing and however in 2013 seeing the impact of the, how company's were implementing the DTI amended the codes and made it much more stringent for company's to actually be contributing
25 and so this also maybe quickly I can look at key criteria that changed so

when we look at skills development it was 15 points according to the 2007 codes but it increased to 20 points given the importance of skills development and also what is important is that it expanded who could benefit in terms of skills development initiatives in the 2013 code
5 because previously it was only employees that needed to be trained but now in the 2013 codes it expanded the scope to say you could also be able to utilise unemployed learners.

So what was also introduced the reason is that company's were not moving fast enough and they were showing more of a compliance
10 based approach so the DTI made it much more harder to not comply and therefore they introduced what we call priority elements where you need to be able to meet sub minimums of the target and the way the targets work is you get rewarded according to how much of the target that you get so out of the 20 points if you are only able to meet 80 percent of the
15 target then you only get 80 percent of the point and with the sub minimum it means that at a minimum you need to have 40 percent of the target being met and if you do not meet 40 percent the entire scorecard, the entire score will be taken down of the company.

JUDGE: I am sorry you are running far, far too fast for me.

20 MR. V. JACK: Okay.

JUDGE: I am trying to understand the whole basis of this, are we talking about benefits of procuring contracts, are we talking about benefits of doing work for the state or what is the basis of, the underlying basis of the carat and the stick?

25 MR. V. JACK: Okay so the purpose of the legislation was to, if you want

to have a license from government or you want to have procurement opportunities from government or if there was privatisation and you wanted to buy from government you would need to meet BEE requirements so therefore that becomes the carat and it is not
5 compulsory and this is a very important point, it is voluntary but it is using these levers to actually drive the contribution to BEE whereas skills development and employment equity is mandatory whether you like it or not a company you have to do it whereas BEE Act it is not compulsory so it is voluntary and it using the stick of the leverage of
10 procurement, financing any licensing requirements to actually drive it and cascade it down.

JUDGE: Yes I hear what you say about it not being compulsory but it seems to me it may not be compulsory for you that you open your mouth in order to get a drink of water but unless you open it you will not get the
15 water so it is compulsory is it not?

MR. V. JACK: In substance ...[intervenes]

JUDGE: Otherwise you cannot live in the economy.

MR. V. JACK: Absolutely, in substance you might find in retail sectors there is no greater lever for the company's to contribute.

20 JUDGE: So why is it stated to be non compulsory when it is plainly not, I know there may not be a statutory sanction.

MR. V. JACK: Ja.

JUDGE: But there is statutory penalty.

MR. V. JACK: Ja well there is not because what has happened with the

employment equity, if you do not comply with the law you get a penalty and what happened is company's actually budgeted for the penalties and said we are not going to comply so we will pay the penalty and it became actually cheaper to rather drive transformation, pay the penalty and so
5 with this you needed to be able to affect the bottom line of the company's and by using these levers so if you had a sanction of a penalty then the BEE Act would not actually have had the impact that it has had so using these are levers of government, it has had quite considerable impact but the bottom line is from a business perspective if you do not contribute to
10 BEE the value of your business is going to go down and you are going to feel the heat practically.

JUDGE: Yes.

MR. V. JACK: Ja.

JUDGE: Right.

15 COMMISSIONER ALLY: Let us just take it back a step like the Chairperson has indicated, historically as you know it who is the main business partner of private sector, are they, have they businesses within themselves because the way you are putting it from what I am understanding government is the main financier of company's and the
20 reason for these particular strategies is then to be able to get monies to get the skills of the country improved so where do you start, is it only Black Economic Empowerment company's that are able to procure from government which is true or are you saying that even the other company's outside of that stream are affected by this, so just give us a
25 sense of how this happens.

MR. V. JACK: Okay so the Act binds all organs of state to look at BEE for making economic decisions so that is the thing.

COMMISSIONER ALLY: So that is procurement part?

MR. V. JACK: The procurement, the funding, the privatisation, the
5 licensing that is a legal requirement it is binding and if they do not then it
would be in breach of the Act so how do you then get the others to
actually contribute so if you are then asking private sector to say what is
your contribution to BEE in terms of the mining sector for you to get this
license the this mining sector was saying using these instruments
10 provided by government to measure their contribution would say given
this instrument this is actually how I have contributed and so I meet the
minimum requirement for me to get the mining license and then the
mining company's because of this the way the is structured would force
its suppliers to also comply and those suppliers would force their
15 suppliers to comply until the cascading effect is felt through the economy
and a simple testified would be you ask any business here have you
been asked about your BEE status and the answer is 90 percent of the
businesses would have been because it shows the cascading impact.

JUDGE: Can I just understand some of these terms.

20 MR. V. JACK: Yes.

JUDGE: On your scorecard ownership is easily understandable so is
management control.

MR. V. JACK: Yes.

JUDGE: How is skills development measured?

MR. V. JACK: So we will unpack the details of the skills development because it measures how much is contributed but also the number of people that go through training so those are the key elements.

JUDGE: Enterprise and supply development, what is that?

5 MR. V. JACK: So enterprise and supply development is the assistance in terms of giving to black company's to help them with their operational and financial capacity so you could give them a loan, you could give them a grant so that they can be part of your supply chain.

JUDGE: Yes, that apparently was not considered, supplier development
10 was not considered as of importance in 2007 but it was brought in, in 2013.

MR. V. JACK: That is correct.

JUDGE: To fill what gap?

MR. V. JACK: Because previous what happened is that company's will
15 develop just anyone not linked to their core business and effectively they will just be throwing money at the problem and the problem is you need to have black people that are part of the value chains of the company's business so when you look at your supply chain to say you need to develop your suppliers and buy from them and also help them to give the
20 money or grant in order for them to provide you with goods and services so that way that they introduce the supplier development element.

JUDGE: Thank you and socio economic development, how is that measured?

MR. V. JACK: It is measured according to how much money is being

invested in social causes and could be community bursaries, it could be early childhood centres and so forth so normally would be known as CSI.

JUDGE: Thank you.

MR. V. JACK: Okay, and company's then would be measured according
5 to all these to get a score and then given that score then there would be different levels that they would fall under and that will then determine when they engage with the state to say if you are at this level you can get it but if you do not meet this level you will not be able to get it.

JUDGE: Yes, are the levels uniform so that if you get two or three
10 company's coming to apply for the same contract they will all be measured equally?

MR. V. JACK: Yes so therefore there is a measurement basis that enables everyone to be measured fairly.

JUDGE: Thank you.

15 ADV. T. MABUDA: Sorry just on the previous slide, the text at the bottom there, is this, so if you have a sub minimum either one of these requirements, ownership management control you drop by one level.

MR. V. JACK: Yes.

ADV. T. MABUDA: Regardless of which one it is.

20 MR. V. JACK: Ja so if any of those, so the priority areas in order to concentrate the intention in terms of driving these areas is that you have to score minimum 40 percent of the targets so those are called the sub minimums because if you do not you get taken down. Let us maybe looking, to give an example when you look at the slide, so if you were a

level 3 contributor which means that your score was above 90 points but you did not have ownership, sub minimum or you did not spend anything on skills development that means that you move from being a level 3 down to a level 4, what impact does that have. So when I do business
5 with you, if I was a level 3, and I am spending R100 with you, I can be able to recognise that R100 in my scorecard at that BEE recognition level of 110 so it would be R10 for the purpose of calculating on my scorecard so there is an incentive to be at a higher level.

So now if I get downgraded one that means that my clients can
10 no longer be able to claim 110 percent they can only claim now 100 points which company's would not actually like so the sanction of being downgraded is huge because it affects the bottom line of company's in terms of getting business, that is why then company's are right now feeling the pain because they have to meet that 40 percent target on
15 ownership, on skills development and supply development and enterprise development which is why there is now the propensity to say how can we actually be able to contribute more so there is a minimum we are able to at least get the 40 percent target to be met.

JUDGE: Two things strike me what you are saying, while I understand
20 the underlying rationale of what you are telling me, it sounds like an administrative nightmare especially for the company's that have to maintain this levels.

MR. V. JACK: Absolutely.

JUDGE: And secondly it sounds very open to manipulation.

25 MR. V. JACK: Absolutely and that is why you have a lot of consultants

now being able to come and try to assist company's which is correct that it could be open to manipulation and definitely it is cumbersome in terms of being able to have the evidence that supports your score and effectively that means that company's like Empowerdex would have to
5 come and verify and auditors do this as well where they come and verify the underlying data to support what you say you are doing so it is quite cumbersome.

COMMISSIONER ALLY: Well it might even get more nightmarish in this sense, each supply chain management department must understand the
10 codes and to evaluate a particular company, for instance when a tender is sent out and as you say in the old days it was easy, it was well just look at the ownership see well there is four black people so we will take you no problem, now you have made it more difficult for the person to get the contract because there are certain other elements and criteria
15 that need to be met and when you come later there is some strange formula that does not make sense to me but probably makes sense to them in terms of how you award points to specific company's so at the moment within government are these supply chain management departments skilled in this particular aspect or is Empowerdex
20 empowering all the departments or how is it working at the moment.

JUDGE: Well put plainly, when an employer comes to tender for a contract does he produce a certificate by Empowerdex to say that I certify that he has, that they comply with all these levels?

MR. V. JACK: Yes.

25 JUDGE: Is that right?

MR. V. JACK: That is correct, the certificate tells you this is your level and behind that level would be a scorecard that breaks down for the each element to say how did you actually score yes.

JUDGE: That I understand, so does the government official who has to,
5 what is the word, authorise the tender or consider the tender, does he actually have the scorecard or does he simply have your certificate?

MR. V. JACK: They would have both the scorecard and the certificate, for example if you have two company's that meet the functional criteria, so when you apply the Preferential Procurement Framework Act in
10 government so you have to look at, depending on the size of the contract, 10 percent being BEE which is the scorecard element and the 90 percent being price and functional delivery and so forth so if you have company's that meet the functional score equal and now the deciding factor is BEE but then you realise both of these company's are level 1
15 then the scorecard enables to you to be able to see, to go to see deeper which are the elements that makes up that level 1 so that is why having the certificate and the actual scorecard then enables decision making.

JUDGE: Now let me just ask you, supposing there are 10 tenderers for a contract, can each one of them come to Empowerdex and say consider
20 my case and give me the certificate of what you say is the position?

MR. V. JACK: Yes so they would say this is our contribution and this is, can you come and verify it ...[intervenes]

JUDGE: No, no, no what I am merely asking is could all 10 tenderers have the same certificate?

25 MR. V. JACK: Yes from the same company absolutely they could but

you see what is critical here is that there is a verification manual that governs, it is like a standards that governs all the company's that do the work, that they should be able to get to the same answer given the same kind of evidence.

5 COMMISSIONER ALLY: Now this is where I was coming to, Empowerdex provides a certificate because it is in the game of evaluating BEE compliance and so forth.

MR. V. JACK: Yes.

COMMISSIONER ALLY: Now does the official do a verification of your
10 verification or does he accept Empowerdex has been doing business with us all this time so therefore if you come an Empowerdex certificate I do not need to verify.

MR. V. JACK: So they accept because before Empowerdex can actually perform these services they have to be accredited with Sanas which is
15 part of the DTI and then once we get the Sanas accreditation and there is professional development kind of continuous evaluation of whether you are applying the standards and that license could be revoked if it was found that Empowerdex was not consistent and had some deficiencies.

20 COMMISSIONER ALLY: Okay thanks.

JUDGE: How many competitors are there in this field?

MR. V. JACK: Sjoe it is quite a number but it is more than probably, on Sanas database it is more than 20 and then you have auditors that can also do this so when you look at Erber then you are looking at quite a
25 number there so it is quite a lot of company's because when you look at

the number of company's that need to be evaluated it is also quite a bit.

JUDGE: Okay thank you.

COMMISSIONER KHUMALO: What I have heard about supplier development like when you are tendering and then a person who gets the tender gets it because there is an agreement of supplier development of a certain percentage, once a person gets it and then they go back to the original suppliers and they give a person maybe one job and that is it, are you able to control that, is there a mechanism because if you saying maybe you supplying paint in a project and then in the adjudication of a tender you promised a certain percentage of that supplier, is that determinable and how are you able to do that especially if you are not in the operations of the company, I know it is one of the criticisms of this model?

MR. V. JACK: Yeah what happens is that some company's would go get the jobs but then would tend to outsource so effectively they become what we call artificial or third party intermediaries but they actually not doing the work, effectively they getting the existing company's to actually do the work and that is called fronting so in 2013 there were much more harder regulations to define fronting and the penalties for fronting being 10 percent of your turnover and you could even see oh who knowingly gets into the fronting arrangement can actually get 10 years and that is also why you have the BEE Commissioner to be able to review these instances where that happens and there has been instances where there is whistle blowers that says there is potential fronting that is suspected and then there is a process of investigating that.

COMMISSIONER KHUMALO: Another example is when say if Transnet wants a firm of attorneys in their panel and there is a supplier development requirement so you end up not knowing whether you put up Advocates and say Advocates you are going to be supplying this quality
5 of work when it is not known so I do not know what was put in place in 2013 because I know a lot of points were lost there potentially.

MR. V. JACK: Yes so effectively the company decides how they would implement that so the key deciding factor is that there is targets that apply uniformly to everyone and effectively how they are applied and the
10 composition is really left to the company to be able to look at who should be on the panel but as long as they meet the BEE score requirements for them to be able to score points then they would be able to meet that but also what is important is that there is distinction between the different levels of company's. in this next slide we show for company's that are
15 below R10 million worth of turnover they do not have to comply with anything, they are exempted, that means that whenever they do business with anyone they do not have to have a certificate they just need an affidavit so you are able to decrease the compliance burden on these company's that are less than 10.

20 And then there are between 10 million and below 50 million those are considered qualifying small enterprises and when you look at their targets they are much simpler targets and therefore the requirements of keeping volumes and volumes of information is lessened and then company's above 50 million that is when they actually have to
25 be able to meet all those stringent requirements.

COMMISSIONER ALLY: And these are gross targets, the 10, 50?

MR. V. JACK: Yes it is 10 over being the total sales over the year ja for the full year.

JUDGE: I take it that Empowerdex also performs an advisory function in
5 the sense that if I am running a company and I know I am a level 6 contributor and I want to improve my BEE qualification, if I want to seek advice as to how to do it I would come to a company like yours would I?

MR. V. JACK: So when we rate you we cannot give you advice and so there is a separation between consulting to help the company's in terms
10 of the implementation and actually the verification otherwise you would have conflict of interest that you verifying the work that you gave advice on so there is that distinction however if it is a different client yes you can be able, like auditors you could be able to have a different division giving advice but it has to be separate from the actual verification on that
15 particular client to avoid conflict of interest.

JUDGE: I am really interested from the point of view your expertise but you are also a person who gives advice in proper cases?

MR. V. JACK: In sorry?

JUDGE: In proper cases.

20 MR. V. JACK: Proper cases?

JUDGE: Those that do not have conflicts of interest.

MR. V. JACK: Oh yes, yes we can be able to.

JUDGE: Yes thank you.

ADV. T. MABUDA: Sorry Mr Jack before you proceed, you indicated that

exempted macro enterprises require an affidavit, what does that affidavit deal with?

MR. V. JACK: If it is a black owned so it would say that firstly they are affirming that they are less than 10 million and if it is a black owned
5 company then they would also attest that the owners are hundred percent or 51 percent black because then there is a benefit in terms of being the beneficiary of enterprise development if you are a black owned entity.

ADV. T. MABUDA: And then you indicated that the 2013 codes have
10 come into effect in 2015 right?

MR. V. JACK: Yes so there has been a transition period but there, as we speak they are in full effect yes.

ADV. T. MABUDA: Oh so they started being in effect in 2013 but
...[intervenes]

15 MR. V. JACK: No there was a transition to say because depending on your financial year end when you did your rating and so forth so for company's that still had ratings valid up until the financial year end they were given that transition and there were those that had ratings just immediately so in essence then by 2014 that is when it has been
20 applicable across the board.

ADV. T. MABUDA: Okay thank you.

JUDGE: What does BEE apply to, does it apply to only company's, to partnerships, to individuals, which, who are struck by BEE.

MR. V. JACK: So whoever is in business whether you are structured as

a trust, even a non profit the trades that provide services, procurement services, even sole proprietor, partnerships that could be firmly based, they would be, as long as you are in business and subject to procurement with the big entities or government you would have to look
5 at BEE.

JUDGE: Does that not put a sole proprietor at a definite disadvantage?

MR. V. JACK: If it is not a black sole proprietor yes.

JUDGE: Yes.

MR. V. JACK: Because that means the ownership element will not be
10 met, that means that they need to be able to meet all the other elements so they can be able to employ black people, they can be able to have black managers, they can be able to develop black skills and also contribute to black suppliers.

JUDGE: Yes.

15 MR. V. JACK: So they will be disadvantaged only on the one which might mean that there will never be a level 1 because they at the highest level you can get.

JUDGE: Yes I follow you.

MR. V. JACK: Ja.

20 JUDGE: I am just trying to see in my own mind the sort of people that it would not apply to, it would not apply to a professional person I take it?

MR. V. JACK: If your turnover is less than 10 million yes it would not apply.

JUDGE: Supposing you have an Advocate who is earning more than

R10 million, you know they do.

MR. V. JACK: Yes.

JUDGE: Advocates do not generally employ people.

MR. V. JACK: Yes so if they make 10 million that means that all the
5 Advocates in essence would be in the same position so it is a systemic
issue so it is not really disadvantaging one individual person, is that you
will not be helping skills of anyone, you are not employing anyone, you
are not necessarily supplying in terms of buying your procurement and
so forth so in those cases it would not be a big problem.

10 JUDGE: Thank you.

MR. V. JACK: Okay.

COMMISSIONER KHUMALO: I think it would be different with
Advocates if they are not getting work directly from the, they get the work
through the attorneys so it is the attorneys that must comply.

15 MR. V. JACK: Oh ja absolutely, attorneys definitely.

COMMISSIONER KHUMALO: Yes.

MR. V. JACK: And from a procurement, the placement of work from the
attorneys with the Advocates that gets measured in terms of it they do
not place work with black attorneys it is going to have a negative impact
20 on their scorecard. Okay now I would like to zoom in on the skills
development element.

COMMISSIONER ALLY: Please do.

MR. V. JACK: Okay, so in the 2007 codes it was really simplistic, the
target was based 3 percent of your payroll and this comes from the skills

development levies definition of what payroll is total remuneration which really comes from the Tax Act, it says 3 percent of your total payroll must be spent on developing skills of black people and 0.3 percent would be for black disabled people and then the second element that was, so
5 these two top targets was based on how much do you actually spend and then the last one was looking at the number of black people participating in learnership, internships and so forth and so it is more of a headcount measure as a basis of your total employees but the first two looks at your total payroll.

10 JUDGE: That seems to be quite a progressive step in the sense that if everybody is contributing 3 percent towards the skills of the black employees that must make a huge difference to the economic base of the country.

MR. V. JACK: Yes.

15 JUDGE: Is it actually happening?

MR. V. JACK: That is the million dollar question.

JUDGE: Now why is it a million dollar question, it should not be a question at all if that is what we have here.

MR. V. JACK: So what is happening in practice is that the 1 percent levy
20 is statutory whether you like it or not you pay it and you might get some refunds if you show that you have done training and so forth up to 70 percent from the applicable Seta so the DTI then said you cannot just put that as a target because it is statutory so 3 percent should be the over, stretch target and so most company's then could not be able to meet the
25 3 percent because it is only looking at black people and black people

being defined as Africans, Indians and Coloureds and so on average what the reality was, company's in total were spending 2 percent on all employees. Now if you spending 3 percent on only black employees when in actual fact the reality is that you are spending 2 percent on all employees, they found it to be a stretch target and so the DTI did not take any of that and said no, no, no you need to actually do more and that is why in the 2013 codes, now this is very important, all of the 2007 codes only apply to employees so the DTI says no you should do more to drive skills development because we are not seeing the impact on the ground in the country so you should be spending 6 percent of your payroll however you can include people from outside not only your employees. So therefore it increased the scope for company's to actually be contributing to more people, that is why this is important consideration for the commission.

15 JUDGE: I am sorry is this 6 percent on employees of all races or 6 percent on black employees?

MR. V. JACK: It is only black employees.

JUDGE: Yes.

MR. V. JACK: It gets more hairy, then the black employees are divided according to economically active population so you further segment your black employees and you look at what is being spent on African males, African females, Coloured males, Coloured females and so forth and sometimes you could be having national economically active population or provincial one and this has been a big debate in the country and it is of course has increased the kind of documentation that then has to be

kept to be able to show that we spent so much on African males, so much on African females and so much on the different components of the grouping of black people.

JUDGE: Well again, although this may be good or may not be good it is
5 by the by but it does seem to me that this must created a huge administrative burden if the company's of any size at all.

MR. V. JACK: Yes it has increased the complexity of the evidence that the company's need to keep because if you have training and you have all your black employees in one then you have to then use the
10 attendance register to be able to say for this invoice we have to then split it according to these EAP's so yes it has increased the administrative burden.

JUDGE: And if you do not employ disabled persons do you then lose out?

15 MR. V. JACK: Yes because then you see there is four points allocated to your people with disability and if you are not spending, I mean it has a huge impact on your scorecard and when you look at ownership it is 20 points and if four points relatively speaking so it is quite substantial because if you did an ownership deal that could cost you 2 billion but the
20 0.3 percent of not spending on the people with disability could be 3 million but they worth the same points so it behoves company's to be able to actually maximise these points and hence there is a pain in company's currently, they are not able to meet this and hence an opportunity to be saying okay how do we then utilise this gap that is not
25 being actually spent because what happens, company's on their budget

they actually budget based on the 6 percent and then towards the year end what happens at times is they rush to be able to meet this so that they do not trigger the sub minimum discounting and so why is it a possible source of funding then if you are able to create a mechanism to
5 saying we can contribute this amount that we have budgeted for but that we cannot really spend to this then that pain goes.

COMMISSIONER ALLY: So the practicality of what you are giving us is this, a particular company is only able to spend 3 percent ...[intervenes]

MR. V. JACK: On black people.

10 COMMISSIONER ALLY: Towards the skilling of black people within their company. They budgeted for the 6 percent as you indicate, you are now indicating that 3 percent is something that could be taken out and put towards an education fund as an example.

MR. V. JACK: Yes.

15 COMMISSIONER ALLY: And this is what the ISFAP model was thinking about.

MR. V. JACK: Yes because that is the 1.5 percent so within that 6 percent, so if you take 1.5 which is 25 percent of 6 that could be earmarked towards dealing with the problem ja.

20 COMMISSIONER ALLY: And then still allows them to be empowered within the procurement with government.

MR. V. JACK: Oh yes.

COMMISSIONER ALLY: Because the scorecard is allowing you to do that because you are within that target level.

MR. V. JACK: Yes, in essence there is no pressure valve right now that allows them to be able to contribute this, the legislation allows them, they can do so now so you do not need any structure, as the codes stand they can contribute to saying we will create our own fund and be able to
5 give it to University students, why. If you look at the slide ...[intervenes]

COMMISSIONER ALLY: Just hold on, just on that.

MR. V. JACK: Yes.

COMMISSIONER ALLY: To give it to you it to University students, must they give it to black University students?

10 MR. V. JACK: Yes.

COMMISSIONER ALLY: Remember the criteria is black people within the company.

MR. V. JACK: Yes.

COMMISSIONER ALLY: So therefore this 1.5 and so forth must also go
15 to black people or black students.

MR. V. JACK: Absolutely.

COMMISSIONER ALLY: As defined in the Employment Equity Act and so forth.

MR. V. JACK: That is correct yes.

20 COMMISSIONER ALLY: Okay.

MR. V. JACK: And then of course because there is an economically active population rider then that would also in the allocation of these bursaries that would have to be factored in.

JUDGE: Sorry I, just make that a little clearer for me, I should have

understood you but I have not.

MR. V. JACK: Sure, so that if you take the 1.5 percent and you give it to somebody to give bursaries, what is the allocation criteria to those bursaries in order for the company's to be able to score their full points it
5 has to be within black people but how, in what proportion according to the economically active population.

COMMISSIONER ALLY: Now just explain that part of how the economically active population is within the student population because they are not economically active.

10 MR. V. JACK: Yes.

COMMISSIONER ALLY: Or how do you define economically active population?

MR. V. JACK: So that is defined clearly within the Department of Labour every year they release the statistics so just to give you a sense, if you
15 look at, these are the kind of statistics that you will get at the bottom, so you will get the national statistics of economically active population and then you also get the national statistics so for example in the Western Cape you will be having more Coloured males and females. In the KZN you would have a higher proportion of Indian males and females
20 whereas nationally it is a completely different, there is a more predominance of African males and females so these are the kind of issues that would have to be tackled to say now when you allocate this a decision would say we use the national EAP, that might be a simpler way of being able to allocate but it is a factor that has been put in there.

25 COMMISSIONER ALLY: I trust you are coming here because I am still

lost in this sense of our example of this company that has, we use the
1.5 percent.

MR. V. JACK: Yes.

COMMISSIONER ALLY: We then said the students you provided to
5 must be black people.

MR. V. JACK: Mm mm.

COMMISSIONER ALLY: The further criteria within the black people must
be that they are economically active.

MR. V. JACK: Mm mm.

10 COMMISSIONER ALLY: Now economically active you say is defined as
per ...[intervenes]

MR. V. JACK: Department of Labour statistics.

COMMISSIONER ALLY: Department of Labour.

MR. V. JACK: Yes.

15 COMMISSIONER ALLY: In that manner.

MR. V. JACK: Yes.

COMMISSIONER ALLY: Now so if you have the funds going to a black
African person you would then have 45.10 percent as a number which
could give you a higher score, is that what that means or how does it
20 work?

MR. V. JACK: Okay so how does it work is that so if you are only
focussing on your African males you will never be able to get hundred
percent of the points because you have to map according to the
economically active population so if your bursary is 10 million, that 1.5 is

10 million so you would have to allocate the 10 million in those proportions, you would exclude the white element both male and female and then you are saying the remaining, you then saying 45 percent of that would be going towards African males, Indian males, Coloured

5 males in those proportions and if you then distribute that 100 million in those proportions then you would have maximised your points but if you are only choosing to say we will fund only, let us say Indian males of your 10, the 1.5 you will only be able to get only 5.8 overall so you have to proportionality allocate it accordingly but this is something that is

10 within the power of the DTI to be able to say look we could have a practice note that says for this particular yes we will be mindful of the EAP and so forth but they could simply it, it is possible to simplify it because when you now take it to this granular level you actually start losing the bigger picture and the impact that it supposed to actually

15 achieve because also when you look at some of the criteria that could be led into this how do you determine who is poor, how do you determine the missing middle and in addition to the EAP then it just becomes ridiculous so therefore one of the suggestion would be to saying when this is considered then there could be a practice note that just then

20 simplifies it and enables to sensitise that it needs to be according equitably in terms of distribution while it meets these particular criteria and the company's the ease of compliance becomes easier, once you have done it 1.5 to this part fund you get all the points without having to worry about how it is split up otherwise you do not get anything by

25 actually making it much more complicated.

ADV. K. PILLAY SC: Or military Judge the code could be amended without the need for a practice note.

MR. V. JACK: Yeah the process of amending the code though becomes quite a process because of course you have to be able to go through the
5 commentary period and also the gazetting and by the Minister and so forth whereas with a practice note it could also be able to provide further clarification and you could be able to achieve the same but yes you could.

ADV. K. PILLAY SC: Of course a practice note cannot be inconsistent
10 with the code.

MR. V. JACK: Yes so, but you can be able to further clarify to saying this is how it applies for the particular what you call, for the particular contribution.

COMMISSIONER KHUMALO: So the way it is drafted now it is subject
15 to different interpretations so the code can clarify that, the practice note?

MR. V. JACK: Yes because when you start getting technically right, so you could be using national, EAP's or provincial but what if I am a company let us take a petroleum company that has a refinery in Durban, Head Office in Western Cape, service stations across and so you know,
20 so those are things that are subject to interpretation that therefore requires to saying this is how we interpreted it and it is going to be consistently utilised so that it does not have a negative impact from a competitive perspective.

COMMISSIONER ALLY: But you see we are more interested in the
25 money that is coming out that would go towards an education fund as it

were but it is important to understand the principles, the formula seems to be very, well as I said it is a nightmare in terms of applying it, the practice note as you said might clarify certain things but also give lawyers a lot of work because in your interpretation you would be going
5 one way or the other and then they say, and that is what is happening with tenders today because in the past you had the ownership and you could that that was a black owned company no problem, now you have got all these, you have got litigation upon litigation with more tenders as we are going along and this particular issue might also do that, be that
10 as it may all we interested in is how we get the 1.5 percent going to education and according to your evidence this is the way to go, is there any way you can improve on it or get more out of it?

MR. V. JACK: The 1.5.

COMMISSIONER ALLY: Yes.

15 MR. V. JACK: So you see the technicalities of being able to that is because this is voluntary so it becomes, now when you change the code so do you change the code and make it mandatory for everyone and what if you are already spending 6 percent and you do not want to be putting into, so the optionality becomes quite an important that the
20 drafting of the code, the amended code then would have to take into account to say the optionality given the particular circumstances is especially where you have labour intensive industries so in your design you will have to look at all the unintended consequences and therefore to make it as a mandatory requirement would be problematic however if
25 you give optionality to those company's that are not meeting the target

and looking for a way to be able to contribute to the education problem then you can be able to have this as a particular solution.

So it is either you could have, you could amend the code but the way you amend the code would be quite critical so my submission would
5 be bringing more optionality because the circumstances are different so, and especially in the mining sector they might be meeting this fully and therefore to make it mandatory that means therefore you no longer be able to, so you are crowding out the spend that was then spent on employees actually in being more productive to be able to cover the
10 education crisis however if you keep it optional and you say here is the code but this is another option where you can be able to contribute if you are not able to meet the criteria then we can be able to, then this is how it is going to work. So you could work I guess, you could have amendment to the codes or bringing new code that clarifies this without
15 amending the existing code so those are the kind of two options.

ADV. T. MABUDA: Mr Jack before you proceed, I am reading from a document, it is report from the Commission of Employment Equity, it defined an EAP as, it includes people from 15 to 64 years of age who are either employed or unemployed and who are seeking employment.

20 MR. V. JACK: Ja.

ADV. T. MABUDA: Would this, would students fall within this definition in your view?

MR. V. JACK: Well there would be the students that are not in matric, that are not at University, that are not employed, they would be included
25 in there.

ADV. T. MABUDA: So would this be targeted at, you are familiar with the term NEET, the Not in Employment Education or Training?

MR. V. JACK: They could benefit from this yes.

ADV. T. MABUDA: My concern was in relation to University students for instance, I am not certain whether this definition would include them?

MR. V. JACK: How is a definition used, this definition is used to be able to say how you would allocate, it is not used as a criteria to meet to actually benefit so it is more of a scoring mechanism rather than a criteria to saying if you meet all those people in the definition then you should be eligible so it is a useful guide from a scoring perspective.

ADV. T. MABUDA: So you are saying if a company funds four black children to go to Wits then they would score points in terms of this legislation.

MR. V. JACK: Yes they would and do you know why they would score points, because now we look at what are the elements that can be subject to being recognised and we have a learning matrix that then defines bursaries and when you look at bursaries it includes learning site institutions such as Universities, colleges, schools, ABET providers and so forth so these are supposed to be the beneficiaries that would be recognised so currently if I am spending my skills development money and support all of it, supporting University students I will get the full points

ADV. T. MABUDA: Thank you.

MR. V. JACK: And then there are bonus points that are also quite critical is that how are black people that are unemployed are absorbed into the

company and that enables them to say you have been part of our
learnership but now we need you to be coming in so this becomes then a
critical element so if I am giving bursaries to those students and I am
able to actually employ them or they are employed elsewhere in the
5 industry and they are not in the category of being unemployed, not in
school, not in University then I could be able to track them and get those
bonus points for tracking them. So this becomes important as then you
look at different options to say that it is not just about giving them the
instructions and the University education but it is about also providing
10 them with employment and absorption within the industry.

COMMISSIONER ALLY: Why would you think that even though we have
these mechanisms that you have so many unemployed youth and you
have youth that are also the educated and unemployed.

MR. V. JACK: Why do we have this problem, it is simple, it takes a lot of
15 time and work to be able firstly what you find with company's they would
rather be having people applying and rather than them actually going to
the grassroots actually finding them and access to these opportunities,
the people at the grassroots they do not know and even if it is advertised
in the newspapers they might not have access to the newspapers and
20 therefore there is a communication problem that is a big problem for
people to access these opportunities and the corporates are not really
keen on getting their hands dirty and getting involved, that is the honest
truth and that is why there is then that gap that when we now move onto
the presentation and look and say currently SARS collects about 15.2
25 billion from the 1 percent and this is distributed 20 percent to the NSFAS

and 12.2 to the Seta's, billion. Now every single year there is from the entire economy that is how much they are collecting which represent 1 percent.

And then this is not hardcore evidence that I can be able to stick
5 my neck out on but based on average from the company's we deal with,
an average of 2 percent across the company's is what is being spent,
some company's spend much higher but some company's even spend
just the 1 percent so on average we are looking at then using the
existing payroll about 30 billion being actually spent, being that is the 2
10 percent. Now if we had to utilise the full target of 6 percent we
potentially could have 91.3 billion that can be spent every year but of
course if you take factors of sluggish economic growth and jobs being
shared then your payroll number might go down but it is still quite a
sizable number.

15 And also when you look at the level of collection from SARS, it is
about 90 percent collection rate so even taking that into account you still
have about a 60 billion skills gap that could be utilised to deal with the
problem but it is not, why, because company's especially in harder
economic times they are focusing on how they drive growth so all these
20 other things that might not be seen to be directly affecting them driving
growth will not get top attention so this is why now there is a pain
because if you do not meet the sub minimum requirement you are not
going to have more business so you actually forced to actually do this in
terms of skills development for you to be able to be competitive so they
25 are in that quandary which is a perfect then timing to be able to say okay

here is an opportunity for you and if we take the proposal that is made of 1.5 percent that means that you could then be able to have more or less 22 billion coming from skills development levy at most, it could be much lower if you take into account collection rates so you could be between
5 20 to 22.8 billion that could come in every single year as long as there is a particular way of structuring it and saying if you contribute this you will be able to still get your BEE points and it would be administered and so forth appropriately and you giving them the option to be able to do that.

JUDGE: So why have you not been able to persuade government that
10 this is a necessary compulsory tax?

MR. V. JACK: Because now if you choose just this portion to make it compulsory then you would have to be able to, so if you are using the instrument of the codes and make this compulsory it becomes then you have to relook at your entire design because you have to make
15 everything compulsory or the other way around is to be able to say increase the levy by another 1.5 but then there are unintended consequences for that because the Seta's might not be efficient in actually making sure that it deals with the problem because there has been problems with the Seta's and the company's are really reluctant to
20 be able to use them as a base to be able to have that kind of distribution So it is a quandary but yes you could be able to ...[intervenes]

JUDGE: But I am trying to understand whether we have struck the ultimate balance at 1 percent or there is a better balance at some other percent.

25 MR. V. JACK: So you could increase yeah, you could increase the

percent.

JUDGE: No but you tell me if we increase then there is this and then there is that and there are pros and cons.

MR. V. JACK: Yeah.

5 JUDGE: Now how does one come to the best balance of pros and cons?

MR. V. JACK: I guess the critical thing is being able to from the engagements with the, one would have to, the government would have to engage with the company's and there would be unintended
10 consequences with the pros and the cons and effectively it is something that has to be debated.

JUDGE: Well that is all very interesting but we are certainly not going to get in on that debate.

MR. V. JACK: Ja.

15 JUDGE: So how do we use this to our advantage?

MR. V. JACK: So the current way, so if government had to put a mandatory increase, the likelihood of having a huge revolt from the company's, a pushback is going to be greater so that is the potential reality so by being able to provide them with the option, see the take-up,
20 based on the evidence if the take-up is good then it is fine because you would have given them the option but ...[intervenes]

JUDGE: Now wait a minute, we are not in the employment labour skills development business, if you and people in your position have not been able to persuade the government to do that how are we going to do it?

MR. V. JACK: To increase the percentage.

JUDGE: Yes.

MR. V. JACK: It is going to be very difficult unless you have evidence to say this is going to be the impact it was going to have if you increase the percentage because right now if you do it today and give that recommendation today it would not be backed by evidence that says it is going to be able to work so my submission would be provide the option to say you could be able to do this and give a time, within this time assess the take up, assess the impact that is why big data becomes critical then evidence based on evidence which is the way that government is approaching, I mean is moving right now is to be able to say given this evidence, the evidence shows that actually this is either sufficient and if it is not sufficient we actually need to deal with this problem by increasing the rate because when you go back to the initial slide why is this critical, because if you do not invest in the education it is going to affect growth but now you bringing this increase based on the evidence that there was no take-up or on the evidence that given the option to the company's it has not had impact and therefore there is cause for increasing it but if it is done right now I think it would have more of a negative impact from the, I mean backlash from the businesses to say no we are not going to be happy to have an increase right now.

ADV. T. MABUDA: Are you able to give us an example of what evidence you are referring to when you say to try and convince these company's to by in on an increase on the levy, are you talking about increases in

past marks for instance in Universities for the bursaries that they are funding, increased skills in the economy or what evidence are you referring to?

MR. V. JACK: Okay so for clarity I am saying if you give company's an
5 option of using the 1.5 percent to be earmarked to go into an education
the people that benefit from that you will be able to get data to saying
these are the people that have benefited, this is the, so on a time line
you give the particular timeline and to say here has been the truth for
you to be able to contribute to and you collect the evidence as you
10 deploy the bursaries because you can then be able to say this is the
support that has been given, these are the outcomes in terms of pass
rates, absorption and the kind of areas that have been supported and
then based on the outcome of that come back and say do we really now
need to have this or go back and change the 1 percent rate to a much
15 higher percentage. So it is something that requires a particular period of
time.

JUDGE: How long?

MR. V. JACK: Difficult to say but ...[intervenes]

JUDGE: Five years?

20 MR. V. JACK: So when you look at the youth employment kind of
subsidy they have been giving it three years so it would be at least a
minimum period of three years of having this option and within five years
you could be able, I mean within three years as a minimum but not more
than five years to be able to evaluate that, to be able then to say could
25 there be a need for increase because at the end of the day it is also the

support would be looking at the National Development Plan to say what is the impact that it is actually having on economic growth so if you find that it works, it does not work at all then you may increase it but be able to say what would also be the impact on driving some of the targets that
5 the National Development Plan is pushing.

ADV. K. PILLAY SC: Mr Jack may I just read to you a portion of, this is a form submitted by Cosatu to Nedlac in terms of a section 77 process where Cosatu is demanding that government finds ways to provide fee free higher education and training to the poor and the missing middle.
10 Now they have stated in the document that Cosatu demands that government should structure its budget in a manner that prioritises funding for free education but does not undermine the country's developmental agenda. In this regard we are specifically calling on government to avoid redirecting budget meant for Skills Development
15 Fund and other development programs intended for the working class towards no fee increment. Now the model which you are proposing where you find a vehicle to entice or to ensure that company's have means of reaching their 6 percent by funding higher education for the poor and the missing middle, would that not result in money which would
20 otherwise be spent on skilling or training black workers being redirected?

MR. V. JACK: Okay so the first question is it being spent right now on them, so there is money being spent on them right now so it would not be redirecting any of the current spend, what this is providing an option for is over and above the current spend that you are not actually utilising
25 rather than every single year, not meeting your budget when you do

have the ability to apply it to a, and this is also a much more longer skills development kind of imperative because it is not just looking at, it is looking at a holistic package that includes absorption into the company's and so therefore it is not redirecting what is being currently spent it is
5 maximising and optimising what is possible to be optimised within the system.

ADV. K. PILLAY SC: But within the notion of optimising what is possible should government not be looking at programs directed specifically at the skilling and the training of workers given that you are doing it in the,
10 within the paradigm of skills development?

MR. V. JACK: Already there is available, I mean the National Skills Fund you also have also programs within the UIF and what has been the take-up. So UIF have under expenditure of R1.5 billion on actually potentially using that money on rescaling the people to be, that are retrenched to
15 actually be able to get skills and be redirected so and mechanisation in the minds is a reality because it is safer not to have people going deeper and deeper and also the productivity increases so that is a reality that is happening so you need to be able to redirect some of the skills that are going to be replaced by the machines and so there is money but it is not
20 being utilised. Look at the National Skills Fund they get money that has been accumulating and has been invested by the PIC they are not utilising that so it is not a question of saying there is no money but it is not actually even some of the money that is there is not being adequately spent.

25 So if you redirect some of that you have to be realistic and say

change the mechanism that allows this money not to be utilised because once you change that and it becomes utilised for intended purpose then there might not even be a need for redirecting but if you redirect you perpetrate the same problem and you just increasing the investments
5 that needs to be managed and that is not going to deal with the problem.

ADV. K. PILLAY SC: And you are confident that the impact of your model will not be to ensure that money which ought to have gone for the skilling and training of workers will now be used to fund students.

MR. V. JACK: So now you see if you make it mandatory there is the
10 potential unintended consequence that some of that money might be redirected but if you keep it optional then you providing an option to be able to optimise the current. The reality is that given the fiscal space right now if I was sitting in government I would not reprioritise because in essence I am going to have to balance the budget to be able to say I am
15 going to take from either productive kind of initiatives that should drive growth or take from welfare and the minute you take from welfare you are going to be affecting how many people, 15 million people and how many people do we have at Universities, less than a million and what is the return that you get on that reprioritisation, you are not going to get
20 further tax collections. Some of the people are not going to be able to be necessarily even employed so therefore by reprioritising from the existing budget you might be creating further systemic risks in the country. So what is the most prudent approach, optimise what we already have, make sure that, I mean there is money in the system, it is
25 quite clear but it is not optimised properly.

ADV. T. MABUDA: Thank you, you can proceed with your presentation.

MR. V. JACK: Okay, so my submission would be between 20 and 22 billion could potentially be utilised by company's and then what are the key technical considerations, of course the biggest issue is that when it comes to BEE do you make it compulsory for all company's to, and I think we have touched on those issues that right now keeping it voluntary and optional and give it time to evaluate the impact it is the more prudent approach and then of course is it going to be a loan versus a grant and then of course is it going to be a loan versus a grant. Now according to the codes if you are giving a loan it is not considered skills development because it is a recoverable amount so if you are going to use this money to be a loan it will not meet the requirement so it would have to be a grant otherwise if it is conditional bursaries that is not going to be meeting the key requirements so the use of this money is critical.

JUDGE: But why is that such a rigid requirement.

MR. V. JACK: Because what happens is company's give loans and if you give a loan, and it is also a tax requirement so it is aligned with the Tax Act of 1962 that says if you give a loan then you cannot get a tax deduction because you are going to be recovering that under section 18 [A] but if it is a bursary and it is a grant that has a condition that you work for them then it is fine, it would be a grant but if it is a loan then you actually are not actually helping the student therefore from a tax perspective it would not be allowed and it is an anti avoidance provision as well in the Tax Act that was used to say give bursaries to workers but then they have to pay it back from their salaries so therefore effectively

you are giving them a loan and you charge them interest and therefore you should not get a tax deduction for that.

COMMISSIONER KHUMALO: Would your perspective be different with social impact bonds?

5 MR. V. JACK: Well I mean we will need to have much more because right now we have not seen more detailed outlay how the social impact bond would work. My understanding of a social impact bond is that based on the outcome we can only be then able to pay so if you are structuring in such a way that you have this money that you pay at the
10 end of the outcome somebody must be funding them to actually get to that outcome right so therefore those mechanics needs to be quite clear so that you are able to see from a tax implications what those would be and therefore also from the BEE codes what would be so which might mean that if this amount is utilised as a loan in the social impact bond
15 then it might be problematic however if it used almost like an off-take agreement that says we pay this person to get this outcome and when they meet the outcome we would also be able to pay back then it might have a different implication.

If you use it as a leverage to increase your funding to get more
20 on the students but if you using it as a direct loan then it would not be in line with the Income Tax Act deductibility rules so I would, to answer that then I would want to be able to see much more details around how then the mechanism that would be followed. And then of course if you give it as a grant then the question is what is the skin in the game for the
25 students in terms of if you do not get a loan and if you get a loan the skin

in the game you have to pay back the loan but given the recovery rate of the loans what could be the other skin in the games kind of requirements that could be factored in from a BEE perspective so that is what would need to be considered.

5 One of the skin in the game is that you have a condition to go back and work for the company so which is a nicer skin in the game because you are guaranteed employment but what if you are not employed, what could be the other skin in the game so national service, being able to actually be redeployed and do productive work and things
10 like that so that could be potentially things that would need to be considered.

ADV. K. PILLAY SC: Is a skin in the game is it a requirement or is it a nice to have?

MR. V. JACK: For the codes it is not a requirement no, so but given the
15 principles that have been laid to say that you cannot get things for free so how do you build it in so that you are able to almost like pay for it as well for the people that benefit because you are not going to value something if you just get it for free so it is a, from that perspective it is an important principle to consider. And then of course with the EAP we
20 have discussed quite considerably to say it would need to be actually clarified but also there is another issue with what the clarity of what would constitute the support so under normal circumstances you will have the fees, the accommodation, the stipend, the books but then there could also be additional cost such as when you come from an
25 educational background that is not really helping you to pass so you

might need that intervention so there is cost attached to that intervention so that could be included in the support but you also curb it so that you do not allow almost abuse of that so that could be the consideration and it is considered in the design of the codes to say what can count and
5 what does not count.

And just to give an example why this was important from the codes perspective is that people will be taken to training, let us say you take them to Harvard, the course cost you 4000 dollars however they go first class, they stay in a five star hotel and they actually have other
10 things so the actual cost of the frills around is much more than the actual educational costs so that is why there was a need then in the codes of good practice to limit what these other accommodation and transportation things in relation to the cost because there was potential abuse to beef up the numbers.

15 JUDGE: It seems to me that you do not only then get skin in the game you get fat and muscles as well.

MR. V. JACK: [laughing] yeah and then also the potential incentives that would not dilute the value of the, so for example for the company's why would they want to do this, so one of the incentives that could be given
20 to, the current sub minimum is 40 percent but if you are giving 1.5 percent into the fund maybe the sub minimum could be relaxed but you do not want to be playing around with the targets because when you play around with the targets, the quantum that deals with the problem goes away so there would need to be an engagement, what could be some of
25 the incentives that push, almost, we call it nudges, nudges them to

contribute towards the education fund.

And then of course if there is a use of intermediaries to administer the rollout of the payments to the Universities when you are looking at the codes impact you would have to look what is the minimum
5 BEE status of those intermediaries and also what is the cost of actually distributing that. Now the Skills Development Levies Act limits the costs of Seta's or any other bodies collect these levies, the cost of collection is limited to 2 percent so you could use those kind of things. If you were to use intermediaries rather than just one you could then create that
10 institutional framework that enables them to be able to minimise the cost so that you do not dilute the value that goes to the students and to dealing with the costs.

So these are just some of the considerations and then the important part is the data collection in order to show the evidence of
15 what works and what does not work, it needs to be embedded and the codes to provide for a tool that shows how the absorption happens so it is something that company's need to do anyway so the benefit for government is that there needs to be that data to be able to then help the evidence kind of based kind of policy making. So these are just the
20 technical considerations if this tool is considered as part of the broader solutions.

COMMISSIONER ALLY: Now the issue as you indicated now, the costs and the administration, the code is directed at the money flowing to the student and not to the person that is collecting and how many people
25 under that person collecting or distributing, is that the point you were

making in your third to last bullet, the use of intermediaries?

MR. V. JACK: Yes.

JUDGE: And therefore you would not get the full points in your scorecard if there is a whole lot of intermediaries and admin costs along
5 the way and the student instead of getting R100 gets R20.

MR. V. JACK: Ja absolutely, there is a value leakage that potentially could be there, so for example depending on how the final suggestions are being made, so if you do because there is room within the skills development levy to say yes SARS would be the collecting body but you
10 could have other collection body or disbursement bodies and therefore in that case you would need to make sure that you plug the value leakage and especially if you giving company's, so company's would be able to say no we can use our asset managers to be able to disburse this amount to the Universities to cover the students therefore you would
15 need to make sure that you have the measures that then limits the value leakage that they will charge because you will end up having 80 percent of the cost being leaked and you are not getting the final amount going to the students, that is the point there.

COMMISSIONER KHUMALO: Mr Jack with the current situation does
20 the system allow for the disbursement now of further changes that needs to be made?

MR. V. JACK: Right now if I was a company and I had X amount to spend on Universities I can be able to disburse and the current framework and the learning matrix in the code of good practice allows
25 me to be able to do that, there is no need to change anything there but if

you are providing, so for example a particular institutional mechanism then you would then have to then regulate how that works and to be able to give them an option say here is the option for you to be able to use this institutional mechanism to be able to disburse so NSFAS has played
5 that role, there have been direct contribution but there are some company's that would not want to use NSFAS that says no we want to be able to do it directly because we can actually be able to choose which fields that are in line with our business that might not be in line with the criteria that a state appointed intermediary would be able to use. So you
10 want to be able to give that option because what is the bottom line here, you want to be able to see as many, as much cash going into the system to deal with the problem and avoid leakages.

COMMISSIONER ALLY: Yes continue.

MR. V. JACK: Okay so the biggest question I guess was on the other
15 collection if you were looking at the other intermediaries that you could be using so the skills development levy framework is already in place that helps provide some level of clarity, it could actually be used so we have already then touched on the issues of the leakage and the biggest question becomes is the private sector, is it public sector and so forth,
20 there is pros and cons for both. Private sector they might be looking for high admin costs and perfect maximisation and actually not going down to the grassroots whereas then where you have a state intermediary they might go into the areas where people do not want to go and therefore you might, it should be able to have impact but there is pros and cons for
25 either that would need to then be considered by the commission.

And I think I would stop it at that because I think there are substance of my submission has been saying in summary there is potential to utilise the existing codes, what you might need to be able to do is have a supplementary code that helps you govern how this contribution to the education fund can be done so that it is in line with the existing codes and it is not imposing anything but you can also give it time to evaluate what kind of information you need to be able to get to say you can actually be able to have mandatory increase in what levy is collected from the company's. And then to be able to look at if you consider intermediaries then the needs, consideration of the skills development levy framework can actually be utilised to do that.

COMMISSIONER KHUMALO: In terms of sustainability, if the scheme is utilised like that how long, maybe if you are referring to the targets in the development plan do you think we would be able to meet that and whether this can be ...[intervenes]

MR. V. JACK: Just from this source?

COMMISSIONER KHUMALO: Just from this.

MR. V. JACK: No I do not think so, you would need to have, because the need is much higher but in terms of the sustainability this is premised on also driving economic growth because then the more the company grows and employs more people the more it can actually spend on actually supporting the education system so you have an alignment of interest however if the economy does not grow therefore there will be less money that potentially could be tapped using this mechanism so the risk that Cosatu raises then become real because then you could have a

crowding out effect of the existing spend from existing workers to support the students, that scenario plays itself out when you have low economic growth so this wants to be able to have high economic growth but then your payroll will be higher therefore the contributions would be higher so
5 the sustainability is really driven by economic growth.

COMMISSIONER KHUMALO: But also it means you need to find other alternative sources of funding other than this.

MR. V. JACK: Absolutely.

COMMISSIONER KHUMALO: This is just one of them.

10 MR. V. JACK: Absolutely because this is not going to be enough to be able to eliminate the problem no.

ADV. T. MABUDA: Just one last question from me, there is a portion in the ministerial task team report that says the commissioner of the BBBEE and the DTI has recommended that a maximum of 25 percent of
15 the 6 percent compliance target could be used by private institutions by donating funds to Isfap, do you have any idea why 25, only 25 percent was recommended of the 6 percent?

MR. V. JACK: I am not sure of the rationale behind it but I think maybe a suggestion that was put out there to say actually that could be a potential
20 but I would not, I am not privy to the reasoning behind that.

ADV. K. PILLAY SC: And that notion of 25 percent will fall away on your suggestion because you maintain that it should be voluntary as to how much of the 6 percent.

MR. V. JACK: But even if it is 25 percent because it is voluntary, so you

could choose to say 20 percent, 10 percent, what turns on it is how is it contributing towards you scoring points so if you do not do the contribution not the 25 percent there is not adverse impact currently as the code has been structured and that as a suggestion it is not
5 necessarily at this stage backed by legislation that says it has got to be mandatory so reading that statement it would be more of a suggestion giving guidance to company's to say guys here is an opportunity for you to be able to be helping deal with the problem as part of nation building.

COMMISSIONER ALLY: But is that not in line with your 1.5 percent.

10 MR. V. JACK: Yes and we used that ...[intervenes]

COMMISSIONER ALLY: That 25 percent comes from, well the 1.5 percent comes from the 25 percent.

MR. V. JACK: Absolutely.

COMMISSIONER ALLY: Of the 6 percent.

15 MR. V. JACK: And so in the slides previously if you are looking at currently estimated if we are spending 2 percent then you have 4 percent shortfall which could amount to about 60 billion per year so there is nothing, if you wanted to put more than 25 percent nothing actually turns on that really right now because you could put 25 percent, you could put
20 1 percent or you could put zero percent if you are already meeting your target is not going to disadvantage you in terms of your score as we speak today.

ADV. T. MABUDA: No further questions from us Chair.

JUDGE: Do you have any comment on the viability of the Isfap model?

MR. V. JACK: So the critical element is the proportion of cause of saying the beauty about it is student centric so it focuses on the student and looks at covering just not only the fees and so forth but also providing additional help so which is a vast improvement currently in terms of the
5 limitation that NSFAS would be able to have an in terms of the viability, in terms of the sources I mean this was mentioned as one potential source but there could be further like using the social impact bonds so the question would be the structure of how those bonds are structured becomes one can be able to then give the view on the viability of that but
10 in terms of the intent and the design I think it holistic in terms of what it covers, it is a holistic approach, of course the sticky parts would be the loan versus own contribution from families and also the grant portion, that is going to be the most contentious issue in how it is actually applied, that is firstly.

15 And then of course how you define the missing middle, the 600 per annum kind of household income *vis-à-vis* distinguishing between the poor and the missing middle and how you actually prioritise or allocation of that, it is another issue but then also the kind of because they are looking at stem so in terms of the areas so in South Africa some
20 of the realities by looking at arts, culture and heritage you could actually, those are low hanging fruits that can absorb quite a lot of people into the economy and it provides us also with unique competitive advantage by including arts and culture in terms of being able to optimise the skills development area so those are I guess some of the areas that one
25 would raise issues to be able to say they would need to be able to look

at that but it is also a function of availability of funds and where the sources come from.

So if I was in the business that would be more in the tourism and therefore I would want to be able to see the streams of bursaries going
5 into the culture because it also goes to the decolonisation issues that the students have raised in terms of creating content, creating, I mean with the roads must fall we need to be able to have our own monuments that then can be able to start changing the discourse so the inclusion of arts for me it is an important element but given the pilot it will give at least
10 some ventilation of some of those issues that can then arising from the pilot be able to be dealt with in its full rollout.

JUDGE: Yes.

ADV. K. PILLAY SC: Chair we have no further questions for Mr Jack.

JUDGE: I have many further questions but I would require to think it
15 over before I asked them I am sure. We might ask you to come back Mr Jack, to be quite honest with you I found it very difficult to absorb the fullness of what you were saying not because I take issue with any of it but simply so much of what you have said is a foreign concept to me therefore I need to think about it.

20 MR. V. JACK: Yes.

JUDGE: But thank you very much indeed.

MR. V. JACK: It is a pleasure thank you.

NO FURTHER QUESTIONS

ADV. K. PILLAY SC: Thank you Chair, we convene at 11:30 tomorrow

morning.

JUDGE: Ja I hope I shall be here by 11:30, I shall try to be here before 11:30 but yes I expect to be thank you.

ADV. K. PILLAY SC: Thank you Chair.

5 **MEETING ADJOURNS**

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SET 6 – HEARING 2 – DAY 3

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HIGHER EDUCATION AND TRAINING**

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