

**HR EMPLOYEES' PERCEPTIONS REGARDING THE CHANGES IN LABOUR  
BROKING**

**by**

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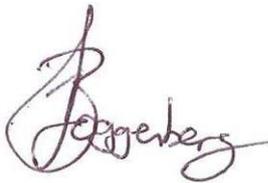
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**(November 2015)**

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## DECLARATION

I, **Bennie Loggenberg**, declare that “**HR employees’ perceptions regarding the changes in labour broking**”, is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.



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SIGNATURE

11 September 2015

DATE

## **ABSTRACT**

South Africa's labour legislation went through significant changes recently, with the changes to section 198 of the Labour Relations Act 66 of 1995 being the most contentious. The purpose of this research was to explore the perceptions of employees in the HR department of an integrated petroleum and chemical company regarding the changes to labour broking and the potential implications of these changes for an integrated petroleum and chemical company and its employees.

The qualitative exploratory study was conducted with six employees of a large integrative petroleum and chemical company making use of labour brokers, until data saturation was reached. The data were collected by means of individual interviews and telephonic interviews. The results indicated that the changes to section 198 will have some positive and negative implications. The positive implications for an organisation included more productive employees and the ability to identify high-quality employees more easily. The positive implications for the company's employees are that the lower-income employees will be protected, the new legislation will provide permanent employment and there will be better dispute resolution procedures. The negative implications to the changes to section 198 for the organisation, include for instance higher costs, the drafting of new policies and guidelines and less employment flexibility. Negative implications for the employees include unemployment, negative attitudes towards the organisation, poor employability and a situation where the current and/or permanent employees have to do all the work.

**KEY TERMS:** Employee, labour broking, labour relations, organisation, Section 198 of the LRA, South Africa

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To my wife and twin daughters I would like to say thank you for your patience, support and the opportunity to better my knowledge and to follow my aspirations. Thank you for inspiring me to be an example you can be proud of. I would also like to thank all the participants in my research for their valuable time given to make my research possible.

In memory of my father-in-law Mr Jan De Beer who told me to go for it, I would like to conclude with, "Hi Dad....., I went for it."

## **LIST OF ACRONYMS**

AsgiSA - Accelerated and Shared Growth Initiative for South Africa

ANC – African National Congress

BBBEE – Broad-based-black economic empowerment

BBC – Black Business Council

BCEA – Basic Conditions of Employment Act

BRICS – Federation Republic of Brazil, Russian Federation, Republic of India, People's Republic of China and Republic of South Africa

BSA – Business South Africa

BUSA – Business Unity South Africa

COIDA – Compensation for Occupational Injuries and Diseases Act

COSATU – Congress of South African Trade Unions

DA – Democratic Alliance

EEA – Employment Equity Act

EFF – Economic Freedom Fighters

FEDUSA – Federation of Unions of South Africa

GEAR – Growth Employment and Redistribution

HR – Human resources

ILO – International Labour Organisation

LRA – Labour Relations Act of 66 of 1995

NACTU – National Council of Trade Unions

NEDLAC – National Economic Development and Labour Advisory Council

NUMSA – National Union of Mine Workers of South Africa

PAC – Pan Africanist Congress

RDP – Reconstruction and Development Programme

SACP – South African Communist Party

SDA – Skills Development Act

SETA – Sector Education and Training Authorities

SWANLA – South West Africa Native Labour Association

SWAPO – South West Africa People's Organisation

TES – Temporary employment services

UIF – Unemployment Insurance Fund

UN – United Nations

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# CHAPTER 1

## GENERAL INTRODUCTION

### 1.1 INTRODUCTION

The National Economic Development and Labour Council (NEDLAC) published proposed changes to the labour legislation that was presented for public discussion in 2012. There is no doubt that these changes will have an impact on companies (Venter, Levy, Holtzhausen, Conradie, Bendeman, & Dworzanowski-Venter, 2012; Botes, 2013).

One specific change was the amendments to section 198 of the Labour Relations Act. Section 198 involves temporary employment services also known as labour brokers. This change has been and still is the most debated because of the nature of the impact it will have on a company's employment situation, the country's unemployment rate, the free labour market system, union representation under temporary workers, to mention but a few. A similar change to the Namibian labour legislation also caused controversy for labour brokers in Namibia (Botes, 2013; Van Eck, 2010). From the onset it is important to take note that when the researcher started with his studies the changes to labour broking were not yet implemented, but before the researcher completed his study, the changes were implemented.

Based on this, a need was identified in the literature and in organisations to investigate what effect the change in section 198 of the Labour Relations Act 66 of 1995 (LRA) would have on an organisation.

This chapter deals with the background to the problem, motivation, objectives and rationale for the study, and the disciplines involved in it. The chapter concludes with the chapter layout.

## **1.2 BACKGROUND TO THE PROBLEM**

### **1.2.1 South African labour legislation**

South African Labour legislation has three fundamental statutes, namely the Labour Relations Act 66 of 1995 (LRA), the Employment Equity Act 75 of 1997 (EEA) and the Basic Conditions of Employment Act 55 of 1998 (BCEA) (Basson, Christianson, Garbers, Le Roux, Mischke, & Strydom, 2005). The reason for these three Acts is their supporting role in the workplace and the employment relationship, and the fact that they cover labour legislation as a whole.

Only labour legislation can be changed and tailored to suit specific employment relationships in the workplace (Basson et al., 2005). Labour legislation can increase labour costs because of the increase in wages and lower production, which in turn creates negative employment rates. Labour legislation thus has an impact on the relationship between a business and its employees, which in a broader sense will have an impact on the business itself (Barker, 2011).

In academic circles, it can be argued that South Africa has the best written Constitution that caters for the whole population, but our more complex labour legislation has frequently changed in the last three decades, more so than any other legalisation in South Africa (Grogan, 2011). Swanepoel and Slabbert (2012, p. 123) state the following: "Throughout the historical development of the country, we can track the dynamics of interaction between the interest of business, the government of the day (and political parties) and labour."

### **1.2.2 Changes to section 198 of the LRA**

Section 198 of the LRA refers to labour brokers, as a "temporary employment service", which means any person who, for reward, procures for or provides to a client other persons (Department of Labour, 2012):

- (a) Who render services to, or perform work for, the client; and
- (b) Who are remunerated by the temporary employment service.

The Act states that both the temporary employment services (TES) and the company hiring a person from the TES are the employers, excluding independent contractors (Venter, Levy, Conradie, & Holtzhausen, 2009).

As stated in section 1.2.1 above, South African legislation and the LRA, in particular, have changed frequently in the last three decades. According to the Department of Labour (2012), amendments to section 198 of the LRA would include the following:

- The employee can act against either the TES or the company making use of his or her service.
- The temporary employment contract may not be longer than six months (recent legislation changed it to three months).
- The employee may not be employed on less favourable terms than another employee doing the same work.

The aim of the Labour Relations Amendment Bill is to revoke section 198 of the LRA, and a new Bill, the Employment Service Bill, has been proposed. Labour broking is currently unregulated. Employers source the best possible labour at the lowest possible cost from TES using these workers for a specific job until the work has been completed. They then send the labourer or worker back to the TES when the contract has expired. This allows the company making use of labour brokers more flexibility regarding labour legislation. The new Employment Service Bill proposes that government should maintain the labour centres, and companies must notify the Department of Labour of all vacancies. Private employment agencies must be registered and should not be allowed to charge placement fees (Venter et al., 2012; Botes, 2013). Changes to Section 198 will be discussed in more detail in chapter 3

According to Botes (2013) and Benjamin, Bhorat, and Van der Westhuizen (2010), workers who are employed on a temporary basis through labour brokers are exploited in terms of earning below the minimum wage. The labour brokers normally keep most of the earnings for themselves. Unions are opting to abolish TES that hire out labour, to ensure that all workers are treated in the same way in respect of pension, medical and other benefits not previously enjoyed by atypical employed workers.

COSATU went on a nationwide strike demanding that labour broking be banned (SAPA, 2012). However, government was reluctant to take that route, but stressed that worker exploitation needs to stop, because labour brokers trade with people like commodities. Government emphasises the fact that companies pay workers sourced from TES less than permanent employed employees doing the same type of work (Finnemore & Joubert, 2013).

Ensor (2013), reported that the majority of ANC members are in favour of limiting the six-month period for temporary employment to zero months but also concluded that the freedom to engage in economic activity will be limited and will result in major challenges for businesses.

For the most part, the implications of labour legislation changes for business seem to be financial and that the unemployment rate is increasing. Government has decided to keep the large trade union federation, COSATU, happy by implementing the new labour legislation on TES, for instance, but seems to be ignoring the unemployment possibilities that will influence its employment targets (SAPA, 2012).

Labour legislation changes thus far have not produced many positive effects except for atypical employees whose right for the same benefits and pay are being fought for and changes regarding the balloting process before a strike (SAPA, 2012). The later might help counter the violent strikes South Africa has become accustomed to, but according to Ensor (2013), trade unions seem to emphasise the fact that the change of strike ballots will only produce another hurdle for strikes and that union constitutions already provide for this. Finnemore and Joubert (2013) state that union constitutions depict rules on holding meetings, strike ballots, disciplinary procedures and other union operations.

Although there are many statements made and there are many believes from different authors regarding the impact that changes to labour broking has on an organisation and its employees, no formal study has been done. It is therefore important that a more formal study is done regarding this aspect. Therefore, this study will focus on the

impact that the changes in section 198 of the LRA have on an integrated petroleum and chemical company in South Africa and its employees.

### **1.2.3 Motivation for the study**

It can be seen throughout the history of the changes in the South African economy with regard to industrialisation, globalisation and also with the international labour organisation (ILO), that changes in legislation, especially on the labour side, have become necessary. Regarding the new changes in section 198 of the LRA it could be argued that some are unnecessary and politically motivated and have been orchestrated by the ANC, COSATU and SACP (SAPA, 2013; Nel, Kirsten, Swanepoel, Erasmus, & Poisat, 2013).

Government receives many proposals for changes in labour legislation from union organisations and employees vested in their high demands and influence (SAPA, 2012). The question therefore arises what impact or effect the change to section 198 of the LRA 66 of 1995 will have on companies in South Africa.

Employees in the HR department have direct experience of changes to labour legislation in that any change to any part of legislation needs to be implemented in an organisation. The changes in section 198 of the LRA could have a huge impact on the integrated petroleum and chemical company (the company used for this study) because this type of company makes use of an extremely large amount of atypical employment.

### **1.3 PROBLEM STATEMENT**

It is apparent, from the discussion thus far, that labour legislation in South Africa is constantly changing to either better the current written law or to adapt to new technological changes or union demands that influence the labour market (see section 1.2 above). Every business has to adapt to these changes, especially labour legislation changes (Barker, 2011).

There are direct and indirect implications for businesses when it comes to labour legislation changes (Barker, 2011). Barker (2011) further argues that a direct implication is higher labour costs due to temporary employees being employed full time. Indirect implications are that the employer employs fewer employees and production and profits thus decrease. Barker (2011, p. 194) further states that “small business enterprises require a high degree of flexibility to ensure their survival”. A small sole proprietorship adapts differently to labour legislation changes than medium and large companies because of the number of employees and the financial ability of the business, among other factors. There are also different changes for different institutions. Some sectors have collective agreements that bind certain businesses to certain labour legislation changes.

Some changes to Section 198 of the LRA indicate that the client making use of employees from a labour broker can be held liable for unfair dismissals. The TES may not employ a person on terms not allowed by a bargaining council agreement, the LRA or BCEA and employees may not be employed on less favourable terms than permanent employees doing the same type of work (Gilfillan, 2012). These changes could have a direct implication for businesses that make use of atypical employment and outsource for employees. The reasons for this is that the client could now be subject to costly and time-consuming disciplinary enquiries, especially because both client and the TES can be held jointly and severally liable for class and individual claims brought forward by employees.

The main research question formulated this study was as follows: What impact will the changes to section 198 of the LRA have on an integrated petroleum and chemical company in South Africa and its employees?

#### **1.4 OBJECTIVES OF THE RESEARCH**

Regarding the above statement, the objectives of this research study were as follows:

Main objective: To explore the perceptions of employees in the HR department with regard to the changes to section 198 of the LRA in the workplace

Objective 2: To investigate the impact that the changes in section 198 of the LRA with regard to labour broking will have on an integrated petroleum and chemical company in South Africa and its employees.

## **1.5 ASSUMPTIONS**

Mouton (1996) and Babbie (2008) refers to assumptions as statements that is believed to be true but which have not been tested. They classified them as epistemological, ontological and methodological assumptions. Morhouse and Richards (2012) suggest that ontology is a question about the nature of reality that is being studied and epistemology is how we understand the reality that is being studied. Methodological assumptions involves the use of the most suitable method and the nature of the research (Babbie, 2008; Mouton, 1996).

### **1.5.1 Epistemological assumptions**

According to Maree, Creswell, Ebersöhn, Eloff, Ferreira, Ivankova, Jansen, Nieuwenhuis, Pietersen, Pano Clark, van der Westhuizen, (2012), epistemological assumptions are interpretations on how one comes to know reality. Mouton (1996) and Babbie (2008) suggests that there are different ways to know something and that the 'truth' is subjective depending on the situation. Epistemological assumptions relate to questions that people deem necessary as evidence of matters in the social world. These questions help the researcher to explore theories and knowledge and how to demonstrate them (Babbie, 2008; Mouton, 1996).

The epistemological assumption of this study was to interpret the reality of the implications of the changes to section 198 of the LRA regarding labour broking on an integrated petroleum and chemical company in South Africa, as experienced by employees in the HR department through the theory of knowledge and individual interviews to create an in-depth understanding of their perceptions of these changes.

### **1.5.2 Ontological assumptions**

Maree et al. (2012), suggest that ontological assumptions are an interpretation of what can be known about a reality. Individuals experience life in their own ways and their culture influences their behaviour. Research always involve the study of something that can be seen as a truth or reality (Babbie, 2008; Mouton, 1996; Baptiste, 2001; Höijer, 2008).

The ontological assumptions in this study were the belief that the employees in the HR department would have certain experiences and challenges in the workplace regarding changes to section 198 of the LRA.

According to Venter et al. (2011), employers experience major challenges to employment levels, while employees experience greater employment certainty and security. Thus the ontological assumption is that changes involving labour broking can influence employment levels in a business.

### **1.5.3 Methodological assumption**

Methodological assumptions involves the most suitable method to be used in research (Babbie, 2008; Mouton, 1996). In this study the following is assumed regarding the methodological assumptions:

- This topic was not previously studied and an exploratory design will be suitable for this study
- The participants' perceptions and experienced can be studied by means of observation and communication.
- Information can be gathered from the participants by means of interviews.

In this study the researcher selected participants working in the HR department of an integrative petroleum and chemical company for a valid sample. All necessary information was gathered by the researcher through conducting interviews. All the

information and knowledge gathered was compared to the views of authors in the literature review chapters (chapter 2 and 3).

## **1.6 RATIONALE FOR THE STUDY**

According to Nel et al. (2013), South African labour legislation is continuously changing as can be seen from the history of this legislation. Labour, government and businesses are often in negotiations regarding economic growth, unemployment and poverty. Labour legislation changes and specifically changes to section 198 of the LRA could have an impact on the manner in which businesses and companies currently treat their workforce as they might opt for their own temporary employment contracts employing fewer employees, rather than sourcing employees from labour brokers.

Employees in the HR department have first-hand experience of the change in labour broking and need to implement strategies and concepts to overcome these changes, which will in turn interrupt workforce management because of changes to their strategic human resource systems.

## **1.7 THESIS STATEMENT**

Changes in labour broking will have an impact on organisations and its employees. HR managers of organisations need to strategise with contingency plans to absorb this change in labour broking.

## **1.8 DEFINITIONS OF RELEVANT TERMS**

Relevant terms for this study include the following:

- *Atypical employment.* This can be defined as new forms of employment including fixed-term employment contracts, seasonal employment, working from home and subcontracting (Basson et al., 2005).
- *Labour relations.* Swanepoel and Slabbert (2012) define Labour Relations (upper case, abbreviated LR) as the field of study concerned with the theory and practice

of labour relations (lower case, abbreviated lr), and with its evolving nature it is sometimes called "Industrial Relations", "Employee Relations" or "Employment Relations". According to Finnemore and Joubert (2013), labour relations is the relationship between an employer and employee. For the purposes of this study, this subdiscipline (see section 1.9.2) involved how the HR department interacts with the changes to section 198 of the LRA regarding their working relationship with employees sourced from labour brokers.

- *Labour broking or temporary employment services.* This is the employer of a person whose services are hired out to a business or a company (Grogan, 2011).

## **1.9 DISCIPLINARY CONTEXT OF THE STUDY**

### **1.9.1 Main discipline: Human resource management**

Dessler, Barkhuizen, Bezuidenhout, De Braine, Du Plessis, Nel, Stanz, Schultz and Van der Walt (2011:2) define human resource management as "the process of acquiring, training, appraising and compensating employees, and of attending to their labour relations, health and safety and fairness concerns".

Human resource management involves duties and techniques such as job analyses, labour planning, selecting job candidates, payroll and training. In addition, managers should know about equal opportunity and affirmative action, employee health and safety and handling grievances, labour relations and employee relations (Dressler et al., 2011). Handling grievances, labour relations and employee relations would form part of the proposed study under human resource management owing to the involvement of labour legislation changes that need to be implemented in organisations.

### **1.9.2 Subdiscipline labour relations/industrial relations**

Swanepoel and Slabbert (2012) state that labour relations/industrial relations can be studied from the point of view of a number of disciplines and should be regarded as a multi-disciplinary topic and an interdisciplinary field of study.

According to Venter et al. (2012), labour relations are interactions between the main role players such as employers, employees and the state. This tripartite relationship is governed by rules and regulations, agreements and laws and ultimately every organisation is influenced by labour relations.

Finnemore and Joubert (2013) further argue that labour relations are highly diverse, extensive and they involve all forms of employment relationships and agreements. Managing labour relations in organisations has become an important part of business in that it influences their competitiveness locally and globally.

Nel et al. (2013, p. 278) state the following: “As labour relations is closely intertwined with the other human resource functions, the establishment of a good labour relations climate in an organization will be greatly influenced by the manner in which the total human resource function is executed”.

For the purpose of this study, this subdiscipline involved changes to section 198 of the LRA and labour relations issues and the perceptions of HR employees in a petroleum and chemical company on how these changes will have an impact on the organisation and its employees.

## **1.10 SUMMARY**

The background to the problem, motivation and objectives of the research with reference to the assumptions and disciplines used, were explained in this chapter.

Chapters 2 and 3 include a literature review. This review served as an information base with regard to the perceptions of employees in the HR department in an integrated petroleum and chemical company who had been exposed to the implications of changes in section 198 of the LRA.

This chapter ends with the chapter layout.

## 1.11 CHAPTER LAYOUT

CHAPTER	TITLE OF CHAPTER	CONTENT
Chapter 1	General introduction	A discussion of the background, motivation for the study, problem statement, research question, objectives of the study, assumptions, rationale for the study, thesis statement, definition of relevant terms, disciplinary context of the study and the layout of the dissertation
Chapter 2	History of labour relations in South Africa	A review of journals, books and research reports on the topic
Chapter 3	Labour broking in South Africa	A review of journals, books and research reports on the topic
Chapter 4	Methodology and research design	A discussion of the research design, population, sample, data collection and analysis, ethical considerations and measures to ensure trustworthiness
Chapter 5	Data results and discussion	The data presentation, and comments and responses of the participants are outlined.

Chapter 6	Conclusion, limitations and recommendations	Answers to the research question, findings and implications, limitations of the study and suggestions for further research are highlighted.
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## **CHAPTER 2**

### **HISTORY OF LABOUR RELATIONS IN SOUTH AFRICA**

#### **2.1 INTRODUCTION**

In chapter 1 (see section 1.2) the continuous changes to South Africa's labour legislation were discussed. Industrialisation, globalisation and international standards have shaped South African labour legislation into its current form, and it will continue to evolve (Swanepoel & Slabbert, 2012).

This chapter examines South African labour legislation before and after democracy and the impact of the ILO on this legislation.

For the purposes of this study, the researcher deemed it important to include where South Africa's labour legislation originated. The need for continuous change is linked to the history of South African labour relations, and started with the first settlers in South Africa, moving on to industrialisation, apartheid, and finally, the new democracy as we know it today, which still requires change in order to satisfy social and economic needs.

Looking at the history of South Africa's labour legislation sets the stage for why the proposed changes to section 198 of the LRA are being introduced.

#### **2.2 LABOUR LEGISLATION IN SOUTH AFRICA**

The rich history of South Africa's labour legislation served a vital background to this study. South African labour laws have evolved and changed in the past few centuries originating from the arrival of the first Dutch settlers in the colonial era in 1652 and they continue to change to this day. Labour legislation can be changed and tailored to suit specific employment relationships in the workplace (Basson et al., 2005).

According to Swanepoel and Slabbert (2012), South Africa's labour issues can be tracked to precolonial times and continued developing through to postcolonial

times towards apartheid, post-apartheid, until today's turbulent times regarding labour issues.

Venter et al. (2011) suggest that South Africa's labour history can be summarised as social engineering resulting from the segregation and racial grouping of people, and that it is important to note that colonialism, apartheid and democratisation have shaped the history of the country's labour legislation.

In the next section, the different historical phases of South African labour legislation are discussed, explaining how labour in South Africa and the different labour legislation originated.

## **2.3 SOUTH AFRICAN LABOUR LEGISLATION BEFORE DEMOCRACY**

### **2.3.1 The colonial phase (1652 – 1870)**

The arrival of Dutch in the Cape in 1652 kick-started the first form of labour legislation in South Africa. The Dutch brought with them Roman Dutch Law from which South Africa's common law originally developed and more importantly the contract of employment evolved from the letting and hiring contract (*locatio conductio*). Grogan (2009) refers to three types of contracts of letting and hiring:

- *locatio conductio rei* – the letting and hiring of a specified thing for remuneration
- *locatio conductio operis* – the independent contractor
- *locatio conductio operarum* – the letting and hiring of personal services for remuneration

The first piece of South African labour legislation in the 17<sup>th</sup> century was recognised for the dominance over the local natives. They were subjected to slavery introduced by the Dutch and British settlers and became an important form of labour. Although slavery was regulated, basic human rights were ignored because slaves were labelled as the property of a person (Venter et al., 2011).

Slavery was relinquished in 1834 and black workers started to be employed in other areas of work. With the abolishment of slavery whites tend to take the role as employer and blacks the role of employee in the master-servant relationship. This racial embedded master-servant relationship brought about the enforcement of employment contracts in the Employment Relationship Act in 1856. Employers had to register their contract of employment to ensure compliancy regarding the employment relationship. These contracts was more beneficial for employers (Grossett & Venter, 1998).

### **2.3.2 The industrialisation phase (1871–1947)**

The discovery of diamonds in 1867 and gold in 1886 brought about industrialisation in South Africa. People from all over the world flocked to South Africa searching for their fortunes. The majority where British and other Europeans as well as some from Australia. These entrepreneurial immigrants from Europe had the know-how and experience of deep mining and ultimately took possession of and leadership in mines. Motivated by riches these entrepreneurs made use of cheap black labour to generate higher profits (Swanepoel & Slabbert, 2012; Venter et al., 2009).

Cecil John Rhodes opted for white supremacy in this industrial era to keep mining riches using racial segregation. Black labourers were employed with low wages including housing and food. The most basic food and accommodation needs were provided in order to increase profits. As the mining industry grew, the need for skilled labour increased. These high-level skilled labourers where sourced from Europe. Employing skilled labourers brought about the British labour relations system and the first trade union was established in 1881. It was known as “The Amalgamated Society of Carpenters and Joiners” (Swanepoel & Slabbert, 2012).

The British invasion of the South African mines and oppression of the white Afrikaans-speaking people led to the Anglo–Boer War in 1899. This in turn, together with the banking crisis in 1880, caused large-scale poverty under whites. During this period, cheap black labourers became more skilled, which stopped making them available for unskilled work in the mines after the war. Unskilled work was then performed by poor white Afrikaans people who were forced to earn wages for survival having lost their farms. Cheap Chinese labour was also imported to help with the labour shortage

(Venter et al., 2009).

In 1907, white skilled labourers (English-speaking supervisors) went on strike. This led to the appointment of white Afrikaans-speaking labourers in supervisory positions because of their experience from supervising black workers on their land. Chinese, black and other non-European labourers in the mines became more skilled. After two more strikes by European white skilled workers, caused by the fear of losing their positions in the mines, the Transvaal Industrial Dispute Prevention Act 20 of 1909 and the Mines and Works Act 12 of 1911 came to light to protect the interests of white European workers not allowing non-European workers to do certain types of work (Swanepoel & Slabbert, 2012; Venter et al., 2009).

During the 1920s, the price of gold decline considerably, and the inflation rate sky rocketed. Mines was forced to cut the jobs of workers earning higher salaries, but kept lower paid workers and cut the salaries of semi-skilled white workers. The idea of making use of cheap black labour in semi-skilled positions, brought about the rand rebellion in 1922. There were large confrontations between the white mine workers' unions and the Chamber of Mines, which resulted in the most volatile strike in South African history. This paved the way for the National Party under the leadership of J. B. M. Hertzog, which later resulted in the devastating times of apartheid (Swanepoel & Slabbert, 2012; Venter et al., 2009; Finnemore & Joubert, 2013).

After the rand rebellion strike, the first unionism Act, dealing comprehensively with labour legislation saw the light in the form of the Industrial Conciliation Act 11 of 1924 that entitled workers to form unions. These unions received recognition and would be protected from employers. The first Wage Act of 1925 under the ruling of the National Party also came into existence to protect the wages of white workers, ensuring that wages could not fall below a certain level and keeping the wages of black workers below those of white workers (Swanepoel & Slabbert, 2012).

The Industrial Conciliation Act of 1924 led to the establishment of increasingly more new unions and sometimes mixed unions. Black unions were not recognised under the Industrial Conciliation Act, and those unions formed struggled to survive the depression, internal conflicts and external pressure. The majority of white workers

joined the British in the Second World War against the Germans. This created a labour shortage and black workers were called upon to meet this shortage. The rise in the number of employed black people brought into existence the Council for Non-European Trade Unions in 1941, and ultimately the African Mineworkers Union, which together with the ANC, went on strike in 1946 with approximately 70 000 participants. Government blamed the ANC communist leaders for the strike and announced the arrest of these communist leaders. With the increasing white fear of job security and racial dominance the idea of apartheid was formed to protect white interests using large-scale racial segregation between black and white (Finnemore & Van Rensburg, 2002; Venter et al., 2009).

### **2.3.3 The apartheid phase (1948–1990)**

Wolpe (2006, p. 426), refers to Legassick's (1972) meaning of apartheid as "tightening the loopholes, ironing out the informalities, eliminating the evasions, modernizing and rationalizing the inter-war structures of 'segregationist' labour control".

In 1948, the National Party came into power and the new government enforced apartheid using laws to control black people and protect white people's interests. This period was highly racially-driven, segregating whites and blacks in South African society. Black workers were obligated to work under conditions set out by the apartheid laws regulating their type of work, where to work and where to stay. This period was characterised by a high incidence of strikes and labour laws were implemented such as the Bantu Labour Act 48 of 1953, Settlement of Dispute Act 48 of 1953, Industrial Conciliation Act 28 of 1956 and the Wage Act of 1957, all to keep the black workers under control and subject to the apartheid ideology (Swanepoel & Slabbert, 2012; Venter et al., 2009).

The increase in the union movement in the 1950s brought about more labour legislation changes. The amendment to the Industrial Conciliation Act of 1956 was to gain more control over black workers because of the increase in striking campaigns against unfair legislation towards black workers. In 1960, South Africa saw another volatile strike in the form of the "Sharpsville riots" which led to a state of emergency. Both the ANC and the Pan Africanist Congress (PAC) were banned and the arrest

of many activists followed. In 1964, South Africa as part of the ILO lost its membership because of its apartheid policies (Swanepoel & Slabbert, 2012; Finnemore & Joubert, 2013).

The increasing growth in the economy during the apartheid era led to a shortage of skilled labour, and once again labour legislation had to change. Government started to invest more in education for black people to help with this shortfall of skilled labour, but the economy stayed more white inclusive. Trade union movements increased in the 1970s, which would start the process for more amendments to labour legislation and ultimately set the scene for ending apartheid (Finnemore, 2009; Swanepoel & Slabbert, 2012).

The Wiehahn Commission of Inquiry into labour legislation in 1977 paved the way for change in South African labour legislation, starting with reform such as freedom of association, better trade union rights and the establishment of the Industrial Court. During the 1980s, labour legislation had evolved in such a manner that there were a great number of recognised trade unions (Swanepoel & Slabbert, 2012).

The birth of COSATU in 1985 was a direct result of union oppression by government. Industrial action increased during this period with many stayaways by workers causing more devastation to the already depressed economy. Government retaliated with the 1988 Labour Relations Amendment Act, limiting the right to strike (Venter et al., 2009; Finnemore & Joubert, 2013).

The slowing of the economy, pressure from foreign boycotts and increasing violence set the way for the crucial change of the labour relations system with its exclusion of certain races, and the move towards a more nation-building approach, where labour, capital and government work hand in hand to improve the economy and make it more effective. This much-needed social change was announced by F. W. de Klerk in 1990 with the release of Nelson Mandela and other political activists. All major role players would now peacefully negotiate the new constitution and Labour Relations Act 66 of 1995 as it is known today (Habib, 2007; Venter et al., 2009).

The transition from apartheid to democracy was applauded and welcomed by foreign

investors who were now eager to form part of the South African economy again. In 1994, the newly elected government started on the enormous task of helping correct the socio-economic imbalances caused by apartheid (Venter et al., 2009).

## **2.4 SOUTH AFRICAN LABOUR LEGISLATION AFTER DEMOCRACY**

### **2.4.1 The first decade of democracy in South Africa (1994–2004)**

The dawn of democracy in South Africa created many economic and social opportunities but at the same time many challenges that urgently needed to be addressed by the newly elected government under the ANC. The country found itself with a socioeconomic imbalance, large wage gaps, and uneven employment distribution. Globalisation and world-class manufacturing with high levels of international competition forced local business to become more competitive and more productive to successfully take part in international trade (Swanepoel & Slabbert 2012; Ferreira, 2005).

The new government led by Nelson Mandela took guidance from Australia, New Zealand and Canada and how they transformed their social inequalities. South Africa became a member of the ILO once again and needed to transform its labour legislation structures in accordance with ILO standards. Mavunga (2010, p. 6) defines the ILO as “a body committed to address[ing] the issues of social justice in its member states”. The ILO was established after the First World War in 1919 as an agency of the League of Nations later becoming a United Nations (UN) agency. It specialises in labour issues. Mavunga (2010) further states that the main aim of the ILO is to regulate international working conditions, such as working hours and to prevent unemployment.

The tripartite relationship between the ANC, Cosatu and SACP brought the first government initiative called the Reconstruction and Development Programme (RDP) which later became the Growth, Employment and Redistribution (GEAR) programme, as a result of pressure from globalisation and international competitiveness (Swannepoel & Slabbert, 2012; Nel et al., 2013).

According to Nel et al. (2013), the Minister of Labour, Tito Mboweni, supported four ILO conventions relating to union rights, freedom of association, collective bargaining and maternity rights in a five-year plan. NEDLAC, with its three priority challenges of sustainable economic growth, social equity and increased participation by all stakeholders, was established in 1994, and allowed government, labour, businesses and the public to come together to discuss and negotiate on issues such as labour, the economy and development. With discussions in NEDLAC between government, labour (union organisations including COSATU, FEDUSA and NACTU) and business (employer organisation BSA), brought about the birth of the new LRA in 1995. This was the first real piece of democratic legislation after apartheid (Nel et al., 2013).

The LRA had gone through fundamental changes from the 1956 Labour Legislation Act including a new collective bargaining process giving more negotiating power to both unions and employers. The new Constitutional Act 105 of 1996 also included employer and employee rights as well as union and employer organisation rights. The necessary tools had now been established for a growing economy and a prosperous democracy, but with GEAR struggling to curb unemployment and battling to improve the socioeconomic difference due to the slow process as well as COSATU being against GEAR, strike actions increased during 1998 (Nel et al., 2013; The bill of rights, 1996).

The government introduced its other socioeconomic policies in 1998 which included the following:

- The Basic Conditions of Employment Act of 1998 (BCEA). This piece of legislation was introduced to set minimum standards of employment regarding wages, working hours, overtime work, annual leave and so on.
- The Employment Equity Act of 1998 (EEA). This Act was implemented to help rectify the inequities in the workplace and it promotes affirmative action.
- The Skills Development Act 92 of 1998. This Act was aimed at encouraging employers to train their employees and develop better skills.

Labour legislation had by then gone through the first fundamental stage after the end

of apartheid and Nelson Mandela called for government to prioritise economic growth (Nel et al., 2013; Finnemeore & Joubert, 2013).

The new labour legislation came under fire from many employers, unions and some of the unemployed public in that it curbed free market forces for labour. Finnemeore and Joubert (2013) summarise this interference in the free market system as follows:

- Small businesses are forced to comply with agreements from centralised bargaining agreements. Employers are frustrated with the large amount of protection employees receive regarding dismissal for misconduct and incapacity.
- Inequities are created through affirmative action resulting in new frustration and inefficiencies in the workplace.
- Employers are discouraged from employing more labourers owing to the stringent requirements of employing labourers resulting in higher unemployment.

With the second democratic election in 1999 the ANC won with an even larger percentage than in the first election. The ANC won with a 66.35% but it was noted that fewer voters turned out for voting than in the first democratic election. South Africa found itself under new leadership in 1999 with Thabo Mbeki, who was now under pressure to address the even higher percentage of unemployed people. Unemployment was at 25.8% in 2000, but by 2001 it had reached 29.4% (Swanepoel & Slabbert, 2012; Nel et al., 2013).

HIV/AIDS was another problem for the already struggling new government to increase labour competitiveness. According to Nel et al. (2013), the number of people living with HIV/AIDS increased from 0.9% in 1990 to 29% in 2010. This is highly detrimental to the South African economy because people who are infected are between the ages of 15 and 50, who directly contribute to the country's economy. The epidemic has and still does reduce household and national income.

With the arrival of the new millennium, globalisation with its international competition forced employers to look for cheaper forms of production to stay competitive. It was also found that there was a huge shortage in quality skilled employees. In 2001,

government tried to overcome the shortage of skilled workers in the form of its National Skills Development Strategy, referred to as the Sector Education and Training Authorities (SETAs). The stringent labour legislation and the rising need for better skilled employees led to organisations finding other forms of employment by means of sourcing and placing temporary employees for specific work (Swanepoel & Slabbert, 2012). Owing to the high level of unemployment, employers found it easy to compel people to work on a contractual basis. Labour broking activities increased as people wanted to work and companies started to see the benefits of sourcing for labour. Union activities also decreased as they found it difficult to organise temporary workers (Swanepoel & Slabbert, 2012; Finnemore & Joubert, 2013).

The concerns of the high unemployment rate, small businesses struggling to cope with the collective demands of labour legislation and the government's economic policies brought about new talks of amendments to labour legislation. According to Nel et al. (2013, p. 95), Act 12 of 2002 brought about amendments in the LRA concerning arbitration procedures and unfair dismissals, and it also looked at small businesses concerns, including questions concerning vulnerable workers. Employees were now better protected regarding unfair dismissals and retrenchments. Other amendments in 2002 included the introduction of the Unemployment Insurance Contributions Act 4 of 2002 and the Basic Conditions of Employment Act 11 of 2002. New sectoral determination now included farm and domestic workers and set minimum wages.

The broad-based black economic empowerment (BBBEE) strategy was implemented in 2003. It appeared that affirmative action and previous black economic empowerment strategies had not rectified past inequalities for black people as hoped for and caused the existence of an elite group of black people. Unemployment was still high and with the build-up to the third elections in 2004 many thought the tripartite relationship of government and the unions would cause a decline in ANC support, but was proven wrong, with 69.69% of the votes going to the ANC. The dawn of the second decade of democracy saw an increase in tensions between government and unions, which set the scene for more legislative changes to come (Nel et al., 2013; Swanepoel & Slabbert 2012).

#### **2.4.2 The second decade of democracy in South Africa (2004–2014)**

Thabo Mbeki started his second term with the ANC winning the election with a two third vote. It seemed as if the people were comfortable with their leaders, but with the amount of voters declining from the previous election, it became apparent that there was an in-house conflict brewing in the ANC and its tripartite relationship. The ANC was moving from a liberation movement to a political party, setting the stage for the next decade (Swanepoel & Slabbert, 2012).

Business Unity South Africa (BUSA) was introduced in 2004 by combining Business South Africa (BSA) and the Black Business Council (BBC). Finnemore and Joubert (2013, p. 153) summarise BUSA as a “confederation of chambers of commerce and industry, professional associations, corporate associations and unisectoral employers’ organisations”. One of the aims of BUSA is to help with the economic growth of the country. COSATU, BUSA and government often came together for discussions of the way forward at NEDLAC, but have often had different views of how to stimulate economic growth and other concerning issues of curbing poverty and unemployment.

Nel et al. (2013) raised another point of concern: with the increase in the number of people living off state allowances, where only 2.5 million people received a government allowance in 1999, by 2010 the number was 15 million. Government was struggling to improve employment and reduce poverty and people were looking for leaders who might start to make the needed changes.

The unsuccessful GEAR policy brought about the introduction of the “Accelerated and Shared Growth Initiative for South Africa (AsgiSA) and the Joint Initiative on Priority Skills Acquisition” in 2005 (Swanepoel & Slabbert, 2012). AsgiSA aimed to reduce poverty and unemployment by 50% in 2014. These aspirations needed the economy to grow extensively to ensure this reduction.

The period up to the 2009 national election introduced the beginning of a new era for the ANC. The economy was more stable during this period, but unemployment and poverty were still a lost cause. The country saw the birth of new xenophobia attacks

on foreign nationals by unsatisfied citizens tired of unemployment, poverty and poor service delivery. All attention shifted to these attacks (Nel et al., 2013; Swanepoel & Slabbert, 2012).

The world economy was hit by a recession period in 2008, and South Africa needed policy changes to cope with this uncertainty. Government was under the leadership of the vice president, Kgalema Motlanthe, at this stage and a series of meetings between unions, government and BUSA took place at NEDLAC on how South Africa needed to address the uncertain international economic conditions (Nel et al., 2013; Swanepoel & Slabbert 2012).

In 2009, just before election time, Jacob Zuma had built ties with many different allies, including the Youth League, COSATU and ANC members, which strengthened his position to become the next leader of South Africa. The ANC won the election with 65.9%, below the two thirds majority. Many votes went to the new political party COPE (7.42%) and the DA's vote also increased to 16.66%. The ANC and the country found itself in new territory with a new leader who announced that the time had come for much-needed change. Jacob Zuma said that enough talks had been held over change and that the time had come for action. He also mentioned that change in legislation to protect workers in the form of better regulation regarding labour broking and contract work would soon be announced. There were many strikes to follow in 2009 and 2010 over service delivery and it was clear that the public had grown tired of empty promises (Swanepoel & Slabbert, 2012).

South Africa had the auspicious privilege of hosting the soccer world cup in 2010. This world cup event brought about increased tourism, foreign investments and job creation. The South African economy was given a boost at the right time with the international recession still in the balance (Nel et al., 2013; Swanepoel & Slabbert 2012).

Amendment Bills for the BCEA, LRA and EEA were announced in November 2010 and a new Act called the Employment Service Bill was introduced. Nel et al. (2013) discuss the following four major concerns regarding the proposed amendments:

- The current government employment service is not doing well in that only 1% of 600 000 applications were employed. There is also a concern that state-controlled employment service will adversely affect the competitiveness of employment services and ultimately negatively influence the labour market.
- The proposed amendment to section 198 of the LRA could lead to the reduction of employment opportunities to the amount of 600 000 if labour broking is restricted.
- Small businesses will struggle to exist as the government wants to prescribe minimum wages including minimum increases which will be a huge financial burden on small businesses.
- Giving the Minister of Labour the power to issue regulations if NEDLAC fails to reach agreements in six months could lead to preference tactics by government to enable the Minister to intervene.

The NEDLAC process of the discussion of the 2010 Amendment Bill concluded in January 2012. The minister of labour, Mildred Oliphant, announced that the amendments received different comments. Comments were received from around 390 individuals and organisations. Most of these comments focused on the issue of labour brokers. The labour system would without a doubt be changed and need to construct positive influences (Nel et al., 2013; Department of Labour, 2012).

On 23 April 2012, a public briefing on the new proposed Amendment Bill took place. The aim of the bill was to:

- treat the informalisation of labour in the labour market
- ensure that South Africa complies with ILO standards
- ensure fair labour practice for all
- increase the effectiveness of the Labour Court, CCMA, labour inspectors, essential services and bargaining and statutory councils
- avoid abuses in the labour market regarding labour broking and temporary employment

For purpose of this study, the researcher focused on the amendments to section 198.

In the Labour Amendments Public Briefing Notes (2012) government focuses on the following general protection regarding section 198:

- Employees bringing a claim for which a Temporary Employment Service (TES) and client are jointly and severally liable may bring proceedings against the TES or the client.
- A labour inspector may enforce compliances against TES or client in terms of BCEA.
- A TES may not employ on terms and conditions not permitted by LRA or BCEA or bargaining council agreement.
- Labour Court or arbitrator may now rule on whether a contract between a TES and a client complies with the LRA, a sectoral determination or bargaining council agreement.

Questions pertaining to other issues in the Amendment Bill were raised with the Marikana massacre on 16 August 2012. The year of 2012 would be shadowed by the Marikana massacre damaging the country's image and emphasising its labour unrest. This volatile strike brought about the death of 44 people including policemen, security guards and union officials. The Association of Mineworkers and Construction Unions (AMCU) signed an agreement after the dreadful day for a new wage agreement on 20 September 2012 not getting the R12 500 per month they wanted for a drill operator, but still receiving a 22% increase in wages. AMCU would again in October 2013 test the limits of forcing a minimum wage of R12 500. The platinum mine sector went on strike for over six months bringing the town of Rustenburg to its knees (Finnemore & Joubert, 2013; SAPA, 2014a).

Immediately after the end of the six-month platinum strike, NUMSA announced its intention to go on strike in the steel and engineering sector. They demanded a 15% wage increase and added to their list the abolishment of labour broking. This strike was also characterised by violence and destruction of property, a trend becoming familiar with strikes in South Africa. At the time of writing this dissertation, the strike had not been resolved and talks on labour broking were not mentioned (SAPA, 2014a).

From the discussion above it is evident that South African labour legislation has gone through many significant changes since 1652 through to the present, and there will continue to be changes. The Bill of Rights and LRA set the way for fair labour legislation for all in the new democracy in South Africa, but the continuous change of requirements, globalisation and international trade will always influence legislation.

## **2.5 SUMMARY**

This chapter focuses on the history of South African labour legislation, how it came to be and the different periods that influenced the changes to the labour legislation. In section 2.4.1, the increased need for labour broking was highlighted as unemployment has risen and workers became desperate for any form of employment.

Curbing unemployment and poverty with changes such as abolishing labour brokers will cause much debate on increasing unemployment. The fact remains that changes are needed. The aim of this study is to focus on the impact that the changes in section 198 of the LRA have on an integrated petroleum and chemical company in South-Africa and its employees.

Chapter 3 deals with the current labour broking situation in South Africa, including arguments for and against labour broking.

## **CHAPTER 3**

### **LABOUR BROKING IN SOUTH AFRICA**

#### **3.1 INTRODUCTION**

As discussed in chapter 2, South Africa's labour legislation is one of the most progressive worldwide, although this was not the case pre-1994. During the apartheid era, labour relations were known for high levels of conflict, union repression, authoritarian management style and cheap labour policies (Finnemore & Joubert, 2013).

This chapter defines labour brokers and discusses the background of labour broking in South Africa, labour broking in Namibia and the current legislation on this issue. The arguments for and against labour broking and the future of labour broking in South Africa are also highlighted.

#### **3.2 DEFINITION OF LABOUR BROKERS/TEMPORARY EMPLOYMENT SERVICES**

A labour broker is defined in the LRA section 198 as any person whose business it is to render out another person to a client for a fee to do a specific job for that client, or obtain a person for the client for specific work and then remunerate that person for the service provided.

The Act also states that the labour broker is the employer of the person whose service is being rendered out to a client and that person is also the employee of the labour broker.

Independent contractors are excluded from this section because the Act defines them as not being employees of the labour broker nor does the labour broker employ independent contractors. Independent contractors do not conclude a contract of employment, but a contract of service (Venter et al., 2012).

For the purposes of this study, labour broking is seen as a form of outsourcing where organisations contract labour brokers who provide them with labour. Employees are therefore in the employ of the labour broker and not the organisation they work for. The labour broker therefore handles all employment aspects of the relationship.

### **3.3 BACKGROUND TO LABOUR BROKING IN SOUTH AFRICA**

Forms of labour broking can be traced back to the settlers in the Cape Colony in 1658 when slave labour from East Africa and East India was used. This form of labour sourcing was used by Boer farmers who moved inland making use of black manual labour on their lands (Finnemore & Van Rensburg, 2004).

With the industrial era brought on by the discovery of diamonds in 1867, the mining sector developed the need for skilled and unskilled labour. Skilled labour was sourced from Europe and Australia leaving mines short of unskilled labour. Unskilled labour was ultimately sourced from blacks in the rural areas by means of strict mechanisms introduced by government. Some mechanisms would include tax on their property and land forcing them to work to earn money to pay these taxes. These unskilled workers were then contracted on three months and year contracts (Finnemore & Van Rensburg, 2004).

Mavunga (2010) asserts that workers were recruited in Southern Africa by labour brokers on fixed-term contracts for mines and businesses during the industrialisation era. These labour brokers were then recruited by businesses to find workers they needed, and in a sense, it can be noted here that the employer would be the person who was making use of the placed worker.

After the First World War the ILO was established in 1919, with the aim of regulating labour relations conditions worldwide such as living conditions, unemployment issues and labour broking policies. ILO standards are set by recommendations, conventions and codes of practice by the states that are its members (Mavunga, 2010).

The ILO called for a complete end to employment agencies which make a profit in placing/hiring labour in 1919. This call was given effect with Convention 34 (in 1935).

Convention 34 set by participating state members involved fee-charging labour broking agencies and the complete abolishment of these agencies. Change forced for revision and the need for and dependency on labour by employment agencies led to Convention 96 (Concerning Fee-Charging Employment Agencies Act 96 of 1949). This Convention 96 involved revision of Convention 34 to allow, but regulate labour broking, but to do away with labour being referred to as a commodity (Bösl, Horn & Du Pisani, 2010).

The labour broking situation in South Africa including the arguments for and against labour broking in South Africa will later be discussed in more detail in this chapter.

### **3.3.1 Permanent employees versus atypical employees**

The LRA refers to two types of employment, namely permanent and atypical employees. For the purposes of this study, it is necessary to differentiate between these two types of employment because their legislative protection from employment contracts differs. Permanent employees are offered a permanent employment contract with benefits that were negotiated. Atypical employees (part-time, temporary and fixed-term employees) are employed on a temporary or contractual basis with limited benefits already set out by the employer, which are either accepted or not accepted by the employee (Venter et al., 2012).

Benjamin et al. (2010) explain the differences in the current legislative protection for permanent employees and atypical employees, as shown in table 3.1.

*Table 3.1*

*Differences in the legislative protection of permanent and atypical employees*

<b><u>Legal protection</u></b>	<b><u>Permanent employees</u></b>	<b><u>Atypical employees</u></b>
Wages	Sectoral determination with no universal minimum wage.	Sectoral determination with no universal minimum wage.
Annual leave	A total of 21 days per year.	One day for every 17 days worked.

Sick leave	A total of 30 days for every 36 month cycle.	For the first six months of employment a day of sick leave for every 26 days worked. After first six months, the 30 days per 36-month cycle applies.
Public holidays	Fully paid or if they must work, they receive overtime rates.	Can be fully paid or receive overtime rate if they must work, depending on the terms and conditions of their employment contract.
Family responsibility leave	One day for every 86 days worked.	One day for every 86 days worked
Unionisation	Each employee has the right to join a union.	Employees may join a union but it is extremely difficult to take part in union activities. Employees miss out on organisational rights as they work at a workplace not controlled by their employer.
UIF	Both the employer and employee contribute 1% of wages.	Both the employer and employee contribute 1% of wages.
SDL	The employer contributes 1% of total payroll.	The employer contributes 1% of total payroll.
Pension	Employer will decide.	Employer will decide.
Medical -aid	Employer will decide.	Employer will decide.
COIDA	Must be paid on annual payroll.	Must be paid on annual payroll.

Termination of employment	A complete process must be followed. Notice periods apply and retrenchments on a large scale are subjected to strict regulations.	A complete process must be followed. Employment may end when a contract expires. No need for notice periods where a contract has an end date. Employees placed by labour brokers have no real protection against unfair dismissal.
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Source: Adapted from Benjamin et al. (2010, p. 15)

The Labour Relations Amendment Bill proposes revoking section 198 of the Labour Relations Act and proposes a new Bill called the Employment Service Bill. This new Employment Service Bill proposes labour centres maintained by government, and companies must notify the Department of Labour of all vacancies. Private employment agencies must be registered and are not allowed to charge placement fees (Venter et al., 2012).

### 3.4 CHANGES TO LABOUR BROKING IN SECTION 198 OF THE LRA

With the changes to the LRA, and with specific reference to section 198, employment agencies or labour brokers are coming under fire again after countless meetings and negotiations between the tripartite key role players – that is, government, employees and employers. An agreement was reached to introduce changes to section 198, which support the regulating clauses for section 198, to ultimately prevent the abuse of employees who make their services available through labour brokers. The amendments also give unions the right to organise the employees of the labour broker at the workplace of either the labour broker or the client (Grogan et al., 2015).

Grogan et al. (2015) mention that the changes to section 198 as a whole focus on the individual who earns below the statutory threshold of R205 433.30 and who is deemed

vulnerable. According to Grogan et al. (2015) and Brand, Todd and Laubscher (2012), the following important changes are highlighted in section 198.

### **3.4.1 Section 198 of the LRA**

According to Grogan et al. (2015), some of the main features of section 198 remain the same. The original section 198 of LRA of 1995 focused on TES being the employer of the person who services are rendered out to a client. The new amendments include the fact that a person who makes his or her services available to a TES that supplies a client company with the acquired service, is in fact the employee of the TES.

Both the client and the TES can be held jointly and severally liable should the TES or client contravene a collective agreement of a bargaining council regarding employment, an arbitration award that regulates employment, the BCEA and a sectoral determination regarding the changes in section 198 (Grogan et al., 2015; Brand et al., 2012).

Where the client who is making use of the services of a person from a TES is deemed the employer of that person as per section 198, the employee may act against the client, the TES or both. Labour inspectors may enforce compliancy against labour brokers, the client and any order or award against a labour broker or client may be enforced on both. Another distinctive change is that a TES must supply the employee with written employment particulars as deemed necessary by the BCEA (Grogan et al., 2015; Brand et al., 2012).

Four sections that did not form part of the original section 198 of the LRA have also been added to changes in section 198. Section 198A-D has added changes that deal with temporary services, fixed-term contracts, part-time employees and general provisions (These sections will be discussed in more detail below.). Section 198A-C includes a more detailed regulation on atypical employment for the whole labour broking environment and to ensure better protection for employees working through TES (Grogan et al., 2015; Brand et al., 2012).

### **3.4.2 Section 198A of the LRA**

This section focuses on a temporary service. According to the Labour Amendment Bill, a temporary service involves an employee who works for a client for no longer than three months; he or she is a substitute for a permanent employee who is temporarily absent; and a collective agreement or a sectoral determination determines a period of time for work that is deemed temporary (Brand et al., 2012).

The person who renders services temporarily for a client is deemed the employee of the TES, except where the employee's service exceeds a three-month period or he or she is not regarded as a substitution worker, in which case, the client will be the employer. These temporary employees may not be treated on less favourable terms than those who are permanently employed and are performing similar work. Different employment terms are only allowed when this is unavoidable, by taking into account the experience or length of service, the quality or quantity of the work done and merit (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

### **3.4.3 Section 198B of the LRA**

This section governs fixed-term contracts. A fixed-term contract is a contract with specifics that include either a specific end date and specific events, projects or tasks. This section also excludes people earning more than the R205 433.30, employers employing fewer than ten employees and who have been in business for fewer than two years, employing no more than 50 employees (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

The regulation on fixed-term contracts concludes that fixed-term contracts longer than three months are only allowed if the work to be done is for a limited period, and if the employer can supply a valid reason as prescribed by section 198B(b). These employees may also not be treated on less favourable terms than other permanent employees doing similar work. These contracts must be in writing and the employer must afford those working longer than three months the opportunity to also apply for

internal vacancies (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

#### **3.4.4 Section 198C of the LRA**

Section 198C refers to part-time employee. A person who is remunerated for the hours worked, but who works fewer hours than a full-time employee doing the same work is considered to be a part-time employee (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

Employers may not subject part-time employees to less favourable conditions. The only time this is allowed is with the same justifiable reasons stipulated for TES and fixed-term employees as per sections 198A and 198B. Part-time employees must also have opportunities for training and self-development. Part-time employees working fewer than 24 four hours in a month are not covered by section 198C (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

#### **3.4.5 Section 198D of the LRA**

Section 198D concludes that an arbitrator may conciliate and arbitrate disputes surrounding section 198, excluding disputes regarding dismissals. All disputes must be referred in writing within six months after the default for conciliation and 90 days for arbitration if conciliation does not succeed (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

As indicated above, it is clear that section 198 is aimed at fair treatment and no exploitation of those employees doing part-time, fixed-term or contract work through TES, with some flexibility for businesses that make use of atypical employment, but with tight regulations (Grogan et al., 2015; Brand et al., 2012; Venter et al., 2012; Finnemore & Joubert, 2013).

### **3.4.6 The South African government's rationale for amending section 198 of the LRA**

Harvey (2011, p. 116) wrote that the ANC called for decent jobs at the end of 2008 in its election manifesto stating that, "*in order to avoid the exploitation of workers and ensure decent work for all workers, as well as to protect the employment relationship, introduce laws to regulate contract work, subcontracting and outsourcing, address the problem of labour broking and prohibit certain abusive practices*".

Workers who are employed on a temporary basis through brokers are exploited in terms of earning below the minimum wage. Labour brokers normally keep most of the earnings for themselves. Unions are opting to abolish TES which hire out labour, to ensure that all workers are treated the same in the sense of having pension, medical and other benefits not previously enjoyed by atypical employment workers (Van Eck, 2010; Harvey, 2011; Finnemore & Joubert, 2013).

Botes (2013) writes that Namibia's labour hiring system was unregulated and cruel for a long period characterised by low earnings and inhumane conditions, and only in the 1990s was there some form of regulation, but still with little protection for employees. The Namibian labour law did not clearly define the person whose service was being rendered out. This caused situations where a person could be identified as an independent contractor as his or her services were only used as necessary, causing employees not to be protected by labour legislation with limited benefits.

In South Africa, a similar scenario has played out in some forms of labour hiring, causing union frustration. Employers in South Africa saw the loophole in section 198 by making the labour broker the employer and avoided all employment risks including lower paid wages, employing specialists and no collective bargaining rights. These employees have little security and no benefits because the client can end the contract at any time (Gericke, 2010).

As mentioned previously with regard to COSATU's national strike, it can be seen why the union wants government to ban labour broking completely when looking at the

exploitation of employees. Namibia has followed this route before, and perhaps it would be better to focus on the regulation of labour broking as it has proven successful.

### **3.5 THE ARGUMENT AGAINST LABOUR BROKING IN SOUTH AFRICA**

Section 23 of the Bill of rights provides for fair labour practices for everyone. Every worker has the right to form and join and participate in trade union activities. The current section 198 of the LRA is in sharp contrast to this because of the triangular employment relationship where the labour broker is the employer of the employee and not the client who makes use of the labour of the employee (Harvey 2011).

The LRA provides that employees may form, join and participate in union activities including bargaining for better employment benefits in instances where the union has sufficient membership. However, because the employee is hired by a client and not part of the client's actual employees, and the labour broker is the employer of the employee, the employee is not covered by union scope (Harvey, 2011).

COSATU's membership has been declining in the last few years and it is unlikely the union will make its membership target of four million by 2015. This decline can be directly linked to in-house and across the floor bickering with affiliates, its stubbornness on ANC policies and an inability to show unity among its leaders. COSATU's plans are now to aim at the sector for temporary and other atypical workers to gain more members. It is extremely difficult to organise these workers because of their employment setup, and access to them is limited. Owing to South Africa's high unemployment rate, these employees basically forfeit their right to unionisation and union activities purely based on scarcity of permanent jobs (Finnemore & Joubert, 2013).

Section 198 of the LRA further states that the labour broker is the employer of the employee whose service is hired out to a client. This creates a situation where the client has no contractual obligations towards employees, which again deprives them of their right to fair labour practice regarding dismissals and retrenchments. Section 198 of the LRA provides for labour broking, but unfortunately without sufficiently

regulating employee rights – hence the vote by unions for a complete repeal of labour broking in South-Africa (Harvey, 2011).

In South Africa's new democracy after 1994, the country's economy began to establish itself in the global market with the world-class manufacturing (WCM) strategy. The need to be internationally competitive regarding production, quality goods and pricing led to many changes in organisations and labour systems. These changes included sourcing for cheaper labour, and labour broking met these requirements. Organisations could gain cheap labour with fewer labour issues as the labour broker is the employer who supplies labour (Finnemore & Joubert, 2013).

For example, where a company needs a boilermaker, it will source from the labour broker with the best rate per hour, which means neither employees nor their unions, form part of the negotiations of the commercial agreement. The labour broker subsequently earns less remuneration than permanent employees without benefits making it a cheaper form of employment for the company (Van Eck, 2010).

According to Van Eck (2010), the LRA or the Basic Conditions of Employment Act (BCEA) does not provide for the registration of labour brokers, which influences their effective regulation and the rights of their employees.

The ILO accepted a recommendation in 2006 regarding temporary employees in that, when it comes to deciding who is the real employer, courts need to look at the working relationship and not the contractual agreement (Gericke, 2010).

Namibia accepted the ILO standards for labour brokers, and this would likely be the best way forward for South-Africa as well. BUSA represents South Africa internationally and sees labour broking as a valuable service and welcomes regulation rather than the banning of labour broking (Finnemore & Joubert, 2013).

Other arguments against labour broking by unions are based on poor working conditions, low earnings and few or no benefits. Unions are opting for total abolishment of labour broking (Anderson & Paton, 2012).

COSATU went on a nationwide strike in 2012 concerning e-tolls and labour amendments. This was a highly successful protest and the whole country had a first eye view on how serious they are about their campaign for labour legislation changes and e-toll systems (Ensor, 2013; Finnemore & Joubert, 2013).

The labour legislation amendments of 2012 included a maximum six-month period for temporary workers and tighter regulation. Finnemore and Joubert (2013) mention that COSATU requested the complete abolishment of labour broking in its address at the National Press Club on 6 March 2012, giving the following reasons:

- It feels that slavery is better than labour broking in that it trades in humans as commodities.
- Labour brokers do not create work but merely source workers for jobs.
- Equal pay for work of equal value does not exist and employees receive less than a permanent employee doing the same type of work.
- Employees placed by labour brokers receive few or no benefits.
- Labour brokers are used when a strike is taking place in an organisation, making the strike less affective.
- Organisations increase their profits by paying lower wages to labour brokers.
- Workers find it difficult to take action against organisations regarding labour legislation as they are not seen as the employer.
- It is difficult to organise these type of workers in union activities as they move around without notice.
- Workers are employed without benefits and are pushed into the government social security system, thus increasing the burden on the state.
- Workers are employed for short periods and irregular intervals and have no time to improve their working skills.

NUMSA's strike in the steel and engineering sector in July 2014 brought attention to the union's urgency for abolishing labour broking as it was made part of demands to end the volatile strike (De Lange, 2014).

In June 2013, a vote passed in the National Assembly on the labour legislation amendments that the contract period for temporary work would be three months and not six months as initially proposed, meaning that government had listened to union demands in some form but had not satisfied the unions' demand for complete abolishment (De Lange, 2013).

### **3.6 THE ARGUMENT FOR LABOUR BROKING IN SOUTH AFRICA**

In arguments against labour broking it can be seen that the welfare of the worker is the central point. Common law of employment and the ILO promote decent work with decent remuneration, but looking at South Africa's current unemployment rate it can be understood why workers accept temporary employment.

Employment statistics of the Adcorp employment index showed job losses of approximately 118 397 in February 2014 of which 104 593 were permanent employment and 26 832 were temporary employment cuts. The mining sector was hit the hardest with 60.5% of the total job losses due to the platinum strike (SAPA, 2014b).

According to the May 2014 report of the Adcorp employment index, the employment of blue-collar temporary workers increased despite the new labour legislation and the prediction was that it would continue to grow. Employers have found ways to directly employ blue-collar workers and not through a labour broking agency, which gives them the flexible labour needed to be competitive.

Why are labour broking and more importantly temporary employment contracts so important to South African businesses? Globalisation and world-class manufacturing are only one answer. Uncertainty and volatile economic times with the Marikana massacre in 2012, the six-month Lonmin mine strike in the platinum sector in 2014 are another reason. The latter incidents raised questions about South Africa's current labour legislation system and the way forward for the unstable economy and high unemployment rate (Finnemore & Joubert, 2013).

In 2011, South Africa became a member of the BRIC countries, and the block name changed to BRICS (Brazil, Russia, India, China and South Africa). The main aim of the BRICS is to promote peace, security and development between these five countries, which includes trade (exports and imports). On the labour side, this relationship is problematic because of the poor wages paid by China for higher productivity compared to South Africa's high wages for lower productivity. Businesses in South Africa make greater use of labour broking because it cuts labour costs, keeping them competitive from a global perspective (Venter et al., 2011).

The world-class manufacturing philosophy developed for global organisations introduces plans for making use of more flexible labour to stay more competitive, including sourcing of workers through labour brokers (Finnemore & Joubert, 2013).

Poverty and the need for drastic economic growth look at labour broking as a remedy for South Africa's current situation. While unions claim that labour broking is simply a form of placing workers in already existing jobs, organisations create jobs for special required skills and flexible labour, increasing the amount of the employed population of the country, decreasing poverty and giving the South African economy a chance of competing globally. Labour broking also decreases the stress levels of permanent employees who are overworked, helping them become more engaged (Finnemore & Joubert, 2013; Robbins, Judge, Odendaal, & Roodt, 2009).

Namibia's complete abolishment of labour broking, which will be discussed later in this chapter infringes on an organisation's right to employ, manufacture and do business, the arguments for labour broking are more focused on a country's economy, and organisations' global competitiveness.

### **3.7 LABOUR BROKING IN NAMIBIA**

The current debate surrounding labour broking and the changes to section 198, have some similarities to and differences from the recent labour broking issue in Namibia, which might serve as guide to the South African government on its decision about labour broking (Van Eck, 2010).

For the purposes of this study and because Namibia is South Africa's close neighbour, the researcher deemed it beneficial to look at labour broking in Namibia and the recent legislation passed in this regard.

Unfair labour treatment was the norm in Namibia in the 1900s regarding labour hire. Labour broking was characterised by discrimination and racism. Native Namibians were subjected to unfair treatment for many years and refused proper employment, which forced them to resort to contract labour (Botes, 2013; Mavunga, 2010).

Contract labour between 1925 and 1943 in Namibia was regulated by the South West Africa Native Labour Association (SWANLA). They provided labourers for mines and the vulnerability of these labourers meant that employers were able to employ workers for minimum wage, making them do any kind of work under extremely harsh conditions (Botes, 2013).

The first protection for these unfairly treated employees only came in the 1950s in the form of South West Africa People's Organisation (SWAPO), which fuelled labour unrest in 1971 and 1972. Contract labour was abolished by the General Law Amendment.

The Proclamation of 1977 was the result of the poor standards of employment. Only in the early 1990s were employment services reinstated with some form of regulation, and this was the start and development of the labour broking legislation found in Namibia today (Botes, 2013; Bösl et al., 2010).

Because the 1992 Namibian Labour Act left labour broking unregulated, the Proposed Guidelines for Labour Hire Employment and Operating Standards of 2000 was the first actual attempt to regulate labour broking, but it was never implemented. The same is also true for the 2004 Companies Act, the Namibian Constitution and Labour Act, whose guidelines for the protection of employee rights were never implemented or enforced (Klerck, 2009; Botes, 2013).

The Namibian Labour Act of 2004 defined an employment hire service in section 126 as any person who for a fee obtained or provided a client with a person who rendered

his or her service or did work for that client and was paid by the client or the labour broker. Although this definition provided that either of the parties could remunerate the person for his or her labour, the confusion remained who the actual employer was. For the reason that no-one was held accountable, these employees had limited labour rights and were excluded from other rights, while having little job security (Botes, 2013).

The Namibian Labour Act of 2007 abolished labour hire because the Namibian government saw labour broking as being the same as the system of contract labour of the 1900s. No person was allowed to employ someone with the idea of hiring that person out to a third party for a fee. It was only with the court case of Africa Personnel Services versus Government of the Republic of Namibia in 2009 that labour broking was reinstated, but unfortunately with no proper legislation. Only in 2012 after consultations between the Namibian Government and ILO experts did new regulations come into force regarding labour broking in the form of the Labour Amendment Act 2 of 2012 and the Employment Services Act 8 of 2011 (Van Eck, 2010; Botes, 2013).

The following are some of the most important parts of the new Namibian Labour Act of 2012 regarding labour broking (Government Gazette of the Republic of Namibia, 2012; Botes 2013):

- The client is the employer of the person whose service is being rendered.
- The client and the labour broker are held jointly and severally liable for any contravention of the Act.
- These employees receive the same rights and benefits as standard employees who are doing the same type of work.
- Employers may not use temporary employees in the expectation of a strike.
- Employers may not employ any temporary employee for the period of six months after retrenchment has taken place.
- Labour brokers must be registered and licensed before they can operate.
- Labour brokers may not receive placing fees.

It can thus be seen that the Namibian Government is serious about protecting the rights of temporary workers and this could serve as a guideline for the South African Government in its changes to Section 198.

From the discussion above it is evident that there are similarities between labour broking in Namibia and the changes to Section 198 in that the client and labour broker are held jointly and severally liable for contravening a bargaining council agreement or rules and regulations stipulated in the LRA and BCEA. Temporary or contract employees may not be employed on less favourable terms than those permanently employed doing the same type of work and the client who renders the service of a temporary employee is deemed the employer of that temporary employee (Grogan, Maserumule, & Govindjee, 2015).

### **3.8 THE FUTURE OF LABOUR BROKING IN SOUTH AFRICA**

The amendments were submitted to NEDLAC for consideration with the union federation, where COSATU and NACTU asked for a complete ban on labour broking, calling it “immoral and politically reprehensible”. The employer organisation for the labour brokers did not agree with the complete abolishment of labour broking, but did agree that labour broking needs to be better regulated (Van Eck, 2010, Finnemore & Joubert, 2013 and Venter et al., 2012).

Political parties also reacted negatively to the amendments to section 198 of the LRA. They appear to be missing the bigger picture concerning what these amendments are trying to achieve, namely to improve rights of atypical employees (Harvey, 2011).

Harvey (2011) suggests that the withdrawal of section 198 of the LRA will not remove the triangular employment relationship in that the labour broker cannot actually fulfil the duties of an employer. She proposes the following four principles when drafting future amendments:

- employment security for all
- access to collective bargaining

- requirements for temporary work to be met by all employers
- allowing employers to subcontract contractors for specialist jobs

The chief director of labour relations in the Department of Labour referred to labour broking as being a service and maintained that employers create jobs and thus need people to do these jobs and not the other way around, meaning that the economy shows positive growth in this form of employment (Harvey, 2011).

In 2013, many employment sectors had job cuts where the sector in labour broking added jobs. The labour broking sector is a R44 billion industry employing over a million temporary employees, and as such, the banning of labour brokers would have a negative influence on job creation and economic growth figures (Khuzwayo, 2013).

Everyone has the right to better their lives by working and earning an income for themselves and their families. With such widespread retrenchments, Gericke (2010) suggests that working as a temporary worker is better than not having an income, and that labour brokers create this option.

### **3.9 SUMMARY**

It is evident from the discussion above that labour broking forms a major part of the South African economy by creating large-scale employment. In the arguments against labour broking, unions are not seeing labour brokers as a form of employment. They argue that employees placed by labour brokers have no protection against unfair treatment and earn far less than permanent employees who are doing the same type of work, and that they also have little or no benefits. They also stress the fact that employers make use of temporary employees during a strike, which has a negative impact on the power balance in negotiations. The unions' only resolution for this argument is the abolishment of labour brokers.

In the arguments for labour broking, TES, employer organisations and BUSA argue that labour brokers are an immediate solution to the poor employment rate in South

Africa. Owing to globalisation and the increase in international competition, local organisations find it more cost effective to make use of temporary workers because of the stringent labour relations regulations and high wage demands by unions for permanent employees. Labour brokers also argue that it is only a handful of companies that are guilty of employing workers under harsh conditions with little remuneration. They feel that the abolishment of labour brokers will have a negative impact on the South African economy, including a huge loss in employment, drastically increasing the current unemployment rate. BUSA welcomed the government's proposal for regulation of labour brokers.

Although still in its infancy, Namibia's way forward of stricter regulation regarding labour broking can be considered as a possible route for South Africa, because it will not have a negative impact on the employment rate and economic growth. It will also create a better work environment for the atypical employee which is on the priority list of the unions.

Chapter 4 will deal with the methodology and research design used in this research study.

## **CHAPTER 4**

### **METHODOLOGY AND RESEARCH DESIGN**

#### **4.1 INTRODUCTION**

Chapters 2 and 3 were a literature review, which formed the theoretical framework for the study.

Welman, Kruger, and Mitchell (2005) state that a research design is a plan which the researcher uses to obtain participants and collect data/information from them. The researcher also describes what he is going to do in order to reach a finding or conclusion. This research study was qualitative in nature because it entailed listening to and understanding the participants' views and perceptions in an effort to learn more about the possible implications of the changes to section 198 of the LRA for an integrated petroleum and chemical company and its employees.

A non-probability snowballing sampling method was used, which entailed each contact person suggesting other participants to the researcher until the sample size was saturated. It was also necessary to make use of purposive sampling (see section 4.3 and 4.4.2). Six individual interviews were held with employees from different divisions in the HR department in the integrated petroleum and chemical company. Four interviews were conducted at the offices of employees in the HR department at the company and two interviews were telephonic because of the participants worked at a satellite branch 200 km away. Data saturation occurred after the sixth interview, after no new information were obtained from the participants, which indicated that the sample size was adequate. These answers were coded with themes to analyse the data collected.

This chapter gives an overview of the methodology, potential bias, the samples used, data collection methods, research questions and the trustworthiness of the research.

## **4.2 RESEARCH METHODOLOGY**

The research methodology used in this study was aimed at investigating the impact that the changes in section 198 of the LRA with regard to labour broking have had on an integrated petroleum and chemical company in South Africa and its employees and explored the employees' perceptions of the changes in labour broking. This study was conducted using a qualitative approach making use of individual interviews with employees in the HR department, working in different divisions of the same company.

### **4.2.1 Qualitative research**

Maree et al. (2012, p. 265) refer to Creswell's definition of qualitative research as "an inquiry process of understanding where a researcher develops a complex, holistic picture, analyses words, reports detailed views of informants, and conducts the study in a natural setting".

Maree et al. (2012) also state that qualitative research is aimed at developing an understanding of the study by focusing on individuals and how they perceive the world through their experiences.

In this study, the researcher made use of individual interviews asking semi-structured explanatory questions of the participants' perceptions regarding the effect that changes in labour broking have on the workplace.

#### **4.2.1.1 Rationale for conducting qualitative research**

The research involved the perceptions of employees in the HR department. The definition of qualitative research as mentioned in 4.2.1 allows the researcher to focus on participants' perceptions and to interpret them to gain a better understanding of the research. Exploration was needed because no other studies had been done previously to enable the researcher to follow a quantitative research approach. The changes to Section 198 of the LRA were enforced during the course of this study, which means that there is a need for this qualitative research study.

#### **4.2.1.2 Characteristics and assumptions of qualitative research**

The following are some characteristics and assumptions of qualitative research (De Vos, Strydom, Fouché, & Delpont, 2013; Struwig & Stead, 2011):

- The researcher wants to understand what is being researched from the perspective of the participant.
- The environment in which the participants find themselves also plays a vital role and should be taken into consideration.
- Prior events and experiences also play a role and the researcher needs to interpret these experiences.
- The researcher is the instrument of the research and makes objectivity difficult. For this reason, bias is recognised.
- The experience of human behaviour is analysed creating an understanding rather than an explanation.

#### **4.2.1.3 Advantages and disadvantages of qualitative research**

According to De Vos et al. (2013), qualitative research relies on understanding rather than explanation. It is a more holistic approach in that participants are observed and interacted within their environment.

Qualitative research is a more cost-effective research method. The following are additional advantages of qualitative research (Flick, 2009; Baily, 1982):

- Interaction takes place with participants with actual experience of what is being researched.
- It is a more holistic process because the participants are observed in their natural environment.
- Interaction with and observation of individuals also open new dimensions for other and further studies.
- The interview process in qualitative research is flexible, because the researcher can decide what questions are appropriate.

- A controlled environment is created with qualitative research improving privacy.

Qualitative research also has its limitations. The following are disadvantages of qualitative research (Flick, 2009; Bailey, 1982):

- It is extremely time consuming in that that researcher can sometimes only complete one or two interviews a day and sometimes has to wait weeks for other interviews.
- The generalisation of a few individuals for a sample to represent the whole population can be a limitation to the study.
- The researcher is the instrument when interviewing and collecting data from the participants, which could lead to bias.
- There is sometimes little or no comparable literature or documentation on a topic being researched. Also, the research might lose objectivity

Section 4.3 explains how the limitations of qualitative research were minimised in this research study.

#### **4.2.2 Grounded theory research**

A grounded theory paradigm was used in this study because the researcher wanted an in-depth knowledge of the issues at hand. The researcher had to gain an understanding of the participants' views and perceptions of their beliefs and context for the study by listening and observing them to find and developed a unified theoretical explanation (Corbin & Strauss, 2015).

This study followed an organised approach where the researcher had to listen to and gain an understanding of the participants' perception and beliefs regarding their own history and context. The theory gave participants a voice and an opportunity to study human action. Grounded theory was used in this study because the researcher collected and analysed all the data before he made conclusions and formed a theory (De Vos et al., 2013).

In this study, the researcher collected data from the individual interviews regarding participants' perceptions of the impact that changes in labour broking have on the organisation and its employees. According to De Vos et al. (2013), grounded theory actually emerges from a study instead of that being found in the research literature.

### **4.2.3 Content analysis**

According to Welman et al. (2005, p. 221), "content analysis can be described as a quantitative analysis of qualitative data".

Content analysis involves gathering and analysing text by creating codes, phrases or words to form an understanding of the study (Struwig & Stead, 2011; Welman et al., 2005).

In this study, the researcher made use of digital recordings of the individual interviews conducted at an integrated petroleum and chemical company in South Africa with employees in the HR department, working in different divisions, which were transcribed to meaningful text to interpret the data through coding (Maree et al., 2012).

### **4.2.4 Descriptive design**

De Vos et al. (2013) suggest that descriptive research focuses on a specific social setting, relationship or situation with open-ended and probing questions. These authors also refer to Rubin and Babbie's (2005) view that description is a deeper examination of the phenomena and their meanings, resulting in a thicker description.

The researcher made use of descriptive features by asking individual open-ended and probing questions to employees in the HR department working in different divisions of the same company and gaining a better understanding of what is being researched from their perceptions regarding the impact of labour broking changes on the organisation and its employees.

All the data that were obtained from the individual interviews were used to create a descriptive report without any interference from the researcher, and only the natural situation was studied (Myers, 2009).

#### **4.2.5 Exploratory design**

Struwig and Stead (2011, p. 7) define exploratory research as "research into an area that has not been studied and in which a researcher wants to develop initial ideas and a more focussed research question." This design involves the discovery of new insights and ideas on topics.

The researcher wanted to gain an understanding of the phenomenon through exploratory research. Owing to the recent enforcement of the changes to section 198 of the LRA there was limited literature on the topic and limited or no research that had been done on the topic in South Africa. The researcher needed to ask the participants open-ended and probing questions, which allowed him to complete this study with possible opportunities for further studies on the topic (De Vos et al., 2013).

### **4.3 POTENTIAL BIAS IN THIS RESEARCH STUDY**

Babbie, (2011, p. 248) defines bias as "any property of questions that encourages respondents to answer in a particular way".

As mentioned in section 4.2.1.3, a limitation to qualitative research is the possibility of bias. Potential bias existed in this study because the researcher used purposive sampling and analysed the data collected. The researcher had a formed view on labour broking because of his background knowledge of this concept, and this established another possible bias.

To reduce the potential bias, the researcher used participants not familiar to him who voluntarily took part in the interviews. The participants were selected by the contact person to ensure that the researcher had the best possible candidates to answer the research questions. The researcher also involved his supervisor in the study with the

analysis of the data gathered to eliminate any biased views, statements and recommendations.

#### **4.4 RESEARCH METHODS**

The population, sampling, data gathering and data analysis used in this study are explained below.

##### **4.4.1 Population**

Welman, Kruger, and Mitchell (2009:52) define a population as "the study object and [it] consists of individuals, groups, organisations, human products and events, or the conditions to which they are exposed".

The population in this study consisted of all employees in the HR department in the chosen integrated petroleum and chemical company. The individuals interviewed in this study were from the population that comprised all units of analysis (Welman et al., 2005).

The individual interviews were held at the company, which has approximately 400 employees. The HR department consisted of approximately 30 HR practitioners based in different cities. The research population for the study were all HR personnel.

##### **4.4.2 Sample**

Maree et al. (2012, p. 79) define sampling as "the process used to select a portion of the population for study". The criteria for the participants are set out in section 4.4.2.1 below.

The research sample used in this study was a non-probability sample because it was impossible for the researcher to locate the entire population with a convenient sampling approach that involved the selection of the most voluntarily available participants for the research study. Purposive sampling and the snowballing effect

were used. According to Maree et al. (2012, p. 79) purposive sampling is when “participants are selected because of some defining characteristic that makes them the holders of the data needed for the study”. A snowball effect occurred because some of the individuals suggested other individuals who could assist with the research. The sample varied with regard to age and gender, which enabled the researcher to compare the responses from the participants across a variety of social settings. The participants are all working in different divisions in the same organisation, which increased the trustworthiness of this study.

The participants were chosen from the HR department because they are directly linked to the changes in labour broking. Individual interviews were conducted with the participants. The sample size was six participants, which ensured adequate power for the envisaged data analysis techniques for this study. The researcher experienced data saturation after the sixth individual interview, when no new data were obtained during the last interview, indicating that the sample size was adequate.

#### **4.4.2.1 Criteria for selection of participants**

The criteria for the participants in this study were that they

- had to form part of the HR department
- were working in the integrative petroleum and chemical company
- made use of labour brokers
- had knowledge of section 198 of the LRA
- were willing to be individually interviewed

#### **4.4.2.2 Biographical characteristics of participants**

The biographical details of the individuals who participated in the individual interviews were recorded and are presented in table 4.1 below.

Table 4.1

*Biographical characteristics of participants*

<b>INDIVIDUAL INTERVIEWS</b>									
<b>BIOGRAPHICAL CHARACTERISTICS OF PARTICIPANTS</b>									
<b>No.</b>	<b>Race</b>	<b>Age</b>	<b>Gender</b>	<b>Language</b>	<b>Religion</b>	<b>Marital status</b>	<b>Job designation</b>	<b>Number of years' service in the HR Department</b>	<b>Type of interview</b>
1	White	60	Female	Afrikaans	Christian	Married	HR Manager – Employee Relations Division	28	Individual
2	White	54	Male	Afrikaans	Christian	Married	Procurement Manager – Procurement Division	31	Individual
3	White	28	Female	Afrikaans	Christian	Married	HC Specialist – Recruitment Division	5	Individual
4	White	56	Male	English	Christian	Married	Maintenance Manager – Service Coordinating Division	26	Individual
5	White	31	Female	Afrikaans	None	Single	HC Specialist - Recruitment Division	2	Telephonic
6	Indian	27	Male	English	Hindu	Single	HC Specialist - Recruitment Division	8	Telephonic

### 4.4.3 Data collection

Data collecting is a fundamental process of research, and according to Creswell (2007), this process encompasses a series of activities as shown in figure 4.1 below.



Figure 4.1. Data collection activities (Source: Creswell, 2007, p. 118)

- *Locating site and individual*

The researcher identified an integrative petroleum and chemical company that makes use of labour broking. He also identified individuals from the company's HR department, working in different divisions, who would have the most appropriate experience relevant to the study and would enable the researcher to successfully complete it.

- *Gaining access*

The researcher was introduced to a contact person in the HR department who assisted him with gaining access to the premises of the company, provided contact information of potential participants and helped with the scheduling of the individual interviews.

- *Sampling*

There were six individuals from the HR department who agreed to participate in the study. Four individual face-to-face interviews were conducted with participants, along with two telephonic interviews. Each participant signed a consent form. The four participants who had individual interviews signed consent forms before the interview started, and the two participants who participated in the telephonic interviews signed consent forms that were emailed to them. The participants were in no way coerced into doing the interviews.

- *Collecting data*

The researcher asked each participant the same five questions. Data were collected by means of individual and telephonic interviews. All interviews were recorded digitally. The researcher made written observation notes during the individual face-to-face interviews. No observation notes could be made during the telephonic interviews. The researcher had no other alternative but to conduct two telephonic interviews owing to the fact that the last two participants worked at a satellite branch 200 km from the main company. The interview questions are set out in section 4.4.3.2 below (also see annexure B).

- *Recording information*

The researcher digitally recorded the individual interviews and telephonic interviews. During the individual interviews, the recorder was placed between the interviewer and the interviewee. During the telephonic interviews the recorder was placed next to the speaker of the phone. The researcher used the bracketing concept and temporarily set aside his assumptions, theories and bias influences when collecting data on the participants' experiences (Denzin & Lincoln, 2000).

- *Resolving field issues*

Field issues in this study included the time period for gaining access, gathering data from the participants and writing the report. Collecting qualitative data can be time consuming (Creswell, 2007). The researcher planned around the time periods of collecting data and considered all ethical issues.

The researcher was in continuous contact with the contact person at the company to arrange access to the site with multiple rescheduled appointments. The researcher had to resort to two telephonic interviews to finalise the data gathering on time. Owing to limited time during the day to analyse the data, the researcher and supervisor planned a timeframe for analyse the data gathered.

- *Storing data*

The researcher intends keeping all the data on his personal computer (protected by a password) for five years, after which time it will be destroyed. The researcher will also delete all data from the recycle bin after the data is destroyed from his personal computer. Any paper data will be shredded five years after the research completion date.

#### **4.4.3.1 Data collection process**

The researcher is the co-owner of a high-volume estate agency that supplies housing rentals to companies and individuals. This allowed the researcher to know which companies make use of labour broking. The researcher contacted different integrated petroleum and chemical companies who make use of labour brokers. He was invited by a company to conduct the research and was introduced to a contact person to assist with the scheduling of the necessary interviews.

A prearranged place and time was made with the participants to conduct the interviews. The four individual interviews were held in the offices of the participants and two interviews were conducted telephonically from the office of the researcher

which was a private and quiet venue. The interviews took approximately 60 minutes. The interviews took place between September 2014 and June 2015.

The researcher and the contact person were in contact via e-mail and the names of the participants were given to the researcher. Two participants were found using snowballing and were interviewed telephonically owing to their remote location 200 km away. The researcher explained that all interviews were voluntary and that the participant's details would be kept confidential. He gave four participants a consent form to complete before the individual interviews were conducted, and e-mailed consent forms to the two participants who took part in the telephonic interviews. Before the researcher started with the individual and telephonic interviews, he first explained the aim of the research.

The researcher recorded all the individual and telephonic interviews. Field notes and observation notes were made during the individual interviews. The face-to-face interviews were conducted first and then the telephonic ones. The researcher could not make field and observation notes during the telephonic interviews, but because of the similarity of the content of the interviews, the researcher accepted the interviewees' views and perceptions as true and valid.

#### *(a) The researcher as instrument*

The researcher was the instrument used to gather information through individual interviews (Welman et al., 2005). Open-ended and probing questions were used during the interviews. The researcher conducted the interviews and made field and observation notes during the four face-to-face interviews. The researcher could not make any field and observation notes during the two telephonic interviews but the content was similar to the face-to-face individual interviews.

The interviewer (researcher) and interviewee (participant) participated in two-way communication. The role of the researcher was to collect data from the participants by asking questions. The researcher had to listen and observe and allow the participants to do the talking (Baily, 1982).

Kvale (2010) suggests that an interviewer (researcher) needs to be knowledgeable, structured, clear, gentle and sensitive, but also critical. These characteristics are essential in interviewing as the interviewer has an impact on the participants during the interview process. The researcher, at all times, aimed to maintain those characteristics during his interviews.

The researcher's pre- and postgraduate studies on labour relations and his regular interaction with contract workers gave him the necessary knowledge for this study. The managerial skills and business knowledge of the researcher enabled him to be structured, clear, gentle, sensitive and critical.

#### *(b) Schedule of questions*

The researcher had preformulated open-ended questions that were used in the semi-structured individual interviews to gather information on the views and beliefs of the participants, which enabled him to obtain more information on the research topic. The open-ended questions asked in this study are set out in section 4.4.3.2 below, and a copy of the schedule of questions is attached to this research study as annexure B. Open-ended questions gave the participants freedom to answer what they actually thought or experienced and gave the researcher more information on the research topic (Struwig & Stead, 2011).

#### **4.4.3.2 Individual interviews**

During the interview process, the researcher asked the following open-ended questions:

- In your view, what is the definition of labour broking?
- In your view, what positive impacts, if any, will the changes in labour broking have on the organisation?

- In your view, what positive impacts, if any, will the changes in labour broking have on the employees?
- In your opinion, what negative impacts, if any, will the changes in labour in labour broking have on the organisation?
- In your opinion, what negative impacts, if any, will the changes in labour broking have on the employees?

The researcher audio recorded the individual interviews. These recordings were then transcribed verbatim. The interviews were numbered by giving each participant a number, for example, interviewee 1, interviewee 2 and so forth, and they were typed as follows:

<b>INTERVIEWEE 1</b>	
A1	Researcher: In your experience, what impact will the proposed changes to
A2	section 198 of the LRA have on your company? Please explain.
A3	Participant 1: It is going to have an impact and we will need to review our
A4	temporary contracts and that a person will have a temporary contract if there
A5	is a specific job that he must do.
A6	We have packers and they ... uhh ... are permanent and part-time, but when
A7	the permanent once leave we always said we had part-time employees, but
A8	now we have to rethink it, because it is people that work here on a daily
A9	basis, thus we might look at outsourcing. Also every time we get new people
A10	for work we need to train them so you have to decide what is more important.
A11	Researcher: So it has cost implications?
A12	Participant 1: Yes it does.

<b>INTERVIEWEE 2</b>	
B1	Researcher: In your view, what is the definition of labour broking?
B2	Participant 2: What's the definition of labour broking?
B3	Researcher: Yes your view on the definition of labour broking.
B4	Participant 2: Well in my opinion, I see it as a service provider that provide
B5	you with temporary employees, when you ... uhh ... fill a position temporarily

B6	until you find a suitable candidate for the position ... uhmm ... and in the
B7	same sentence it is also the same as a seasonal worker for example on our
B8	side if we have and extra line producing rubber then we will get such a
B9	person in for that specific job as we do not have other work to keep that
B10	person busy for the rest of the year. So ... we will make use of a labour
B11	broker you know for a time being as a solution or seasonal when there are
B12	for instance something out of the ordinary that needs to be done for a week
B13	or two.

### INTERVIEWEE 3

C1	Researcher: In your experience, what impact will the proposed changes to
C2	section 198 of the LRA have on your company? Please explain.
C3	Participant 3: It means you are either going to employ more ... or even
C4	less people or if another person can do the job you are going to outsource
C5	it.
C6	Researcher: In your view, will the proposed amendments regarding labour
C7	broking influence the company's flexibility regarding employment? Please
C8	explain.
C9	Participant 3: What I understand, but I am not sure if I am on the right track,
C10	but let's say we have a guy in service until the end of the year ... uhh ... he
C11	is not allowed to return, but I can conclude another contract with another
C12	person for a year, so this actually means we can still continue do things we
C13	always did, if you want to work the same way, ...but it is going to cost you a
C14	lot more on training, because you have to prepare that person from the start
C15	again.

### INTERVIEWEE 4

D1	Researcher: In your experience, what impact will the proposed changes to
D2	section 198 of the LRA have on your company? Please explain.
D3	Participant 4: Yes, we need to outsource to independent contractors.
D4	Researcher: In your view, will the proposed amendments regarding labour
D5	broking influence the company's flexibility regarding employment? Please
D6	explain.

D7	Participant 4: Yes ... as I understand the new law will allow you to conclude a new contract every time ... uhh ... for example a fix term contract.
D8	

### TELEPHONE INTERVIEW 1

E1	Researcher: In your view what is the definition of labour broking?
E2	Participant 5: Labour broking is when ... uhm ... a company supplies hire... uhh ... contract workers to ... uhmm ... a client company. So there is work to be done but on an ad hoc basis basically.
E3	
E4	
E5	Researcher: Are you aware of the changes to section 198 of the LRA and what do you understand regarding these changes?
E6	Participant 5: Uhh ... I do understand the changes and I know that ... uhmm ... an employee that is currently employed by a temporary or labour broker, after 3 months while there is a client or after three months they deemed to be the employee ... uhh ... yes the employee of the client company and should there be a dispute then ... uhmm ... the client company is known as the labour broker are joint and liable separable for the dispute.
E7	
E8	
E9	
E10	
E11	
E12	Researcher: Do you think the company will go more for temporary contracts than rather making use of labour brokers?
E13	Participant 5: It depends on our situation and it depends on what the works is that needs to be done.
E14	
E15	Researcher: So it all depends on the different work that needs to be done.
E16	Participant 5: Yes but if it is a long period job it is going to be very irritating to stop a contract after three months and then leave.
E17	
E18	
E19	

### TELEPHONE INTERVIEW 2

F1	Researcher: In your experience, what impact will the proposed changes to section 198 of the LRA have on your company? Please explain.
F2	
F3	Participant 6: Yes, I think ... uh ... the biggest impact will be financially ... uhmm ... because after 3 months you will have to permanently employ your temp workers that will have a huge financial impact, because you will have to give them benefits and it will have a huge effect on the headcount. Many
F4	
F5	
F6	

F7	companies don't want to sit with high headcounts and this causes the
F8	headcount to increase.
F9	Researcher: In your view, will the proposed amendments regarding labour
F10	broking influence the company's flexibility regarding employment? Please
F11	explain.
F12	Participant 6: Uh ... I don't' think the flexibility is influenced, it just makes it
F13	more of a schlep, because after three months the project must be completed
F14	and when the project is not completed then you must make a decision if you
F15	are going to employ that person and if that person is not a good candidate
F16	then you must again look for another person. Uhmm ... but I also think it is
F17	a good opportunity to identify good temp workers and motivate them by
F18	permanently employing them. It is an opportunity for them I think to become
F19	permanently employed.

The individual interviews were used to gather information purposively. The audio recordings were typed for analysis purposes. The typed lines were numbered. The first line with the first interview was typed A1, the second line A2, and so forth. The second interview's first typed line started with B1, the second line B2, and so forth. The data analysis process was made easier by numbering each line. Specific comments could then be found more easily when the researcher looked through the typed interviews (Welman et al, 2005).

#### **4.4.3.3 Individual interviews and field notes**

Data was collected from the individuals during the individual interviews and telephonic interviews.

##### *(a) Qualitative research interviews*

##### *(i) Definition of an interview*

According to De Vos et al (2013), interviewing is the main method used to collect data in qualitative research. It involves a direct interchange between the interviewer and

individuals or groups to gather data. Data can be collected through individual or focus group interviews.

The researcher made use of individual and telephonic interviews with selected individuals from different HR divisions in the said company to gather data on their experiences of changes in labour broking.

*(ii) Interview methods*

Interviews can be semi-structured or unstructured. Unstructured interviews are more informal and based on the participants' experiences and the way they feel guides the questions. Semi-structured interviews are conducted with pre-formulated questions that are asked during the interview (De Vos et al., 2013; Welman et al., 2005).

De Vos et al. (2013) and Welman et al. (2005) suggest that in qualitative research, unstructured and semi-structured interviews are commonly used. Unstructured interviews in in-depth interviews are more explorative without a given set of questions that are asked. Semi-structured interviews are preplanned with formulated questions. The same questions are put to all the participants.

The researcher used semi-structured interviews with a list of preformulated questions that were put to all the participants. Each participant shared his or her views, understanding and experience of each question, and the answers were recorded and transcribed.

*(iii) Advantages of interviews as a data collection method*

Individual and telephonic interviews were used in the study to collect data. These interviews were needed to find people who were directly linked to changes in labour broking regulations so that their views and experiences could be recorded.

Baily (1982) suggests the following advantages of interviews:

- *Flexibility.* The interviewer can improvise with questions. He or she can change the order or even change the questions as needed when conducting the interview.
- *Response rate.* Questionnaires can easily get lost, but with interviews, the researcher has an immediate response. Illiterate people can also take part in interviews.
- *Non-verbal behaviour.* The interviewer is in a position to observe the reactions and behaviour of the participants.
- *Control over environment.* The interviewer can choose a place for the interviews that is comfortable, private and familiar to the participants.
- *Spontaneity.* The interviewer is able to note and record any spontaneous behaviour.

(iv) *Disadvantages of interviews as a data collection method*

The process of collecting data through interviews can be time consuming. It might happen that the interviewer needs to reschedule interviews that are not completed, waiting long periods to obtain authority to do the interviews, all of which might influence the answers to the interviewers questions (Baily, 1982).

There is also the risk of researchers being biased in that they might misunderstand some of the answers of the participants in the interview or the answers might not be trustworthy. Participants can also easily become side tracked and change their opinions (Baily, 1982; Maree et al., 2012; Kvale, 2010). In this study, the researcher limited this bias by confirming and reflecting the participants' views and perceptions on the findings obtained through the interview at the end of each interview.

(v) *The interview process in this study*

Asking questions and recording the data is only part of the interview, as De Vos, et al. (2013, p. 345) explain. It also includes “mutual attentiveness, monitoring and responsiveness”.

The interviews were conducted in the offices of each participant. This was more comfortable for participants. Two telephonic interviews were also done, because it was more convenient for the two participants as that they are based at a satellite branch of the company 200 km away. The first step involved the introduction and explanation of the interview. The interviewer insured the participants; anonymity as well as the right to end the interview at any time and gave them a consent form to sign. A copy of the consent form is shown in annexure A.

In the second step, the interviewer gave an overview of his study and asked the preformulated questions. All answers were recorded and the researcher took the role as an observer by listening to the participants' answers. The researcher observed the participants during the individual interviews, but was unable to observe the participants during the telephonic interviews. The content of the telephonic interviews was accepted as valid because of its similarity to the content from the individual interviews.

The third step involved the interviewer summarising and closing the interview and thanking the participants for their time and willingness to take part in the interview. The interviews took approximately 60 minutes each.

(vi) *Non-verbal behaviour and listening*

Terre Blanche, Durrheim, and Painter (2006, p. 306) state the following: “Speaking is more than the production of words. Bodies speak, and they can be seen to speak through the complex gestural language which is part of speaking.” The interviewer continuously observed the behaviour of the participants during the individual interviews when answering questions, keeping his own non-verbal action relaxed. Eye contact and facial expressions were important to let the participant feel that the interviewer was paying attention to his or her answer (Van Schalkwyk & Viviers, 1994).

During the telephonic interviews, the researcher could not observe or make field notes, but collected similar content to the face-to-face, individual interviews. The content was accepted as valid and ruled out the need for observations and field notes for the telephonic interviews.

Listening is a crucial part of interviewing and although the interviews were recorded, the researcher needed to listen attentively to the answers of the participants. With effective listening, the interviewer was able to ask clarification questions where needed and to express the correct facial and other body expressions when needed (Van Schalkwyk & Viviers, 1994).

*(vii) Tape recorder/field notes*

A digital recorder (model: Sony IC recorder) was used during the individual interviews because it is more reliable than only taking notes. It was placed on a table between the researcher and participant. The digital recorder was also used during the telephonic interviews and was placed next to the telephone speaker. The researcher asked permission to use the recorder during the interviews and no participant objected. The interviewer was then able to listen to the recordings and make sure that the answers were correctly transcribed (Kvale, 2010).

Welman et al. (2009, p. 199) define field notes as "detailed notes and observations that are made by the interviewer/researcher." During the interviews, the researcher made field notes on things that could not be recorded on a digital recorder, for example, facial expressions. Field notes were not made during the telephonic interviews and as such that the researcher relied on the content of the interviews, which was similar to the content obtained from the face-to-face interviews and thus deemed reliable. Notes on what was being said were made in an unobtrusive way to keep the participants focused. The researcher also made notes directly after each interview as the memories of incidents were still fresh in his mind (Babbie, 2002; De Vos et al., 2013).

#### *(viii) Timing and location*

The location chosen for the interviews was at the company offices of the participants, at an agreed date and time. The location was quiet and the participants were more relaxed in their own environment. The interviews were scheduled on dates and at times that suited both the researcher and participants. The participants for the telephonic interviews were contacted via email to set a date and time that they preferred to avoid any interruptions.

#### **4.4.4 Data analysis**

Creswell (2007, p. 148) defines data analysis in qualitative research as “[p]reparing and organising the data for analysis, then reducing the data into themes through a process of coding and condensing the codes, and finally representing the data in figures, tables or a discussion”.

After the interviews, the researcher compiled the data into meaningful write-ups. These write-ups were then analysed to interpret theories and make sense of the data (Welman et al., 2009; Henning, Van Rensburg, & Smit, 2004).

During the analysis phase, the researcher grouped the data into units and gave them coded themes, which was done manually. The researcher was able to make sense of the data by using thematic analysis (Henning, et al., 2004; De Vos et al., 2013; Struwig & Stead, 2011).

Tesch’s (1990) data analysis method was used in the data gathering phase. Tesch (1990) proposed the following seven steps:

- The digital recorder, recorded individual interviews with the employees of the HR department where typed. Notes were made on expressions witnessed.
- The researcher selected the most interesting individual interview as a starting point to identify main codes.

- Similar topics were grouped together. A coding list was created.
- Different topics were coded using the coding list.
- The researcher made use of themes and analysed the descriptive wording that occurred the most.
- The themes were alphabetised.
- Each theme's data were gathered and grouped.

## **4.5 METHODS TO ENSURE TRUSTWORTHINESS**

The quality of the research depends on its trustworthiness (De Vos, et al., 2013). There is no set rule to establish trustworthiness, but according to Loseke (2013), it is wise to establish the trustworthiness of the research.

De Vos et al. (2013) refer to four criteria (credibility, transferability, dependability, conformability) as explained by Lincoln and Guba to ensure trustworthiness. These criteria are explained below.

### **4.5.1 Credibility**

This brings about the accurate truth of the research data. It validates the subject and presentation of the research (De Vos et al., 2013).

The researcher ensured validity with the in-depth interviews. The researcher also had other professional interactions with employees from the HR department. This interaction involved supplying accommodation to labourers employed by the company. This prolonged interaction improved the credibility of the study.

#### **4.5.2 Transferability**

This involves the transfer of findings to other situations. Transferability increases the credibility of research when the findings can be generalised to other studies. According to De Vos et al. (2013:420) transferability of a qualitative study can be problematic.

The researcher ensured transferability by presenting the personal details of the participants in this study in table 4.1. The transferability of the research to other settings is validated by the fact that the proposed changes to labour broking will apply to all institutions that make use of labour brokers.

#### **4.5.3 Dependability**

This is the reliability of the research when changes occur during the research process. The researcher needs to adapt to the changes. In qualitative research, the social world is continuously changing, and anticipating changes makes for reliable research (De Vos et al., 2013).

Repeatability is expected in quantitative studies, but in a qualitative research study, variability is expected. Most qualitative research studies are modified to the research situation and therefore no methodological description exists. The description of methods in a qualitative study provides information on how repeatable or unique the study is (Krefting, 1991). In this study, because it was qualitative research, the data gathering process, analysis and interpretation of the data were described.

#### **4.5.4 Confirmability**

This involves confirmation of the findings of the study by another. Henning et al. (2004) suggest that in a qualitative study, the researcher tries to make sense of what is being studied through collecting data from experiences and interactions of individuals.

Keeping detailed records of the qualitative research process and findings also enables outside audits to confirm results (De Vos et al., 2013).

## **4.6 TRUTH VALUE**

According to Denzin and Lincoln (2000), findings in research need to be scientifically authentic. There needs to be truth or some form of validity surrounding the research. The truth value of research is where the entire population feels that it can familiarise itself with the information gathered from the sample used in the study.

The changes in labour legislation could affect all HR employees from different institutions who make use of labour broking. These employees should be able to familiarise themselves with the information gathered from this study.

### **4.6.1 Reflexivity**

Cresswell, (2007, p. 243) defines reflexivity as follows: "the writer is conscious of the biases, values and experiences that he or she brings to a qualitative research study".

The researcher continuously assessed the influences of his perceptions, views and interest in the study. He only interpreted the participants' views and perceptions.

### **4.6.2 Bracketing**

According to Creswell (2007), bracketing involves the researcher setting aside his or her own experiences of the research to elicit the views and perspectives of the participants without influence from the researcher's experiences.

In this study, the researcher had preconceived views about the research but did not allow these to influence the research as he only focused on the information provided by the participants to ensure no bias.

### **4.6.3 Intuiting**

The researcher developed an intuitive awareness about the views and perceptions of the participants and was totally engrossed in the study through the participants' perceptions and views.

The researcher reassessed the information gathered from the participants to gain a clear and common understanding of the data collected. Clear patterns and themes emerged with the revision and analysis of the data (see annexure C).

### **4.6.4 Authority of the research**

The researcher had authority with regard to the research because of his

- knowledge of the subject
- experiences and interactions with contract workers
- judgemental skills
- ability to explore

## **4.7 ETHICAL CONSIDERATIONS**

Barbour (2008, p. 66) defines ethical consideration as "paying attention to the way in which the research is presented to potential participants, the likely impact of taking part in research, the effect of sampling strategies, engaging with the researcher and dissemination sessions".

According to Babbie (2009), ethical considerations involve what is right and what is wrong in research. There must be an acceptable standard in qualitative research to which qualitative studies need to conform.

The researcher considered the ethics of social research as set out below.

#### **4.7.1 Participants' right to privacy**

Privacy involves keeping the personal information of individuals safe with limited access and all data received from individuals being kept confidential (De Vos et al., 2013).

Four individual interviews were conducted in a private environment in the participant's office. Two telephonic interviews were also conducted from the researcher's office, because the two participants were unable to do individual interviews because of their location. The researcher kept all records safe at his home with only himself having access, thus establishing confidentiality.

#### **4.7.2 Participants' right to fair treatment**

Participants have the right to be treated respectfully and professionally. From the outset, the researcher informed the participants of exactly what he wanted to research, providing his commitment in being on time for appointments, behaving appropriately in being respectful towards participants, including their views and perspectives. The same commitment and behaviour were provided during the telephonic interviews. The researcher firstly communicated with the participants via e-mails and concluded a date and time for the telephonic interviews.

The participants were also informed that their participation was voluntary (De Vos et al., 2013; Baily, 1982; Babbie, 2009).

#### **4.7.3 Participants' freedom from harm**

No harm may be caused to any participant during research. This harm includes physical or emotional harm. The researcher needed to take precautions and measurements to ensure that the participants were kept from any form of discomfort, such as stress, fatigue and emotional harm (De Vos et al., 2013; Babbie, 2009).

The researcher informed the participants that they could withdraw from the interviews at any time if they felt uncomfortable. They were thus protected from any emotional harm (Barbour; 2008).

#### **4.7.4 Participants' freedom from exploitation**

According to Babbie (2009) and De Vos et al. (2013), deception in research is unethical. Keeping information from and misleading participants are forms of deception in research.

The researcher was honest and clear from the first day of contact with potential participants on what was being researched and why. He stipulated the time required for interviews and the background regarding the questions to be asked. The researcher never forced any participant with inappropriate behaviour to take part in the research.

#### **4.7.5 Participants' right to full disclosure**

The participants' right to full disclosure involves their right to have access to and feedback from the research conducted (De Vos et al., 2013; Terre Blanche et al., 2006).

The researcher informed the participants that he was doing this study to complete his MCom degree and that the information collected from them would be used in the study and form part of the results of the dissertation. The participants were also informed that the results might be published in an accredited journal.

#### **4.7.6 Risk/benefit ratio**

This ratio refers to the careful analysis of possible risks and benefits of a study. Should there be any risks identified in a study, they have to outweigh and justify the expected benefits of the study. The researcher must attempt to minimise the risks and maximise the benefits (Burns & Grove, 2001).

The researcher informed the participants of possible risks and benefits of the study. It was made clear that the benefits would be visible after the conclusion of the study to enable them to draw contingency plans for the changes to labour broking.

#### **4.7.7 Informed consent**

Participants in research must always take part voluntarily. The researcher explained to the participants that their involvement was purely voluntary and that they had the right to stop with participation at any time they felt like it and ask questions at any time (De Vos et al., 2013).

The researcher provided clear information on the study, the interview process, the risks and benefits and that participation was purely voluntary and that no participant would be coerced into participating in the research (Terre Blanche et al., 2006; De Vos et al., 2013).

The consent form was given to each participant to sign ensuring that he or she understood what was expected (see annexure A). The background to the research was discussed with the participant and the aim of the interviews was outlined. Participants were thanked for their input and informed of their right to access the information compiled (De Vos et al., 2013).

#### **4.8 SUMMARY**

The researcher made use of a qualitative approach in this study. Before data were collected, the researcher conducted a literature review on the history of labour relations in South Africa and labour broking in South Africa.

The researcher made use of snowball sampling to find HR employees in the chosen company, keeping ethical considerations in mind. Open-ended questions were used in the interviews. The questions and answers were analysed before findings and recommendations (as set out in the next chapter) were made.

The results of the data are discussed in chapter 5. Limitations and recommendations are outlined in chapter 6.

## **CHAPTER 5**

### **DATA RESULTS AND DISCUSSION**

#### **5.1 INTRODUCTION**

The data results of this study are presented in this chapter. The methodology used for the research was discussed in chapter 4. Six individual interviews, 4 face-to-face and 2 telephonic interviews, were conducted until data saturation had been reached. The data were analysed and the results were interpreted to present the findings.

The main objective as per section 1.4 of this study was to explore the perceptions of employees in the HR department regarding the impact that the changes in Section 198 of the LRA would have on organisations and its employees. The main aim led to the formulation of a second objective, namely that these proposed changes to labour broking might ultimately also have an impact on the specific integrated petroleum and chemical company chosen for this study.

The participants interviewed in this study formed part of the HR department at the company. This was necessary as they are directly linked to labour legislation changes in the workplace especially the workforce that includes employees supplied by labour brokers.

Three main themes and thereafter subthemes were identified from these main themes (see annexure C). These themes allowed the researcher to answer the research question and to achieve the objective of the study as set out in section 1.4.

The biographical characteristics of the participants, themes and subthemes are discussed in this chapter, while the conclusions, limitations and recommendations are dealt with in chapter 6.

## 5.2 GRAPHICAL ILLUSTRATION OF THE PARTICIPANTS

According to Welman et al. (2005), it is important to include the biographical characteristics of the participants to ensure validity through diversity. Diverse participants participated in this study, thus supporting coherent findings and valid results.

The biographical characteristics of the participants given in section 4.4.2.2 are graphically illustrated below.

### 5.2.1 Biographical characteristics of participants

The biographical characteristics of all the participants in this study are presented and discussed in tables 5.1 to 5.8 below.

#### 5.2.1.1 Race distribution of the sample

*Table 5.1*

*Frequency distribution: Race profile of the participants*

<b>Race</b>	<b>Biographical characteristic</b>	<b>Frequency</b>	<b>Percentage</b>
	White	5	83%
	Indian	1	17%
	Total	6	100%

According to table 5.1, the sample was made up of 83% white participants and 17% Indian participants. These participants were identified by the researcher's contact person and through the snowballing effect (Welman et al., 2005). The main branch of the company has more white employees in the HR department, which resulted in the large participation percentage rate for whites. There were no black participants available in this research study and this will be discussed under the limitations of the study in chapter 6. Figure 5.1 provides a graphical illustration of the race distribution as presented in table 5.1.

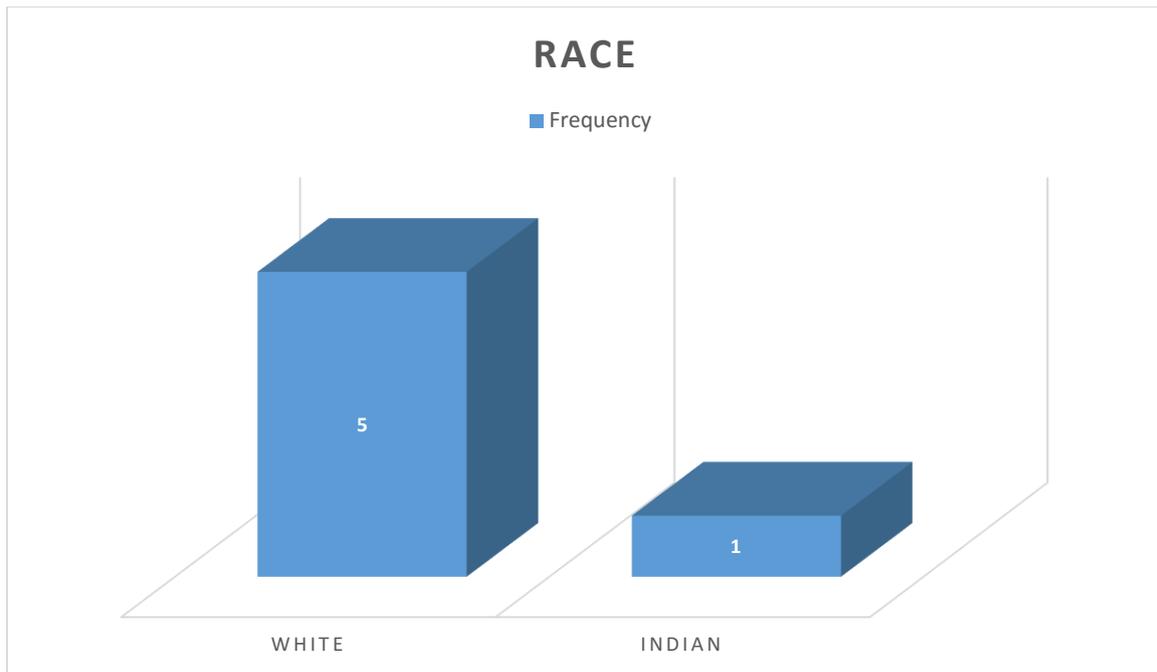


Figure 5.1. A graphical illustration of the sample distribution by race

### 5.2.1.2 Age distribution of the sample

Table 5.2

Frequency distribution: Age profile of the participants

Age	Biographical characteristic	Frequency	Percentage
	20-30	2	33%
	31-40	1	17%
	41-50	0	0%
	51-60	3	50%
	Total	6	100%

According to table 5.2, 33% of participants in the sample were aged between 20 and 30 years, 17% were aged between 31 and 40 and 50% were aged between 51 and 60 years. The different ages of the participants gave a mix of young and old participants, which supports validity regarding experience and knowledge. Figure 5.2 provides a graphical illustration of the age difference of the participants, that is, a combination of young and old.

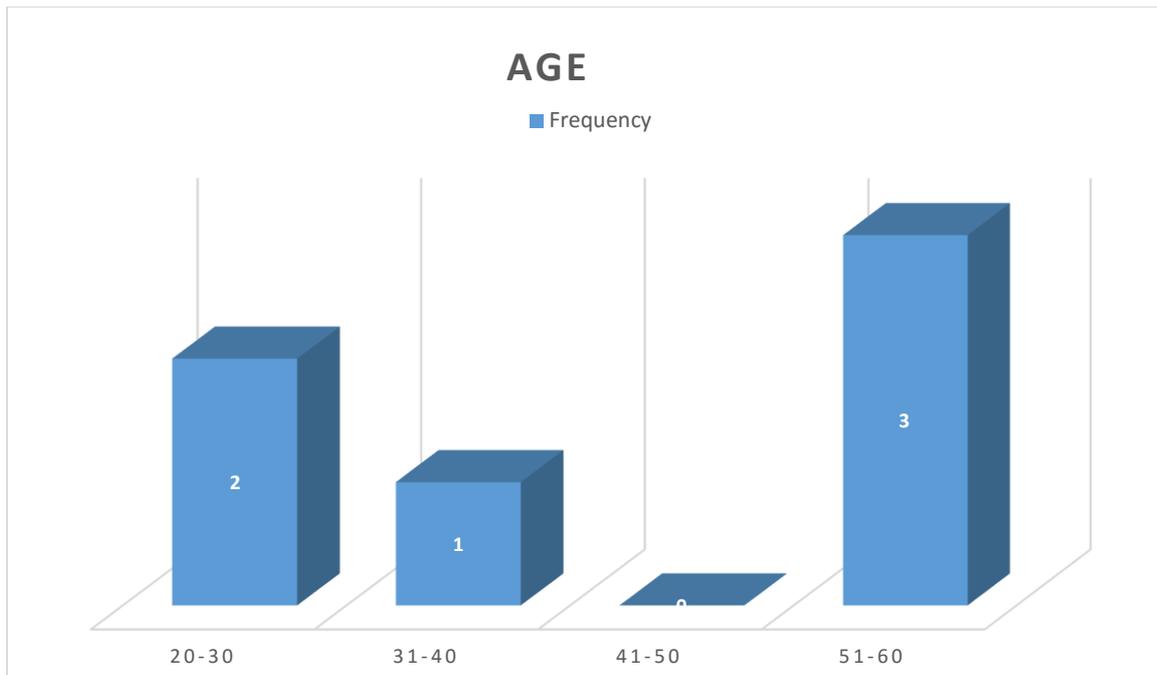


Figure 5.2. A graphical illustration of the sample distribution by age

### 5.2.1.3 Gender distribution of the sample

Table 5.3

Frequency distribution: Gender profile of the participants

Gender	Biographical characteristic	Frequency	Percentage
	Male	3	50%
	Female	3	50%
	Total	6	100%

As indicated in table 5.3, the sample included 50% male participants and 50% female participants. This provided a valid sample because there was an equal number of male and female participants. Figure 5.3 depicts this distribution.

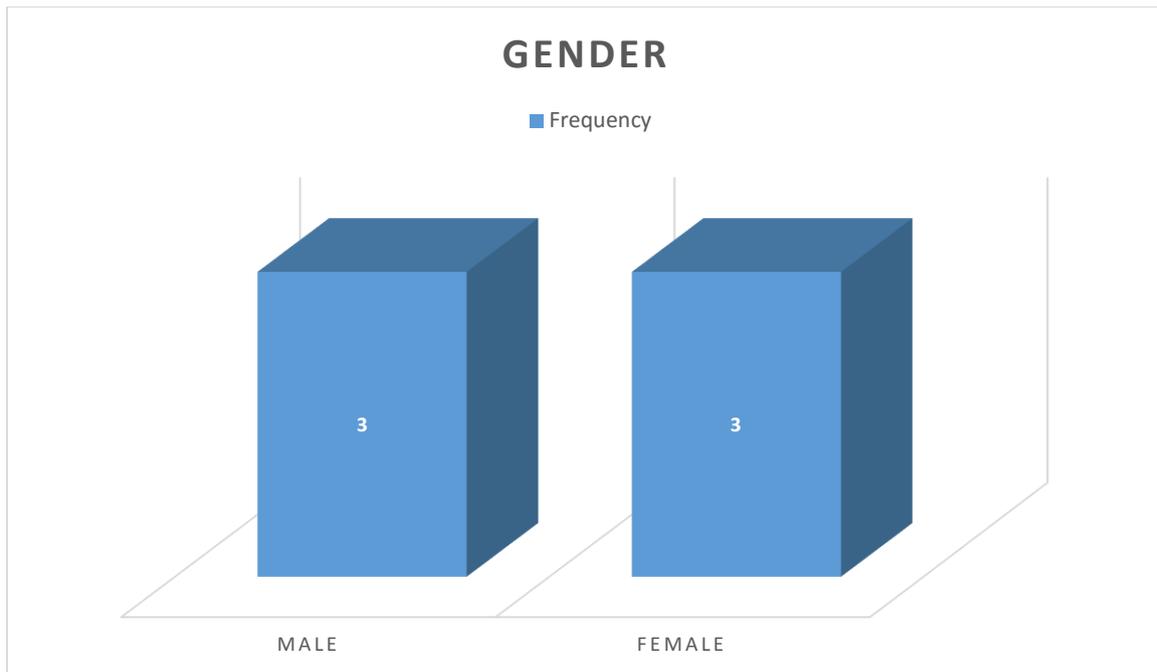


Figure 5.3. A graphical illustration of the sample distribution by gender

#### 5.2.1.4 Language distribution of the sample

Table 5.4

Frequency distribution: Language profile of the participants

Language	Biographical characteristic	Frequency	Percentage
	Afrikaans	4	67%
	English	2	33%
	Total	6	100%

According to table 5.4, the sample comprised 67% Afrikaans-speaking participants and 33% of English-speaking participants. The different language profiles allowed for the exploration of different cultures, which contributed to the validity of the sample. The sample used in this study did not include other languages owing to the fact that there were no black participants available for participation. This will be discussed under the limitations of the study in chapter 6. Figure 5.4 illustrates the different languages of the participants and indicates that Afrikaans was the more common language used. Although the majority of the participants were Afrikaans speaking, the interviews were conducted in English to enable the researcher to type the interviews

verbatim, without the need to translate Afrikaans interviews into English. This made the data trustworthy because the researcher bias in the study was limited because the researcher could not use his own ideas and views to manipulate the interviews.

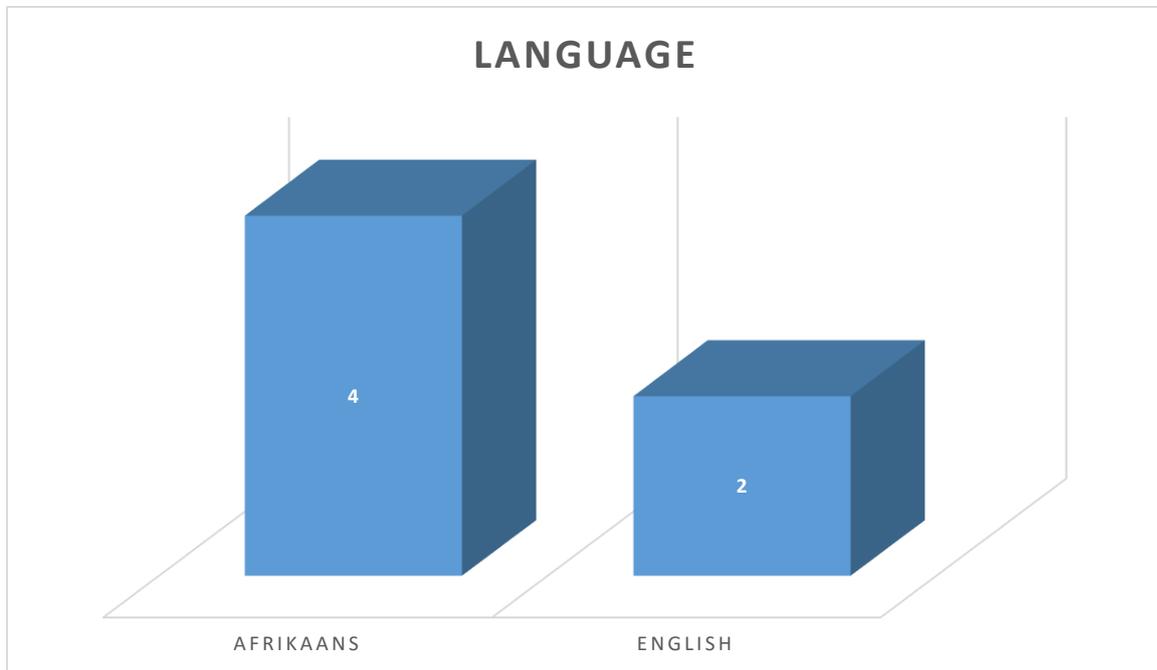


Figure 5.4. A graphical illustration of the sample distribution by language

### 5.2.1.5 Religion distribution of the sample

Table 5.5

Frequency distribution: Religion profile of the participants

Religion	Biographical characteristic	Frequency	Percentage
	Christian	4	67%
	Hindu	1	17%
	No religion	1	17%
	Total	6	100%

According to table 5.5, 67% of the participants were Christians, 17% belonged to the Hindu religion and 17% had no religion. The religion profile also contributed to the validity through diversity of cultures, background and beliefs, and the study was thus

relevant because diverse participants confirmed each other's answers. Figure 5.6 graphically depicts the diverse religions of the participants.

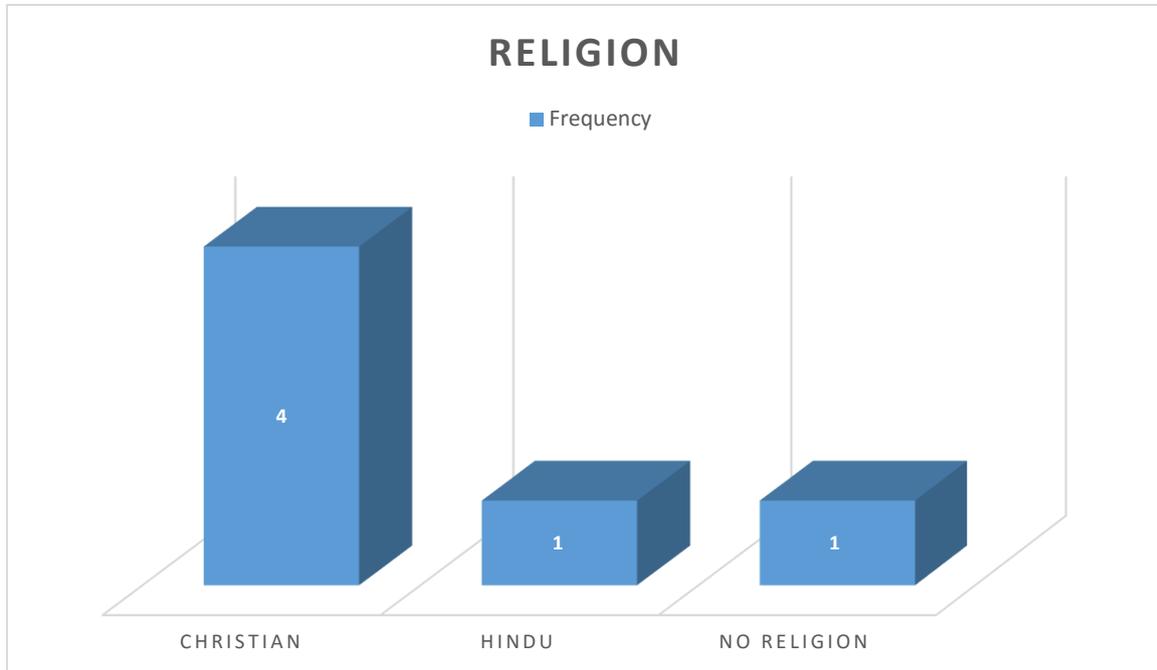


Figure 5.5. A graphical illustration of the sample distribution by religion

### 5.2.1.6 Marital status distribution of the sample

Table 5.6

Frequency distribution: Marital status profile of the participants

Marital status	Biographical characteristic	Frequency	Percentage
	Married	4	67%
	Single	2	33%
	Total	6	100%

Table 5.6 indicates that 67% of the sample were married and 33% single. This indicates a combination of family values, experience, different priorities and social standing. Although these differences provide a platform for different views, the participants still confirmed each other's answers. Figure 5.6 indicates that the majority of the participants were in fact married.

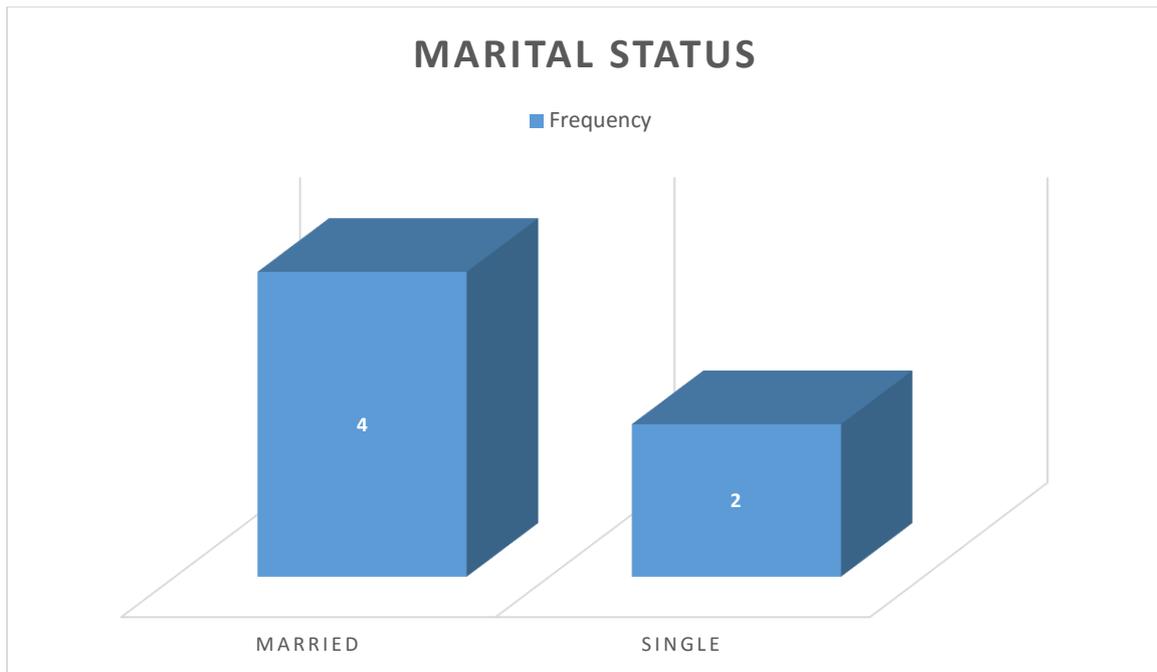


Figure 5.6. A graphical illustration of the sample distribution by marital status

#### 5.2.1.7 Job designation distribution of the sample

Table 5.7

Frequency distribution: Job designation profile of the participants

Job designation	Biographical characteristic	Frequency	Percentage
	HR Manager	1	16.67%
	Procurement Manager	1	16.67%
	HC Specialist	3	50%
	Maintenance Manager	1	16.67%
	Total	6	100%

According to table 5.7, 16.67% of the sample were HR managers, 16.67% procurement managers and 16.67% maintenance managers. The remaining 50% were human capital specialists. All the participants played a vital role to ensure compliance with labour legislation regarding policies and procedures in the workplace, as set out by the LRA, and could therefore provide expert information for this study

because they were also involved in labour broking. Hence the sample used made the study more trustworthy. Figure 5.7 provides a graphical depiction of the distribution of the different job designations.

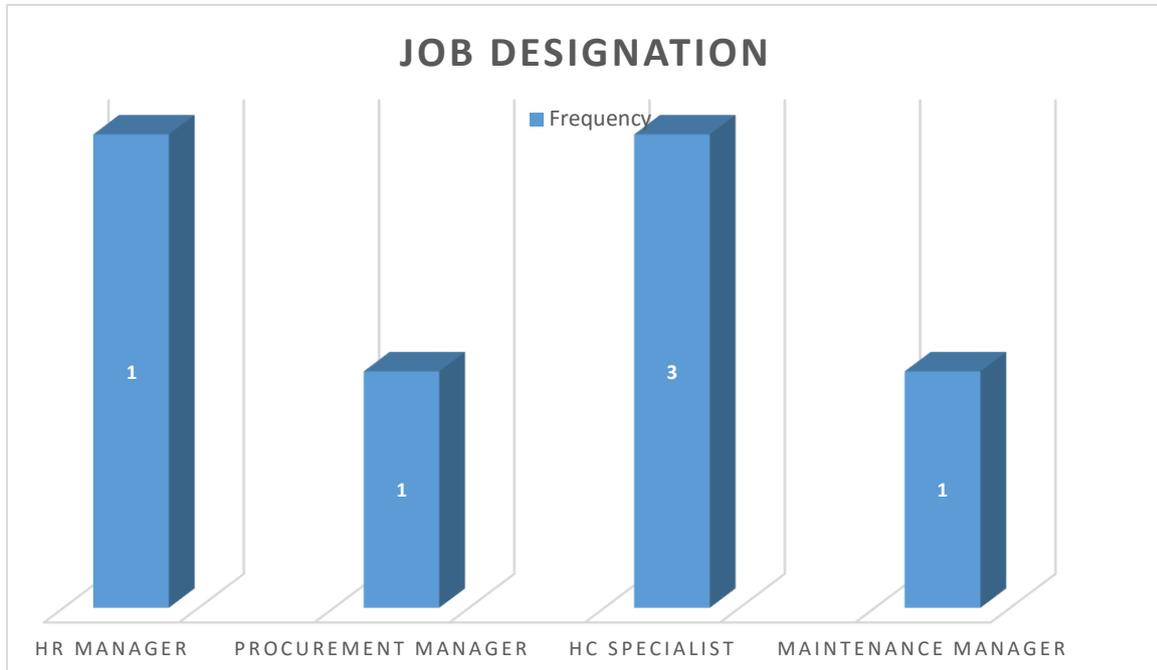


Figure 5.7. A graphical illustration of the sample distribution by job designation

### 5.2.1.8 Service years' profile distribution of the sample

Table 5.8

Frequency distribution: Service years' profile of the participants

Service years	Biographical characteristic	Frequency	Percentage
	1-10 years	3	50%
	11-20	0	0%
	21-30	2	33%
	30-40	1	17%
	Total	6	100%

Table 5.8 concludes that 50% of the participants had 1 to ten years' service, 33% had 21 to 30 years' service and 17% had 30 to 40 years' service. This indicated for a

mixture of valuable experience in the field which provided for a valid sample in that 50% had been employed in the same company for more than 20 years, knowing how operations took place prior to the amendments to labour broking legislation. These participants were all experts in the HR field, providing the best possible answers and adding great value to this study. Figure 5.8 indicates the various years of service of the participants.

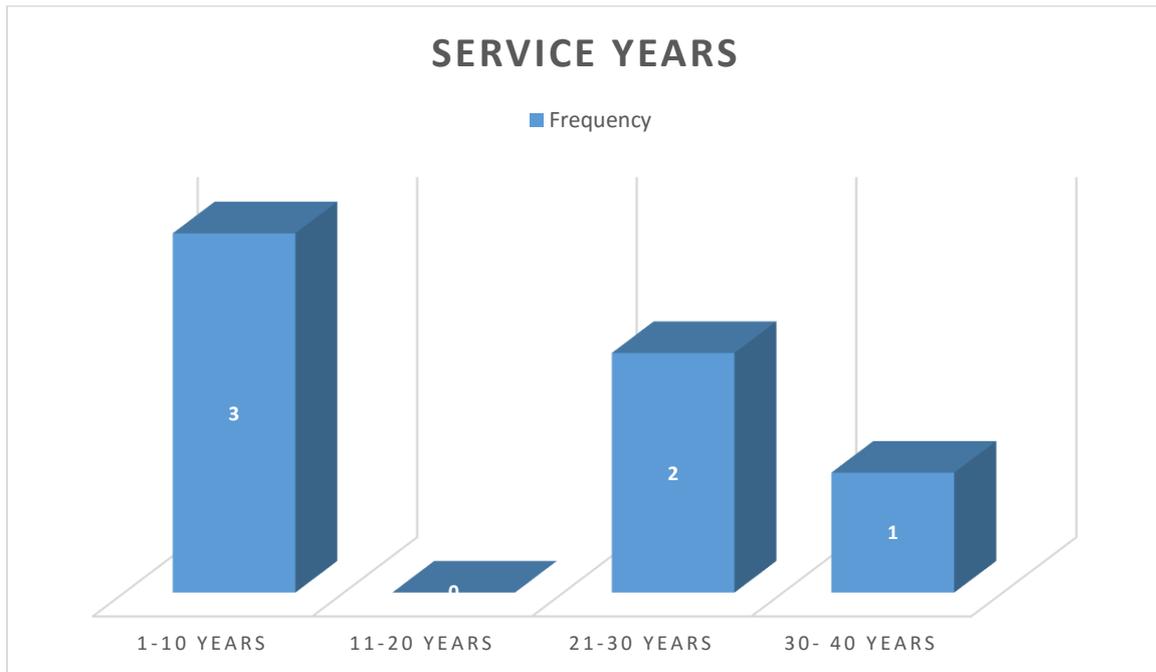


Figure 5.8. A graphical illustration of the sample distribution by service years

### 5.3 THE MAIN THEMES DISCUSSED IN THE INTERVIEWS

Semi-structured interviews were conducted with five explanatory open-ended questions (see annexure B). The data analyses were done on the basis of data gathered from the participants, who, at the time of study were working as experts in the HR department in the company chosen for this study.

The five explanatory open-ended questions set out section 4.4.3.2 and annexure B were asked during the individual interviews. The biographical information of the individuals was also shown in table 4.1 in section 4.4.2.2 and section 5.2 above.

Richards and Morse (2007, p. 135) define a theme as “a common thread that runs through the data”. The following themes were identified after the research process in chapter 4 had been completed (themes and subthemes are presented as annexure C):

- perception of labour broking
- perceptions regarding the positive impacts of changes to section 198 of the LRA
- perceptions regarding the negative impacts of changes to section 198 of the LRA

As discussed in section 4.4.4, the data analysis was done using Tesch’s (1990) qualitative data analysis method. After the themes had been identified, the researcher was able to find text from the verbatim interviews that had relevance and meaning for the themes (Richards & Morse, 2007).

Each of the main themes, together with the subthemes, are introduced and presented in the next section. Direct quotes from the transcribed interviews are used to confirm the codes. The themes codes are then contrasted and compared with the literature – in other words, literature control is used.

### **5.3.1 Theme 1: Perception of labour broking**

The following questions, probing questions and answers developed into theme 1:

- In your view what is the definition of labour broking?
- Are you aware of the changes to section 198 of the LRA and what do you understand regarding these changes?

The following probing questions were also asked during the interviews, which enabled the researcher to get more in-depth answer from the participants and which also enabled the researcher to confirm the participants’ views:

- Your view on the definition of labour broking
- Elaborate on your understanding of the changes to labour broking

The following subthemes emerged from theme 1:

- Subtheme 1.1: Definition of labour broking
- subtheme 1.2: Awareness of changes to section 198 of the LRA

Theme 1 relating to the perception of labour broking is indicated in table 5.9 below.

*Table 5.9 Perception of labour broking*

<b>Main question: In your view what is the definition of labour broking?</b>	
<b>Verbatim evidence</b>	<b>Group category identified for the definition of labour broking</b>
<p>Participant 2: Well in my opinion, I see it as a service provider that provides you with temporary employees, when you fill a position temporarily until you find a suitable candidate for the position ...</p> <p>Participant 4: ... so then it is a verbal thing of ... here is my schedule, if you need a guy then I will bring you one at that rate. But the company also has negotiations with them that if there is no work tomorrow, you need to organise that guy.</p> <p>Participant 5: Labour broking is when a company supplies and hire contract workers to a client company. So there is work to be done but on an ad hoc basis basically.</p> <p>Participant 6: When a company uses temporary workers to do ad hoc work they finish the work and go home.</p>	<p>Service provider providing temporary employees</p>

It can be concluded from the information in table 5.9 that four participants conceded that labour broking involves making use of contract or temporary workers supplied by another company to do the necessary work.

The probing/follow-up questions and answers in table 5.10 indicate the participants' awareness and understanding/perception of the changes to section 198 of the LRA.

*Table 5.10*

*Awareness and understanding/perception of the changes to section 198 of the LRA*

<b>Probing question: Are you aware of the changes to section 198 of the LRA and what do you understand regarding these changes?</b>	
<b>Verbatim evidence</b>	<b>Group category identified awareness and understanding/perception of changes to section 198 of the LRA</b>
<p>Participant 2: ... it means that a few people are going to lose their jobs ...</p> <p>Participant 3: It means you are either going to employ more, or even less people ...</p> <p>Participant 6: ... their contract has ended.</p>	Job losses
<p>Participant 2: ... it also means that a few people will be employed permanently.</p> <p>Participant 3: It means you are either going to employ more or even less people ...</p> <p>Participant 4: I understand the new law will allow you to conclude a new contract every time for example a fixed term contract.</p> <p>Participant 5: I do understand the changes and I know that an employee that is currently employed temporarily or by a</p>	Permanent employment

labour broker, after 3 months... they are deemed to be the employee. Participant 6: Yes we are aware of it. You will have fixed term contracts.	
Participant 3: ... Or if another person can do the job you are going to outsource it.	Outsource

It is evident from tables 5.9 and 5.10 above that the participants were familiar with the term “labour broking” and agreed with the definition formulated in section 3.2 of the study.

The participants also showed awareness and understanding of the changes to section 198 of the LRA. The participants were of the opinion that the changes to section 198 in the LRA would result in

- job losses (3 participants)
- permanent employment (5 participants)
- outsourcing (1 participant). (The researcher included this participant’s view, because it is also evident from the literature that outsourcing is a cheaper form of employment (see the discussion below).

### Discussion

According to Richards and Morse (2007), grounded theory (as explained in section 4.2.2 in this study) is a method based on interactions to find a process that will ultimately result in a specific situation. This is why the researcher had to make sure that the participants knew what labour broking is and if they were aware of the proposed changes to labour broking before he could fully continue with the study. If the participants had not known what labour broking is or had not even been aware of the changes in section 198 of the LRA, then there would have been no reason to continue with the interviews.

The participants defined labour broking as a form of hiring labour from a company supplying labour for a specific period or job. From the outset it was found that there was an awareness of implications of the proposed changes to section 198 of the LRA with references made to job losses, permanent employment and outsourcing.

These conclusions also support the views of the following authors regarding the definition and awareness of the changes to labour broking:

- The Labour Relations Act 66 of 1995 (LRA), section 198 (see section 3.2 in this study) defines labour broking as any person whose business it is to render out another person to a client for a fee to do a specific job for that client.
- Grogan et al. (2015) and Brand et al. (2012) confirm that the changes to section 198 of the LRA will include the rule that temporary employees must be employed with the same benefits as a permanent employee, which will eventually see temporary employees becoming permanently employed (see section 3.4.2 in this study).
- Harvey (2011) (see section 3.8 in this study) suggests that employers need to be able to outsource for specialists when drafting future amendments to section 198 of the LRA to stay competitive and productive.
- Swanepoel and Slabbert (2012) (see section 2.4.1 in this study) also refer to outsourcing for cheaper labour in order to stay competitive.
- Nel et al. (2013) agree that the proposed changes to section 198 of the LRA could lead to a reduction in employment opportunities of up to 600 000 if labour broking is restricted (see section 2.4.2 in this study).

### **5.3.2 Theme 2: Perceptions regarding the positive impacts of changes to section 198 of the LRA**

The following questions, probing questions and answers developed into theme 2:

- In your view, what positive impacts, if any, will the changes in labour broking have on the organisation?
- In your view, what positive impacts, if any, will the changes in labour broking have on the employees?

The following probing questions were also asked during the interviews, which enabled the researcher to get more in-depth answers from the participants and which also enabled the researcher to confirm the participants' views:

- Does the impact of the changes depend on what work needs to be done?
- In your experience, what impact will the proposed changes to section 198 of the LRA have on your company?
- Elaborate on the implications that the changes to labour broking will have on the working relationship between the organisation and the employee?
- So you would agree better work for employees?

The following subthemes emerged from theme 2:

- Subtheme 2.1: Advantages of the changes to labour broking on an organisation
- Subtheme 2.2: Advantages of changes to labour broking for employees

Theme 2 relating to the positive impact on an organisation regarding changes to labour broking is indicated in table 5.11.

*Table 5.11*

*Positive impacts on an organisation regarding changes to labour broking*

<b>Main question: In your view, what positive impacts, if any, will the changes in labour broking have on the organisation?</b>	
<b>Verbatim evidence</b>	<b>Group category identified positive impacts on an organisation regarding proposed changes to section 198 of the LRA</b>

Participant 5: ... will definitely improve the employees' morale in their work performance and such which will make the organisation more productive. Participant 6: ...yes it is better work from employees which is good for the organisation.	Increase productivity
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Table 5.11 indicates that the changes will have some positive impacts on the organisation.

The probing questions and answers in tables 5.12 and 5.13 provide evidence regarding subthemes 2.1 and 2.2.

*Table 5.12*

*Advantages of the changes to labour broking on an organisation*

<b>Probing question: Are there more advantages for the organisation?</b>	
<b>Verbatim evidence</b>	<b>Group category identified advantages of the changes to labour broking on an organisation</b>
Participant 4: quality of the people from the labour brokers is very poor, so what do we do now? If you need a boilermaker or welder then we pay very high rates for a guy that has a boiler shop and we hire his best employees to do the job and he goes away when he is finished. With the changes we can see that contract workers become more productive to try and become permanent. Participant 5: ... they will feel quite motivated by it and up their performance Participant: 6 ... a good opportunity to identify good temp workers and motivate them by permanently employing them. It is an opportunity for them I think	Engaged employee

to become permanently employed, which will automatically improve their productivity.	
Participant 2: ... fill a position temporarily until you find the best candidate for the position... Participant 5: ... if they see that a certain employee is actually a good contractor then they keep them on.	Opportunity to identify top-quality employees

Table 5.13

*Advantages of changes to labour broking for employees*

<b>Main question: In your view, what positive impacts, if any, will the changes in labour broking have on the employees?</b>	
<b>Verbatim evidence</b>	<b>Group category identified advantages of the changes to labour broking for an employee</b>
Participant 1: ... the changes in law [are] to protect the guy that earns a small salary Participant 2: ... I see something positive for the guy who has been cheated for 10 years not being able to get permanent employment ... for him it is prime time as he will now get benefits that he did not receive for the past 10 years.	Protect lower income
Participant 2: ... I see something positive for the guy who has been cheated for 10 years not being able to get permanent employment ... Participant 5: ... we had a few temporary workers or labour broker employees that had worked on our site for a long time, maybe three or four years and now at least we make them permanent. It will definitely improve the morale in their work performance and such. So we see the benefits, yes.	Permanent employment

Participant 6: ... that person knows that after three months he will be permanent.	
<p>Participant 2: With the new changes we will need to follow disciplinary procedural steps with contract employees as we will not be able to just dismiss contract workers as we did in the past.</p> <p>Participant 5: ... an employee that is currently employed by a labour broker, will be deemed to be a permanent employee after 3 months. Before the changes in labour broking, the client company and the labour broker are jointly and separately liable for any dispute. The contract employee can now, after the changes in labour broking, approach the client company directly with any dispute or grievance.</p>	Better dispute resolution procedures

Tables 5.11, 5.12 and 5.13 indicate that the participants agreed that there would be positive implications resulting from the changes in labour broking for both the organisation and the employees. The participants also concurred with the advantages in subthemes 2.1 and 2.2. They all perceived that the positive impacts for the organisation would be

- increased productivity (2 participants)
- engaged employees (3 participants)
- an opportunity to identify better quality employees (2 participants)

The advantages of changes to labour broking for an employee would be

- to protect lower-income employees (2 participants)
- permanent employment (3 participants)
- better dispute resolution procedures (2 participants)

## Discussion

The participants stated that there were positive implications for the organisation and its employees after the changes to section 198 of the LRA. As mentioned in section 3.6, the proposed changes to labour broking are based on the welfare of the contract worker. The participants referred to the possibilities of permanent employment and protecting the rights of contract workers, which would ultimately lead to better work performance and more engaged employees.

The proposed amendments will still allow for contract workers for a period of three months. According to the participants, contract workers would still be cheaper to use for small projects that take less than three months to complete.

These conclusions also support the views of the following authors regarding the positive impact of changes to labour broking:

- Botes (2013) refers to the Namibian Labour Act of 2012 (section 3.7) stating that the contract worker will receive the same rights and benefits as standard employees who are doing the same type of work.
- The Labour Amendments Public Briefing Notes (2012) (section 2.4.2) mentions that a TES may not employ a person on less favourable terms not permitted by the LRA or BCEA and bargaining council agreement.
- According to Grogan et al. (2015) and Brand et al. (2012) (section 3.4.2), the amendments to section 198 of LRA will include the following:
  - The temporary employment contract may not be longer than three months
  - The employee may not be employed on less favourable terms than another employee doing the same work.
- Brand et al. (2012) (section 3.4) concede that the client of the labour broker will be jointly and severally liable for non-compliance after the implementation of the LRA Amendment Bill of 2012. The employee can lodge a grievance directly with the client organisation.
- According to Harvey (2011) (section 3.8), the amendments to section 198 of the LRA are to improve the rights of the contract worker.

- Finnemore and Joubert (2013) (section 2.4.1) assert that employers do not want to employ contract workers because of the strict regulations, and should the proposed amendments to section 198 be implemented, companies will be more likely to implement permanent employees which will lead to fewer contract workers.
- Gericke (2010), (section 3.4.6) emphasises the fact that temporary employees have no work security because companies use them as cheap labour knowing that they will work just to receive an income. With the amendments, the temporary employee will now have an opportunity to receive some benefits.
- Botes (2013) (section 3.7) examined Namibia's evolution in labour broking and also referred to the "no job security" of the contract workers before the amendments to the Labour Broking Act.
- Finnemore and Joubert (2013) (section 3.5) agree that contract workers are a cheap source of employment, because the company making use of their labour is not deemed the employer and has little risk in employing contract workers. The amendment to section 198 will keep the company liable for unfair treatment.
- Swannepoel and Slabbert (2012) (section 2.4.2) refers to talks of President Jacob Zuma after the elections in 2009 whereby he mentioned that change in better regulation to protect contract workers (lower income group) will be announced soon.

### **5.3.3 Theme 3: Perceptions regarding the negative impacts of changes to changes to section 198 of the LRA**

The following questions, probing questions and answers developed into theme 3:

- In your opinion, what negative impacts, if any, will the changes in labour broking have on the organisation?
- In your opinion, what negative impacts, if any, will the changes in labour broking have on the employees?

The following probing questions were also asked during the interviews, which enabled the researcher to get more in-depth answers from the participants and which also enabled the researcher to confirm the participants' views:

- Do you think the organisation and employees' production will be affected?
- : In your view, will the proposed amendments regarding labour broking influence the company's flexibility regarding employment? Please explain.
- Do you think the organisation will go for more fixed term contracts than making use of labour broking?
- So basically the law will prevent you from using long term temporary contracts?
- Will the amendments to Section 198 of the LRA have an impact on the psychological contract between the organisation and the employees? Please explain.
- Based on your views will the internal policies of the organisation be affected by changes in labour broking?
- So do you mean that the workers will now just do what the need to do and work as hard as they used to?
- 

The following subthemes submerged from theme 3:

- Subtheme 3.1: Disadvantages of changes to labour broking on an organisation
- Subtheme 3.2: Disadvantages of changes to labour broking on employees

Themes relating to negative impacts on an organisation regarding changes to section 198 of the LRA are indicated in table 5.14.

*Table 5.14*

*Negative impacts on an organisation regarding changes to labour broking*

<b>Main question: In your opinion, what negative impacts, if any, will the changes in labour broking have on the organisation?</b>	
<b>Verbatim evidence</b>	<b>Group category identified negative impacts on an organisation regarding proposed changes to section 198 of the LRA</b>

<p>Participant 1: It is going to have an impact and we will need to review our temporary contracts ... so it has cost implications</p> <p>Participant 2: Yes especially on the financial side ...</p> <p>Participant 3: ... it is going to cost you a lot more on training because we need to employ a new worker every 3 months and these employees must be trained and supplied with safety wear and gear.</p> <p>Participant 5: ... the biggest one would be budget constraint ...</p> <p>Participant 6: ... definitely the budget will be affected</p> <p>...</p>	<p>Increased expenses</p>
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From table 5.14 it can be concluded that cost implications were the unanimous negative implication regarding the changes to labour broking. Probing questions and answers resulted in more negative implications.

Tables 5.15 and 5.16 provide evidence of subthemes 3.1 and 3.2.

*Table 5.15*

*Disadvantages of changes to labour broking on an organisation*

<p><b>Probing question: Are there more examples of disadvantages that the changes in labour broking will have on the organisation?</b></p>	
<p><b>Verbatim evidence</b></p>	<p><b>Group category identified disadvantages of changes to labour broking for an organisation.</b></p>

<p>Participant 1: Policies need to be rewritten. We will look more at independent contractors as for example our electricity workers are independent contractors.</p> <p>Participant 2: ... as well as disciplinary procedures and IR procedures.</p> <p>Participant 5: Yes, I think we will have to change our policies and put into our policies something like project work will need to be specified, temp workers will not be able to work longer than 3 months ...</p> <p>Participant 6: We will have to actually draw up a new policy slash guideline for managers so that they can understand that a temp person cannot work longer than 3 months. For example in your recruitment policy you will add that if there is an internal vacancy that the temp employee will have to be included and seen as an internal candidate and not an external candidate.</p>	<p>New policies</p>
<p>Participant 5: ... and if there have to be any temp worker or work needed, it needs to be cleared with the human resource department so we can give the guidelines in terms on how to apply the temp contracts so that we are always on the right side of the legislation.</p> <p>Participant 6: We will have to actually draw up a new policy slash guideline for managers so that they can understand that a temp person cannot work longer than 3 months ... So yes it will have an impact because you have to implement something similar so that the whole company understand[s] and know[s] what the regulations are ...</p>	<p>New guidelines</p>
<p>Participant 5: Yes it would, actually because sometimes employers try to get in terms and try to help out in certain areas ... and then if they see that a certain employee is actually a good contractor then they keep them on for other projects, but sometimes those projects don't have</p>	<p>Employment flexibility</p>

<p>an end date so then with the new amendments we are forced to keep or to appoint that person and then the flexibility terms of moving people around becomes a bit of a tricky situation.</p> <p>Participant 6: ... after three months the project must be completed and when the project is not completed then you must make a decision if you are going to employ that person and if that person is not a good candidate then you must again look for another person.</p>	
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Table 5.16

*Disadvantages of changes to labour broking for employees*

<b>Main question: In your opinion, what negative impacts, if any, will the changes in labour broking have on the employees?</b>	
<b>Verbatim evidence</b>	<b>Group category identified disadvantages of changes to labour broking for an organisation</b>
<p>Participant 1: You are not going to create jobs, but rather take away jobs. The employee knows that we are only going to take him for a certain time, where he now ... every time hopes that you are going to renew and renew and renew, and now we say to each other that he must leave after a certain period so he is not going to do his best and it is going to have an impact.</p> <p>Participant 2: Yes ... you are going to conclude a new temporary contract with a different person every time ... and I also think it will influence employability.</p>	<p>Unemployment</p>

<p>Participant 5: ... or they do not feel secure and they only have three-month contract with the company. The company would say we are forced now to make people permanent and we can't afford it so we would actually have to let the temp employees go before the three months are up and we will properly have to use our current staff to maintain the jobs.</p> <p>Participant 6: ... generally it can have a negative impact, because they will start to panic because they will not be employed permanently because the company cannot afford more employees.</p>	
<p>Participant 2: Work security will be affected and I also think it will influence the employability, job satisfaction, autonomy etc. which will influence the employees' attitudes towards the organisation.</p> <p>Participant 4: ... there will be an impact on the working relationship between the company and the worker. Attitudes of the employees towards the organisation will be influenced negatively.</p>	Negative attitudes
<p>Participant 1: ... every time we get new people for work we need to train them which will not be possible due to cost involved as we keep on replacing workers.</p> <p>Participant 2: The amendments will negatively influence the employability of the contract workers because each time you conclude a new temporary contract you conclude it with a new contract worker.</p>	Poor employability
<p>Participant 5: ... we will properly have to use our current staff to maintain the jobs.</p> <p>Participant 6: ... sometimes you need somebody quick and if you don't use labour brokers anymore you have to do everything yourself.</p>	Current employees will do all the work

The information in tables 5.14, 5.15 and 5.16 indicates that the changes to labour broking will have a negative effect on the organisation and the employee. The negative impact in theme 3 for the organisation relates to

- increased expenses (5 participants)
- new policies (4 participants)
- new guidelines (2 participants)
- employment flexibility (2 participants)

The negative impacts in theme 3 for the employee relate to

- unemployment (4 participants)
- negative attitudes (2 participants)
- poor employability (2 participants)
- current employees having to do all the work (2 participants)

### Discussion

It is evident that the proposed changes to labour broking will also have negative implications for the organisation and the employee. The major concerns for the organisation would be the cost implications.

The reason for the cost implications are the appointment of full-time employees, on the one hand, and the high staff turnover regarding the three-month contract of temporary workers, on the other. When employing full-time employees, the cost to company automatically rises because permanent employees receive benefits such as pension, medical aid, overtime, performance bonuses and union fees, whereas contract workers are not entitled to any benefits from the company.

The high staff turnover regarding the three-month contracts of contract workers influences the cost to the company in terms of training, safety wear and other accessories which each new employee must receive.

AgriSA's aim was to reduce unemployment (section 2.4.2) but according to the participants unemployment will increase with the changes to section 198. The participants agreed that employees would experience a negative impact in the form of unemployment and negative attitudes towards the organisation. It was evident from the participants' reactions that job losses are the major concern, because the company cannot afford to make the contract workers full-time employees or to provide contract workers with company benefits, which will increase the company's expenses. This will then result in employees who are already working for the company doing all the work, which will result in work overload, burnout and stress, which again will lead to absenteeism, ill-health and ultimately affect the organisation negatively because of poor work performance.

Job losses have a negative effect on employees' attitudes, but the greater concern is their employability. If the employee does not do any work, he or she cannot improve on skills or learn new ones. This affects the employability of employees, which might lead to longer periods of unemployment.

These conclusions for theme 3 are also supported by the views of the following authors:

- Nel et al. (2013) (section 2.4.2) state that the changes to section 198 of the LRA will reduce employment opportunities on a large scale.
- According to Klerck (2009) and Botes (2013) (section 3.7 of this study), the Namibian government set new guidelines and policies for organisations after the changes in labour broking, but were not enforced.
- Botes (2013) (section 3.7) refers to the Namibian Labour Act of 2012, which states that an employer may not employ a temporary worker for six months after retrenchment. This influences employment flexibility.
- In section 3.4 of the study, it was stated that Brand, et al. (2012) refer to the Minister of Labour's proposed changes that will include strict regulation, which will influence employment flexibility because organisations will not be able to simply appoint a person to a job that is required and then get rid of him or her.

- Harvey (2011) (section 3.4.6) and Van Eck, (2010) (section 3.8) both refer to the regulation of labour broking, which in turn implies new policies and guidelines.
- Labour Amendments Public Briefing Notes (2012) (section 2.4.2) mentions that a TES may not employ a person on less favourable terms and conditions as permitted by the LRA, BCEA and bargaining council agreement which will have will increase the financial burden of a company making use of TES.
- Nel et al. (2013) (section 2.4.2) highlight the concern that small businesses will not be able to afford the high wages and other financial increases which will result in small businesses closing down, which will result in job losses.
- According to Van Eck (2010) (section 3.5), contract workers earn less remuneration which subsequently affects their attitudes towards the organisation.
- Venter et al. (2011) (section 3.6) maintain that business in South Africa makes more use of labour broking in that it cuts on labour costs, keeping them competitive in the global perspective. Changes in labour broking legislation will therefore result in higher labour costs increasing the expenses of the company.
- Changes in labour broking will result in current employees doing all the work, leading to stress and burn-out, which results in negative attitudes and poor work performance, as mentioned by Robbins et al. (2009) (section 3.6).

## **5.4 SUMMARY**

The researcher identified three themes with subthemes that identified important concepts relating to the proposed changes to labour broking that gave him insight into the experiences of employees who were experts in the human resource management field and who were working in an integrated petroleum and chemical company.

A major concept that underscored all the participants, was the proposed changes to labour that would definitely have an impact on the organisation and its employees. The participants identified positive and negative implications. However, the researcher realised during the interviews that more probing questions would be needed to identify the positive implications.

All the data gathered were compared to findings in the literature review to ensure the trustworthiness of the study. All irrelevant data was removed from the final data analysis.

Chapter 6 focuses on the conclusions, limitations and recommendations for possible future research on this topic.

## CHAPTER 6

### CONCLUSIONS, LIMITATIONS AND RECOMMENDATIONS

#### 6.1 INTRODUCTION

In the previous chapter, the findings were presented and discussed and compared to the literature study in chapters 2 and 3.

This chapter deals with the conclusions, limitations and recommendations of the study with regard to the employees' perception regarding the impact of the changes to section 198 of the LRA on an organisation and its employees. The possibility of further studies on this topic is also touched on in this chapter.

The conclusions and recommendations of this study are based on the perceptions of six participants, employed at an integrated petroleum and chemical company and working in the HR department, regarding the changes to section 198 of the LRA.

The research objectives of the study were as follow:

*Main objective:* To explore the perceptions of employees in the HR department with regard to the changes to section 198 of the LRA in the workplace

*Objective 2:* To investigate the impact that the changes in section 198 of the LRA with regard to labour broking will have on an integrated petroleum and chemical company in South Africa.

A literature review was conducted in chapters 2 and 3 to enable the researcher to collect information on the problem and objective of the study. After the researcher had formulated the objective of the study he conducted snowball sampling at the company chosen for the research, and canvassed six individuals from the HR department to participate in individual interviews.

The researcher conducted six interviews of which two were telephonic. The researcher also had to do follow-up interviews to gather more data and to clarify information until data saturation was reached, to enable him to achieve the research objective.

During the data analysis phase, the researcher used Tesch's (1990) qualitative data analysis method. To ensure trustworthiness (see section 4.5) the researcher made use of the four criteria (credibility, transferability, dependability, confirmability) of Lincoln and Guba's trustworthiness model as discussed by De Vos et al. (2013).

The following three themes emerged for the data analysis (see section 5.3):

- perception of labour broking
- perceptions regarding the positive impacts of changes to section 198 of the LRA
- perceptions regarding the negative impacts of changes to section 198 of the LRA

From the main themes, subthemes also emerged with the data analysis (see annexure C), which helped the researcher to formulate findings, draw conclusions and make recommendations.

## **6.2 CONCLUSIONS**

The results presented in chapter 5 allowed the researcher to draw conclusions relating to the objective of the study. These conclusions will now be discussed according to the themes presented in annexure C of this study.

### **6.2.1 Conclusions relating to perceptions of labour broking**

#### **6.2.1.1 *Definition of labour broking (subtheme of perceptions of labour broking)***

The researcher concluded (section 5.3.1) that the participants agreed that the labour broking entails a company making use of hired labour supplied by another company.

These labour broking firms supply temporary workers to other companies according to their needs.

#### **6.2.1.2 *Awareness of changes to section 198 of the LRA (subtheme of perceptions of labour broking)***

The researcher also concluded (section 5.3.1) that, with the participants' understanding of the term of labour broking, they are aware of the changes to section 198 of the LRA and understood that these changes would have the following implications for the organisation:

- job losses
- permanent employment
- outsourcing as a result of these changes

Job losses occur when an organisation decides to no longer make use of labour brokers. This will improve the chances of some of the temporary workers becoming permanently employed. When an organisation does not employ workers permanently and does not make use of contract workers for a specific job, it has an alternative option of outsourcing for independent contractors to do that specific job.

#### **6.2.2 *Conclusion relating to the perceptions regarding the positive impacts of changes to section 198 of the LRA***

##### **6.2.2.1 *Advantages of the changes to labour broking on an organisation (subtheme of perceptions regarding the positive impacts of changes to section 198 of the LRA)***

The researcher concluded (section 5.3.2) that the participants believed that the changes to labour broking would have positive impacts for the organisation. The participants conceded that the organisation would experience advantages in the form of

- increased productivity
- engaged employees
- an opportunity to identify top-quality employees

Employees would increase their productivity and become more engaged to try and become permanently employed, which would result in more productive employees. This would also allow the organisation to identify competent employees that it could employ permanently.

#### **6.2.2.2 Advantages of changes to labour broking for an employee (subtheme of perceptions regarding positive impacts of changes to section 198 of the LRA)**

It was concluded in section 5.3.2 that the participants felt that employees would also enjoy advantages as a result of the changes to labour broking. The following advantages were identified:

- protecting lower-income employees
- permanent employment
- better dispute resolution procedures

The participants indicated that changes to section 198 of the LRA would help protect the employee who earns a lower income than the average permanent employee in terms of better benefits, and these changes would also protect their rights in terms of unlawful termination of their employment contracts. The contract worker would also be afforded an opportunity to take up permanent employment, in the event of the organisation deciding to employ a person instead of making use of labour broking because of the impact of the changes to section 198 of LRA.

### **6.2.3 Conclusion relating to perceptions regarding the negative impacts of changes to section 198 of the LRA**

#### **6.2.3.1 *Disadvantages of changes to labour broking on an organisation (subtheme of perceptions regarding the negative impacts of changes to section 198 of the LRA)***

It was concluded (section 5.3.3) that the participants felt that there would be negative implications for the organisation and its employees regarding the changes to section 198 of the LRA.

The following four disadvantages of the changes to labour broking for the organisation were identified:

- increased expenses
- new policies
- new guidelines
- employment flexibility

The researcher concluded that the major concern from the organisation's perspective would be the increase in expenses that would arise as a result of the changes to section 198 of the LRA. New employment contracts give rise to benefits, increasing the cost to company. New contractors every three months would lead to increased costs because of training, safety wear and other induction expenses.

The changes to section 198 of the LRA would also oblige organisations to rewrite their policies and guidelines for their operations, which would include the code of conduct, disciplinary procedures, recruitment policies and so forth. These changes would also curb employee flexibility because organisations would not be able to keep temporary workers to help out in different areas for indefinite periods.

### **6.2.3.2 *Disadvantages of changes to labour broking on an employee (subtheme of perceptions regarding negative impacts of changes to section 198 of the LRA)***

It was concluded in section 5.3.3 that the participants felt that the employees would also be disadvantaged as a result of the changes to labour broking. The following disadvantages were identified in the study:

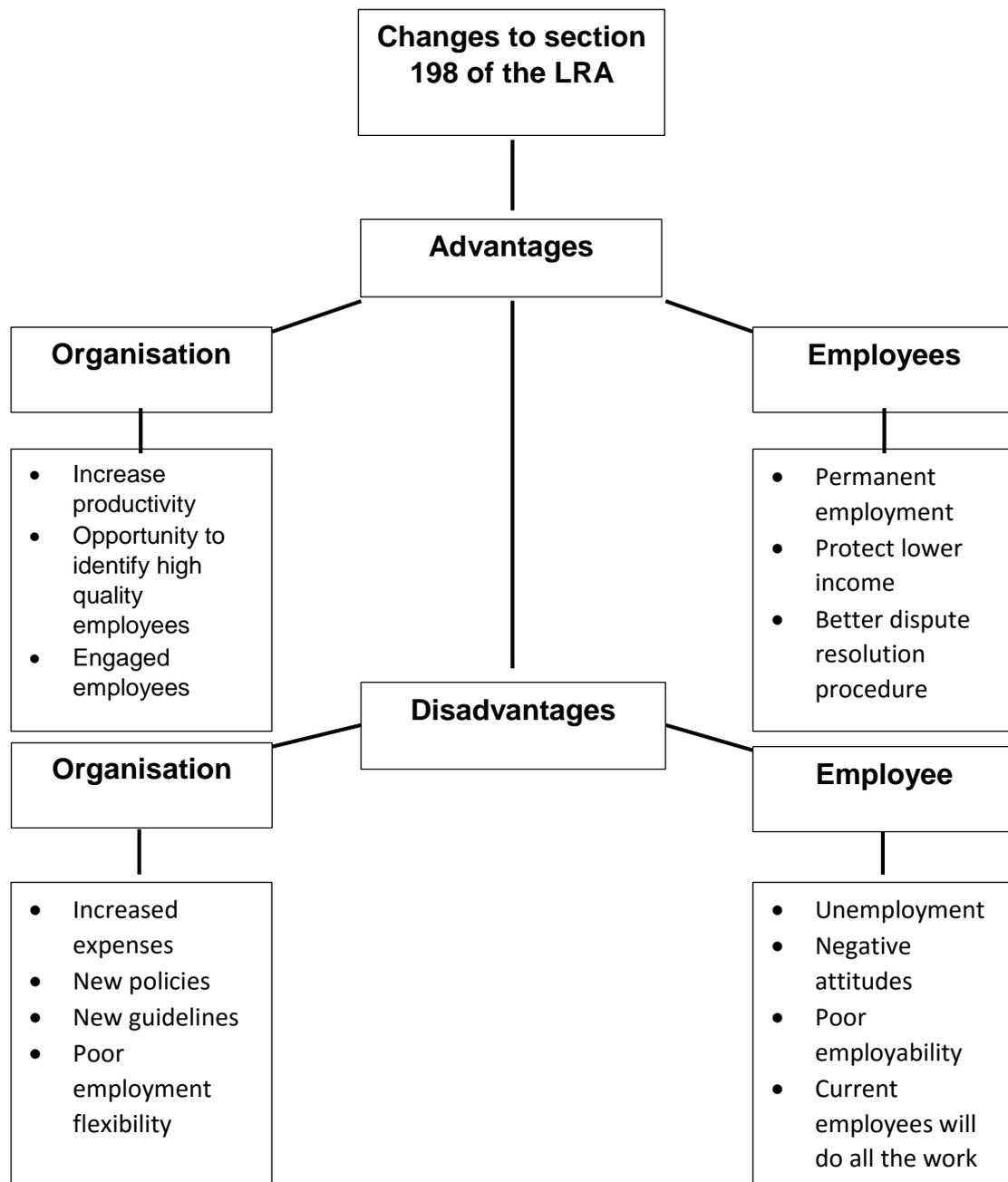
- unemployment
- negative attitudes
- poor employability
- current employees having to do all the work

The researcher concluded that the changes to section 198 of the LRA would result in unemployment for contract workers because the organisation would use fewer contract workers because of the rise in costs and stringent regulations, as discussed in the previous section.

The time limit of the three-month contract would also affect contract workers' employability owing to the fact that they would not have sufficient time to learn and practise a skill to better themselves. This would influence employees' attitudes negatively towards the organisation and the fact that the organisations would not be able to renew employees' contracts in the usual way. Also, the extra work would have to be divided up between the current employees, which would affect attitudes negatively.

## **6.3 A SUMMARY OF EMPLOYEES' PERCEPTIONS OF THE IMPACT OF CHANGES TO LABOUR BROKING ON THE ORGANISATION AND EMPLOYEES**

Figure 6.1 below summaries the conclusions drawn in section 5.3 and presented in section 6.2 of this study, illustrating the advantages and disadvantages for the organisation and employees regarding the changes to section 198 of the LRA.



*Figure 6.1. Summary of employees' perceptions regarding the impact of changes to labour broking on the organisation and employees*

#### **6.4 PERSONAL EXPERIENCE DURING THE STUDY**

This study gave the researcher a broader view on how change can affect the individual and an organisation. With specific reference to the changes in labour legislation, the

researcher had the opportunity to form a better understanding of how the changes to section 198 of the LRA would impact on the organisation and its employees.

The researcher found this study rich with academic and personal development, laying a foundation for further research on this topic.

## **6.5 STRENGTHS OF THE STUDY**

The researcher was able to identify a company that uses labour brokers because he works in the property industry and supplies accommodation to contract workers. The researcher was able to conduct individual interviews in the offices of the participants at their workplace, with minimal disturbance. This allowed the participants to be more relaxed and in control. The researcher was also able to do follow-up interviews with the participants via telephonic interviews to obtain more clarity and record more information when needed.

The fact that the changes to labour broking are a recent occurrence, the participants were more than willing to discuss their experiences of and views on these changes. Although the researcher had his own opinion of labour broking based on his experiences, the bias was limited because only participants whom he did not know were used, and they voluntarily participated in the interviews.

The researcher and his study leader analysed all the data to avoid the possibility of preconceived ideas influencing the conclusions and findings of this study.

## **6.6 LIMITATIONS OF AND RECOMMENDATIONS FOR THE STUDY**

Limitations were touched on throughout the study, and more specifically, in sections 4.3 and 6.5, the researcher mentioned the researcher's bias, the participant's involvement and data collection and data analysis. On the strength of this, the researcher was able to make recommendations based on the conclusions drawn and findings made on employees' perceptions of changes to labour broking.

### **6.6.1 Limitations and recommendations relating to the researcher's bias, participant involvement, data collection and data analysis**

The researcher's academic and employment background could have increased the researcher bias in the study, but he avoided bias by making use of bracketing, reflexivity and intuiting techniques throughout the study. Some of the participants were Afrikaans, but the researcher eliminated the bias by conducting the interviews in English, thus collecting accurate data without including the researcher's own perceptions.

The researcher was also supported by his experienced study leader who guided him through the correct interview process, and the collection and analysis of data. This enabled the researcher to conduct in-depth research on the experiences of the participants.

Another limitation of this study could have been participant involvement owing to the fact that no black participants were included (section 5.2.1.1) and the participants had different home languages (section 5.2.1.4). The researcher was also forced to conduct two telephonic interviews. He subsequently follow-up telephonic interviews to eliminate this limitation in an effort to collect more in-depth data to validate his findings.

A recommendation for further study would be to involve a larger and more diverse sample group of employees working in an HR department and a sample group of contract workers to gain a broader view of the potential implications of the changes to labour broking.

The researcher ensured trustworthiness throughout the study by following the rules on credibility, transferability, dependability and confirmability.

### **6.6.2 Limitations and recommendations regarding the implications of changes to section 198 of the LRA for the organisation and employee as perceived by employees in the HR department**

The rich history of South African labour legislation discussed in chapter 2 shows that South Africa's labour legislation is an ever-evolving science, always changing for various reasons.

The objective of this study was to explore the perceptions of employees in the HR department of the changes to section 198 of the LRA in the workplace and the impact of these changes on an integrated petroleum and chemical company in South Africa and its employees.

It was concluded that the changes to section 198 of the LRA would have implications for the organisation and its employees. The results mentioned in section 6.2 indicated that both the organisation and employees would experience positive and negative consequences.

The key role players involved with the changes to labour legislation, with specific reference to section 198 of the LRA, should try and minimise the negative impact of these changes on organisations and employees, so that organisations can still make a profit and remain competitive in the world of business.

### **6.6.3 Limitations and recommendations for future research**

Owing to the fact that this study was conducted at an integrative petroleum and chemical company making use of contract workers, it is not possible to generalise the finding to other organisations that use labour brokers. It is therefore recommended that this research be repeated to include other organisations and a larger sample group.

This study involved no black employees and the majority participants were white Afrikaans-speaking employees. It is therefore further recommended that more in-depth research be conducted which include a more diverse sample group to

investigate the effect that changes in section 198 of the LRA have on organisations and its employees.

A final recommendation is that further studies should take into account the perceptions of contract workers and employees and/or managers in labour broking companies in order to provide a broader and in-depth overview of their perceptions of the effect of the changes to labour broking on organisations and employees alike.

## **6.7 RECOMMENDATIONS FOR THIS INDUSTRY**

As evident from the participants' perception it can be concluded that the following recommendations could be made for the industry.

The organisation will need to try and keep the operating cost low. This could be achieved with a carefully stratified employment policy regarding atypical employment and also by utilising the increased productivity from employees.

The organisation will have an opportunity to identify good quality employees which will help boost permanent employment and improve employability of employees. Well stratified guidelines for permanent and temporary employees will counter the situation where permanent employees will need to do all the work.

A well implemented dispute resolution procedure will help improve the negative attitudes of employees regarding temporary employment. Better engaged employees should be utilised to increase productivity and employment flexibility.

This study is original and will hopefully shed light on the potential impact of changes in labour broking on organisations and their employees.

# **THE IMPACT OF CHANGES IN LABOUR BROKING ON AN INTEGRATED PETROLEUM AND CHEMICAL COMPANY**

## **Abstract**

There have been significant changes to South Africa's labour legislation in the last few months, with the changes to section 198 of the Labour Relations Act 66 of 1995 being the most contentious. The purpose of this research was to explore the perceptions of employees in the HR department of an integrated petroleum and chemical company regarding the changes to section 198 and the potential implications of these changes for an integrated petroleum and chemical company and its employees. The qualitative exploratory study was conducted with six employees of a large integrative petroleum and chemical company making use of labour brokers, until data saturation was reached. The data were collected by means of individual interviews and telephonic interviews. The results indicated that the changes to section 198 will have some positive implications for an organisation, including more productive employees and the ability to identify high-quality employees more easily. The positive implications for the company's employees are that the lower-income employees will be protected, the new legislation will provide permanent employment and there will be better dispute resolution procedures. However, the changes to section 198 will also have negative implications for the organisation, for instance higher costs, the drafting of new policies and guidelines and less employment flexibility. Negative implications for the employees include unemployment, negative attitudes towards the organisation, poor employability and a situation where the current and/or permanent employees have to do all the work.

**Keywords:** Atypical employment; employees; labour broking; labour legislation; section 198 of the Labour Relations Act; petroleum and chemical company; temporary employment

## INTRODUCTION

The workplace and the employment relationship are governed and supported by three fundamental pieces of South African labour legislation, namely the Labour Relations Act 66 of 1995 (hereinafter the LRA), the Employment Equity Act 75 of 1997 and the Basic Conditions of Employment Act 55 of 1998. Although South African labour legislation is complex, it is the only legislation that can be changed to accommodate specific employment relationships (Basson, Christianson, Garbers, Le Roux, Mischke & Strydom, 2005).

South Africa's labour history can be traced back to 1652 and the beginning of colonialism. At this time, slavery was introduced as the first form of labour broking (Venter, Levy, Holtzhausen, Conradie, Bendeman & Dworzanowski-Venter, 2012).

More recently, South African labour legislation has undergone some changes, specifically to section 198 of the Labour Relations Act, which deals with labour broking. Labour broking is defined in the LRA as an institution or person who renders out the services of an individual to his client for a fee. These proposed changes caused much debate regarding the impact they might have on employment rates, company expenses, international competition and the free labour market system, which is very similar to the system operating in Namibia, South Africa's neighbour (Botes, 2013; Van Eck, 2010). Namibia had a very active labour broking sector, which was characterised by harsh treatment of employees and poor working conditions. This prompted major changes, resulting in strict regulation, then outright banning and, finally, a return to more moderate regulation (Botes, 2013).

Similar conditions exist in some sectors of South Africa, so Cosatu organised a nationwide strike to abolish labour broking because of the exploitation of temporary employees (Sapa, 2012). The Labour Relations Amendment Bill of 2012 included an alternative proposition to introduce a new Employment Services Bill and replace section 198 of the LRA, which would force labour brokers to register with the Department of Labour and notify them of vacancies, thus introducing a form of strict regulation (Venter, et al., 2012).

There are arguments both for and against the changes in labour broking. Such changes in labour legislation will have implications for companies making use of labour broking, as they will have to adapt to stay competitive and legally compliant (Barker, 2011; Nel, Kirsten,

Swanepoel, Erasmus & Poisat, 2013). The aim of this study was to explore the perceptions of employees in the HR department of an integrative petroleum and chemical company with regard to the changes to section 198 of the LRA and the impact that these changes will have on an integrative petroleum and chemical company making use of labour brokers.

## **LABOUR BROKING IN SOUTH AFRICA**

We mentioned previously that labour broking in South Africa started as early as 1652. Labour broking became an important form of employment for businesses wishing to increase their profits by employing few or no skilled workers (Swanepoel & Slabbert, 2012). World-class manufacturing and globalisation also forced businesses to become more competitive and reduce high labour costs; thus labour broking became a popular source of cheap employment (Swanepoel & Slabbert, 2012; Ferreira, 2005).

Namibia has experienced much trial and error with regard to labour broking, since labour broking is a primary form of employment in Namibia (Van Eck, 2010; Botes, 2013). The legislation regulating labour broking did not change much in the early 1900s and was characterised by unfair labour practices; it was only later, when Namibia joined the International Labour Organization (ILO) that the country came under fire. As a result, Namibia was forced to introduce a distinct body of legislation that ensures all employees are subject to fair labour practices (Botes, 2013).

A similar situation has arisen in South Africa: According to ADCORP (2014), labour broking is a primary form of employment and is growing continuously. If South African companies wish to win international contracts – beating their competitors from China, Brazil and India, who make use of cheap labour – they must avoid using expensive permanent employees and opt for cheaper temporary workers (ADCORP, 2014).

After the demise of apartheid and the birth of a new democracy, South Africa joined the ILO, which meant that it had to comply with international labour legislation (Swanepoel & Slabbert, 2012). The Labour Relations Act 66 of 1995 made provision for labour broking in section 198. This section was ultimately introduced to regulate labour broking, but companies and labour brokers found loopholes in the legislation. As the demand for contract workers increased, so did the number of temporary employment services (TESes) providing temporary or contract

workers to clients (Swanepoel & Slabbert, 2012; Van Eck, 2010). Given South Africa's high unemployment rate, labour broking seems to be a suitable option for people who cannot find permanent employment; at least they earn some income. Thus it is a form of job creation (Harvey, 2011).

However, with the increase in temporary workers and the difficulty of organising union membership among such workers, unions have increasingly called for the abolition of this type of employment (Finnemore & Joubert, 2013; De Lange, 2014). The Labour Relations Amendment Bill was introduced in 2010 and the National Economic Development and Labour Advisory Council (NEDLAC) process was concluded in 2012. The amendments to section 198 of the LRA were debated at length and strongly opposed by Business Unity South Africa (BUSA), but government went ahead and passed the Bill, following an overwhelming 248 votes in favour of it versus only 81 against it. The contract period of six months was also reduced to three months, just before the conclusion of the NEDLAC proceedings (Finnemore & Joubert, 2013; Nel, et al., 2013).

The government's rationale for amending section 198 of the LRA was mainly to prevent the exploitation of workers earning below the minimum wage and being subjected to inhumane working conditions (Harvey, 2011). BUSA argued that only a handful of TESes are guilty of such exploitation and that labour broking is a major form of job creation. ADCORP (2014) has confirmed this increase in the employment of blue-collar workers (Finnemore & Joubert, 2013).

TESes and companies have found loopholes in the amended legislation and ways to adapt to the amendments, as labour broking activities continue to grow (Harvey, 2011; Gericke, 2010; ADCORP, 2014).

### **Changes to section 198 of the LRA**

The ANC's 2009 manifesto stated that laws must be introduced to prevent worker exploitation, ensure decent work for all workers and protect the employment relationship; it also stipulated that laws must regulate contract work, subcontracting and outsourcing (Grogan, Maserumule, Govindjee, 2015; Brand, Todd & Laubcher, 2012).

The Labour Relations Amendment Bill of 2012 included a few changes to section 198 in support of the ANC manifesto. This Amendment Bill was passed after countless meetings with key role-players from government, employers and employees. The changes were aimed regulating labour broking and preventing worker exploitation. Section 198 retained its key components, for example a temporary employment service (TES) that procures a person's service for work at a client company is still regarded as the employer of that person. However, the changes allow the employee to hold the TES and the client company jointly and severally liable for contravention of bargaining council and collective agreements, arbitration awards and BCEA regulations (Grogan, et al., 2015; Brand, et al., 2012).

The Amendment Bill added four new sections to section 198 (s 198A–D) to deal with the different types of atypical employment. Section 198A focuses on temporary services. A temporary service is a service provided by a person who does not work for more than three months for a client company, where the person works as a substitute for an absent permanent employee, or where a sectoral determination and/or collective agreement permits a determined period as temporary. According to Section 198A, the TES is deemed to be the employer of the temporary employee, except where the employee works longer than three months or is not a substitute worker. A temporary employee may not be appointed on less favourable terms than those permanent employees who are doing similar work (Grogan, et al., 2015; Brand, et al., 2012).

Section 198B focuses on fixed-term contracts. Such a contract will have a specific end date or is subjected to a specific project. Employees excluded from section 198 are those earning above the threshold of R205 433.30 and employees who work for a business that employs less than 10 employees, as well as a new business less than two years old that employs 50 employees. Where a fixed-term contract exceeds three months, the employer must provide a valid reason to allow a longer contract provided the work that needs to be done has a limited period. Section 198B also stipulates that persons working longer than three months must receive the same opportunity to apply for a permanent position as a permanent employee; they may not be treated less favourably than a permanent employee (Grogan, et al., 2015; Brand, et al., 2012).

Part-time employees are regulated in terms of section 198C. Such employees are considered to be persons who are paid per hour and work fewer hours than a permanent employee who does the same type of work. These employees may also not be treated less favourably than those

who are doing the same type of work, and are subject to the same jurisdiction as per section 198A & B. Part-time employees working less than 24 hours per month do not fall within the scope of section 198C (Grogan, et al., 2015; Brand, et al., 2012).

In the past, a contract worker could only approach the Labour Court for unfair labour practices. But section 198D now enables contract workers to take their case to the CCMA for arbitration. Labour inspectors may also enforce legislative compliance on both the labour broker and its clients; moreover, those employees that are hired must be provided with written particulars of their employment that comply with section 29 of the BCEA (Grogan, et al., 2015; Brand, et al., 2012).

### **Arguments against labour broking**

The ILO and South Africa's Bill of Rights provide for fair labour practices and, according to Harvey (2011), labour broking is contrary to these provisions, since temporary workers do not enjoy the same benefits as permanent employees.

Harvey (2011), Finnemore and Joubert (2013) and Anderson and Paton (2012) all confirm that temporary employees earn lower wages than permanent employees and are unable to participate in union activities to demand better wages. They often have very few or no benefits, such as a pension and medical aid, and they also work long hours under harsh conditions. Moreover, the fact that temporary or contract workers work for short intervals, such as one or two months at a time, prevents them from developing proper skills and opportunities to improve themselves.

Numsa and Cosatu are some of the unions that are strongly opposed to labour broking; the abolishment of labour broking is always on their list of demands during a strike. Finnemore and Joubert (2013) refer to Cosatu's address at the National Press Club on 6 March 2012, in which they explain why they intend to have labour broking abolished. The unions claim that TESes trade with humans as if they were a commodity and that they are only placing temporary workers in existing jobs, not actually helping to create new employment. These workers also work for only a few months at a time and therefore cannot improve their skills. Numsa and Cosatu also stress that temporary workers are paid lower wages so that the organisation can boost its profits; in addition, when companies make use of temporary workers during strikes, they reduce the effectiveness of those strikes (Finnemore & Joubert,

2013).

The argument against labour broking is directly related to the welfare of contract workers. Political influences and union membership play a role, as can be seen from the sudden reduction of the six-month employment contract to a three-month employment contract at the National Assembly during June 2013 (De Lange, 2013).

### **Arguments in favour of labour broking**

When South Africa became a democracy, it opened the door to the world, with many international investors and businesses hoping to gain a foothold in this resource-rich country. South African companies were introduced to world-class manufacturing and globalisation, which resulted in stiff competition in the form of quality, quantity and production costs (Finnemore & Joubert, 2013; Barker, 2011).

BUSA argued that labour broking is an important form of employment and is needed for businesses to compete with the low wages paid by countries such as China and Brazil. They also argue that only a handful of TESes are guilty of exploiting contract workers. Permanent employees are a significant expense for a company, and with the stringent labour legislation and union demands, it is becoming increasingly difficult to retain permanent employees (Finnemore & Joubert, 2013; Venter, et al., 2011). This fact was confirmed by ADCORP (2014), which showed that permanent employment had decreased and temporary employment contracts had increased. Labour broking can thus be seen as a remedy for poverty and the poor economic growth in South Africa (Finnemore & Joubert, 2013).

The argument for labour broking is largely focused on improving the country's economic growth and unemployment situation. It also supports the right of a company to do business, as can be seen from the experience of the Namibian government: When the latter tried to prohibit labour broking through legislation, it was opposed by the Supreme Court of Appeal of Namibia, which was guided by the ILO conventions and provisions, concluding that such a prohibition interferes with a company's right to manufacture and do business (Van Eck, 2010; Botes, 2013).

### **Namibia's current position on labour broking**

The Namibian labour broking industry has a long history of slavery and unfair treatment. The natives in Namibia were coerced into accepting harsh working conditions with low wages, no benefits and no protection from unfair labour practices. With those wrongs in mind, the Namibian government decided to ban labour broking outright (Bösl, Horn & Du Pisani, 2010; Van Eck, 2010).

Section 128 of the Namibian Labour Act of 2007 does not recognise labour hire nor a third party in the employment relationship. And in 2007, in the case of *Africa Personnel Services v Government of Namibia and Others (A 4/2008)*, the Namibian High Court ruled that it is illegal to conduct business as a labour broker because the employment contract has only two parties; labour hire is based on Roman law and is not applicable to the Namibian common law; and section 21(1)(j) of the Namibian Constitution does not include labour brokers (Bösl, Horn & Du Pisani, 2010).

Africa Personnel Services, one of the largest employment agencies in Namibia, contested the ruling in the Namibian Supreme Court of Appeal, in *Africa Personnel Services v Government of Namibia and Others (SA 51/2008)*, claiming that it is unconstitutional to deprive a company of economic activity and the right to conduct business and provide employment. The court subsequently ruled that section 128 of the Labour Act is unconstitutional and that current labour hire activities cannot be compared to labour hire during colonial times. The ruling also mentions that labour hire is a major part of economic activity and should rather be regulated, as prescribed by the ILO's Private Employment Agencies Convention (Convention No 181 of 1997) (Bösl, Horn & Du Pisani, 2010; Van Eck, 2010).

According to Van Eck (2010), Namibia's Labour Commissioner introduced regulations for labour hire that allow contract workers to receive the same wages and benefits as those with written contracts, making their situation more comparable to permanent employees.

### **The future of labour broking in South Africa**

The changes to labour broking came into effect on 1 January 2015 and businesses had until March 2015 to comply with the new legislation (De Lange, 2015). The CCMA is expecting a large increase in cases brought by contract workers regarding unfair dismissals and

discrimination because the changes to section 198 of the LRA mean that these cases can be heard by an arbitrator, and not just the Labour Court (De Lange, 2015).

Harvey (2011) suggests that future changes to section 198 should be drafted to support the triangular relationship between employers, labour brokers and employees: these changes should include employment security for all, bargaining council access, regulated labour broking structures and freedom for employers to make use of subcontractors for specific needs.

Given the arguments for and against labour broking, it is clear that labour broking is a form of employment that is here to stay, since everyone has a right to work and to improve their living standards, and temporary employment provides more opportunities for employment than permanent employment (Gericke, 2010).

## **RESEARCH DESIGN**

### **Research approach**

An exploratory qualitative approach was applied in this study. Qualitative methods were used to interpret the participants' views regarding the changes to section 198 of the Labour Relations Act; this would have been difficult to achieve if the researchers had used only quantitative methods (Rice & Ezzy, 2002). New ideas and insights are encouraged through qualitative research designs. The interpretive paradigm approach was followed in this research study because the researchers needed to understand how employees in the HR department of an integrative petroleum and chemical company perceive the changes to section 198 of the LRA in the workplace and the impact that these changes will have on their company, which makes use of labour brokers (Saunders, Lewis & Thornhill, 2009).

### **Research procedure**

Six participants from a large petroleum and chemical company were approached to participate in this study. According to Krefting (1991), trustworthiness can be improved by spending adequate time with the participants. One of the researchers works for an estate agent that arranges rentals for TEsEs and companies making use of contract workers; consequently, this researcher has personal experience of and informed opinions regarding the effect that the changes to section 198 of the LRA will have in the workplace. This fact enhanced the

trustworthiness of this study, since the researcher's experience promoted a good working relationship with the participants. After the interviews, further telephonic discussions were held with some of the participants to clarify any misunderstandings and to ensure that the participants and the researcher were in agreement over the responses obtained during the interviews. Data saturation occurred after the sixth interview and there was no need to gather more information.

### **Population**

Employees working in integrative petroleum and chemical companies and making use of labour brokers constituted this study's research population. Six participants from one particular large integrative petroleum and chemical company were selected for this research. A convenience sample was used because the participants were readily available and met the requirements for inclusion.

### **Sample**

A purposive sampling technique was used to identify six participants for this study. Before participants could be included in this study, they had to meet the following criteria: they had to work in the HR department of an integrative petroleum and chemical company, and the company had to make use of labour brokers. Individual interviews were conducted with four participants; the remaining two participants were interviewed telephonically because they were based at a satellite branch of the company more than 200km away from the main branch.

### **Data collection**

Qualitative research can be conducted through words (Tesch, 1990) because every person uses words to communicate through language. In this study, words were used to interpret the information. The researchers used tape recordings so that they could later transcribe the interviews verbatim. The data obtained from the interviews were typed in one-and-a-half spacing with wide margins, which enabled the researchers to add written notes and comments. The researchers were able to identify important concepts, as well as recurring themes and ideas, from the transcripts. Individual interviews were used to explore and describe the participants' knowledge and experience. A specific time was set and the interviews were conducted in a private room at the participants' workplace to ensure there were no disturbances. Each interview took approximately an hour (Rice & Ezzy, 2002).

The interviews were semi-structured and consisted of broad objectives, which were reflected in the questions asked. The participants were encouraged to explain their views and experiences in a specific situation and the researcher explored matters that arose therefrom (Grbich, 1999). This balanced type of interview enabled the researchers to reach the research goal, namely to ascertain whether the changes to section 198 of the LRA will have an effect on an organisation and its employees. Open-ended questions were asked, which gave the participants the opportunity to express themselves freely (Hein, 1980). The researchers used audio recordings rather than video recordings because participants tend to find video recordings more distracting than audio recordings (Grbich, 1999). A reliable tape recorder was used in a quiet environment (Kvale, 1996). Field notes were made, which contained information about the interviews, the researcher's personal feelings, impressions and the setting.

The questions asked during the interviews, which enabled the researchers to collect the necessary data for this study, were as follows:

- What positive impacts do the changes in labour broking have on your organisation?
- What are the benefits for the employees?
- What negative impacts do the changes in labour broking have on your organisation?
- What negative effects will the changes to labour broking specifically have on the employees?

The same questions were asked during the telephonic interviews with the two participants who were based at a satellite branch of the company more than 200 km away from the main branch.

### **Data analysis**

Tesch's (1990) data-gathering process was applied. Important concepts, as well as recurring themes and ideas, were gathered from the transcripts, which ensured that themes could be identified and categorised. The transcripts were then reviewed to identify any additional concepts or themes that had not been noted initially. Variations and similarities between the different interviews were noted (Lobiondo-Wood & Haber, 1994). One of the researchers stored the data at his office/home and the electronic data were stored on the researcher's computer, which is password-protected. The participants remain anonymous.

### **Ethical considerations**

To meet ethical requirements, the researchers obtained written informed consent from each participant prior to each interview (Silverman, 2002). The interviews were conducted in a private boardroom and confidentiality was guaranteed by making sure that the data were available only to the researchers. The participants remain anonymous and none of them have access to the data.

### **Characteristics of the participants**

Table 1 depicts the biographical characteristics of the participants:

**Table 1: Characteristics of the participants in this study**

<b>BIOGRAPHICAL CHARACTERISTICS OF PARTICIPANTS</b>									
<b>Nr</b>	<b>Race</b>	<b>Age</b>	<b>Gender</b>	<b>Language</b>	<b>Religion</b>	<b>Marital status</b>	<b>Job designation</b>	<b>Number of years' service in the HR department</b>	<b>Type of Interview</b>
1	White	60	Female	Afrikaans	Christian	Married	HR manager	28	Individual interview
2	White	54	Male	Afrikaans	Christian	Married	Procurement manager	31	Individual interview
3	White	28	Female	Afrikaans	Christian	Married	HC specialist	5	Individual interview
4	White	56	Male	English	Christian	Married	Maintenance manager	26	Individual interview
5	White	31	Female	Afrikaans	None	Single	HC specialist	2	Telephonic interview
6	Indian	27	Male	English	Hindu	Single	HC specialist	8	Telephonic interview

Table 1 indicates that the sample in this study comprised 83% white participants and 17% Indian participants. There were more white participants in this study because the main branch of the company has more white employees in the HR department; this resulted in a larger percentage of white participants. 33% of the participants were aged between 20 and 30 years, 17% of the participants were aged between 31 and 40 years, while 50% were aged between 51 and 60 years. 50% of the participants were male and 50% were female. 67% of the participants

were Afrikaans-speaking and 33% were English-speaking. 67% of the participants belonged to the Christian faith (religion), 17% belonged to no religion and 17% belonged to the Hindu religion. 67% of the participants were married and 33% were single. 16,67% of the participants were HR managers, 16,67% were procurement managers, 16,67% were maintenance managers and the remaining 50% of the participants were human capital (HC) specialists. The participants' job designation was important in this study because the participants play a vital role in ensuring that the organisation complies with labour legislation in terms of policies and procedures. Therefore, the participants could provide expert information for this study, as they are all involved in labour broking; this enhances the trustworthiness of the study.

## **FINDINGS AND DISCUSSION**

### **Positive impacts on an organisation and its employees resulting from changes to section 198 of the LRA**

The participants all concurred that the main positive impact on the organisation resulting from the changes in labour broking was an increase in productivity. Another positive impact was that the organisation would have an opportunity to identify high-quality and engaged employees. Below are some of the answers obtained in response to the question: **What positive impacts do the changes in labour broking have on your organisation?**

*... will definitely improve the employee's moral in their work performance and such which will make the organisation more productive.*

*Quality of the people from the labour brokers is very poor, so what do we do now? If you need a boilermaker or welder then we pay very high rates for a guy that has a boiler shop and we hire his best employees to do the job and he goes away when he is finished. With the changes we can see that contract workers become more productive to try and become permanent.*

*... if they see that a certain employee is actually a good contractor then they keep them on.*

The participants also agreed that the changes to section 198 of the LRA will have a positive impact on the employees in that such changes will protect the lower-income employees and will provide permanent employment and better dispute resolution procedures. Below are some of the answers obtained in response to the question: **What are the benefits for the employees?**

*... I see something positive for the guy who has been cheated for 10 years not being able to get permanent employment... for him it is prime time as he will now get benefits that he did not receive for the past 10 years.*

*... we had a few temporary workers or labour broker employees that had worked on our site for a long time, maybe three or four years and now at least we make them permanent. It will definitely improve the moral in their work performance and such. So we see the benefits, yes.*

*...an employee that is currently employed by a labour broker, will be deemed to be a permanent employee after 3 months. Before the changes in labour broking, the client company and the labour broker are jointly and separable liable for any dispute. The contract employee can now, after the changes in labour broking, approach the client company directly with any dispute or grievance.*

*With the new changes we will need to follow disciplinary procedural steps with contract employees as we will not be able to just dismiss contract workers as we did in the past.*

These findings support the views of the following authors regarding the positive impact that the changes to section 198 of the LRA have on an organisation and its employees:

Grogan, Maserumule and Govindjee (2015), Brand, Todd and Laubcher (2012) and Botes (2013) all concede that the employee will have more benefits because contract employees may not be treated less favourably; moreover, they will enjoy better disciplinary procedures regarding fair treatment and grievances. Harvey (2011) suggests that the amendments to section 198 of the LRA will improve the rights of the contract worker. Finnemore and Joubert (2013) are of the view that employers are reluctant to employ contract workers because of the strict regulations and that the amendments to section 198 will show that companies prefer to employ permanent employees. ADCORP (2014) and Nel, et al. (2013) concede that atypical

employment is a cheaper form of employment and that, following the changes to section 198 of the LRA, many will opt to become permanent, as they will be entitled to better treatment and better opportunities as permanent employees.

### **Negative impacts on an organisation and its employees resulting from changes to section 198 of the LRA**

The data gathered during the interviews clearly indicated that the changes to section 198 of the LRA would have negative implications primarily in terms of the cost involved. Some of the participants' responses were as follows:

*It is going to have an impact and we will need to review our temporary contracts.... so it has cost implications.*

*...it is going to cost you a lot more on training because we need to employ a new worker every 3 months and these employees must be trained and supplied with safety wear and gear.*

Other disadvantages of the changes to section 198 of the LRA are that the organisation will have to draft new policies and guidelines. Employment flexibility was also cited as a negative impact. Below are some of the answers obtained in response to the question: Are there more examples of disadvantages that the changes in labour broking will have on the organisation?

*We will have to actually draw up a new policy/guideline for managers so that they can understand that a temp person cannot work longer than 3 months. For example in your recruitment policy you will add that if there is an internal vacancy that the temp employee will have to be included and seen as an internal candidate and not an external candidate.*

*...and if there have to be any temp worker or work needed, it needs to be cleared with the human resource department so we can give the guidelines in terms on how to apply the temp contracts so that we are always on the right side of the legislation.*

*...after three months the project must be completed and when the project is not completed then you must make a decision if you are going to employ that person and if that person is not a good candidate then you must again look for another person.*

Changes to section 198 of the LRA will also have negative effects on the employees. The participants concurred that some negative effects on the employees might include the following: unemployment; employees will have a negative attitude towards the organisation and they will not be readily employable; and current and/or permanent employees will do all the work. Below are some of the answers obtained in response to the question: What negative effects will the changes to labour broking specifically have on the employees?

*You are not going to create jobs, but rather take away jobs. The employee knows that we are only going to take him for a certain time, where he now...every time hopes that you are going to renew and renew and renew, and now we say to each other that he must leave after a certain period so he is not going to do his best and it is going to have an impact.*

*Work security will be affected and I also think it will influence the employability, job satisfaction, autonomy etc. which will influence the employees' attitudes towards the organisation.*

*The amendments will negatively influence the employability of the contract workers because each time you conclude a new temporary contract you conclude it with a new contract worker.*

*...sometimes you need somebody quick and if you don't use labour brokers anymore you have to do everything yourself.*

These findings support the views of the following authors regarding the negative impact that the changes to section 198 of the LRA have on an organisation and its employees. Brand, Todd and Laubcher (2012) stress the strict regulation, which will influence the employment flexibility, because the organisations will not be able to just appoint a person to perform a job and then let him/her go. Harvey (2011) refers to the regulation of labour broking, resulting in new policies and guidelines. Venter, et al. (2011) are of the view that businesses in South Africa

make more use of labour broking because it reduces labour costs; this helps them to remain competitive. The changes in labour broking legislation will result in higher labour costs, thus increasing the cost to the company. Nel, et al. (2013) claim that small businesses will not be able to afford high wages and other financial burdens; this will result in business closures and job losses.

**Figure 1: Summary of the impact of changes to section 198 of the LRA on an organisation and the employees**

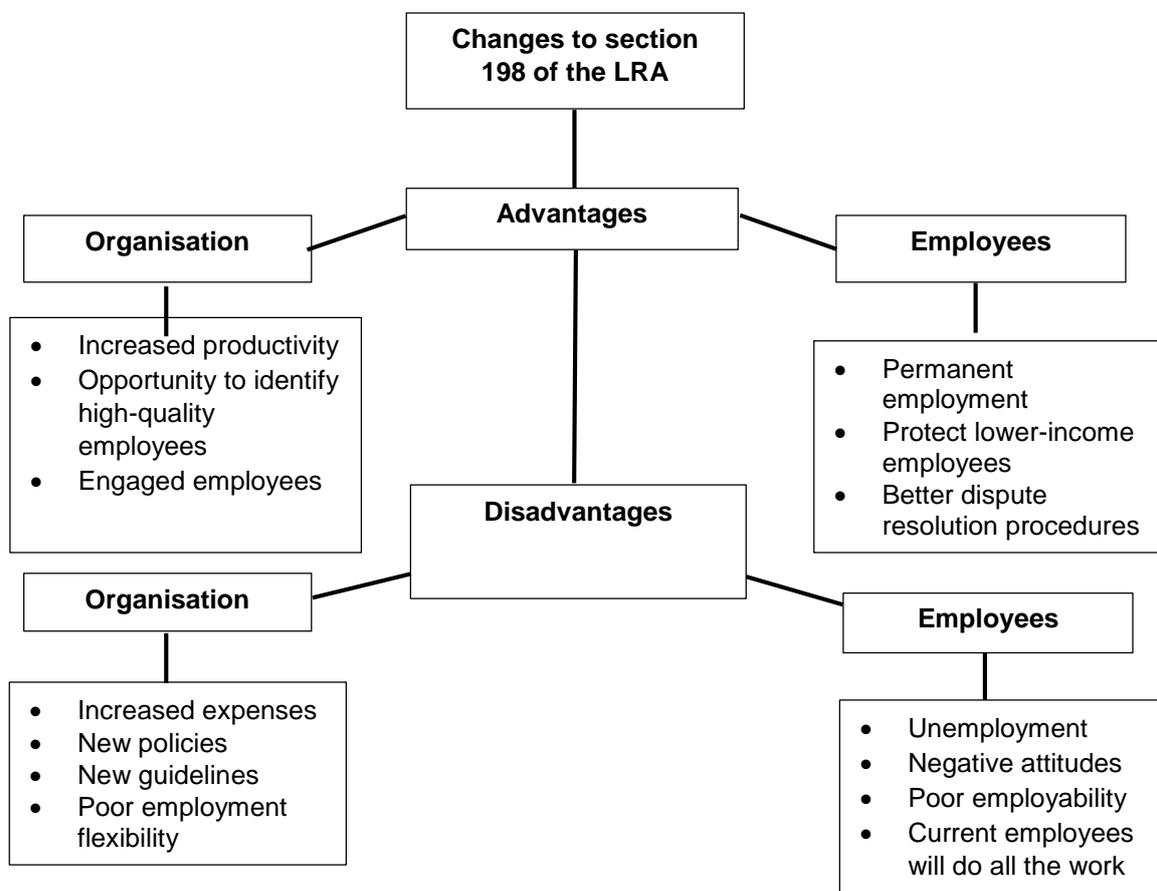


Figure 1 summarises the conclusions drawn from this study. It illustrates both the advantages and disadvantages for the organisation and its employees of the changes to section 198 of the LRA.

## **CONCLUSION**

The objective of the study discussed in this article was to explore the perceptions of employees in the HR department of an integrated petroleum and chemical company with regard to the changes to section 198 of the LRA in the workplace and the impact that these changes will have on a company making use of labour brokers.

The results indicated that the changes to section 198 will have both positive and negative implications for organisations and employees. The positive impacts on the organisation will include higher productivity and better engaged employees. For employees, the positive implications include more job protection, more benefits and fair treatment.

However, organisations will also experience negative implications in the form of higher costs resulting from more benefits to the employees, as well as the need to employ new temporary employees every three months, with the associated costs of training them and providing them with gear. Furthermore, policies will have to be amended to reflect the changes. Negative implications for the employees may include job losses, since companies might decide not to use contract workers anymore; this will have a negative effect on the employees' employability, as well as their attitude towards the company.

Therefore, according to the employees in the HR department of the integrative petroleum and chemical company, the changes to section 198 of the LRA will have both negative and positive implications for an organisation and its employees.

## BIBLIOGRAPHY

ADCORP. Retrieved from <http://www.adcorp.co.za/News/Pages/Useoftemporaryworkerscontinuestogrowacrossallsectors.aspx> [Accessed 2014-7-27].

Anderson, A. & Paton C. (2012, July 13). *Nedlac signs off on two of four labour amendments*. Business Day South Africa. [Online] Available from <http://0-www.lexisnexis.com.oasis.unisa.ac.za/hottopics/Inacademic/?verb=sr&csi=163765> [Accessed 2013-07-04].

Barker, F. (2011). *The South African labour market: Theory and practice*. (5<sup>th</sup> ed). Pretoria: Van Schaik Publishers.

Basson, A.C., Christianson, M.A., Garbers C., Le Roux, P.A.K., Mischke, C. & Strydom, E.M.L. (2005). *Essential labour law*. (4<sup>th</sup> ed). Pretoria: Labour Law Publications.

Bösl, A., Horn, N. & Du Pisani, A. (2010). *Constitutional democracy in Namibia: A critical analysis after two decades*. Windhoek: Macmillan Education Namibia.

Botes, A. (2013). *The history of labour hire in Namibia: A lesson for South Africa*. Potchefstroom Electronic Law Journal, 16(1), 506-536. Retrieved from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/e=EJC134643> [Accessed 2014-05-27].

Brand, J., Todd, C. & Laubcher, T. (2012, April). *Labour law amendments. Lecture notes*. Johannesburg: Bowman Gilfillan Attorney Group.

De Lange, J. (2013, Augustus 21). *LP's stem vir omstrede arbeidswet*. Sake Beeld, bl 19.

De Lange, J. (2015, Januarie 27). *Arbeidswette: KVBA is reg*. Sake Beeld, bl 11.

Ferreira, G.M. (2005). *Developments in labour relations in South Africa: Ten years of democracy (1994-2004)*. Department of Public Administration and Management, University of South Africa, Unisa Press, 24(2), 197-214. Retrieved from <http://www.unisa.ac.za> [Accessed 2014-04-26].

Finnemore, M. & Joubert, Y. (2013). *Introduction to labour relations in South Africa*. (11<sup>th</sup> ed). Durban: LexisNexis.

Gericke, E. (2010). *Closing a loophole*. Potchefstroom Electronic Law Journal, 13(2), 92-106. Retrieved from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC86769> [Accessed 2014-04-26].

Grbich, C. (1999). *Qualitative research in health: An introduction*. London: Sage.

Grogan, J., Maserumule, P. & Govindjee, A. (2015). *Juta's annual labour law update 2015*. Cape Town: Juta and Company.

Harvey, S. (2011) *Labour brokers and workers' rights: Can they co-exist in South Africa?* South African Law Journal, 128(1), 100-122. Retrieved from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC53957> [Accessed 2014-04-26].

Hein, E. (1980). *Communication in nursing practice*. Boston, MA: Little Brown.

Krefting, I. (1991). *Rigor in qualitative research: The assessment of trustworthiness*. American Journal of Occupational Therapy, 45(3): 1-15.

Kvale, S. (1996). *Interviews: An introduction to qualitative research interviewing*. Thousand Oaks, CA: Sage.

Lobiondo-Wood, G. & Haber, J. (1994). *Nursing research methods, critical appraisal and utilization*. St. Louis, MI: Mosby.

Nel, P.S., Kirsten, M., Swanepoel, B.J., Erasmus, B.J., & Poisat, P. (2013). *South African employment relations: Theory and practice*. Pretoria: Van Schaik.

Rice, P.L. & Ezzy, D. (2002). *Qualitative research methods: Health focus*. Oxford: Oxford University Press.

Sapa (2012). *Cosatu involved in labour broking talks*. [Online] Available from <http://www.fin24.com/Economy/Cosatu-involved-in-labour-broking-talks-20120316> [Accessed 2013-07-04].

Saunders, M., Lewis, P. & Thornhill, A. (2009). *Research methods for business students*. (5<sup>th</sup> ed.). Rotolito Lombarda, Prentice Hall.

Silverman, D. (2002). *Doing qualitative research: A practical handbook*. London: Sage.

Swanepoel, B.J. & Slabbert, J.A. (2012). *Introducing labour relations management in South Africa: Adding value to Africa*. Durban: LexisNexis.

Tesch, K. (1990). *Qualitative research: Analysis, types and software tools*. New York, NY: Falmer Press.

Van Eck, B.P.S. (2010). *Temporary employment services (labour brokers) in South Africa and Namibia*. Potchefstroom Electronic Law Journal, 13(2), 107-204. Retrieved from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC86769> [Accessed 2014-04-26].

Venter, R., Levy, A., Holtzhausen, M., Conradie, M., Bendeman, H. & Dworzanowski-Venter, B. (2012). *Labour relations in South Africa*. (4<sup>th</sup> ed). Cape Town: Oxford University Press.

## REFERENCES

- ADCORP.(2014).<http://www.adcorp.co.za/News/Pages/Useoftemporaryworkerscontinues togrowacrossallsectors.aspx> [Accessed 2014-7-27].
- Anderson, A. & Paton, C. (2012). *Nedlac signs off on two of four labour amendments*. Business Day South Africa. Retrieved July 4, 2013 from <http://0-www.lexisnexis.com.oasis.unisa.ac.za/hottopics/lnacademic/?verb=sr&csi=163765>.
- Babbie, E. (2002). *The basics of social research* (2nd ed.). Belmont, CA: Wadsworth.
- Babbie, E. (2008). *The basics of social research*. 4<sup>th</sup> ed. London: Thomson Learning.
- Babbie, E. (2009). *The practice of social research* (12th ed.). Belmont, CA: Wadsworth Cengage Learning.
- Babbie, E. (2011). *Introduction to social research* (5th ed.). Belmont, CA: Wadsworth.
- Baily, K. D. (1982). *Methods of social research* (2nd ed.). New York, NY: The Free Press.
- Baptiste, I. (2001). *Qualitative data analysis: Common phases, strategic differences*. Retrieved November 20, 2015, from <http://www.qualitative-research.net>.
- Barbour, R. (2008). *Introducing qualitative research: A student guide to the craft of doing qualitative research*. London: Sage.
- Barker, F. (2011). *The South African labour market: Theory and practice* (5th ed.). Pretoria: Van Schaik.
- Basson, A. C., Christianson, M. A., Garbers, C., Le Roux, P. A. K., Mischke C., & Strydom, E. M. L. (2005). *Essential labour law* (4th ed.). Pretoria: Labour Law Publications.

Benjamin, P., Bhorat, H., & Van Der Westhuizen, C. (2010). *Regulatory impact assessment of selected provisions of the: Labour Relations Amendment Bill, 2010, Basic Conditions of Employment Amendment Bill, 2010, Employment Equity Amendment Bill, 2010, Employment Service Bill, 2010 prepared for the Department of Labour and the Presidency*. Retrieved May 12, 2014, from <http://www.labour.gov.za/DOL/downloads/documents/useful-documents/labour-relations/RIA13Sept2010.pdf>.

Bösl, A., Horn, N., & Du Pisani, A. (2010) *Constitutional democracy in Namibia: A critical analysis after two decades*. Windhoek: Macmillan Education.

Botes, A. (2013). The history of labour hire in Namibia: A lesson for South Africa. *Potchefstroom Electronic Law Journal*, 16(1), 506–536. Retrieved May, 14, 2015, from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/e=EJC134643>.

Brand, J., Todd, C., & Laubscher T. (2012, April). *Labour law amendments: Lecture notes*. Johannesburg: Bowman Gilfillan Attorney Group.

Burns, N. & Grove, S.K. (2001). *The practice of nursing research: conduct, critique and utilization*. Philadelphia: Saunders.

Corbin, J. & Strauss, A. (2015). *Basic of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (4<sup>th</sup> edition). Thousand Oaks, CA: Sage.

Creswell, J. W. (2007). *Qualitative inquiry and research design: Choosing among five approaches* (2<sup>nd</sup> ed.). Newbury Park, CA: Sage.

De Lange, J. (2014). *Hoop vlam op oor skikking: Vordering oor makelaar, subsidies. Sake Beeld*, bl. 11.

De Lange, J. (2013). LPs stem vir omstrede arbeidswet. *Sake Beeld*, bl. 19.

De Vos, A. S., Strydom, H., Fouché, C. B., & Delport, C. S. L. (2013). *Research at grass roots* (4<sup>th</sup> ed.). Pretoria: Van Schaik.

Denzin, N. K., & Lincoln Y. S. (2000). *Handbook of qualitative research* (2<sup>nd</sup> ed.). Newbury Park, CA: Sage.

Department of Labour. (2011). Available from <http://www.labour.gov.za/DOL/downloads/documents/useful-documents/labour-relations/finalconsultation.pdf>.

Department of labour. (2012). *Public Briefing on Labour Law Amendments [Lecture notes]*. Bloemfontein: Ms Bronkhorst.

Dessler, G., Barkhuizen, N., Bezuidenhout, De Braine, R., Du Plessis, Y., Nel, P., Stanz, K., Schultz, K., Van der Walt, H. (2011). *Human Resource Management, Global and Southern African Perspectives*. Pearson Education.

Ensor, L. (2013). *ANC U-turn on labour brokers, strike votes*. Retrieved July 28, 2013, from; <http://0www.lexisnexis.com.oasis.unisa.ac.za/hottopics/lnacademic/?verb=sr&csi=163765>.

Ferreira, G. M. (2005). Developments in labour relations in South Africa: Ten years of democracy (1994–2004). Department of Public Administration and Management, University of South Africa. *Unisa Press*, 24(2), 197–214. Retrieved April 26, 2014, from <http://www.unisa.ac.za>.

Finnemore, M. (2009). *Introduction to labour relations in South Africa* (10<sup>th</sup> ed.). Durban: LexisNexis.

Finnemore, M., & Joubert, Y. (2013). *Introduction to labour relations in South Africa* (11<sup>th</sup> ed.). Durban: LexisNexis.

Finnemore, M., & Van Rensburg, M. (2002). *Contemporary labour relations* (2<sup>nd</sup> ed.). Durban: LexisNexis.

Finnemore, M., & Van Rensburg, M. (2004). *Contemporary labour relations*. Durban: LexisNexis.

Flick, U. (2009). *An introduction to qualitative research* (4<sup>th</sup> ed.). London: Sage.

Gericke, E. (2010). Closing a loophole. *Potchefstroom Electronic Law Journal*, 13(2), 92–106. Retrieved April 26, 2014, from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC86769>.

Gibbs, G. (2007). *Analyzing quality data*. London: Sage.

Gilfillan, B. (2012). *Labour law amendments public briefing [Lecture notes]*. Johannesburg: Bowman Gilfillan Attorney Group.

Government Gazette of the Republic of Namibia. (2012). Labour Amendment Act 2 of 2012. Retrieved July 9, 2014, from <http://www.lac.org.na/laws/2012/4925.pdf>.

Grogan, J. (2009). *Workplace law* (10<sup>th</sup> ed.). Cape Town: Juta.

Grogan, J. (2011). *Workplace law* (10<sup>th</sup> ed.). Cape Town: Juta.

Grogan, J., Maserumule, P., Govindjee, A. (2015). *Juta's Annual Labour Law Update 2015*. Juta and Company, Claremont, Cape Town.

Grossett, M. & Venter, R. (1998). *Labour relations in South Africa: A comprehensive guide for managers and practitioners*. Durban: Thomson.

Habib, A. (2007). From pluralism to corporatism: South Africa's labour relations in transition. *South African Journal of Political Studies*, 24(1) 57–75. Retrieved July 14, 2014, from <http://www.unisa.ac.za>.

Harvey, S. (2011). Labour brokers and workers' rights: Can they co-exist in South Africa? *South African Law Journal*, 128(1), 100-122. Retrieved April 26, 2014, from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC53957>.

Henning, E., Van Rensburg, W., & Smit, B. (2004). *Finding your way in qualitative research*. Pretoria: Van Schaik.

Höijer, B. (2008). Ontological assumptions and generalisations in qualitative (audience) research. *European Journal of Communication*, 23(3), 275 – 294.

Khuzwayo, W. (2013, June 11). Labour brokers add 370 jobs as other sectors lay off. *SA Media* (p. 18). Bloemfontein: University of the Free State.

Klerck, G. (2009). Rise of the temporary employment industry in Namibia: A regulatory “fix”. *Journal of Contemporary African Studies* 27(1), 85–103. Retrieved April 26, 2014, from <http://www.unisa.ac.za>.

Krefting, I. (1991). Rigor in qualitative research: The assessment of trustworthiness. *American Journal of Occupational Therapy*, 45(3), 1–15.

Kvale, S. (2010). *Doing interviews*. London: Sage.

Loseke, D.R. (2013). *Methodological thinking: Basic principles of social research design*. Newbury Park, CA: Sage.

Maree, K., Creswell, J. W., Ebersöhn, L., Eloff, I., Ferreira, R., Ivankova, N. V., Jansen, J. D., Nieuwenhuis, J., Pietersen, J., Plano Clark, V. L., & Van der Westhuizen, C. (2012). *First steps in research* (revised ed.). Pretoria: Van Schaik.

Mavunga, R.A., (2010). *Critical analysis of labour brokers: Should they be regulated or banned in South Africa?* Master's thesis, University of Pretoria, Pretoria. Retrieved July 9, 2014, from <https://my.unisa.ac.za>.

Morhouse, J.M. & Richards, L. (2012). *Users' guide to qualitative methods*. Newbury Park, CA: SAGE.

Mouton, J. (1996). *Understanding social research*. Pretoria: Van Schaik

Myers, D. (2009). *Qualitative research in business and management*. Newbury Park, CA: Sage.

Nel, P.S., Kirsten, M., Swanepoel, B.J., Erasmus, B.J., & Poisat, P. (2013). *South African employment relations: Theory and practice*. Pretoria: Van Schaik.

Richards, L., & Morse, J.M. (2007). *Users guide for qualitative methods* (2nd ed.). Thousand Oaks, CA: Sage.

Robbins, S. P., Judge, T. A., Odendaal, A., & Roodt, G. (2009). *Organisational behaviour: Global and Southern African perspectives*. Cape Town: Pearson Education.

SAPA (2014b). *Ekonomie verloor poste*. *Sake Beeld*, bl. 16.

SAPA (2012). *Cosatu involved in labour broking talks*. Retrieved July 4m 2013, from <http://www.fin24.com/Economy/Cosatu-involved-in-labour-broking-talks-20120316>.

SAPA (2014a). Retrieved July 27, 2014, from <http://www.citypress.co.za/business/agreement-end-numsa-strike-close/>.

South Africa. 1996. Labour Relations Act 66 of 1995. *Government Gazette*. [Online] Available from: <http://www.labour.gov.za/DOL/downloads>.

Struwig, F. W., & Stead, G. B. (2011). *Planning, designing and reporting research*. Cape Town: Pearson Education.

Swanepoel, B. J., & Slabbert, J. A. (2012). *Introducing labour relations management in South Africa: Adding value to Africa*. Durban: LexisNexis.

Terre Blanche, M., Durrheim, K., & Painter D. (2006). *Research in practice: Applied methods for the social sciences*. Cape Town: UCT Press.

Tesch, K. (1990). *Qualitative research: Analysis, types and software tools*. New York: Falmer Press.

The Bill of Rights of the Constitution of the Republic of South African. (1996). Government Gazette. (No. 17678).

Van Eck, B. P. S. (2010). Temporary employment services (labour brokers) in South Africa and Namibia. *Potchefstroom Electronic Law Journal*, 13(2), 107–204. Retrieved April 26, 2014, from <http://0-reference.sabinet.co.za.oasis.unisa.ac.za/document/EJC86769>.

Van Schalkwyk, H., & Viviers, D.A. (1994). *Taalkommunikasie Afrikaans*. Kaapstad: Maskew Miller Longman.

Venter, R., Levy, A., Conradie, M. & Holtzhausen, M. (2009). *Labour relations in South Africa* (3<sup>rd</sup> ed.). Cape Town: Oxford University Press.

Venter, R., Levy, A., Holtzhausen, M., Conradie, M., Bendeman, H., Dworzanowski, - Venter, B. (2012). *Labour relations In South Africa* (4<sup>th</sup> ed.). Cape Town: Oxford University Press.

Welman, C., Kruger, F., & Mitchel, B., (2005). *Research methodology* (3<sup>rd</sup> ed.). Cape Town: Oxford University Press.

Welman, C., Kruger, F., & Mitchel, B. (2009). *Research methodology*. Cape Town: Oxford University Press.

Wolpe, H. (2006). Capitalism and cheap labour-power in South Africa: From segregation to apartheid. *Economy and Society*, 1(4), 425–456. Retrieved July 14, 2014, from <http://www.unisa.ac.za>.

**ANNEXURE A**  
**LETTER OF CONSENT FORM**



**Informed consent for participation in an academic research study**

**Department of Human Resource Management**

**TITLE OF THE STUDY:**

**Employees' perceptions regarding the changes in labour broking: A qualitative study**

Research conducted by:

Mr B. Loggenberg (43245668)

Cell: 082 067 8431

Dear Respondent

You are invited to participate in an academic research study conducted by Bennie Loggenberg, a master's student in the Department of Human Resource Management at the University of South Africa.

The purpose of the study is to investigate the effect of the proposed changes in labour broking on businesses.

Please note the following:

- Your name will not appear in the research and the answers you supply will be treated as strictly confidential. You cannot be identified in person on the basis of your answers.
- Your participation in this study is of vital importance to me. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences.
- The results of the study will be used for academic purposes only and may be published in an academic journal. I will provide you with a summary of the findings on request.
- The interview will only take approximately one hour.
- The records will be kept for five years for publication purposes, after which they will be permanently destroyed (hard copies will be shredded and electronic versions will be permanently deleted from the hard drive of my computer).
- You will not be reimbursed or receive any incentives for your participation in this study.

- Please contact my supervisor, Professor Y. T. Joubert (cell: 082 721 9862) if you have any questions or comments on the study.

Please sign the form to indicate that you

- have read and understand the information provided above
- give your consent to participate in the study on a voluntary basis.

---

**Respondent's signature**

---

**Date**

**ANNEXURE B**  
**INTERVIEW QUESTIONS**

1. In your view, what is the definition of labour broking?
  
2. In your view, what positive impacts, if any, will the changes in labour broking have on the organisation?
  
3. In your view, what positive impacts, if any, will the changes in labour broking have on the employees?
  
4. In your opinion, what negative impacts, if any, will the changes in labour in labour broking have on the organisation?
  
5. In your opinion, what negative impacts, if any, will the changes in labour broking have on the employees?

**ANNEXURE C**  
**THEMES AND SUBTHEMES IDENTIFIED IN THE STUDY**

Theme 1	Perception of labour broking
Subthemes	<ol style="list-style-type: none"> <li>1. Definition of labour broking</li> <li>2. Awareness of changes to section 198 of the LRA</li> </ol>
Theme 2	Perceptions regarding the positive impacts of changes to section 198 of the LRA
Subthemes	<ol style="list-style-type: none"> <li>1. Advantages of the changes to labour broking on an organisation</li> <li>2. Advantages of changes to labour broking for an employee</li> </ol>
Theme 3	Perceptions regarding the negative impacts of changes to section 198 of the LRA
Subthemes	<ol style="list-style-type: none"> <li>1. Disadvantages of changes to labour broking on an organisation</li> <li>2. Disadvantages of changes to labour broking on employees</li> </ol>

**ANNEXURE D  
ETHICAL CLEARANCE**

**UNISA**

university  
of south africa

**DEPARTMENT OF HUMAN RESOURCE MANAGEMENT  
RESEARCH ETHICS REVIEW  
COMMITTEE**

2014-10-01

Ref#: 2014_HRM_003 Name of applicant: Mr B Loggenberg Student #: 43245668
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Dear Mr B Loggenberg,

Decision: Ethics Approval
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**Name of Applicant:** Mr B Loggenberg, (bennie@suecoprop.com, 082 067 8431)

**Name of Supervisor:** Prof YT Joubert (joubevt@unisa.ac.za; 012-429 3399)

**Proposal:** Employee' perceptions regarding the changes in labour broking: a qualitative study

**Qualification:** Mcom Business Management (with specialisation in Human Resource Management)

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Thank you for the application for research ethics clearance by the Department of Human Resource Management Research Ethics Review Committee for the *above* mentioned research. Final approval is granted for the duration of the research project.

**Full approval:** The application was reviewed in compliance with the Unisa Policy on Research Ethics by the Department of Human Resource Management RERC on 23 September 2014.

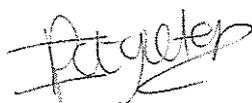
The proposed research may now commence with the proviso that:

- 1) The researcher/s will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
- 2) Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the Department of Human Resource Management Research Ethics Review Committee. An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants.
- 3) The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant

**Note:**

The reference number: 2014\_HRM\_003 should be clearly indicated on all forms of communication [e.g. Webmail, E-mail messages, letters] with the intended research participants, as well as with the Department of Human Resource Management RERC.

Kind regards,



Prof IL Potgieter Chairperson  
012 429 3723/ visseil@unisa.ac.za

.. .....

Prof RT Mpfu  
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