LABOUR RELATIONS ACT
NO. 66 OF 1995

[View Regulation]

[ASSENTED TO 29 NOVEMBER, 1995]
[DATE OF COMMENCEMENT: 11 NOVEMBER, 1996]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 42103 dated 12 December, 2018.

as amended by

Labour Relations Amendment Act, No. 42 of 1996

Basic Conditions of Employment Act, No. 75 of 1997

Employment Equity Act, No. 55 of 1998

Labour Relations Amendment Act, No. 127 of 1998

Labour Relations Amendment Act, No. 12 of 2002

Intelligence Services Act, No. 65 of 2002
[with effect from 20 February, 2003]

Electronic Communications Security (Pty) Ltd Act, No. 68 of 2002
[with effect from 28 February, 2003]

General Intelligence Laws Amendment Act, No. 52 of 2003
[with effect from 28 February, 2003]

Prevention and Combating of Corrupt Activities Act, No. 12 of 2004
[with effect from 27 April, 2004]

Public Service Amendment Act, No. 30 of 2007
[with effect from 1 April, 2008]

Superior Courts Act, No. 10 of 2013
[with effect from 23 August, 2013, unless otherwise indicated]

General Intelligence Laws Amendment Act, No. 11 of 2013
[with effect from 29 July, 2013]

Labour Relations Amendment Act, No. 6 of 2014

Legal Aid South Africa Act, No. 39 of 2014
[with effect from 1 March, 2015]

Labour Relations Amendment Act, No. 8 of 2018
[with effect from 1 January, 2019]

pending amendment by

Labour Relations Amendment Act, No. 6 of 2014
(provisions not yet proclaimed)

ACT

To change the law governing labour relations and, for that purpose—

to give effect to section 23 of the Constitution;

to regulate the organisational rights of trade unions;

to promote and facilitate collective bargaining at the workplace and at sectoral level;

to regulate the right to strike and the recourse to lock-out in conformity with the Constitution;

to promote employee participation in decision-making through the establishment of workplace forums;

to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;

to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;

to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;

to give effect to the public international law obligations of the Republic relating to labour relations;

to amend and repeal certain laws relating to labour relations; and

to provide for incidental matters.

[Long title amended by s. 43 of Act No. 6 of 2014.]

ARRANGEMENT OF SECTIONS

CHAPTER I
PURPOSE, APPLICATION AND INTERPRETATION

1. Purpose of this Act.—The purpose of *this Act*1 is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of *this Act*, which are—

(*a*) to give effect to and regulate the fundamental rights conferred by section 23 of the Constitution of the Republic of South Africa, 1996;2

[Para. (a) substituted by s. 1 of Act No. 6 of 2014.]

(*b*) to give effect to obligations incurred by the *Republic* as a member state of the International Labour Organisation;

(*c*) to provide a framework within which *employees* and their *trade unions*, employers and *employers' organisations* can—

(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and

(ii) formulate industrial policy; and

(*d*) to promote—

(i) orderly collective bargaining;

(ii) collective bargaining at sectoral level;

(iii) employee participation in decision-making in the workplace; and

(iv) the effective resolution of labour disputes.

2. Exclusion from application of this Act.—This Act does not apply to members of—

(*a*) the National Defence Force;

(*b*) the State Security Agency.

[S. 2 amended by s. 40 (1) of Act No. 65 of 2002 (Editorial Note: s. 40 (1) substituted by s. 51 of Act No. 11 of 2013), by s. 26 of Act No. 68 of 2002 (Editorial note: s. 26 repealed by s. 23 of Act No. 52 of 2003), by s. 25 (2) of Act No. 52 of 2003 and substituted by s. 53 of Act No. 11 of 2013.]

3. Interpretation of this Act.—Any person applying *this Act* must interpret its provisions—

(*a*) to give effect to its primary objects;

(*b*) in compliance with the Constitution; and

(*c*) in compliance with the public international law obligations of the *Republic*.

CHAPTER II
FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS

4. Employees' right to freedom of association.—(1) Every *employee* has the right—

(*a*) to participate in forming a *trade union* or federation of *trade unions*; and

(*b*) to join a *trade union*, subject to its constitution.

(2) Every member of a *trade union* has the right, subject to the constitution of that *trade union*—

(*a*) to participate in its lawful activities;

(*b*) to participate in the election of any of its *office-bearers*, *officials* or *trade union representatives*; and

(*c*) to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office; and

(*d*) to stand for election and be eligible for appointment as a *trade union representative* and, if elected or

appointed, to carry out the functions of a *trade union representative* in terms of *this Act* or any *collective agreement*.

(3) Every member of a *trade union* that is a member of a federation of *trade unions* has the right, subject to the constitution of that federation—

(*a*) to participate in its lawful activities;

(*b*) to participate in the election of any of its *office-bearers* or *officials*; and

(*c*) to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office.

5. Protection of employees and persons seeking employment.—(1) No person may discriminate against an *employee* for exercising any right conferred by *this Act*.

(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following—

(*a*) require an *employee* or a person seeking employment—

(i) not to be a member of a *trade union* or *workplace forum*;

(ii) not to become a member of a *trade union* or *workplace forum*; or

(iii) to give up membership of a *trade union* or *workplace forum*;

(*b*) prevent an *employee* or a person seeking employment from exercising any right conferred by *this Act* or from participating in any proceedings in terms of *this Act*; or

(*c*) prejudice an *employee* or a person seeking employment because of past, present or anticipated—

(i) membership of a *trade union* or *workplace forum*;

(ii) participation in forming a *trade union* or federation of *trade unions* or establishing a *workplace forum*;

(iii) participation in the lawful activities of a *trade union*, federation of *trade unions* or *workplace forum*;

(iv) failure or refusal to do something that an employer may not lawfully permit or require an *employee* to do;

(v) disclosure of information that the *employee* is lawfully entitled or required to give to another person;

(vi) exercise of any right conferred by *this Act*; or

(vii) participation in any proceedings in terms of *this Act*.

(3) No person may advantage, or promise to advantage, an *employee* or a person seeking employment in exchange for that person not exercising any right conferred by *this Act* or not participating in any proceedings in terms of *this Act*. However, nothing in this section precludes the parties to a *dispute* from concluding an agreement to settle that *dispute*.

(4) A provision in any contract, whether entered into before or after the commencement of *this Act*, that directly or indirectly contradicts or limits any provision of section 4, or this section is invalid, unless the contractual provision is permitted by *this Act*.

6. Employers' right to freedom of association.—(1) Every employer has the right—

(*a*) to participate in forming an *employers' organisation* or a federation of *employers' organisations*; and

(*b*) to join an *employers' organisation*, subject to its constitution.

(2) Every member of an *employers' organisation* has the right, subject to the constitution of that *employers' organisation*—

(*a*) to participate in its lawful activities;

(*b*) to participate in the election of any of its *office-bearers* or *officials*; and

(*c*) if—

(i) a natural person, to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office; or

(ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an *office-bearer* or *official* and, if elected or appointed, to hold office.

(3) Every member of an *employers' organisation* that is a member of a federation of *employers' organisations* has the right, subject to the constitution of that federation—

(*a*) to participate in its lawful activities;

(*b*) to participate in the election of any of its *office-bearers* or *officials*; and

(*c*) if—

(i) a natural person, to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office;

(ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an *office-bearer* or *official* and, if elected or appointed, to hold office.

7. Protection of employers' rights.—(1) No person may discriminate against an employer for exercising any right conferred by *this Act*.

(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following—

(*a*) require an employer—

(i) not to be a member of an *employers' organisation*;

(ii) not to become a member of an *employers' organisation*; or

(iii) to give up membership of an *employers' organisation*;

(*b*) prevent an employer from exercising any right conferred by *this Act* or from participating in any proceedings in terms of *this Act*; or

(*c*) prejudice an employer because of past, present or anticipated—

(i) membership of an *employers' organisation*;

(ii) participation in forming an *employers' organisation* or a federation of *employers' organisations*;

(iii) participation in the lawful activities of an *employers' organisation* or a federation of *employers' organisations*;

(iv) disclosure of information that the employer is lawfully entitled or required to give to another person;

(v) exercise of any right conferred by *this Act*; or

(vi) participation in any proceedings in terms of *this Act*.

(3) No person may advantage, or promise to advantage, an employer in exchange for that employer not exercising any right conferred by *this Act* or not participating in any proceedings in terms of *this Act*. However, nothing in this section precludes the parties to a *dispute* from concluding an agreement to settle that *dispute*.

(4) A provision in any contract, whether entered into before or after the commencement of *this Act*, that directly or indirectly contradicts or limits any provision of section 6, or this section, is invalid, unless the contractual provision is permitted by *this Act*.

8. Rights of trade unions and employers' organisations.—Every *trade union* and every *employers' organisation* has the right—

(*a*) subject to the provisions of Chapter VI—

(i) to determine its own constitution and rules; and

(ii) to hold elections for its *office-bearers*, *officials* and representatives;

(*b*) to plan and organise its administration and lawful activities;

(*c*) to participate in forming a federation of *trade unions* or a federation of *employers' organisations*;

(*d*) to join a federation of *trade unions* or a federation of *employers' organisations*, subject to its constitution, and to participate in its lawful activities; and

(*e*) to affiliate with, and participate in the affairs of, any international workers' organisation or international employers' organisation or the International Labour Organisation, and contribute to, or receive financial assistance from, those organisations.

9. Procedure for disputes3.—(1) If there is a *dispute* about the interpretation or application of any provision of this Chapter, any party to the *dispute* may refer the *dispute* in writing to—

(*a*) a *council*, if the parties to the *dispute* fall within the *registered scope* of that *council*; or

(*b*) the Commission, if no *council* has jurisdiction.

(2) The party who refers the *dispute* must satisfy the *council* or the Commission that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The *council* or the Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

10. Burden of proof.—In any proceedings—

(*a*) a party who alleges that a right or protection conferred by this Chapter has been infringed must prove the facts of the conduct; and

(*b*) the party who engaged in that conduct must then prove that the conduct did not infringe any provision of this Chapter.

CHAPTER III
COLLECTIVE BARGAINING

Part A—Organisational Rights

11. Trade union representativeness.—In this Part, unless otherwise stated, "representative *trade union*" means a registered *trade union*, or two or more registered *trade unions* acting jointly, that are sufficiently representative of the *employees* employed by an employer in a *workplace*.

12. Trade union access to workplace.—(1) Any *office-bearer* or *official* of a representative *trade union is* entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve their interests.

(2) A representative *trade union is* entitled to hold meetings with *employees* outside their *working hours* at the employer's premises.

(3) The members of a representative *trade union* are entitled to vote at the employer's premises in any election or ballot contemplated by that *trade union's* constitution.

(4) The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

13. Deduction of trade union subscriptions or levies.—(1) Any *employee* who is a member of a representative *trade union* may authorise the employer in writing to deduct subscriptions or levies payable to that *trade union* from the *employee's* wages.

(2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative *trade union* by not later than the 15th day of the month first following the date each deduction was made.

(3) An *employee* may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative *trade union* one month's written notice or, if the *employee* works in the *public service*, three months' written notice.

(4) An employer who receives a notice in terms of subsection (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.

(5) With each monthly remittance, the employer must give the representative *trade union*—

(*a*) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;

(*b*) details of the amounts deducted and remitted and the period to which the deductions relate; and

(*c*) a copy of every notice of revocation in terms of subsection (3).

14. Trade union representatives.—(1) In this section, "representative *trade union*" means a registered *trade union*, or two or more registered *trade unions* acting jointly, that have as members the majority of the *employees* employed by an employer in a *workplace*.

(2) In any *workplace* in which at least 10 members of a representative *trade union* are employed, those members are entitled to elect from among themselves—

(*a*) if there are 10 members of the *trade union* employed in the *workplace*, one *trade union representative*;

(*b*) if there are more than 10 members of the *trade union* employed in the *work place*, two *trade union representatives*;

(*c*) if there are more than 50 members of the *trade union* employed in the *workplace*, two *trade union representatives* for the first 50 members, plus a further one *trade union representative* for every additional 50 members up to a maximum of seven *trade union representatives*;

(*d*) if there are more than 300 members of the *trade union* employed in the *workplace*, seven *trade union representatives* for the first 300 members, plus one additional *trade union representative* for every 100 additional members up to a maximum of 10 *trade union representatives*;

(*e*) if there are more than 600 members of the *trade union* employed in the *workplace*, 10 *trade union*

representatives for the first 600 members, plus one additional *trade union representative* for every 200 additional members up to a maximum of 12 *trade union representatives*; and

(*f*) if there are more than 1 000 members of the *trade union* employed in the *workplace*, 12 *trade union representatives* for the first 1 000 members, plus one additional *trade union representative* for every 500 additional members up to a maximum of *20 trade union representatives*.

(3) The constitution of the representative *trade union* governs the nomination, election, terms of office and removal from office of a *trade union representative*.

(4) A *trade union representative* has the right to perform the following functions—

(*a*) at the request of an *employee* in the *workplace*, to assist and represent the *employee* in grievance and disciplinary proceedings;

(*b*) to monitor the employer's compliance with the workplace-related provisions of *this Act*, any law regulating terms and conditions of employment and any *collective agreement* binding on the employer;

(*c*) to report any alleged contravention of the workplace-related provisions of *this Act*, any law regulating terms and conditions of employment and any *collective agreement* binding on the employer to—

(i) the employer;

(ii) the representative *trade union*; and

(iii) any responsible authority or agency; and

(*d*) to perform any other function agreed to between the representative *trade union* and the employer.

(5) Subject to reasonable conditions, a *trade union representative* is entitled to take reasonable time off with pay during *working hours*—

(*a*) to perform the functions of a *trade union representative*; and

(*b*) to be trained in any subject relevant to the performance of the functions of a *trade union representative*.

15. Leave for trade union activities.—(1) An *employee* who is an *office-bearer* of a representative *trade union*, or of a federation of *trade unions* to which the representative *trade union* is affiliated, is entitled to take reasonable leave during w*orking hours* for the purpose of performing the functions of that office.

(2) The representative *trade union* and the employer may agree to the number of days of leave, the number of days of paid leave and the conditions attached to any leave.

(3) An arbitration award in terms of section 21 (7) regulating any of the matters referred to in subsection (2) remains in force for 12 months from the date of the award.

16. Disclosure of information.—(1) For the purposes of this section, "representative *trade union*" means a registered *trade union*, or two or more registered *trade unions* acting jointly, that have as members the majority of the *employees* employed by an employer in a *workplace*.

(2) Subject to subsection (5), an employer must disclose to a *trade union representative* all relevant information that will allow the *trade union representative* to perform effectively the functions referred to in section 14 (4).

(3) Subject to subsection (5), whenever an employer is consulting or bargaining with a representative *trade union*, the employer must disclose to the representative *trade union* all relevant information that will allow the representative *trade union* to engage effectively in consultation or collective bargaining.

(4) The employer must notify the *trade union representative* or the representative *trade union* in writing if any information disclosed in terms of subsection (2) or (3) is confidential.

(5) An employer is not required to disclose information—

(*a*) that is legally privileged;

(*b*) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;

(*c*) that is confidential and, if disclosed, may cause substantial harm to an *employee* or the employer; or

(*d*) that is private personal information relating to an *employee*, unless that *employee* consents to the disclosure of that information.

(6) If there is a *dispute* about what information is required to be disclosed in terms of this section, any party to the *dispute* may refer the *dispute* in writing to the Commission.

(7) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(8) The Commission must attempt to resolve the *dispute* through conciliation.

(9) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

(10) In any *dispute* about the disclosure of information contemplated in subsection (6), the commissioner must first decide whether or not the information is relevant.

(11) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (5) (c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an *employee* or employer against the harm that the failure to disclose the information is likely to cause to the ability of a *trade union representative* to perform effectively the functions referred to in section 14 (4) or the ability of a representative *trade union* to engage effectively in consultation or collective bargaining.

(12) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the *employee* or employer.

(13) When making an order in terms of subsection (12), the commissioner must take into account any breach of confidentiality in respect of information disclosed in terms of this section at that *workplace* and may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.

(14) In any *dispute* about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in that *workplace* be withdrawn for a period specified in the arbitration award.

17. Restricted rights in the domestic sector.—(1) For the purposes of this section, "domestic sector" means the employment of *employees* engaged in domestic work in their employers' homes or on the property on which the home is situated.

(2) The rights conferred on representative *trade unions* by this Part in so far as they apply to the domestic sector are subject to the following limitations—

(*a*) the right of access to the premises of the employer conferred by section 12 on an *office-bearer* or *official* of a representative *trade union* does not include the right to enter the home of the employer, unless the employer agrees; and

(*b*) the right to the disclosure of information conferred by section 16 does not apply in the domestic sector.

18. Right to establish thresholds of representativeness.—(1) An employer and a registered *trade union* whose members are a majority of the *employees* employed by that employer in a *workplace*, or the parties to a *bargaining council*, may conclude a *collective agreement* establishing a threshold of representativeness required in respect of one or more of the organisational rights referred to in sections 12, 13 and 15.

(2) A *collective agreement* concluded in terms of subsection (1) is not binding unless the thresholds of representativeness in the *collective agreement* are applied equally to any registered *trade union* seeking any of the organisational rights referred to in that subsection.

19. Certain organisational rights for trade union party to a council.—Registered *trade unions* that are parties to a *council* automatically have the rights contemplated in sections 12 and 13 in respect of all *workplaces* within the *registered scope* of the *council* regardless of their representativeness in any particular *workplace*.

20. Organisational rights in collective agreements.—Nothing in this Part precludes the conclusion of a *collective agreement* that regulates organisational rights.

21. Exercise of rights conferred by this Part4**.**—(1) Any registered *trade union* may notify an employer in writing that it seeks to exercise one or more of the rights conferred by this Part in a *workplace*.

(2) The notice referred to in subsection (1) must be accompanied by a certified copy of the *trade union's* certificate of registration and must specify—

(*a*) the *workplace* in respect of which the *trade union* seeks to exercise the rights;

(*b*) the representativeness of the *trade union* in that *workplace*, and the facts relied upon to demonstrate that it is a representative *trade union*; and

(*c*) the rights that the *trade union* seeks to exercise and the manner in which it seeks to exercise those rights.

(3) Within 30 days of receiving the notice, the employer must meet the registered *trade union* and endeavour to conclude a *collective agreement* as to the manner in which the *trade union* will exercise the rights in respect of that *workplace*.

(4) If a *collective agreement* is not concluded, either the registered *trade union* or the employer may refer the *dispute* in writing to the Commission.

(5) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on the other party to the *dispute*.

(6) The Commission must appoint a commissioner to attempt to resolve the *dispute* through conciliation.

(7) If the *dispute* remains unresolved, either party to the *dispute* may request that the *dispute* be resolved through arbitration.

(8) If the unresolved *dispute* is about whether or not the registered *trade union* is a representative *trade*

union, the commissioner—

(*a*) must seek—

(i) to minimise the proliferation of *trade union* representation in a single *workplace* and, where possible, to encourage a system of a representative *trade union* in a *workplace*; and

(ii) to minimise the financial and administrative burden of requiring an employer to grant organisational rights to more than one registered *trade union*;

(*b*) must consider—

(i) the nature of the *workplace*;

(ii) the nature of the one or more organisational rights that the registered *trade union* seeks to exercise;

(iii) the nature of the *sector* in which the *workplace is* situated;

[Sub-para. (iii) amended by s. 2 (a) of Act No. 6 of 2014.]

(iv) the organisational history at the *workplace* or any other *workplace* of the employer; and

(v) the composition of the work-force in the *workplace* taking into account the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment; and;

[Sub-par. (v) added by s. 2 (a) of Act No. 6 of 2014.]

(*c*) may withdraw any of the organisational rights conferred by this Part and which are exercised by any other registered *trade union* in respect of that *workplace*, if that other *trade union* has ceased to be a representative *trade union*.

(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered *trade union* that does not have as members the majority of *employees* employed by an employer in a *workplace*—

(*a*) the rights referred to in section 14, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 14 in that *workplace*.

(*b*) the rights referred to in section 16, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 16 in that *workplace.*

[Sub-s. (8A) inserted by s. 2 (b) of Act No. 6 of 2014.]

(8B) A right granted in terms of subsection (8A) lapses if the *trade union* concerned is no longer the most representative *trade union* in the *workplace*.

[Sub-s. (8B) inserted by s. 2 (b) of Act No. 6 of 2014.]

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered *trade union*, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a *collective agreement* in terms of section 18, if—

(*a*) all parties to the *collective agreement* have been given an opportunity to participate in the arbitration proceedings; and

(*b*) the *trade union*, or *trade unions* acting jointly, represent a significant interest, or a substantial number of *employees*, in the *workplace*.

[Sub-s. (8C) inserted by s. 2 (b) of Act No. 6 of 2014.]

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.

[Sub-s. (8D) inserted by s. 2 (b) of Act No. 6 of 2014.]

(9) In order to determine the membership or support of the registered *trade union*, the commissioner may—

(*a*) make any necessary inquiries;

(*b*) where appropriate, conduct a ballot of the relevant *employees*; and

(*c*) take into account any other relevant information.

(10) The employer must co-operate with the commissioner when the commissioner acts in terms of subsection (9), and must make available to the commissioner any information and facilities that are reasonably necessary for the purposes of that subsection.

(11) An employer who alleges that a *trade union* is no longer a representative *trade union* may apply to the Commission to withdraw any of the organisational rights conferred by this Part, in which case the provisions of subsections (5) to (10) apply, read with the changes required by the context.

(12) If a *trade union* seeks to exercise the rights conferred by Part A in respect of *employees* of a temporary employment service, it may seek to exercise those rights in a *workplace* of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a *workplace* of a client of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises.

[Sub-s. (12) added by s. 2 (c) of Act No. 6 of 2014.]

22. Disputes about organisational rights.—(1) Any party to a *dispute* about the interpretation or application of any provision of this Part, other than a *dispute* contemplated in section 21, may refer the *dispute* in writing to the Commission.

(2) The party who refers a *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration as soon as may be practicable.

(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to—

(*a*) the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and

(*b*) any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.

[Sub-s. (5) added by s. 3 of Act No. 6 of 2014.

Part B—Collective Agreements

23. Legal effect of collective agreement.—(1) A *collective agreement* binds—

(*a*) the parties to the *collective agreement*;

(*b*) each party to the *collective agreement* and the members of every other party to the *collective agreement*, in so far as the provisions are applicable between them;

(*c*) the members of a registered *trade union* and the employers who are members of a registered *employers' organisation* that are party to the *collective agreement* if the *collective agreement* regulates—

(i) terms and conditions of employment; or

(ii) the conduct of the employers in relation to their *employees* or the conduct of the *employees* in relation to their employers;

(*d*) *employees* who are not members of the registered *trade union* or *trade unions* party to the agreement if—

(i) the employees are identified in the agreement;

(ii) the agreement expressly binds the employees; and

(iii) that *trade union* or those *trade unions* have as their members the majority of *employees* employed by the employer in the *workplace*.

(2) A *collective agreement* binds for the whole period of the *collective agreement* every person bound in terms of subsection (1) (c) who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered *trade union* or registered *employers' organisation* for the duration of the *collective agreement*.

(3) Where applicable, a *collective agreement* varies any contract of employment between an *employee* and employer who are both bound by the *collective agreement*.

(4) Unless the *collective agreement* provides otherwise, any party to a *collective agreement* that is concluded for an indefinite period may terminate the agreement by giving reasonable notice in writing to the other parties.

[Sub-s. (4) substituted by s. 1 of Act No. 12 of 2002.]

24. Disputes about collective agreements.—(1) Every *collective agreement* excluding an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26 or a settlement agreement contemplated in either section 142A or 158 (1) (c), must provide for a procedure to resolve

any *dispute* about the interpretation or application of the *collective agreement*. The procedure must first require the parties to attempt to resolve the *dispute* through conciliation and, if the *dispute* remains unresolved, to resolve it through arbitration.

[Sub-s. (1) substituted by s. 2 (a) of Act No. 12 of 2002.]

(2) If there is a *dispute* about the interpretation or application of a *collective agreement*, any party to the *dispute* may refer the *dispute* in writing to the Commission if—

(*a*) the *collective agreement* does not provide for a procedure as required by subsection (1);

(*b*) the procedure provided for in the *collective agreement* is not operative; or

(*c*) any party to the *collective agreement* has frustrated the resolution of the *dispute* in terms of the *collective agreement*.

(3) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(4) The Commission must attempt to resolve the *dispute* through conciliation.

(5) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.5

(6) If there is a *dispute* about the interpretation or application of an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26, any party to the *dispute* may refer the *dispute* in writing to the Commission, and subsections (3) to (5) will apply to that dispute.6

(7) Any person bound by an arbitration award about the interpretation or application of section 25 (3) (c) and (d) or section 26 (3) (d) may appeal against that award to the Labour Court.

(8) If there is a *dispute* about the interpretation or application of a settlement agreement contemplated in either section 142A or 158 (1) (c), a party may refer the *dispute* to a *council* or the Commission and subsections (3) to (5), with the necessary changes, apply to that *dispute*.

[Sub-s. (8) added by s. 2 (b) of Act No. 12 of 2002.]

25. Agency shop agreements.—(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as an agency shop agreement, requiring the employer to deduct an agreed agency fee from the wages of *employees* identified in the agreement who are not members of the *trade union* but are eligible for membership thereof.

[Sub-s. (1) substituted by s. 1 (a) of Act No. 42 of 1996.]

(2) For the purposes of this section, "representative trade union" means a registered *trade union*, or two or more registered *trade unions* acting jointly, whose members are a majority of the *employees* employed—

(*a*) by an employer in a *workplace*; or

(*b*) by the members of an *employers' organisation* in a *sector* and *area* in respect of which the agency shop agreement applies.

(3) An agency shop agreement is binding only if it provides that—

(*a*) *employees* who are not members of the representative *trade union* are not compelled to become members of that *trade union*;

(*b*) the agreed agency fee must be equivalent to, or less than—

(i) the amount of the subscription payable by the members of the representative *trade union*;

(ii) if the subscription of the representative *trade union* is calculated as a percentage of an *employee's* salary, that percentage; or

(iii) if there are two or more registered *trade unions* party to the agreement, the highest amount of the subscription that would apply to an *employee*;

(*c*) the amount deducted must be paid into a separate account administered by the representative *trade union*; and

(*d*) no agency fee deducted may be—

(i) paid to a political party as an affiliation fee;

(ii) contributed in cash or kind to a political party or a person standing for election to any political office; or

(iii) used for any expenditure that does not advance or protect the socio-economic interests of *employees*.

[Para. (d) amended by s. 1 (b) of Act No. 42 of 1996.]

(4) (*a*) Despite the provisions of any law or contract, an employer may deduct the agreed agency fee from the wages of an *employee* without the *employee's* authorisation.

(*b*) Despite subsection (3) (c) a conscientious objector may request the employer to pay the amount deducted from that employee's wages into a fund administered by the Department of Labour.

(5) The provisions of sections 98 and 100 (b) and (c) apply, read with the changes required by the context, to the separate account referred to in subsection (3) (c).

(6) Any person may inspect the *auditor's* report, in so far as it relates to an account referred to in subsection (3) (c), in the *registrar's* office.

(7) The *registrar* must provide a certified copy of, or extract from, any of the documents referred to in subsection (6) to any person who has paid the prescribed fees.

(8) An employer or *employers' organisation* that alleges that a *trade union* is no longer a representative *trade union* in terms of subsection (1) must give the *trade union* written notice of the allegation, and must allow the *trade union* 90 days from the date of the notice to establish that it is a representative *trade union*.

(9) If, within the 90-day period, the *trade union* fails to establish that it is a representative *trade union*, the employer must give the *trade union* and the *employees* covered by the agency shop agreement 30 days' notice of termination, after which the agreement will terminate.

(10) If an agency shop agreement is terminated, the provisions of subsection (3) (c) and (d) and (5) apply until the money in the separate account is spent.

26. Closed shop agreements.—(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as a closed shop agreement, requiring all *employees* covered by the agreement to be members of the *trade union*.

(2) For the purposes of this section, "representative trade union" means a registered *trade union*, or two or more registered *trade unions* acting jointly, whose members are a majority of the *employees* employed—

(*a*) by an employer in a workplace; or

(*b*) by the members of an *employers' organisation* in a *sector* and *area* in respect of which the closed shop agreement applies.

(3) A closed shop agreement is binding only if—

(*a*) a ballot has been held of the *employees* to be covered by the agreement;

(*b*) two thirds of the *employees* who voted have voted in favour of the agreement;

(*c*) there is no provision in the agreement requiring membership of the representative *trade union* before employment commences; and

(*d*) it provides that no membership subscription or levy deducted may be—

(i) paid to a political party as an affiliation fee;

(ii) contributed in cash or kind to a political party or a person standing for election to any political office; or

(iii) used for any expenditure that does not advance or protect the socio-economic interests of *employees*.

[Para. (d) amended by s. 2 of Act No. 42 of 1996.]

(4) Despite subsection (3) (b), a closed shop agreement contemplated in subsection (2) (b) may be concluded between a registered *trade union* and a registered *employers' organisation* in respect of a *sector* and *area* to become binding in every workplace in which—

(*a*) a ballot has been held of the *employees* to be covered by the agreement; and

(*b*) two thirds of the *employees* who voted have voted in favour of the agreement.

(5) No *trade union* that is party to a closed shop agreement may refuse an *employee* membership or expel an *employee* from the *trade union* unless—

(*a*) the refusal or expulsion is in accordance with the *trade union's* constitution; and

(*b*) the reason for the refusal or expulsion is fair, including, but not limited to, conduct that undermines the *trade union's* collective exercise of its rights.

(6) It is not unfair to dismiss an *employee*—

(*a*) for refusing to join a *trade union* party to a closed shop agreement;

(*b*) who is refused membership of a *trade union* party to a closed shop agreement if the refusal is in accordance with the provisions of subsection (5); or

(*c*) who is expelled from a trade union party to a closed shop agreement if the expulsion is in accordance with the provisions of subsection (5).

(7) Despite subsection (6)—

(*a*) the *employees* at the time a closed shop agreement takes effect may not be dismissed for refusing to join a *trade union* party to the agreement; and

(*b*) *employees* may not be dismissed for refusing to join a *trade union* party to the agreement on grounds of conscientious objection.

(8) The *employees* referred to in subsection (7) may be required by the closed shop agreement to pay an agreed agency fee, in which case the provisions of section 25 (3) (b), (c) and (d) and (4) to (7) apply.

(9) If the Labour Court decides that a *dismissal* is unfair because the refusal of membership of or the expulsion from a *trade union* party to a closed shop agreement was unfair, the provisions of Chapter VIII apply, except that any order of compensation in terms of that Chapter must be made against the *trade union*.

(10) A registered *trade union* that represents a significant interest in, or a substantial number of, the *employees* covered by a closed shop agreement may notify the parties to the agreement of its intention to apply to become a party to the agreement and, within 30 days of the notice, the employer must convene a meeting of the parties and the registered *trade union* in order to consider the application.

(11) If the parties to a closed shop agreement do not admit the registered *trade union* as a party, the *trade union* may refer the *dispute* in writing to the Commission.

(12) The registered *trade union* must satisfy the Commission that a copy of the referral has been *served* on all the parties to the closed shop agreement.

(13) The Commission must attempt to resolve the *dispute* through conciliation.

(14) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

(15) The representative *trade union* must conduct a ballot of the *employees* covered by the closed shop agreement to determine whether the agreement should be terminated if—

(*a*) one third of the *employees* covered by the agreement sign a petition calling for the termination of the agreement; and

(*b*) three years have elapsed since the date on which the agreement commenced or the last ballot was conducted in terms of this section.

(16) If a majority of the *employees* who voted, have voted to terminate the closed shop agreement, the agreement will be terminated.

(17) Unless a *collective agreement* provides otherwise, the ballot referred to in subsections (3) (a) and (15) must be conducted in accordance with the guidelines published by the Commission.

PART C—Bargaining Councils

27. Establishment of bargaining councils.—(1) One or more registered *trade unions* and one or more registered *employers' organisations* may establish a *bargaining council* for a *sector* and *area* by—

(*a*) adopting a constitution that meets the requirements of section 30; and

(*b*) obtaining registration of the *bargaining council* in terms of section 29.

(2) The State may be a party to any *bargaining council* established in terms of this section if it is an employer in the *sector* and *area* in respect of which the *bargaining council* is established.

(3) If the State is a party to a *bargaining council* in terms of subsection (2), any reference to a registered *employers' organisation* includes a reference to the State as a party.

(4) A *bargaining council* may be established for more than one *sector*.

[Sub-s. (4) added by s. 3 of Act No. 42 of 1996.]

28. Powers and functions of bargaining council.—(1) The powers and functions of a *bargaining council* in relation to its *registered scope* include the following—

(*a*) to conclude *collective agreements*;

(*b*) to enforce those *collective agreements*;

(*c*) to prevent and resolve labour *disputes*;

(*d*) to perform the dispute resolution functions referred to in section 51;

(*e*) to establish and administer a fund to be used for resolving *disputes*;

(*f*) to promote and establish training and education schemes;

(*g*) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *bargaining council* or their members;

(*h*) to develop proposals for submission to *NEDLAC* or any other appropriate forum on policy and legislation that may affect the *sector* and *area*;

(*i*) to determine by *collective agreement* the matters which may not be an *issue in dispute* for the purposes of a *strike* or a *lock-out* at the workplace;

(*j*) to confer on *workplace forums* additional matters for consultation;

(*k*) to provide industrial support services within the sector; and

[Para. (k) added by s. 3 (b) of Act No. 12 of 2002.]

(*l*) to extend the services and functions of the *bargaining council* to workers in the informal sector and home workers.

[Para. (l) added by s. 3 (b) of Act No. 12 of 2002.]

(2) From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1) (g).

[Sub-s. (2) added by s. 1 of Act No. 127 of 1998.]

(3) The laws relating to pension, provident or medical aid schemes or funds will apply in respect of any pension, provident or medical aid scheme or fund established in terms of subsection (1) (g) after the coming into operation of the Labour Relations Amendment Act, 1998.

[Sub-s. (3) added by s. 1 of Act No. 127 of 1998.]

29. Registration of bargaining councils.—(1) The parties referred to in section 27 may apply for registration of a *bargaining council* by submitting to the *registrar*—

(*a*) the *prescribed* form that has been properly completed;

(*b*) a copy of its constitution; and

(*c*) any other information that may assist the *registrar* to determine whether or not the *bargaining council* meets the requirements for registration.

(2) The *registrar* may require further information in support of the application.

(3) As soon as practicable after receiving the application, the *registrar* must publish a notice containing the material particulars of the application in the *Government Gazette* and send a copy of the notice to *NEDLAC*. The notice must inform the general public that they—

(*a*) may object to the application on any of the grounds referred to in subsection (4); and

(*b*) have 30 days from the date of the notice to *serve* any objection on the *registrar* and a copy on the applicant.

[Sub-s. (3) substituted by s. 4 (a) of Act No. 12 of 2002.]

(4) Any person who objects to the application must satisfy the *registrar* that a copy of the objection has been *served* on the applicant and that the objection is on any of the following grounds—

(*a*) the applicant has not complied with the provisions of this section;

(*b*) the *sector* and *area* in respect of which the application is made is not appropriate;

(*c*) the applicant is not sufficiently representative in the *sector* and *area* in respect of which the application is made.

(5) The *registrar* may require further information in support of the objection.

(6) The applicant may respond to an objection within 14 days of the expiry of the period referred to in subsection (3) (b), and must satisfy the *registrar* that a copy of that response has been *served* on the person who objected.

(7) The *registrar*, as soon as practicable, must send the application and any objections, responses and further information to *NEDLAC* to consider.

(8) *NEDLAC*, within 90 days of receiving the documents from the *registrar*, must—

(*a*) consider the appropriateness of the *sector* and *area* in respect of which the application is made;

(*b*) demarcate the appropriate *sector* and *area* in respect of which the *bargaining council* should be registered; and

(*c*) report to the *registrar* in writing.

(9) If *NEDLAC* fails to agree on a demarcation as required in subsection (8) (b), the *Minister* must demarcate the appropriate *sector* and *area* and advise the *registrar*.

(10) In determining the appropriateness of the *sector* and *area* for the demarcation contemplated in subsection (8) (b), *NEDLAC* or the *Minister* must seek to give effect to the primary objects of *this Act*.

(11) The registrar—

(*a*) must consider the application and any further information provided by the applicant;

(*b*) must determine whether—

(i) the applicant has complied with the provisions of this section;

(ii) the constitution of the *bargaining council* complies with section 30;

(iii) adequate provision is made in the constitution of the *bargaining council* for the representation of small and medium enterprises;

(iv) the parties to the *bargaining council* are sufficiently representative of the *sector* and *area* determined *by NEDLAC* or the *Minister*; and

(v) there is no other *council* registered for the *sector* and *area* in respect of which the application is made; and

(*c*) if satisfied that the applicant meets the requirements for registration, must register the *bargaining council* by entering the applicant's name in the register of *councils*.

(12) If the *registrar* is not satisfied that the applicant meets the requirements for registration, the *registrar*—

(*a*) must send the applicant a written notice of the decision and the reasons for that decision; and

(*b*) in that notice, must inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(13) If, within that 30-day period, the applicant meets those requirements, the *registrar* must register the applicant by entering the applicant's name in the register of *councils*.

(14) If, after the 30-day period, the *registrar* concludes that the applicant has failed to meet the requirements for registration, the *registrar* must—

(*a*) refuse to register the applicant; and

(*b*) notify the applicant and any person that objected to the application of that decision in writing.

(15) After registering the applicant, the *registrar* must—

(*a*) issue a certificate of registration in the applicant's name that must specify the *registered scope* of the applicant; and

(*b*) send the registration certificate and a certified copy of the registered constitution to the applicant.

(16) Subsections (3) to (10) and (11) (b) (iii) and (iv) do not apply to the registration or amalgamation of *bargaining councils* in the public service.

[Sub-s. (16) added by s. 4 (b) of Act No. 12 of 2002.]

30. Constitution of bargaining council.—(1) The constitution of every *bargaining council* must at least provide for—

(*a*) the appointment of representatives of the parties to the *bargaining council*, of whom half must be appointed by the *trade unions* that are party to the *bargaining council* and the other half by the *employers' organisations* that are party to the *bargaining council*, and the appointment of alternates to the representatives;

(*b*) the representation of small and medium enterprises;

(*c*) the circumstances and manner in which representatives must vacate their seats and the procedure for replacing them;

(*d*) rules for the convening and conducting of meetings of representatives, including the quorum required for, and the minutes to be kept of, those meetings;

(*e*) the manner in which decisions are to be made;

(*f*) the appointment or election of *office-bearers* and *officials*, their functions, and the circumstances and manner in which they may be removed from office;

(*g*) the establishment and functioning of committees;

(*h*) the determination through arbitration of any *dispute* arising between the parties to the *bargaining council* about the interpretation or application of the *bargaining council's* constitution;

(*i*) the procedure to be followed if a *dispute* arises between the parties to the *bargaining council*;

(*j*) the procedure to be followed if a *dispute* arises between a registered *trade union* that is a party to the *bargaining council*, or its members, or both, on the one hand, and employers who belong to a registered *employers' organisation* that is a party to the *bargaining council*, on the other hand;

(*k*) the procedure for exemption from *collective agreements*;

(*l*) the banking and investment of its funds;

(*m*) the purposes for which its funds may be used;

(*n*) the delegation of its powers and functions;

(*o*) the admission of additional registered *trade unions* and registered *employers' organisations* as parties to the *bargaining council*, subject to the provisions of section 56;7

(*p*) a procedure for changing its constitution; and

(*q*) a procedure by which it may resolve to wind up.

[Sub-s. (1) amended by s. 5 (a) of Act No. 42 of 1996.]

(2) The requirements for the constitution of a *bargaining council* in subsection (1) apply to the constitution of a *bargaining council* in the *public service* except that—

(*a*) any reference to an "*employers' organisation*" must be read as a reference to the State as employer; and

(*b*) the requirement in subsection (1) (b) concerning the representation of small and medium enterprises does not apply.

(3) The constitution of the Public Service Co-ordinating Bargaining Council must include a procedure for establishing a *bargaining council* in a *sector* of the *public service* designated in terms of section 37 (1).

(4) The constitution of a *bargaining council* in the *public service* may include provisions for the establishment and functioning of chambers of a *bargaining council* on national and regional levels.

(5) The procedures for the resolution of *disputes* referred to in subsection (1) (h), (i) and (j) may not entrust dispute resolution functions to the Commission unless the governing body of the Commission has agreed thereto.

[Sub-s. (5) added by s. 5 (b) of Act No. 42 of 1996.]

31. Binding nature of collective agreement concluded in bargaining council.—Subject to the provisions of section 32 and the constitution of the *bargaining council*, a *collective agreement* concluded in a *bargaining council* binds —

(*a*) the parties to the *bargaining council* who are also parties to the *collective agreement*;

(*b*) each party to the *collective agreement* and the members of every other party to the *collective agreement* in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and

(*c*) the members of a registered *trade union* that is a party to the *collective agreement* and the employers who are members of a registered *employers' organisation* that is such a party, if the *collective agreement* regulates—

(i) terms and conditions of employment; or

(ii) the conduct of the employers in relation to their *employees* or the conduct of the *employees* in relation to their employers.

[S. 31 substituted by s. 6 of Act No. 42 of 1996.]

32. Extension of collective agreement concluded in bargaining council.—(1) A *bargaining council* may ask the *Minister* in writing to extend a *collective agreement* concluded in the *bargaining council* to any non-parties to the *collective agreement* that are within its *registered scope* and are identified in the request, if at a meeting of the *bargaining council*—

(*a*) one or more registered *trade unions* whose members constitute the majority of the members of the *trade unions* that are party to the *bargaining council* vote in favour of the extension; and

(*b*) one or more registered *employers*' *organisations*, whose members employ the majority of the *employees* employed by the members of the *employers' organisations* that are party to the *bargaining council*, vote in favour of the extension.

(2) Subject to subsection (2A), the *Minister* must extend the *collective agreement*, as requested, by publishing a notice in the Government *Gazette*, within 60 days of receiving the request, declaring that, from a specified date and for a specified period, the *collective agreement* will be binding on the non-parties specified in the notice.

[Sub-s. (2) substituted by s. 1 (1) (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(2A) If the *registrar* determines that the parties to the *bargaining council* are sufficiently representative within the *registered scope* of the *bargaining council* for the purposes of subsection (5) (a), the *Minister* must publish the notice contemplated in subsection (2) within 90 days of the request.

[Sub-s. (2A) inserted by s. 1 (1) (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(3) A *collective agreement* may not be extended in terms of subsection (2) unless the *Minister* is satisfied that —

(*a*) the decision by the *bargaining council* to request the extension of the *collective agreement* complies with the provisions of subsection (1);

(*b*) (i) the *registrar*, in terms of section 49 (4A) (a), has determined that the majority of all *employees*

who, upon extension of the *collective agreement*, will fall within the scope of the agreement, are members of the *trade unions* that are parties to the *bargaining council*; or

[Sub-para. (i), previously para. (b), substituted by s. 7 (a) of Act No. 42 of 1996 and by s. 1 (1) (c) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(ii) the *registrar*, in terms of section 49 (4A) (a), has determined that the members of the *employers' organisations* that are parties to the *bargaining council* will, upon the extension of the *collective agreement*, be found to employ the majority of all the *employees* who fall within the scope of the *collective agreement*;

[Sub-para. (ii), previously para. (c) substituted by s. 7 (a) of Act No. 42 of 1996 and by s. 1 (1) (c) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*c*) . . .

(*d*) the non-parties specified in the request fall within the *bargaining council's registered scope*;

(*d*A) the *bargaining council* has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the *collective agreement* and is able to decide an application for an exemption within 30 days;

[Para. (dA) inserted by s. 4 (a) of Act No. 6 of 2014.]

(*e*) provision is made in the *collective agreement* for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—

(i) the *bargaining council's* refusal of a non-party's application for exemption from the provisions of the *collective agreement*;

(ii) the withdrawal of such an exemption by the *bargaining council*;

[Para. (e) substituted by s. 2 (a) of Act No. 127 of 1998 and amended by s. 4 (b) of Act No. 6 of 2014.]

(*f*) the *collective agreement* contains criteria that must be applied by the independent body when it considers an appeal, and that those criteria are fair and promote the primary objects of *this Act*; and

[Para. (f) substituted by s. 2 (a) of Act No. 127 of 1998.]

(*g*) the terms of the *collective agreement* do not discriminate against non-parties.

(3A) No representative, office-bearer or official of a *trade union* or *employers' organisation* party to the *bargaining council* may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3) (e).

[Sub-s. (3A) inserted by s. 4 (c) of Act No. 6 of 2014.]

(3B) The *Minister* may make regulations on the procedures and criteria that a *bargaining council* must take into consideration when developing the criteria for the purposes of section 32 (3) (dA), (e) and (f).

[Sub-s. (3B) inserted by s. 1 (1) (d) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(4) . . . . . .

[Sub-s. (4) deleted by s. 2 (b) of Act No. 127 of 1998.]

(5) Despite subsection 3 (b) and (c), the *Minister* may extend a *collective agreement* in terms of subsection (2) if—

(*a*) the *registrar* has, in terms of section 49 (4A) (b), determined that the parties to the *bargaining council* are sufficiently representative within the *registered scope* of the *bargaining council*;

[Para. (a) substituted by s. 7 (b) of Act No. 42 of 1996, by s. 5 (a) of Act No. 12 of 2002, amended by s. 4 (d) of Act No. 6 of 2014 and substituted by s. 1 (1) (e) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*b*) the *Minister* is satisfied that failure to extend the agreement may undermine collective bargaining at *sectoral* level or in the *public service* as a whole;

[Para. (b) substituted by s. 7 (b) of Act No. 42 of 1996.]

(*c*) the *Minister* has published a notice in the *Government Gazette* stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and

[Para. (c) added by s. 4 (d) of Act No. 6 of 2014.]

(*d*) the *Minister* has considered all comments received during the period referred to in paragraph (c).

[Para. (d) added by s. 4 (d) of Act No. 6 of 2014.]

(5A) When determining whether the parties to the *bargaining council* are sufficiently representative for the purposes of subsection (5) (a), the *registrar* may take into account the composition of the workforce in the *sector*, including the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard

employment.

[Sub-s. (5A) inserted by s. 4 (e) of Act No. 6 of 2014 and substituted by s. 1 (1) (f) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6) (*a*) After a notice has been published in terms of subsection (2) or (2A), the *Minister*, at the request of the *bargaining council*, may publish a further notice in the Government *Gazette*—

(i) extending the period specified in the earlier notice by a further period determined by the Minister; or

(ii) if the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective.

[Para. (a) amended by s. 1 (1) (g) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*b*) . . . . . .

[Para. (b) deleted by s. 1 (1) (h) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(7) The *Minister*, at the request of the *bargaining council*, must publish a notice in the *Government Gazette* cancelling all or part of any notice published in terms of subsection (2) or (6) from a date specified in the notice.

(8) Whenever any *collective agreement* in respect of which a notice has been published in terms of subsection (2) or (6) is amended, amplified or replaced by a new *collective agreement*, the provisions of this section apply to that new *collective agreement*.

(9) For the purposes of extending *collective agreements* concluded in the Public Service Co-ordinating Bargaining Council or any *bargaining council* contemplated in section 37 (3) or (4)—

(*a*) any reference in this section to an *employers' organisation* must be read as a reference to the State as employer; and

(*b*) subsections (3) (c), (e) and (f) and (4) of this section will not apply.

[Sub-s. (9) added by s. 7 (c) of Act No. 42 of 1996.]

(10) If the parties to a *collective agreement* that has been extended in terms of this section terminate the agreement, they must notify the Minister in writing.

[Sub-s. (10) added by s. 5 (b) of Act No. 12 of 2002.]

(11) A *bargaining council* that has a *collective agreement* extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3) (f).

[Sub-s. (11) added by s. 4 (f) of Act No. 6 of 2014.]

32A. Renewal and extension of funding agreements.—(1) For the purposes of this section—

(*a*) a "funding agreement" means a *collective agreement* concluded in a *bargaining council*, including a provision in such an agreement to fund—

(i) the operational and administrative activities of the *bargaining council* itself;

(ii) a *dispute* resolution fund referred to in section 28 (1) (e);

(iii) a training and education scheme contemplated in section 28 (1) (f); or

(iv) a pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *bargaining council* or their members, as contemplated in section 28 (1) (g);

(*b*) the "renewal of a funding agreement" means an agreement that is—

(i) binding on the parties to the agreement; and

(ii) deemed to be an extension of the agreement to non-parties in terms of section 32 (2).

(2) Subject to subsection (3), and where the *Minister* is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level, the *Minister* may renew a funding agreement for up to 12 months at the request of any of the parties to a *bargaining council* if—

(*a*) the funding agreement has expired; or

(*b*) the parties have failed to conclude a *collective agreement* to renew or replace the funding agreement before 90 days of its expiry.

(3) The *Minister* must, before making a decision under subsection (2)—

(*a*) publish a notice in the *Government Gazette* calling for public comment on the request within a period stipulated in the notice; and

(*b*) consider the comments received.

(4) Any review of the *Minister's* decision under subsection (2) must be determined by the Labour Court and any such decision remains in force until—

(*a*) set aside by the Labour Court; or

(*b*) if the decision is taken on appeal, set aside by the Labour Appeal Court or the Constitutional Court, as the case may be.

[S. 32A inserted by s. 2 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

33. Appointment and powers of designated agents of bargaining councils.—(1) The *Minister* may at the request of a *bargaining council* appoint any person as the designated agent of that *bargaining council* to promote, monitor and enforce compliance with any *collective agreement* concluded in that *bargaining council*.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 12 of 2002.]

(1A) A designated agent may—

(*a*) secure compliance with the council's *collective agreements* by—

(i) publicising the contents of the agreements;

(ii) conducting inspections;

(iii) investigating complaints; or

(iv) any other means the council may adopt; and

(*b*) perform any other functions that are conferred or imposed on the agent by the council.

[Sub-s. (1A) inserted by s. 6 (b) of Act No. 12 of 2002.]

(2) A *bargaining council* must provide each designated agent with a certificate signed by the secretary of the bargaining council stating that the agent has been appointed in terms of *this Act* as a designated agent of that *bargaining council*.

(3) Within the *registered scope* of a *bargaining council*, a designated agent of the *bargaining council* has all the powers set out in Schedule 10.

[Sub-s. (3) substituted by s. 6 (c) of Act No. 12 of 2002.]

(4) The *bargaining council* may cancel the certificate provided to a designated agent in terms of subsection (2) and the agent then ceases to be a designated agent of the *bargaining council* and must immediately surrender the certificate to the secretary of the *bargaining council*.

33A. Enforcement of collective agreements by bargaining councils.—(1) Despite any other provision in this Act, a *bargaining council* may monitor and enforce compliance with its *collective agreements* in terms of this section or a *collective agreement* concluded by the parties to the council.

(2) For the purposes of this section, a *collective agreement* is deemed to include—

(*a*) any basic condition of employment which in terms of section 49 (1) of the *Basic Conditions of Employment Act* constitutes a term of employment of any employee covered by the *collective agreement*; and

(*b*) the rules of any fund or scheme established by the *bargaining council*.

(3) A *collective agreement* in terms of this section may authorise a designated agent appointed in terms of section 33 to issue a compliance order requiring any person bound by that *collective agreement* to comply with the *collective agreement* within a specified period.

(4) (*a*) The *council* may refer any unresolved *dispute* concerning compliance with any provision of a *collective agreement* to arbitration by an arbitrator appointed by the council.

(*b*) If a party to an arbitration in terms of this section, that is not a party to the council, objects to the appointment of an arbitrator in terms of paragraph (a), the Commission, on request by the council, must appoint an arbitrator.

(*c*) If an arbitrator is appointed in terms of subparagraph (*b*)—

(i) the Council remains liable for the payment of the arbitrator's fee; and

(ii) the arbitration is not conducted under the auspices of the Commission.

(5) An arbitrator conducting an arbitration in terms of this section has the powers of a commissioner in terms of section 142, read with the changes required by the context.

(6) Section 138, read with the changes required by the context, applies to any arbitration conducted in terms of this section.

(7) An arbitrator acting in terms of this section may determine any *dispute* concerning the interpretation or application of a *collective agreement*.

(8) An arbitrator conducting an arbitration in terms of this section may make an appropriate award, including —

(*a*) ordering any person to pay any amount owing in terms of a *collective agreement*;

(*b*) imposing a fine for a failure to comply with a *collective agreement* in accordance with subsection (13);

(*c*) charging a party an arbitration fee;

(*d*) ordering a party to pay the costs of the arbitration;

(*e*) confirming, varying or setting aside a compliance order issued by a designated agent in accordance with subsection (4);

(*f*) any award contemplated in section 138 (9).

(9) Interest on any amount that a person is obliged to pay in terms of a *collective agreement* accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the arbitration award provides otherwise.

(10) An award in an arbitration conducted in terms of this section is final and binding and may be enforced in terms of section 143.

(11) Any reference in section 138 or 142 to the *director* must be read as a reference to the secretary of the *bargaining council*.

(12) If an employer upon whom a fine has been imposed in terms of this section files an application to review and set aside an award made in terms of subsection (8), any obligation to pay a fine is suspended pending the outcome of the application.

(13) (*a*) The Minister may, after consulting *NEDLAC*, publish in the *Government Gazette* a notice that sets out the maximum fines that may be imposed by an arbitrator acting in terms of this section.

(*b*) A notice in terms of paragraph (a) may specify the maximum fine that may be imposed—

(i) for a breach of a *collective agreement*—

(*aa*) not involving a failure to pay any amount of money;

(*bb*) involving a failure to pay any amount of money; and

(ii) for repeated breaches of the *collective agreement* contemplated in subparagraph (i).

[S. 33A inserted by s. 7 of Act No. 12 of 2002.]

34. Amalgamation of bargaining councils.—(1) Any *bargaining council* may resolve to amalgamate with one or more other *bargaining councils*.

(2) The amalgamating *bargaining councils* may apply to the *registrar* for registration of the amalgamated *bargaining council* and the *registrar* must treat the application as an application in terms of section 29.

(3) If the *registrar* has registered the amalgamated *bargaining council*, the *registrar* must cancel the registration of each of the amalgamating *bargaining councils* by removing their names from the register of *councils*.

(4) The registration of an amalgamated *bargaining council* takes effect from the date that the *registrar* enters its name in the register of *councils*.

(5) When the *registrar* has registered an amalgamated *bargaining council*—

(*a*) all the assets, rights, liabilities and obligations of the amalgamating *bargaining councils* devolve upon and vest in the amalgamated *bargaining council*; and

(*b*) all the *collective agreements* of the amalgamating *bargaining councils*, regardless of whether or not they were extended in terms of section 32, remain in force for the duration of those *collective agreements*, unless amended or terminated by the amalgamated *bargaining council*.

PART D—Bargaining Councils in the Public Service

35. Bargaining councils in public service.—There will be a *bargaining council* for—

(*a*) the *public service* as a whole, to be known as the Public Service Co-ordinating Bargaining Council; and

(*b*) any *sector* within the *public service* that may be designated in terms of section 37.

36. Public Service Co-ordinating Bargaining Council.—(1) The Public Service Co-ordinating Bargaining Council must be established in accordance with Schedule 1.8

(2) The Public Service Co-ordinating Bargaining Council may perform all the functions of a *bargaining council* in respect of those matters that—

(*a*) are regulated by uniform rules, norms and standards that apply across the *public service*; or

(*b*) apply to terms and conditions of service that apply to two or more *sectors*; or

(*c*) are assigned to the State as employer in respect of the *public service* which are not assigned to the State as employer in any *sector*.

37. Bargaining councils in sectors in public service.—(1) The Public Service Co-ordinating Bargaining Council may, in terms of its constitution and by resolution—

(*a*) designate a *sector* of the *public service* for the establishment of a *bargaining council*; and

(*b*) vary the designation of, amalgamate or disestablish *bargaining councils* so established.

(2) A *bargaining council* for a *sector* designated in terms of subsection (1) (a) must be established in terms of the constitution of the Public Service Co-ordinating Bargaining Council.

(3) If the parties in the *sector* cannot agree to a constitution for the *bargaining council* for a *sector* designated in terms of subsection (1) (a), the Registrar must determine its constitution.

(4) The relevant resolution made in terms of subsection (1) must accompany any application to register or vary the registration of a *bargaining council* or to register an amalgamated *bargaining council*.

(5) A *bargaining council* established in terms of subsection (2) has exclusive jurisdiction in respect of matters that are specific to that *sector* and in respect of which the State as employer in that *sector*, has the requisite authority to conclude *collective agreements* and resolve labour *disputes*.

[S. 37 amended by s. 8 of Act No. 42 of 1996 and substituted by s. 8 of Act No. 12 of 2002.]

38. Disputes between bargaining councils in public service.—(1) If there is a jurisdictional *dispute* between two or more *bargaining councils* in the *public service*, including the Public Service Co-ordinating Bargaining Council, any party to the *dispute* may refer the *dispute* in writing to the Commission.

(2) The party who refers the *dispute* to the Commission must satisfy the Commission that a copy of the referral has been served on all other *bargaining councils* that are parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* as soon as possible through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration by the Commission.

[S. 38 amended by s. 9 (a) and (b) of Act No. 42 of 1996 and substituted by s. 9 of Act No. 12 of 2002.]

PART E—Statutory Councils

39. Application to establish statutory council.—(1) For the purposes of this Part—

(*a*) "representative *trade union*" means a registered *trade union*, or two or more registered *trade unions* acting jointly, whose members constitute at least 30 per cent of the *employees* in a *sector* and *area*; and

(*b*) "representative *employers' organisation*" means a registered *employers' organisation*, or two or more registered *employers' organisations* acting jointly, whose members employ at least 30 per cent of the *employees* in a *sector* and *area*.

(2) A representative *trade union* or representative *employers' organisation* may apply to the *registrar* in the *prescribed* form for the establishment of a *statutory council* in a *sector* and *area* in respect of which no *council* is registered.

(3) The *registrar* must apply the provisions of section 29 (2) to (10)9 to the application—

(*a*) read with the changes required by the context; and

(*b*) subject to the deletion of the word "sufficiently" in section 29 (4) (c).

(4) The *registrar* must—

(*a*) consider the application and any further information provided by the applicant; and

(*b*) determine whether—

(i) the applicant has complied with section 29 and of this section;

(ii) the applicant is representative of the *sector* and *area* determined by *NEDLAC* or the *Minister*; and

(iii) there is no other *council* registered for the *sector* and *area* in respect of which the application is made.

(5) If the *registrar* is not satisfied that the applicant meets the requirements for establishment, the *registrar* must—

(*a*) send the applicant a written notice of the decision and the reasons for that decision; and

(*b*) in that notice, inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(6) If, after the 30-day period, the *registrar* concludes that the applicant has failed to meet the requirements for establishment, the *registrar* must—

(*a*) refuse to register the applicant; and

(*b*) notify the applicant and any person that objected to the application in writing of that decision.

40. Establishment and registration of statutory council.—(1) If the *registrar* is satisfied that the applicant meets the requirements for the establishment of a *statutory council*, the *registrar*, by notice in the *Government Gazette*, must establish the *statutory council* for a *sector and area*.

(2) The notice must invite—

(*a*) registered *trade unions* and registered *employers' organisations* in that *sector* and *area* to attend a meeting; and

(*b*) any interested parties in that *sector* and *area* to nominate representatives for the *statutory council*.

(3) The Commission must appoint a commissioner to chair the meeting and facilitate the conclusion of an agreement on—

(*a*) the registered *trade unions* and registered *employers' organisations* to be parties to the *statutory council*; and

(*b*) a constitution that meets the requirements of section 30, read with the changes required by the context.

(4) If an agreement is concluded, the *Minister* may advise the *registrar* to register the *statutory council* in accordance with the agreement if the *Minister* is satisfied that—

(*a*) every registered *trade union* or registered *employers' organisation* that ought to have been included has been included in the agreement; and

(*b*) the constitution meets the requirements of section 30, read with the changes required by the context.

(5) In considering the requirements in subsection (4) (a), the *Minister* must take into account—

(*a*) the primary objects of *this Act*;

(*b*) the diversity of registered *trade unions* and registered *employers' organisations* in the *sector* and *area*; and

(*c*) the principle of proportional representation.

(6) If the *Minister* is not satisfied in terms of subsection (4), the *Minister* must advise the Commission of the decision and the reasons for that decision and direct the Commission to reconvene the meeting in terms of subsection (3) in order to facilitate the conclusion of a new agreement.

(7) If advised by the *Minister* in terms of subsection (4), the *registrar* must register the *statutory council* by entering its name in the register of *councils*.

41. Establishment and registration of statutory council in absence of agreement.—(1) If no agreement is concluded in terms of section 40 (3), the commissioner must convene separate meetings of the registered *trade unions* and *employers' organisations* to facilitate the conclusion of agreements on—

(*a*) the registered *trade unions* to be parties to the *statutory council*;

(*b*) the registered *employers' organisations* to be parties to the *statutory council*; and

(*c*) the allocation to each party of the number of representatives of the *statutory council*.

(2) If an agreement is concluded on—

(*a*) the registered *trade unions* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council* the agreed registered *trade unions*;

(*b*) the registered *employers' organisations* to be parties to the *statutory council*, the Minister must admit as parties to the statutory council the agreed registered *employers' organisations*.

(3) If no agreement is concluded on—

(*a*) the registered *trade unions* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council*—

(i) the applicant, if it is a registered *trade union*; and

(ii) any other registered *trade union* in the *sector* and *area* that ought to be admitted, taking into account the factors referred to in section 40 (5);

(*b*) the registered *employers' organisations* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council*—

(i) the applicant, if it is a registered *employers' organisations*; and

(ii) any other registered *employers' organisation* in the *sector* and *area* that ought to be admitted, taking into account the factors referred to in section 40 (5).

(4) (*a*) The *Minister* must determine an even number of representatives of the *statutory council*, taking into account the factors referred to in section 40 (5).

(*b*) One half of the representatives must be allocated to the registered *trade unions* that are parties to the *statutory council* and the other half of the representatives must be allocated to the registered *employers'*

organisations that are parties to the *statutory council*.

(5) If no agreement is concluded in respect of the allocation of the number of representatives of the *statutory council*—

(*a*) between the registered *trade unions* that are parties to the *council*, the *Minister* must determine this allocation on the basis of proportional representation;

(*b*) between the registered *employers' organisation* that are parties to the *council*, the *Minister* must determine this allocation on the basis of proportional representation and taking into account the interests of small and medium enterprises.

(6) If the applicant is a *trade union* and there is no registered *employers' organisation* that is a party to the *statutory council*, the *Minister*, after consulting the Commission, must appoint suitable persons as representatives and alternates, taking into account the nominations received from employers and *employers' organisations* in terms of section 40 (2).

(7) If the applicant is an *employers' organisation* and there is no registered *trade union* that is a party to the *statutory council*, the *Minister*, after consulting the Commission, must appoint suitable persons as representatives and alternates, taking into account the nominations received from *employees* and *trade unions* in terms of section 40 (2).

(8) The *Minister* must notify the *registrar* of agreements concluded and decisions made in terms of this section, and the *registrar* must—

(*a*) adapt the model constitution referred to in section 207 (3) to the extent necessary to give effect to the agreements and decisions made in terms of this section;

(*b*) register the *statutory council* by entering its name in the register of *councils*; and

(*c*) certify the constitution as the constitution of the *statutory council*.

42. Certificate of registration of statutory council.—After registering a *statutory council*, the *registrar* must—

(*a*) issue a certificate of registration that must specify the *registered scope* of the *statutory council*; and

(*b*) send the certificate and a certified copy of the registered constitution to all the parties to the *statutory council* and any representatives appointed to the *statutory council*.

43. Powers and functions of statutory councils.—(1) The powers and functions of a *statutory council* are—

(*a*) to perform the dispute resolution functions referred to in section 51;

(*b*) to promote and establish training and education schemes; and

(*c*) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *statutory council* or their members; and

(*d*) to conclude collective agreements to give effect to the matters mentioned in paragraphs (a), (b), and (*c*).

(2) A *statutory council*, in terms of its constitution, may agree to the inclusion of any of the other functions of a *bargaining council* referred to in section 28.

(3) If a *statutory council* concludes a *collective agreement* in terms of subsection (1) (d), the provisions of section 31, 32 and 33 apply, read with the changes required by the context.

[Sub-s. (3) substituted by s. 10 of Act No. 42 of 1996.]

(4) (*a*) From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1) (c).

(*b*) The provisions of the laws relating to pension, provident or medical aid schemes or funds will apply in relation to any pension, provident or medical aid scheme or fund established in terms of subsection (1) (c) after the coming into operation of the Labour Relations Amendment Act, 1998.

[Sub-s. (4) added by s. 3 of Act No. 127 of 1998.]

44. Ministerial determinations.—(1) A *statutory council* that is not sufficiently representative within its *registered scope* may submit a *collective agreement* on any of the matters mentioned in section 43 (1) (a), (b) or (c) to the *Minister*. The *Minister* must treat the *collective agreement* as a recommendation made by the Employment Conditions Commission in terms of section 54 (4) of the *Basic Conditions of Employment Act*.

[Sub-s. (1) substituted by s. 10 (a) of Act No. 12 of 2002.]

(2) The *Minister* may promulgate the *statutory council's* recommendations as a determination under the *Basic Conditions of Employment Act* if satisfied that the *statutory council* has complied with section 54 (3) of the *Basic Conditions of Employment Act*, read with the changes required by the context.

[Sub-s. (2) substituted by s. 10 (b) of Act No. 12 of 2002.]

(3) The determination must provide for—

(*a*) exemptions to be considered by an independent body appointed by the *Minister*; and

(*b*) criteria for exemption that are fair and promote the primary objects of *this Act*.

(4) The *Minister* may in a determination impose a levy on all employers and *employees* in the *registered scope* of the *statutory council* to defray the operational costs of the *statutory council*.

(5) A *statutory council* may submit a proposal to the *Minister* to amend or extend the period of any determination and the *Minister* may make the amendment to the determination or extend the period by notice in the *Government Gazette*.

45. Disputes about determinations.—(1) If there is a *dispute* about the interpretation or application of a determination promulgated in terms of section 44 (2), any party to the *dispute* may refer the *dispute* in writing to the Commission.

(2) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

46. Withdrawal of party from statutory council.—(1) If a registered *trade union* or registered *employers' organisation* that is a party to a *statutory council* withdraws from that *statutory council*, the *Minister* may request the Commission to convene a meeting of the remaining registered *trade unions* or registered *employers' organisations* in the *sector* and *area*, in order to facilitate the conclusion of an agreement on the registered *trade unions* or the registered *employers' organisations* to be parties and the allocation of representatives to the *statutory council*.

(2) If no agreement is concluded, the provisions of section 41 apply, read with the changes required by the context.

47. Appointment of new representative of statutory council.—(1) If a representative appointed in terms of section 41 (6) or (7) for any reason no longer holds office, the *Minister* must publish a notice in the *Government Gazette* inviting interested parties within the *registered scope* of the *statutory council* to nominate a new representative.

(2) The provisions of section 41 (6) or (7) apply, read with the changes required by the context, in respect of the appointment of a new representative.

48. Change of status of statutory council.—(1) A *statutory council* may resolve to apply to register as a *bargaining council*.

(2) The *registrar* must deal with the application as if it were an application in terms of section 29,10 except for section 29 (4) (b), (7) to (10) and (15).

(3) If the *registrar* has registered the *statutory council* as a *bargaining council*, the *registrar* must alter the register of *councils* and its certificate to reflect its change of status.

(4) Any determination in force at the time of the registration of the *bargaining council* or any agreement extended by the *Minister* in terms of section 43 (3)—

(*a*) continues to have force for the period of its operation unless superseded by a *collective agreement*; and

(*b*) may be extended for a further period.

(5) The *bargaining council* must perform any function or duty of the *statutory council* in terms of a determination during the period in which the determination is still in effect.

(6) If any *dispute* in terms of a determination is unresolved at the time the determination ceases to have effect, the *dispute* must be dealt with as if the determination was still in effect.

Part F—General Provisions Concerning Councils

49. Representativeness of council.—(1) When considering the representativeness of the parties to a *council*, or parties seeking registration of a *council*, the *registrar*, having regard to the nature of the *sector* and the situation of the *area* in respect of which registration is sought, may regard the parties to a *council* as representative in respect of the whole *area*, even if a *trade union* or *employers' organisation* that is a party to the *council* has no members in part of that *area*.

(2) A *bargaining council*, having a *collective agreement* that has been extended by the *Minister* in terms of section 32, must inform the *registrar* annually, in writing, on a date to be determined by the *registrar* as to the information specified in subsection (3) and the number of *employees* who are—

(*a*) covered by the *collective agreement*;

(*b*) members of the *trade unions* that are parties to the agreement;

(*c*) employed by members of the *employers' organisations* that are party to the agreement.

[Sub-s. (2) substituted by s. 11 (a) of Act No. 12 of 2002 and amended by s. 5 (a) of Act No. 6 of 2014.]

(3) A *bargaining council* other than one contemplated in subsection (2) must on request by the *registrar*, inform the *registrar* in writing within the period specified in the request as to the number of *employees* who are—

(*a*) employed within the *registered scope* of the *council*;

(*b*) members of the *trade unions* that are parties to the *council*;

(*c*) employed by members of the *employers' organisations* that are party to the *council*.

[Sub-s. (3) substituted by s. 11 (b) of Act No. 12 of 2002 and amended by s. 5 (b) of Act No. 6 of 2014.]

(4) A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the council for the two years following the determination for any purpose in terms of *this* Act, including a decision by the *Minister* in terms of sections 32 (3) (b), and 32 (5).

[Sub-s. (4) added by s. 11 (c) of Act No. 12 of 2002, substituted by s. 5 (c) of Act No. 6 of 2014 and by s. 3 (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(4A) A determination made by the registrar in terms of—

(*a*) section 32 (3) (b) is sufficient proof that the members of the *employer organisations* that are party to the *bargaining council*, upon extension of the *collective agreement*, employ the majority of the *employees* who fall within the scope of that agreement; and

(*b*) section 32 (5) (a) is sufficient proof that the parties to the *collective agreement* are sufficiently representative within the *registered scope of the bargaining council*.

[Sub-s. (4A) inserted by s. 3 (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(5) This section does not apply to the *public service*.

[Sub-s. (5) added by s. 11 (c) of Act No. 12 of 2002.]

50. Effect of registration of council.—(1) A certificate of registration is sufficient proof that a registered *council* is a body corporate.

(2) A *council* has all the powers, functions and duties that are conferred or imposed on it by or in terms of *this Act*, and it has jurisdiction to exercise and perform those powers, functions and duties within its *registered scope*.

(3) A party to a *council* is not liable for any of the obligations or liabilities of the *council* by virtue of it being a party to the *council*.

(4) A party to, or *office-bearer* or *official* of, a *council* is not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by a party to, or *office-bearer* or *official* of, a *council* while performing their functions for the *council*.

(5) *Service* of any document directed to a *council* at the address most recently provided to the *registrar* will be for all purposes *service* of that document on that *council*.

51. Dispute resolution functions of council.—(1) In this section, *dispute* means any *dispute* about a matter of mutual interest between—

(*a*) on the one side—
  (i) one or more *trade unions*;
  (ii) one or more *employees*; or
  (iii) one or more *trade unions* and one or more *employees*; and

(*b*) on the other side—
  (i) one or more *employers' organisations*;
  (ii) one or more employers; or
  (iii) one or more *employers' organisations* and one or more employers.

(2) (*a*) (i) The parties to a *council* must attempt to resolve any *dispute* between themselves in accordance with the constitution of the *council*.

(ii) For the purposes of subparagraph (i), a party to a *council* includes the members of any registered *trade union* or registered *employers' organisation* that is a party to the *council*.

[Sub-para. (ii) added by s. 11 (a) of Act No. 42 of 1996.]

(*b*) Any party to a *dispute* who is not a party to a *council* but who falls within the *registered scope* of the *council* may refer the *dispute* to the *council* in writing.

(*c*) The party who refers the *dispute* to the *council* must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) If a *dispute* is referred to a *council* in terms of *this Act*11 and any party to that *dispute* is not a party to that *council*, the *council* must attempt to resolve the *dispute*—

(*a*) through conciliation; and

(*b*) if the *dispute* remains unresolved after conciliation, the *council* must arbitrate the *dispute* if—

(i) *this Act* requires arbitration and any party to the *dispute* has requested that it be resolved through arbitration; or

(ii) all the parties to the *dispute* consent to arbitration under the auspices of the *council*.

(4) If one or more of the parties to a *dispute* that has been referred to the *council* do not fall within the *registered scope* of that *council*, it must refer the *dispute* to the Commission.

(5) The date on which the referral in terms of subsection (4) was received by a *council* is, for all purposes, the date on which the *council* referred the *dispute* to the Commission.

(6) A *council* may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the *council*, its dispute resolution functions in terms of this section.

[Sub-s. (6) added by s. 11 (b) of Act No. 42 of 1996.]

(7) Subject to this Act, a *council* may not provide in a *collective agreement* for the referral of *disputes* to the Commission, without prior consultation with the director.

[Sub-s. (7) added by s. 12 of Act No. 12 of 2002.]

(8) Unless otherwise agreed to in a collective agreement, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a *bargaining council*.

[Sub-s. (8) added by s. 12 of Act No. 12 of 2002.]

(9) A *bargaining council* may, by *collective agreement*—

(*a*) establish procedures to resolve any *dispute* contemplated in this section;

(*b*) provide for payment of a dispute resolution levy; and

(*c*) provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115 (2A) (l), which may not exceed the fee provided for in that section.

[Sub-s. (9) added by s. 12 of Act No. 12 of 2002 and substituted by s. 6 of Act No. 6 of 2014.]

52. Accreditation of council or appointment of accredited agency.—(1) With a view to performing its dispute resolution functions in terms of section 51 (3), every *council* must—

(*a*) apply to the governing body of the Commission for accreditation to perform those functions; or

(*b*) appoint an accredited agency to perform those of the functions referred to in section 51 (3) for which the council is not accredited.

(2) The *council* must advise the Commission in writing as soon as possible of the appointment of an accredited agency in terms of subsection (1) (b), and the terms of that appointment.

[S. 52 substituted by s. 12 of Act No. 42 of 1996.]

53. Accounting records and audits.—(1) Every *council* must, to the standards of generally accepted accounting practice, principles and procedures—

(*a*) keep books and records of its income, expenditure, assets and liabilities; and

(*b*) within six months after the end of each financial year, prepare financial statements, including at least —

(i) a statement of income and expenditure for the previous financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Each *council* must arrange for an annual audit of its books and records of account and its financial statements by an *auditor* who must—

(*a*) conduct the audit in accordance with generally accepted auditing standards; and

(*b*) report in writing to the *council* and in that report express an opinion as to whether or not the *council* has complied with those provisions of its constitution relating to financial matters.

(3) Every *council* must—

(*a*) make the financial statements and the *auditor's* report available to the parties to the *council* or their representatives for inspection; and

(*b*) submit those statements and the *auditor's* report to a meeting of the *council* as provided for in its constitution.

(4) Every *council* must preserve each of its books of account, supporting vouchers, income and expenditure statements, balance sheets, and *auditors'* reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

(5) The money of a *council* or of any fund established by a *council* that is surplus to its requirements, or the expenses of the fund, may be invested only in—

(*a*) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;

(*b*) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);

(*c*) a registered unit trust; or

(*d*) any other manner approved by the *registrar*.

[Sub-s. (5) amended by s. 13 of Act No. 42 of 1996.]

(6) A *council* must comply with subsections (1) to (5) in respect of all funds established by it, except funds referred to in section 28 (3).

[Sub-s. (6) added by s. 13 of Act No. 12 of 2002.]

54. Duty to keep records and provide information to registrar.—(1) In addition to the records required by section 53 (4), every *council* must keep minutes of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

(2) Every *council* must provide to the *registrar*—

(*a*) within 30 days of receipt of its *auditor's* report, a certified copy of that report and of the financial statements;

(*b*) within 30 days of receipt of a written request by the *registrar*, an explanation of anything relating to the *auditor's* report or the financial statements;

(*c*) upon registration, an address within the *Republic* at which it will accept *service* of any document that is directed to it;

(*d*) within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers* even if their appointment or election did not result in any changes to its *office-bearers*;

(*e*) 30 days before a new address for *service* of documents will take effect, notice of that change of address; and

(*f*) each year and on a date to be determined by the *registrar*, a report in the prescribed form specifying —

(i) the number of employees who are employed by small enterprises that fall within the *registered scope* of the *council* and the number of *employees* of those enterprises who are members of *trade unions*;

(ii) the number of *employees* employed by small enterprises that are covered by a *collective agreement* that was concluded by the *council* and extended by the *Minister* in terms of section 32;

(iii) the number of small enterprises that are members of the *employers' organisations* that are parties to the *council*; and

(iv) the number of applications for exemptions received from small enterprises and the number of applications that were granted and the number rejected.

[Para. (f) added by s. 14 (b) of Act No. 12 of 2002.]

(3) Every *council* must provide to the Commission—

(*a*) certified copies of every *collective agreement* concluded by the parties to the *council*, within 30 days of the signing of that *collective agreement*;

(*b*) the details of the admission and resignation of parties to the *council*, within 30 days of their admission or resignation.

(4) If a *council* fails to comply with any of the provisions of section 49 (2) or (3), section 53 or subsections (1) or (2) of this section, the *registrar* may—

(*a*) conduct an inquiry into the affairs of that council;

(*b*) order the production of the *council's* financial records and any other relevant documents;

(*c*) deliver a notice to the *council* requiring the council to comply with the provisions concerned;

(*d*) compile a report on the affairs of the *council*; or

(*e*) submit the report to the Labour Court in support of any application made in terms of section 59 (1)

(b).

[Sub-s. (4) added by s. 14 (c) of Act No. 12 of 2002.]

(5) The *registrar* may use the powers referred to in subsection (4) in respect of any fund established by a *council*, except a fund referred to in section 28 (3).

[Sub-s. (5) added by s. 14 (c) of Act No. 12 of 2002.]

55. Delegation of functions to committee of council.—(1) A *council* may delegate any of its powers and functions to a committee on any conditions imposed by the *council* in accordance with its constitution.

[Sub-s. (1) substituted by s. 14 (a) of Act No. 42 of 1996.]

(2) A committee contemplated by subsection (1) must consist of equal numbers of representatives of *employees* and employers.

(3) . . . . . .

[Sub-s. (3) deleted by s. 14 (b) of Act No. 42 of 1996.]

56. Admission of parties to council12**.**—(1) Any registered *trade union* or registered *employers' organisation* may apply in writing to a *council* for admission as a party to that *council*.

(2) The application must be accompanied by a certified copy of the applicant's registered constitution and certificate of registration and must include—

(*a*) details of the applicant's membership within the *registered scope* of the *council* and, if the applicant is a registered *employers' organisation*, the number of *employees* that its members employ within that *registered scope*;

(*b*) the reasons why the applicant ought to be admitted as a party to the *council*; and

(*c*) any other information on which the applicant relies in support of the application.

(3) A *council*, within 90 days of receiving an application for admission, must decide whether to grant or refuse an applicant admission, and must advise the applicant of its decision, failing which the *council* is deemed to have refused the applicant admission.

(4) If the *council* refuses to admit an applicant it must within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

(5) The applicant may apply to the Labour Court for an order admitting it as a party to the *council*.

(6) The Labour Court may admit the applicant as a party to the *council*, adapt the constitution of the *council* and make any other appropriate order.

57. Changing constitution or name of council.—(1) Any *council* may resolve to change or replace its constitution.

(2) The *council* must send the *registrar* a copy of the resolution and a certificate signed by its secretary stating that the resolution complies with its constitution.

(3) The *registrar* must—

(*a*) register the changed or new constitution of a *council* if it meets the requirements of section 30 or if it is a *statutory council* established in terms of section 41 if it meets the requirements of the model constitution referred to in section 207 (3); and

(*b*) send the *council a* copy of the resolution endorsed by the *registrar*, certifying that the change or replacement has been registered.

(4) The changed or new constitution takes effect from the date of the *registrar's* certification.

(5) Any *council* may resolve to change its name.

(6) The *council* must send the *registrar* a copy of the resolution and the original of its current certificate of registration.

(7) The *registrar* must—

(*a*) enter the new name in the register of *councils*, and issue a certificate of registration in the new name of the *council*;

(*b*) remove the old name from that register and cancel the earlier certificate of registration; and

(*c*) send the new certificate to the *council*.

(8) The new name takes effect from the date that the *registrar* enters it in the register of *councils*.

58. Variation of registered scope of council.—(1) If the *registrar* is satisfied that the *sector* and *area* within which a *council* is representative does not coincide with the *registered scope* of the *council*, the *registrar*, acting independently or in response to an application from the council, may vary the *registered scope* of the *council*.

[Sub-s. (1) substituted by s. 15 of Act No. 42 of 1996.]

(2) The provisions of section 29 apply, read with the changes required by the context, to a variation in terms of this section.

(3) Despite subsection (2), if within the stipulated period no material objection is lodged to any notice published by the *registrar* in terms of section 29 (3), the *registrar*—

(i) may vary the *registered scope* of the council;

(ii) may issue a certificate specifying the scope of the council as varied; and

(iii) need not comply with the procedure prescribed by section 29.

[Sub-s. (3) added by s. 15 of Act No. 12 of 2002.]

59. Winding-up of council.—(1) The Labour Court may order a *council* to be wound up if—

(*a*) the *council* has resolved to wind up its affairs and has applied to the Court for an order giving effect to that resolution; or

(*b*) the registrar of labour relations or any party to the *council* has applied to the Court and the Court is satisfied that the *council* is unable to continue to function for any reason that cannot be remedied.

(2) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must—

(*a*) consider those interests before deciding whether or not to grant the order; and

(*b*) if it grants the order, include provisions in the order disposing of each of those interests.

(3) If it makes an order in terms of subsection (1), the Labour Court may appoint a suitable person as liquidator, on appropriate conditions.

(4) (*a*) The registrar of the Labour Court must determine the liquidator's fees.

(*b*) The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

(*c*) The liquidator's fees are a first charge against the assets of the *council*.

(5) If, after all the liabilities of the *council* have been discharged, any assets remain that cannot be disposed of in accordance with the constitution of that *council*, the liquidator must realise those assets and pay the proceeds to the Commission for its own use.

(6) For the purposes of this section, the assets and liabilities of any pension, provident or medical aid scheme or fund established by a *council* will be regarded and treated as part of the assets and liabilities of the *council* unless—

(*a*) the parties to the *council* have agreed to continue with the operation of the pension, provident or medical aid scheme or fund as a separate scheme or fund despite the winding-up of the *council*; and

(*b*) the *Minister* has approved the continuation of the scheme or fund; and

(*c*) application has been made in accordance with the provisions of the laws applicable to pension, provident or medical aid schemes or funds, for the registration of that scheme or fund in terms of those provisions.

[Sub-s. (6) added by s. 4 of Act No. 127 of 1998.]

(7) A pension, provident or medical aid scheme or fund registered under the provisions of those laws after its application in terms of subsection (6) (c), will continue to be a separate scheme or fund despite the winding-up of the *council* by which it was established.

[Sub-s. (7) added by s. 4 of Act No. 127 of 1998.]

(8) The *Minister* by notice in the *Government Gazette* may declare the rules of a pension, provident or medical aid scheme or fund mentioned in subsection (7), to be binding on any *employees* and employer or employers that fell within the *registered scope* of the relevant *council* immediately before it was wound up.

[Sub-s. (8) added by s. 4 of Act No. 127 of 1998.]

60. Winding-up of council by reason of insolvency.—Any person who seeks to wind up a *council* by reason of insolvency must comply with the Insolvency Act, 1936 (Act No. 24 of 1936), and, for the purposes of this section, any reference to the court in that Act must be interpreted as referring to the Labour Court.

61. Cancellation of registration of council.—(1) The registrar of the Labour Court must notify the registrar of labour relations if the Court has ordered a council to be wound up.

(2) When the *registrar* receives a notice from the Labour Court in terms of subsection (1), the *registrar* must cancel the registration of the *council* by removing its name from the register of *councils*.

(3) The *registrar* may notify a *council* and every party to the *council* that the *registrar* is considering cancelling the *council's* registration, if the *registrar* believes that—

(*a*) the *council* has ceased to perform its functions in terms of *this Act* for a period longer than 90 days before the date of the notice; or

(*b*) the *council* has ceased to be representative in terms of the provisions of the relevant Part, for a period longer than 90 days prior to the date of the notice.

(4) In a notice in terms of subsection (3), the *registrar* must state the reasons for the notice and inform the *council* and every party to the *council* that they have 60 days to show cause why the *council's* registration should not be cancelled.

(5) After the expiry of the 60-day period, the *registrar*, unless cause has been shown why the *council's* registration should not be cancelled, must notify the *council* and every party to the *council* that the registration will be cancelled unless an appeal to the Labour Court is noted and the Court reverses the decision.

(6) The cancellation takes effect—

(*a*) if no appeal to the Labour Court is noted within the time contemplated in section 111 (3), on the expiry of that period; or

(*b*) if the *council* or any party has appealed and the Labour Court has confirmed the decision of the *registrar*, on the date of the Labour Court's decision.

(7) If either event contemplated in subsection (6) occurs, the *registrar* must cancel the *council's* registration by removing the name of the *council* from the register of *councils*.

(8) Any *collective agreement* concluded by parties to a *council* whose registration has been cancelled, whether or not the *collective agreement* has been extended to non-parties by the *Minister* in terms of section 32, lapses 60 days after the *council's* registration has been cancelled.

(9) Despite subsection (8), the provisions of a *collective agreement* that regulates terms and conditions of employment remain in force for one year after the date that the *council's* registration was cancelled, or until the expiry of the agreement, if earlier.

(10) Any party to a *dispute* about the interpretation or application of a *collective agreement* that regulates terms and conditions of employment referred to in subsection (8) may refer the *dispute* in writing to the Commission.

(11) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(12) The Commission must attempt to resolve the *dispute* through conciliation.

(13) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

(14) The *registrar* must cancel the registration of a *bargaining council* in the *public service* by removing its name from the register of *councils* when the *registrar* receives a resolution from the Public Service Co-ordinating Bargaining Council disestablishing a *bargaining council* established in terms of section 37 (2).

[Sub-s. (14) added by s. 16 of Act No. 12 of 2002.]

(15) The provisions of subsections (3) to (7) do not apply to *bargaining councils* in the *public service*.

[Sub-s. (15) added by s. 16 of Act No. 12 of 2002.]

62. Disputes about demarcation between sectors and areas.—(1) Any registered *trade union*, employer, *employee*, registered *employers' organisation* or *council* that has a direct or indirect interest in the application contemplated in this section may apply to the Commission in the *prescribed* form and manner for a determination as to—

(*a*) whether any *employee*, employer, class of *employees* or class of employers, is or was employed or engaged in a *sector* or *area*;

(*b*) whether any provision in any arbitration award, *collective agreement* or wage determination made in terms of the *Wage Act* is or was binding on any *employee*, employer, class of *employees* or class of employers.

[Sub-s. (1) amended by s. 16 (a) of Act No. 42 of 1996.]

(2) If two or more *councils* settle a *dispute* about a question contemplated in subsection (1) (a) or (b), the *councils* must inform the *Minister* of the provisions of their agreement and the *Minister* may publish a notice in the *Government Gazette* stating the particulars of the agreement.

(3) In any proceedings in terms of *this Act* before the Labour Court, if a question contemplated in subsection (1) (a) or (b) is raised, the Labour Court must adjourn those proceedings and refer the question to the Commission for determination if the Court is satisfied that—

(*a*) the question raised—

(i) has not previously been determined by arbitration in terms of this section; and

(ii) is not the subject of an agreement in terms of subsection (2); and

(*b*) the determination of the question raised is necessary for the purposes of the proceedings.

(3A) In any proceedings before an arbitrator about the interpretation or application of a *collective agreement*,

if a question contemplated in subsection (1) (a) or (b) is raised, the arbitrator must adjourn those proceedings and refer the question to the Commission if the arbitrator is satisfied that—

(*a*) the question raised—

(i) has not previously been determined by arbitration in terms of this section; and

(ii) is not the subject of an agreement in terms of subsection (2); and

(*b*) the determination of the question raised is necessary for the purposes of the proceedings.

[Sub-s. (3A) inserted by s. 16 (b) of Act No. 42 of 1996.]

(4) When the Commission receives an application in terms of subsection (1) or a referral in terms of subsection (3), it must appoint a commissioner to hear the application or determine the question, and the provisions of section 138 apply, read with the changes required by the context.

(5) In any proceedings in terms of *this Act* before a commissioner, if a question contemplated in subsection (1) (a) or (b) is raised, the commissioner must adjourn the proceedings and consult the *director*, if the commissioner is satisfied that—

(*a*) the question raised—

(i) has not previously been determined by arbitration in terms of this section; and

(ii) is not the subject of an agreement in terms of subsection (2); and

(*b*) the determination of the question raised is necessary for the purposes of the proceedings.

(6) The *director* must either order the commissioner concerned to determine the question or appoint another commissioner to do so, and the provisions of section 138 apply, read with the changes required by the context.

(7) If the Commission believes that the question is of substantial importance, the Commission must publish a notice in the *Government Gazette* stating the particulars of the application or referral and stating the period within which written representations may be made and the address to which they must be directed.

(8) If a notice contemplated in subsection (7) has been published, the commissioner may not commence the arbitration until the period stated in the notice has expired.

(9) Before making an award, the commissioner must consider any written representations that are made, and must consult *NEDLAC*.

(10) The commissioner must send the award, together with brief reasons, to the Labour Court and to the Commission.

(11) If the Commission believes that the nature of the award is substantially important, it may publish notice of the award in the *Government Gazette*.

(12) The *registrar* must amend the certificate of registration of a *council* in so far as is necessary in light of the award.

63. Disputes about Parts A and C to F.—(1) Any party to a *dispute* about the interpretation or application of Parts A and C to F of this Chapter, may refer the *dispute* in writing to the Commission unless—

(*a*) the *dispute* has arisen in the course of arbitration proceedings or proceedings in the Labour Court; or

[Para. (a) substituted by s. 17 of Act No. 42 of 1996.]

(*b*) the *dispute* is otherwise to be dealt with in terms of Parts A and C to F.

(2) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

CHAPTER IV
STRIKES AND LOCK-OUTS

64. Right to strike and recourse to lock-out.—(1) Every *employee* has the right to strike and every employer has recourse to *lock-out* if—

(*a*) the *issue in dispute* has been referred to a *council* or to the Commission as required by *this Act*, and—

(i) a certificate stating that the *dispute* remains unresolved has been issued; or

(ii) a period of 30 days, or any extension of that period agreed to between the parties to the *dispute*, has elapsed since the referral was received by the *council* or the Commission; and after that—

(*b*) in the case of a proposed *strike*, at least 48 hours' notice of the commencement of the *strike*, in writing, has been given to the employer, unless—

(i) the *issue in dispute* relates to a *collective agreement* to be concluded in a *council*, in which case,

notice must have been given to that *council*; or

(ii) the employer is a member of an *employers' organisation* that is a party to the *dispute*, in which case, notice must have been given to that *employers' organisation*; or

(*c*) in the case of a proposed *lock-out*, at least 48 hours' notice of the commencement of the *lock-out*, in writing, has been given to any *trade union* that is a party to the *dispute*, or, if there is no such *trade union*, to the *employees*, unless the *issue in dispute* relates to a *collective agreement* to be concluded in a *council*, in which case, notice must have been given to that *council*; or

(*d*) in the case of a proposed *strike* or *lock-out* where the State is the employer, at least seven days' notice of the commencement of the *strike* or *lock-out* has been given to the parties contemplated in paragraphs (b) and (c).

(2) If the *issue in dispute* concerns a refusal to bargain, an advisory award must have been made in terms of section 135 (3) (c) before notice is given in terms of subsection (1) (b) or (c). A refusal to bargain includes—

(*a*) a refusal—

(i) to recognise a *trade union* as a collective bargaining agent; or

(ii) to agree to establish a *bargaining council*;

(*b*) a withdrawal of recognition of a collective bargaining agent;

(*c*) a resignation of a party from a *bargaining council*;

(*d*) a *dispute* about—

(i) appropriate bargaining units;

(ii) appropriate bargaining levels; or

(iii) bargaining subjects.

(3) The requirements of subsection (1) do not apply to a *strike* or a *lock-out* if—

(*a*) the parties to the *dispute* are members of a *council*, and the *dispute* has been dealt with by that *council* in accordance with its constitution;

(*b*) the *strike* or *lock-out* conforms with the procedures in a *collective agreement*;

(*c*) the *employees* strike in response to a *lock-out* by their employer that does not comply with the provisions of this Chapter;

(*d*) the employer locks out its *employees* in response to their taking part in a *strike* that does not conform with the provisions of this Chapter; or

(*e*) the employer fails to comply with the requirements of subsections (4) and (5).

(4) Any *employee* who or any *trade union* that refers a *dispute* about a unilateral change to terms and conditions of employment to a *council* or the Commission in terms of subsection (1) (a) may, in the referral, and for the period referred to in subsection (1) (a)—

(*a*) require the employer not to implement unilaterally the change to terms and conditions of employment; or

(*b*) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.

(5) The employer must comply with a requirement in terms of subsection (4) within 48 hours of *service* of the referral on the employer.

65. Limitations on right to strike or recourse to lock-out.—(1) No person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a *strike* or a *lock-out* if—

(*a*) that person is bound by a *collective agreement* that prohibits a *strike* or *lock-out* in respect of the *issue in dispute*;

(*b*) that person is bound by an agreement that requires the *issue in dispute* to be referred to arbitration;

(*c*) the *issue in dispute* is one that a party has the right to refer to arbitration or to the Labour Court in terms of *this Act* or any other *employment law*;

[Para. (c) substituted by s. 7 (a) of Act No. 6 of 2014.]

(*d*) that person is engaged in—

(i) an *essential service*; or

(ii) a maintenance service.13

(2) (*a*) Despite section 65 (1) (c), a person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or in furtherance of a *strike* or *lock-out* if the *issue in dispute* is about any matter dealt with in sections 12 to 15.14

(*b*) If the registered *trade union* has given notice of the proposed *strike* in terms of section 64 (1) in respect of an *issue in dispute* referred to in paragraph (a), it may not exercise the right to refer the *dispute* to arbitration in terms of section 21 for a period of 12 months from the date of the notice.

(3) Subject to a *collective agreement*, no person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a *strike* or *lock-out*—

(*a*) if that person is bound by—

(i) any arbitration award or *collective agreement* that regulates the *issue in dispute*; or

(ii) any determination made in terms of section 44 by the *Minister* that regulates the *issue in dispute*; or

(*b*) any determination made in terms of Chapter Eight of the *Basic Conditions of Employment Act* and that regulates the *issue in dispute*, during the first year of that determination.

[Para. (b) substituted by s. 7 (b) of Act No. 6 of 2014.]

66. Secondary strikes.—(1) In this section "secondary strike" means a *strike*, or conduct in contemplation or furtherance of a *strike*, that is in support of a *strike* by other *employees* against their employer, but does not include a *strike* in pursuit of a demand that has been referred to a *council* if the striking *employees*, employed within the *registered scope* of that *council*, have a material interest in that demand.

[Sub-s. (1) substituted by s. 19 of Act No. 42 of 1996 (English only).]

(2) No person may take part in a secondary *strike* unless—

(*a*) the *strike* that is to be supported complies with the provisions of sections 64 and 65;

(*b*) the employer of the *employees* taking part in the secondary *strike* or, where appropriate, the *employers' organisation* of which that employer is a member, has received written notice of the proposed secondary *strike* at least seven days prior to its commencement; and

(*c*) the nature and extent of the secondary *strike* is reasonable in relation to the possible direct or indirect effect that the secondary *strike* may have on the business of the primary employer.

(3) Subject to section 68 (2) and (3), a secondary employer may apply to the Labour Court for an interdict to prohibit or limit a secondary *strike* that contravenes subsection (2).

(4) Any person who is a party to proceedings in terms of subsection (3), or the Labour Court, may request the Commission to conduct an urgent investigation to assist the Court to determine whether the requirements of subsection (2) (c) have been met.

(5) On receipt of a request made in terms of subsection (4), the Commission must appoint a suitably qualified person to conduct the investigation, and then submit, as soon as possible, a report to the Labour Court.

(6) The Labour Court must take account of the Commission's report in terms of subsection (5) before making an order.

67. Strike or lock-out in compliance with this Act.—(1) In this Chapter, "protected *strike*" means a *strike* that complies with the provisions of this Chapter and "protected *lock-out*" means a *lock-out* that complies with the provisions of this Chapter.

(2) A person does not commit a delict or a breach of contract by taking part in—

(*a*) a protected *strike* or a protected *lock-out*; or

(*b*) any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out*.

(3) Despite subsection (2), an employer is not obliged to remunerate an *employee* for services that the *employee* does not render during a protected *strike* or a protected *lock-out*, however—

(*a*) if the *employee's remuneration* includes payment in kind in respect of accommodation, the provision of food and other basic amenities of life, the employer, at the request of the *employee*, must not discontinue the payment in kind during the *strike* or *lock-out*; and

(*b*) after the end of the *strike* or *lock-out*, the employer may recover the monetary value of the payment in kind made at the request of the employee during the *strike* or *lock-out* from the *employee* by way of civil proceedings instituted in the Labour Court.

(4) An employer may not dismiss an *employee* for participating in a protected *strike* or for any conduct in contemplation or in furtherance of a protected *strike*.

(5) Subsection (4) does not preclude an employer from fairly dismissing an *employee* in accordance with the provisions of Chapter VIII for a reason related to the *employee's* conduct during the *strike*, or for a reason based on the employer's *operational requirements*.

(6) Civil legal proceedings may not be instituted against any person for—

(*a*) participating in a protected *strike* or a protected *lock-out*; or

(*b*) any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out*.

(7) The failure by a registered *trade union* or a registered *employers' organisation* to comply with a provision in its constitution requiring it to conduct a ballot of those of its members in respect of whom it intends to call a *strike* or *lock-out* may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the *strike* or *lock-out*.

(8) The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a *strike* or a *lock-out*, if that act is an offence.

(9) . . . . . .

[Sub-s. (9) deleted by s. 8 of Act No. 6 of 2014.]

68. Strike or lock-out not in compliance with this Act.—(1) In the case of any *strike* or *lock-out*, or any conduct in contemplation or in furtherance of a *strike* or *lock-out*, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction—

(*a*) to grant an interdict or order to restrain—15

(i) any person from participating in a *strike* or any conduct in contemplation or in furtherance of a *strike*; or

(ii) any person from participating in a *lock-out* or any conduct in contemplation or in furtherance of a *lock-out*;

(*b*) to order the payment of just and equitable compensation for any loss attributable to the *strike* or *lock-out*, or conduct, having regard to—

(i) whether—

(*aa*) attempts were made to comply with the provisions of this Chapter and the extent of those attempts;

(*bb*) the *strike* or *lock-out* or conduct was premeditated;

(*cc*) the *strike* or *lock-out* or conduct was in response to unjustified conduct by another party to the *dispute*; and

(*dd*) there was compliance with an order granted in terms of paragraph (a);

(ii) the interests of orderly collective bargaining;

(iii) the duration of the *strike* or *lock-out* or conduct; and

(iv) the financial position of the employer, *trade union* or *employees* respectively.

[Para. (b) substituted by s. 17 of Act No. 12 of 2002.]

(2) The Labour Court may not grant any order in terms of subsection (1) (a) unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice if—

(*a*) the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;

(*b*) the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and

(*c*) the applicant has shown good cause why a period shorter than 48 hours should be permitted.

(3) Despite subsection (2), if written notice of the commencement of the proposed *strike* or *lock-out* was given to the applicant at least 10 days before the commencement of the proposed *strike* or *lock-out*, the applicant must give at least five days' notice to the respondent of an application for an order in terms of subsection (1) (a).

(4) Subsections (2) and (3) do not apply to an employer or an *employee* engaged in an *essential service* or a maintenance service.

(5) Participation in a *strike* that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that *strike*, may constitute a fair reason for *dismissal*. In determining whether or not the *dismissal* is fair, the Code of Good Practice: Dismissal in Schedule 8 must be taken into account.

69. Picketing.16—(1) A registered *trade union* may authorise a picket by its members and supporters for the purposes of peacefully demonstrating—

(*a*) in support of any protected *strike*; or

(*b*) in opposition to any *lock-out*.

(2) Despite any law regulating the right of assembly, a picket authorised in terms of subsection (1) may be held—

(*a*) in any place to which the public has access but outside the premises of an employer; or

(*b*) with the permission of the employer, inside the employer's premises.

[Sub-s. (2) amended by s. 20 of Act No. 42 of 1996 (English only).]

(3) The permission referred to in subsection (2) (b) may not be unreasonably withheld.

(4) Unless there is a *collective agreement* binding on the *trade union* that regulates picketing, the commissioner conciliating the *dispute* must attempt to secure an agreement between the parties to the *dispute* on rules that should apply to any picket in relation to that *strike* or *lock-out* before the expiry of the period contemplated in section 64 (1) (a) (ii).

[Sub-s. (4) substituted by s. 4 (1) (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(5) If there is no *collective agreement* or no agreement is reached in terms of subsection (4), the

commissioner conciliating the *dispute* must determine picketing rules, in accordance with any default picketing rules *prescribed* by the *Commission* under section 208 or published in any *code of good practice*, and in doing so must take account of—

(*a*) the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised;

(*b*) any relevant code of *good practice*; and

(*c*) any representations made by the parties to the *dispute* attending the conciliation meeting.

[Sub-s. (5) substituted by s. 4 (1) (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6) The rules determined by the commissioner conciliating the *dispute* may provide for picketing by *employees*—

(*a*) in a place contemplated in subsection (2) (a) which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the commissioner conciliating the *dispute* before the rules are determined; or

(*b*) on their employer's premises if the commissioner conciliating the *dispute* is satisfied that the employer's permission has been unreasonably withheld.

[Sub-s. (6) substituted by s. 9 (a) of Act No. 6 of 2014 and by s. 4 (1) (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6A) The commissioner conciliating the *dispute* must determine the picketing rules contemplated in subsection (5) at the same time as issuing any certificate contemplated in section 64 (1) (a).

[Sub-s. (6A) inserted by s. 4 (1) (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6B) The *Commission* may determine picketing rules under subsections (5) and (6) on a direct application from a registered *trade union* and on an urgent basis if—

(*a*) it has referred a *dispute* about a unilateral change to terms and conditions of employment in accordance with section 64 (4) and the employer has not complied with section 64 (5); or

(*b*) the employer has given notice of an intention to commence or has commenced an unprotected *lockout*.

[Sub-s. (6B) inserted by s. 4 (1) (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6C) No picket in support of a protected *strike* or in opposition to a *lockout* may take place unless picketing rules—

(*a*) are agreed to in—

(i) a *collective agreement* binding on the *trade union*;

(ii) an agreement contemplated in subsection (4); or

(*b*) have been determined in terms of subsection (5).

[Sub-s. (6C) inserted by s. 4 (1) (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(7) The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section.

(8) Any party to a *dispute* about any of the following issues, including a person contemplated in subsection (6) (a), may refer the *dispute* in writing to the Commission—

(*a*) an allegation that the effective use of the right to picket is being undermined;

(*b*) an alleged material contravention of subsection (1) or (2);

(*c*) an alleged material breach of a *collective agreement* or an agreement contemplated in subsection (4); or

[Para. (c) substituted by s. 4 (1) (c) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*d*) an alleged material breach of a picketing rule determined in terms of subsection (5).

[Sub-s. (8) amended by s. 9 (b) of Act No. 6 of 2014. Para. (d) substituted by s. 4 (1) (c) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(9) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(10) The Commission must attempt to resolve the *dispute* through conciliation.

(11) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may, in addition to any relief contemplated in section 68 (1), grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include an order—

(*a*) directing any party, including a person contemplated in subsection (6) (a), to comply with a picketing agreement or rule;

(*b*) varying the terms of a picketing agreement or rule; or

(*c*) suspending a picket at one or more of the locations designated in the *collective agreement*, agreed rules contemplated in subsection (4) or rules determined by the *Commission*.

[Sub-s. (12) added by s. 9 (c) of Act No. 6 of 2014 and substituted by s. 4 (1) (d) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(13) The Labour Court may not grant an order in terms of subsection (12) unless—

(*a*) 48 hours' notice of an application seeking relief referred to in subsection (12) (a) or (b) has been given to the respondent; or

(*b*) 72 hours' notice of an application seeking relief referred to in subsection (12) (c) or (d) has been given to the respondent.

[Sub-s. (13) added by s. 9 (c) of Act No. 6 of 2014.]

(14) The Labour Court may permit a shorter period of notice than required by subsection (13) if the—

(*a*) applicant has given written notice to the respondent of its intention to apply for the order;

(*b*) respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and

(*c*) applicant has shown good cause why a period shorter than that contemplated by subsection (13) should be permitted.

[Sub-s. (14) added by s. 9 (c) of Act No. 6 of 2014.]

(15) For the purposes of this section, 'commissioner conciliating the *dispute*' includes a person appointed by a *bargaining council* to conciliate the *dispute*.

[Sub-s. (15) added by s. 4 (1) (e) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

70. Essential services committee.17—The *Minister*, after consulting *NEDLAC*, must establish an essential services committee under the auspices of the Commission in accordance with the provisions of *this Act*.

[S. 70 amended by s. 5 of Act No. 127 of 1998 and substituted by s. 10 of Act No. 6 of 2014.]

70A. Composition of essential services committee.—(1) The *Minister* must appoint to the essential services committee on terms that the Minister considers fit—

(*a*) a chairperson, who is independent from the constituencies contemplated in subsection (3) and who may be a senior commissioner;

(*b*) a deputy chairperson, who must be a senior commissioner; and

(*c*) six persons nominated in accordance with the provisions of subsections (3) and (4).

(2) A member of the essential services committee—

(*a*) must be a citizen of South Africa, who is ordinarily resident in South Africa, or a permanent resident of South Africa;

(*b*) must have suitable qualifications or experience in labour law, labour relations, commerce, public affairs, the administration of justice, industry or a sector of the economy;

(*c*) must not be an unrehabilitated insolvent; and

(*d*) must not be subject to an order of a competent court holding that person to be mentally unfit or disordered.

(3) Organised business, labour and government at *NEDLAC* must each nominate to the *Minister* the names of two persons to be appointed to the essential services committee.

(4) The *Minister* must appoint the persons nominated by organised business, labour and government at *NEDLAC* if these persons meet the requirements set out in subsection (2).

(5) The *Minister* may fill any vacancy that arises in accordance with the provisions of this section.

(6) A member of the essential services committee may not represent any person before a panel of the essential services committee, but may be appointed by the *trade union* and employer parties to serve as an assessor in terms of section 70C.

[S. 70A inserted by s. 11 of Act No. 6 of 2014.]

70B. Powers and functions of essential services committee.—(1) The powers and functions of the essential services committee are to—

(*a*) monitor the implementation and observance of essential services determinations, minimum services agreements, maintenance services agreements and determinations;

(*b*) promote effective *dispute resolution* in essential services;

(*c*) develop guidelines for the negotiation of minimum services agreements;

(*d*) decide, on its own initiative or at the reasonable request of any interested party, whether to institute investigations as to whether or not the whole or a part of any service is an essential service;

(*e*) manage its caseload; and

(*f*) appoint the panels contemplated in section 70C to perform one or more of the functions set out in section 70D.

(2) At the request of a *bargaining council*, the essential services committee must establish a panel to perform any function in terms of section 70D (1).

(3) The essential services committee may request the Commission or any other appropriate person to conduct an investigation to assist the essential services committee in an investigation and to submit a report to it.

[S. 70B inserted by s. 11 of Act No. 6 of 2014.]

70C. Appointment of panels.—(1) The essential services committee must, taking into account the nature and complexity of the issue, assign each matter before it to a panel consisting of either three or five persons, including the assessors referred to in subsections (3) and (4).

(2) A panel must be presided over by the chairperson or deputy chairperson of the essential services committee or by a senior commissioner referred to in subsection (3).

(3) The Commission must compile a list of suitably trained senior commissioners who may preside at panel hearings.

(4) If the essential services committee constitutes a three-member panel, it must either—

(*a*) appoint two of its members to serve as *assessors*; or

(*b*) invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

(5) If the essential services committee constitutes a five-member panel, it must—

(*a*) appoint two of its members to serve as its assessors; and

(*b*) invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

(6) If the essential services committee appoints assessors from its members to serve on a panel, it must appoint one who was nominated to the essential services committee by—

(*a*) organised labour; and

(*b*) organised business or government, depending on the sector concerned.

(7) A member of the essential services committee may be nominated to serve as an assessor in terms of subsections (4) (b) and (5) (b).

(8) The essential services committee may appoint an assessor if the *trade union* or employer parties participating in the hearing fail to nominate an assessor in terms of subsections (4) (b) and (5) (b) within the prescribed period.

(9) When appointing or nominating an assessor in terms of subsections (4) to (8), the essential services committee, and any party to a matter before it, must take into account the person's skills, experience, expertise and knowledge of the sector concerned.

[S. 70C inserted by s. 11 of Act No. 6 of 2014.]

70D. Powers and functions of panel.—(1) The powers and functions of a panel appointed by the essential services committee are to—

(*a*) conduct investigations as to whether or not the whole or a part of any service is an essential service;

(*b*) determine whether or not to designate the whole or a part of that service as an essential service;

(*c*) determine *disputes* as to whether or not the whole or a part of any service falls within the scope of a designated essential service;

(*d*) determine whether or not the whole or a part of any service is a maintenance service;

(*e*) ratify a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service; and

(*f*) determine, in accordance with the provisions of *this Act*, the minimum services required to be maintained in the service that is designated as an essential service.

(2) The presiding member of the panel must determine any question of procedure or law, including whether

an issue is a question of procedure or law.

(3) The chairperson of the essential services committee or any person contemplated in section 70C (2) presiding at a hearing may, sitting alone, make an order—

(*a*) extending or reducing any period prescribed by the rules of the essential services committee; and

(*b*) condoning the late performance of an act contemplated by the rules of the essential services committee.

(4) Subject to subsections (2) and (3), the decision or finding of the majority of the panel is the decision of the essential services committee.

(5) The decision of a panel must be in writing and signed by the person referred to in section 70C (2), and include the reasons for that decision.

(6) A panel appointed by the essential services committee may make any appropriate order relating to its functions.

[S. 70D inserted by s. 11 of Act No. 6 of 2014.]

70E. Jurisdiction and administration of essential services committee.—(1) The essential services committee has jurisdiction throughout the Republic.

(2) The seat of the essential services committee is the Commission's head office.

(3) The functions of the essential services committee, including the functions of the panels, may be performed at any place in the Republic.

(4) The Commission must administer the essential services committee.

(5) The *director* is the accounting officer of the essential services committee and must allocate adequate resources to the essential services committee in order for it to perform its functions.

(6) The *director* may appoint staff to the essential services committee after consulting the essential services committee and the governing body, and the governing body must determine their remuneration and other terms and conditions of appointment.

(7) The allowances of members of the essential services committee, assessors and persons appointed to investigate matters are determined by the Minister of Finance.

(8) The essential services committee will be financed and provided with working capital from—

(*a*) the monies that Parliament may appropriate to the Commission in terms of section 122; and

(*b*) grants, donations and bequests made to it.

[S. 70E inserted by s. 11 of Act No. 6 of 2014.]

70F. Regulations for essential services committee.—(1) The Minister, after consulting the essential services committee, may make regulations concerning the—

(*a*) functioning of the essential services committee; and

(*b*) panels appointed by the essential services committee.

(2) . . . . . .

[S. 70F inserted by s. 11 of Act No. 6 of 2014. Sub-s. (2) deleted by s. 5 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

71. Designating a service as an essential service.—(1) The essential services committee must give notice in the *Government Gazette* of any investigation that it is to conduct as to whether the whole or a part of a service is an *essential service*.

(2) The notice must indicate the service or the part of a service that is to be the subject of the investigation and must invite interested parties, within a period stated in the notice—

(*a*) to submit written representations; and

(*b*) to indicate whether or not they require an opportunity to make oral representations.

(3) Any interested party may inspect any written representations made pursuant to the notice, at the Commission's offices.

(4) The Commission must provide a certified copy of, or extract from, any written representations to any person who has paid the *prescribed* fee.

(5) The essential services committee must advise parties who wish to make oral representations of the place and time at which they may be made.

(6) Oral representations must be made in public.

(7) After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an *essential service*.

(8) If the panel appointed by the essential services committee designates the whole or a part of a service as an *essential service*, the essential services committee must publish a notice to that effect in the *Government Gazette*.

[Sub-s. (8) substituted by s. 12 of Act No. 6 of 2014.]

(9) A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an *essential service* or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.

[Sub-s. (9) substituted by s. 12 of Act No. 6 of 2014.]

(10) The Parliamentary service and the South African Police Service shall be deemed to have been designated an essential service in terms of this section.

(Date of commencement of s. 71: 1 January, 1996.)

72. Minimum services.—(1) When making a determination in terms of section 71, a panel of the essential services committee may issue an order—

(*a*) directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order;

(*b*) if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a *bargaining council* having jurisdiction.

(2) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.

(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service—

(*a*) the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*; and

(*b*) the provisions of section 74 do not apply.

(4) A minimum service determination—

(*a*) is valid until varied or revoked by the essential services committee; and

(*b*) may not be varied or revoked for a period of 12 months after it has been made.

(5) Despite subsections (3) and (4), section 74 applies to a designated essential service in respect of which the *essential services* committee has ratified a minimum services agreement or has made a determination of minimum services if the majority of *employees* employed in the *essential services* voted in a ballot in favour of this.

[Sub-s. (5) substituted by s. 6 (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(6) Subsection (5) does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.

(7) Despite subsection (4), a panel may vary a determination by ratifying a *collective agreement* concluded between or on behalf of one or more—

(*a*) *trade unions* representing a majority of the *employees* covered by the determination; and

(*b*) employers employing the majority of the *employees* covered by the determination.

(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable *collective agreement*, refer a *dispute* arising from those negotiations to the Commission or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.

[S. 72 substituted by s. 13 of Act No. 6 of 2014.]

(9) For the purposes of this section, a "ratified minimum service" or "determined minimum service" means the minimum number of *employees* in a designated essential service who may not *strike* in order to ensure that the life, personal safety or health of the whole or part of the population is not endangered.

[S. 72 substituted by s. 13 of Act No. 6 of 2014. Sub-s. (9) added by s. 6 (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

73. Disputes about minimum services and about whether a service is an essential service.—(1) Any party to a *dispute* about one or more of the following issues may refer the *dispute* in writing to the essential services committee—

(*a*) whether or not a service is an *essential service*;

[Para. (a) amended by s. 14 (c) of Act No. 6 of 2014.]

(*b*) whether or not an *employee* or employer is engaged in a service designated as an *essential service*;

(*c*) whether or not the employer and a registered *trade union* or trade unions representing *employees* in the *essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service; and

[Para. (c) added by s. 14 (c) of Act No. 6 of 2014.]

(*d*) the terms of such a *collective agreement*.

[S. 73 amended by s. 14 (a) and (b) of Act No. 6 of 2014. Para. (d) added by s. 14 (c) of Act No. 6 of 2014.]

(2) The party who refers the *dispute* to the essential services committee must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The essential services committee must determine the *dispute* as soon as possible.

74. Disputes in essential services18**.**—(1) Subject to section 73 (1), any party to a *dispute* that is precluded from participating in a *strike* or a *lock-out* because that party is engaged in an *essential service* may refer the *dispute* in writing to—

(*a*) a *council*, if the parties to the *dispute* fall within the *registered scope* of that *council*; or

(*b*) the Commission, if no *council* has jurisdiction.

[Sub-s. (1) amended by s. 15 of Act No. 6 of 2014.]

(2) The party who refers the *dispute* must satisfy the *council* or the Commission that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The *council* or the Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration by the *council* or the Commission.

(5) Any arbitration award in terms of subsection (4) made in respect of the State and that has financial implications for the State becomes binding—

(*a*) 14 days after the date of the award, unless a minister has tabled the award in Parliament within that period; or

(*b*) 14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding.

(6) If Parliament passes a resolution that the award is not binding, the *dispute* must be referred back to the Commission for further conciliation between the parties to the *dispute* and if that fails, any party to the *dispute* may request the Commission to arbitrate.

(7) If Parliament is not in session on the expiry of—

(*a*) the period referred to in subsection (5) (a), that period or the balance of that period will run from the beginning of the next session of Parliament;

(*b*) the period referred to in subsection (5) (b), that period will run from the expiry of the period referred to in paragraph (a) of this subsection or from the beginning of the next session of Parliament.

[Para. (b) substituted by s. 21 (b) of Act No. 42 of 1996.]

75. Maintenance services.—(1) A service is a maintenance service if the interruption of that service has the effect of material physical destruction to any working *area*, plant or machinery.

(2) If there is no *collective agreement* relating to the provision of a maintenance service, an employer may apply in writing to the essential services committee for a determination that the whole or a part of the employer's business or service is a maintenance service.

[Sub-s. (2) substituted by s. 22 (a) of Act No. 42 of 1996.]

(3) The employer must satisfy the essential services committee that a copy of the application has been *served* on all interested parties.

(4) The essential services committee must determine, as soon as possible, whether or not the whole or a part of the employer's business or service is a maintenance service.

[Sub-s. (4) substituted by s. 22 (b) of Act No. 42 of 1996.]

(5) As part of its determination in terms of subsection (4), the essential services committee may direct that any *dispute* in respect of which the *employees* engaged in a maintenance service would have had the right to strike, but for the provisions of section 65 (1) (d) (ii), be referred to arbitration.

[Sub-s. (5) added by s. 22 (c) of Act No. 42 of 1996.]

(6) The committee may not make a direction in terms of subsection (5) if—

(*a*) the terms and conditions of employment of the *employees* engaged in the maintenance service are determined by collective bargaining; or

(*b*) the number of *employees* prohibited from striking because they are engaged in the maintenance

service does not exceed the number of *employees* who are entitled to strike.

[Sub-s. (6) added by s. 22 (c) of Act No. 42 of 1996.]

(7) If a direction in terms of subsection (5) requires a *dispute* to be resolved by arbitration—

(*a*) the provisions of section 74 will apply to the arbitration; and

(*b*) any arbitration award will be binding on the *employees* engaged in the maintenance service and their employer, unless the terms of the award are varied by a *collective agreement*.

[Sub-s. (7) added by s. 22 (c) of Act No. 42 of 1996.]

(8) A panel appointed by the *essential services* committee may in the *prescribed* manner vary or cancel the designation of the whole or part of a maintenance service on its own accord or on application by the employer or a registered *trade union* with members affected by the designation of a maintenance service.

[Sub-s. (8) added by s. 7 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

76. Replacement labour.—(1) An employer may not take into employment any person—

(*a*) to continue or maintain production during a protected *strike* if the whole or a part of the employer's service has been designated a maintenance service; or

(*b*) for the purpose of performing the work of any *employee* who is locked out, unless the *lock-out is* in response to a *strike*.

(2) For the purpose of this section, "take into employment" includes engaging the services of a labour broker or an independent contractor.

77. Protest action to promote or defend socio-economic interests of workers.—(1) Every *employee* who is not engaged in an *essential service* or a maintenance service has the right to take part in *protest action* if—

(*a*) the *protest action* has been called by a registered *trade union* or federation of *trade unions*;

(*b*) the registered *trade union* or federation of *trade unions* has *served* a notice on *NEDLAC* stating—

(i) the reasons for the *protest action*; and

(ii) the nature of the *protest action*;

(*c*) the matter giving rise to the intended *protest action* has been considered by *NEDLAC* or any other appropriate forum in which the parties concerned are able to participate in order to resolve the matter; and

(*d*) at least 14 days before the commencement of the *protest action*, the registered *trade union* or federation of *trade unions* has *served* a notice on *NEDLAC* of its intention to proceed with the *protest action*.

(2) The Labour Court has exclusive jurisdiction—

(*a*) to grant any order to restrain any person from taking part in *protest action* or in any conduct in contemplation or in furtherance of *protest action* that does not comply with subsection (1);

(*b*) in respect of *protest action* that complies with subsection (1), to grant a declaratory order contemplated by subsection (4), after having considered—

(i) the nature and duration of the *protest action*;

(ii) the steps taken by the registered *trade union* or federation of *trade unions* to minimise the harm caused by the *protest action*; and

(iii) the conduct of the participants in the *protest action*.

(3) A person who takes part in *protest action* or in any conduct in contemplation or in furtherance of *protest action* that complies with subsection (1), enjoys the protections conferred by section 67.

(4) Despite the provisions of subsection (3), an *employee* forfeits the protection against *dismissal* conferred by that subsection, if the *employee*—

(*a*) takes part in *protest action* or any conduct in contemplation or in furtherance of *protest action* in breach of an order of the Labour Court; or

(*b*) otherwise acts in contempt of an order of the Labour Court made in terms of this section.

CHAPTER V
WORKPLACE FORUMS

78. Definitions in this Chapter.—In this Chapter—

(*a*) "*employee*" means any person who is employed in a *workplace*, except a senior managerial *employee*

whose contract of employment or status confers the authority to do any of the following in the *workplace*—

(i) . . . . . .

[Sub-para. (i) deleted by s. 23 of Act No. 42 of 1996.]

(ii) represent the employer in dealings with the *workplace forum*; or

(iii) determine policy and take decisions on behalf of the employer that may be in conflict with the representation of *employees* in the *workplace*; and

(*b*) "representative *trade union*" means a registered *trade union*, or two or more registered *trade unions* acting jointly, that have as members the majority of the *employees* employed by an employer in a *workplace*.

79. General functions of workplace forum.—A *workplace forum* established in terms of this Chapter—

(*a*) must seek to promote the interests of all *employees* in the *workplace*, whether or not they are *trade union* members;

(*b*) must seek to enhance efficiency in the *workplace*;

(*c*) is entitled to be consulted by the employer, with a view to reaching consensus about the matters referred to in section 84; and

(*d*) is entitled to participate in joint decision-making about the matters referred to in section 86.

80. Establishment of workplace forum.—(1) A *workplace forum* may be established in any *workplace* in which an employer employs more than 100 *employees*.

(2) Any representative *trade union* may apply to the Commission in the *prescribed* form for the establishment of a *workplace forum*.

(3) The applicant must satisfy the Commission that a copy of the application has been *served* on the *employer*.

(4) The Commission may require further information in support of the application.

(5) The Commission must—

(*a*) consider the application and any further information provided by the applicant; and

(*b*) consider whether, in the *workplace* in respect of which the application has been made—

(i) the employer employs 100 or more *employees*;

(ii) the applicant is a representative *trade union*; and

(iii) there is no functioning *workplace forum* established in terms of this Chapter.

(6) If satisfied that the requirements of subsection (5) are met, the Commission must appoint a commissioner to assist the parties to establish a *workplace forum* by *collective agreement* or, failing that, to establish a *workplace forum* in terms of this Chapter.

(7) The commissioner must convene a meeting with the applicant, the employer and any registered *trade union* that has members employed in the *workplace*, in order to facilitate the conclusion of a *collective agreement* between those parties, or at least between the applicant and the employer.

(8) If a *collective agreement* is concluded, the provisions of this Chapter do not apply.

[Sub-s. (8) amended by s.24 of Act No. 42 of 1996.]

(9) If a *collective agreement* is not concluded, the commissioner must meet the parties referred to in subsection (7) in order to facilitate agreement between them, or at least between the applicant and the employer, on the provisions of a constitution for a *workplace forum* in accordance with this Chapter, taking into account the guidelines in Schedule 2.

(10) If no agreement is reached on any of the provisions of a constitution, the commissioner must establish a *workplace forum* and determine the provisions of the constitution in accordance with this Chapter, taking into account the guidelines in Schedule 2.

(11) After the *workplace forum* has been established, the commissioner must set a date for the election of the first members of the *workplace forum* and appoint an election officer to conduct the election.

(12) The provisions of this section do not apply to the *public service*. The establishment of *workplace forums* in the *public service* will be regulated in a Schedule promulgated by the Minister for the Public Service and Administration in terms of section 207 (4).

81. Trade union based workplace forum.—(1) If a representative *trade union* is recognised in terms of a *collective agreement* by an employer for the purposes of collective bargaining in respect of all *employees* in a *workplace*, that *trade union* may apply to the Commission in the *prescribed* form for the establishment of a *workplace forum*.

(2) The applicant may choose the members of the *workplace forum* from among its elected representatives in the *workplace*.

(3) If the applicant makes this choice, the provisions of this Chapter apply, except for section 80 (11) and

section 82 (1) (b) to (m).

(4) The constitution of the applicant governs the nomination, election and removal from office of elected representatives of the applicant in the *workplace*.

(5) A *workplace forum* constituted in terms of this section will be dissolved if—

(*a*) the *collective agreement* referred to in subsection (1) is terminated;

(*b*) the applicant is no longer a representative *trade union*.

(6) The provisions of this section do not apply to the *public service*.

82. Requirements for constitution of workplace forum.—(1) The constitution of every *workplace forum* must —

(*a*) establish a formula for determining the number of seats in the workplace *forum*;

(*b*) establish a formula for the distribution of seats in the *workplace forum* so as to reflect the occupational structure of the *workplace*;

(*c*) provide for the direct election of members of the *workplace forum* by the *employees* in the *workplace*;

(*d*) provide for the appointment of an *employee* as an election officer to conduct elections and define that officer's functions and powers;

(*e*) provide that an election of members of the *workplace forum* must be held not later than 24 months after each preceding election;

(*f*) provide that if another registered *trade union* becomes representative, it may demand a new election at any time within 21 months after each preceding election;

(*g*) provide for the procedure and manner in which elections and ballots must be conducted;

(*h*) provide that any *employee*, including any former or current member of the *workplace forum*, may be nominated as a candidate for election as a member of the *workplace forum* by—

(i) any registered *trade union* with members employed in the *workplace*; or

(ii) a petition signed by not less than 20 per cent of the *employees* in the *workplace* or 100 *employees*, whichever number of *employees* is the smaller;

(*i*) provide that in any ballot every *employee* is entitled—

(i) to vote by secret ballot; and

(ii) to vote during *working hours* at the employer's premises;

(*j*) provide that in an election for members of the *workplace forum* every *employee* is entitled, unless the constitution provides otherwise—

(i) to cast a number of votes equal to the number of members to be elected; and

(ii) to cast one or more of those votes in favour of any candidate;

(*k*) establish the terms of office of members of the *workplace forum* and the circumstances in which a member must vacate that office;

(*l*) establish the circumstances and manner in which members of the *workplace forum* may be removed from office, including the right of any representative *trade union* that nominated a member for election to remove that member at any time;

(*m*) establish the manner in which vacancies in the *workplace forum* may be filled, including the rules for holding by-elections;

(*n*) establish the circumstances and manner in which the meetings referred to in section 83 must be held;

(*o*) provide that the employer must allow the election officer reasonable time off with pay during *working hours* to prepare for and conduct elections;

(*p*) provide that the employer must allow each member of the *workplace forum* reasonable time off with pay during *working hours* to perform the functions of a member of the *workplace forum* and to receive training relevant to the performance of those functions;

(*q*) require the employer to take any steps that are reasonably necessary to assist the election officer to conduct elections;

(*r*) require the employer to provide facilities to enable the *workplace forum* to perform its functions;

(*s*) provide for the designation of full-time members of the *workplace forum* if there are more than 1 000 *employees* in a *workplace*;

[Para. (s) substituted by s. 25 (a) of Act No. 42 of 1996.]

(*t*) provide that the *workplace forum* may invite any expert to attend its meetings, including meetings with the employer or the *employees*, and that an expert is entitled to any information to which the *workplace forum is* entitled and to inspect and copy any document that members of the *workplace forum* are entitled to inspect and copy;

[Para. (t) substituted by s. 25 (b) of Act No. 42 of 1996.]

(*u*) provide that *office-bearers* or *officials* of the representative *trade union* may attend meetings of the *workplace forum*, including meetings with the employer or the *employees*;

[Para. (u) amended by s. 25 (c) of Act No. 42 of 1996.]

(*v*) provide that the representative *trade union* and the employer, by agreement, may change the constitution of the *workplace forum*; and

[Para. (v) amended by s. 25 (d) of Act No. 42 of 1996.]

(*w*) establish the manner in which decisions are to be made.

[Para. (w) added by s. 25 (e) of Act No. 42 of 1996.]

(2) The constitution of a *workplace forum* may—

(*a*) establish a procedure that provides for the conciliation and arbitration of proposals in respect of which the employer and the *workplace forum* do not reach consensus;

(*b*) establish a co-ordinating *workplace forum* to perform any of the general functions of a *workplace forum* and one or more subsidiary *workplace forums* to perform any of the specific functions of a *workplace forum*; and

(*c*) include provisions that depart from sections 83 to 92.

(3) The constitution of a *workplace forum* binds the employer.

(4) The Minister for the Public Service and Administration may amend the requirements for a constitution in terms of this section for *workplace forums* in the *public service* by a Schedule promulgated in terms of section 207 (4).

83. Meetings of workplace forum.—(1) There must be regular meetings of the *workplace forum*.

(2) There must be regular meetings between the *workplace forum* and the employer, at which the employer must—

(*a*) present a report on its financial and employment situation, its performance since the last report and its anticipated performance in the short term and in the long term; and

(*b*) consult the *workplace forum* on any matter arising from the report that may affect *employees* in the *workplace*.

(3) (*a*) There must be meetings between members of the *workplace forum* and the *employees* employed in the *workplace* at regular and appropriate intervals. At the meetings with *employees*, the *workplace forum* must report on—

(i) its activities generally;

(ii) matters in respect of which it has been consulted by the employer; and

(iii) matters in respect of which it has participated in joint decision-making with the employer.

(*b*) Each calendar year, at one of the meetings with the *employees*, the employer must present an annual report of its financial and employment situation, its performance generally and its future prospects and plans.

(*c*) The meetings of *employees* must be held during *working hours* at a time and place agreed upon by the workplace *forum* and the employer without loss of pay on the part of the *employees*.

84. Specific matters for consultation.—(1) Unless the matters for consultation are regulated by a *collective agreement* with the representative *trade union*, a workplace *forum* is entitled to be consulted by the employer about proposals relating to any of the following matters—

(*a*) restructuring the *workplace*, including the introduction of new technology and new work methods;

(*b*) changes in the organisation of work;

(*c*) partial or total plant closures;

(*d*) mergers and transfers of ownership in so far as they have an impact on the *employees*;

(*e*) the *dismissal* of *employees* for reasons based on *operational requirements*;

(*f*) exemptions from any *collective agreement* or any law;

(*g*) job grading;

(*h*) criteria for merit increases or the payment of discretionary bonuses;

(*i*) education and training;

(*j*) product development plans; and

(*k*) export promotion.

(2) A *bargaining council* may confer on a *workplace forum* the right to be consulted about additional matters in *workplaces* that fall within the *registered scope* of the *bargaining council*.

(3) A representative *trade union* and an employer may conclude a *collective agreement* conferring on the *workplace forum* the right to be consulted about any additional matters in that *workplace*.

(4) Any other law may confer on a *workplace forum* the right to be consulted about any additional matters.

(5) Subject to any applicable occupational health and safety legislation, a representative *trade union* and an employer may agree—

(*a*) that the employer must consult with the *workplace forum* with a view to initiating, developing, promoting, monitoring and reviewing measures to ensure health and safety at work;

(*b*) that a meeting between the *workplace forum* and the employer constitutes a meeting of a health and safety committee required to be established in the *workplace* by that legislation; and

(*c*) that one or more members of the *workplace forum* are health and safety representatives for the purposes of that legislation.

(6) For the purposes of *workplace forum* in the *public service*—

(*a*) the *collective agreement* referred to in subsection (1) is a *collective agreement* concluded in a *bargaining council*;

(*b*) a *bargaining council* may remove any matter from the list of matters referred to in subsection (1) in respect of *workplaces* that fall within its *registered scope*; and

(*c*) subsection (3) does not apply.

85. Consultation.—(1) Before an employer may implement a proposal in relation to any matter referred to in section 84 (1), the employer must consult the *workplace forum* and attempt to reach consensus with it.

(2) The employer must allow the *workplace forum* an opportunity during the consultation to make representations and to advance alternative proposals.

(3) The employer must consider and respond to the representations or alternative proposals made by the *workplace forum* and, if the employer does not agree with them, the employer must state the reasons for disagreeing.

(4) If the employer and the workplace *forum* do not reach consensus, the employer must invoke any agreed procedure to resolve any differences before implementing the employer's proposal.

86. Joint decision-making.—(1) Unless the matters for joint decision-making are regulated by a *collective agreement* with the representative *trade union*, an employer must consult and reach consensus with a *workplace forum* before implementing any proposal concerning—

(*a*) disciplinary codes and procedures;

(*b*) rules relating to the proper regulation of the *workplace* in so far as they apply to conduct not related to the work performance of *employees*;

(*c*) measures designed to protect and advance persons disadvantaged by unfair discrimination; and

(*d*) changes by the employer or by employer-appointed representatives on trusts or boards of employer-controlled schemes, to the rules regulating social benefit schemes.

(2) A representative *trade union* and an employer may conclude a *collective agreement*—

(*a*) conferring on the *workplace forum* the right to joint decision-making in respect of additional matters in that *workplace*;

(*b*) removing any matter referred to in subsection (1) (a) to (d) from the list of matters requiring joint decision-making.

(3) Any other law may confer on a *workplace forum* the right to participate in joint decision-making about additional matters.

(4) If the employer does not reach consensus with the *workplace forum*, the employer may—

(*a*) refer the *dispute* to arbitration in terms of any agreed procedure; or

(*b*) if there is no agreed procedure, refer the *dispute* to the Commission.

(5) The employer must satisfy the Commission that a copy of the referral has been *served* on the chairperson of the *workplace forum*.

(6) The Commission must attempt to resolve the *dispute* through conciliation.

(7) If the *dispute* remains unresolved, the employer may request that the *dispute* be resolved through arbitration.19

(8) (*a*) If an arbitration award is about a proposal referred to in subsection (1) (d) it takes effect 30 days after the date of the award.

(*b*) Any representative on the trust or board may apply to the Labour Court for an order declaring that the implementation of the award constitutes a breach of a fiduciary duty on the part of that representative.

(*c*) Despite paragraph (a), the award will not take effect pending the determination by the Labour Court of an application is made in terms of paragraph (b).

(9) For the purposes of *workplace forums* in the *public service*, a *collective agreement* referred to in subsections (1) and (2) is a *collective agreement* concluded in a *bargaining council*.

87. Review at request of newly established workplace forum.—(1) After the establishment of a *workplace forum*, the *workplace forum* may request a meeting with the employer to review—

(*a*) criteria for merit increases or the payment of discretionary bonuses;

(*b*) disciplinary codes and procedures; and

(*c*) rules relating to the proper regulation of the *workplace* in so far as they apply to conduct not related to work performance of *employees* in the *workplace*.

(2) The employer must submit its criteria, disciplinary codes and procedures, and rules, referred to in subsection (1), if any, in writing to the *workplace forum* for its consideration.

(3) A review of the criteria must be conducted in accordance with the provisions of section 85.

(4) A review of the disciplinary codes and procedures, and rules, must be conducted in accordance with the provisions of section 86 (2) to (7) except that, in applying section 86 (4), either the employer or the *workplace forum* may refer a *dispute* between them to arbitration or to the Commission.

[Sub-s. (4) substituted by s. 26 of Act No. 42 of 1996.]

88. Matters affecting more than one workplace forum in an employer's operation.—(1) If the employer operates more than one *workplace* and separate *workplace forums* have been established in two or more of those *workplaces*, and if a matter has been referred to arbitration in terms of section 86 (4) (a) or (b) or by a *workplace forum* in terms of section 87 (4), the employer may give notice in writing to the chairpersons of all the *workplace forums* that no other *workplace forum* may refer a matter that is substantially the same as the matter referred to arbitration.

[Sub-s. (1) substituted by s. 27 of Act No. 42 of 1996.]

(2) If the employer gives notice in terms of subsection (1)—

(*a*) each *workplace forum* is entitled to make representations and participate in the arbitration proceedings; and

(*b*) the arbitration award is binding on the employer and the *employees* in each *workplace*.

89. Disclosure of information.—(1) An employer must disclose to the *workplace forum* all relevant information that will allow the *workplace forum* to engage effectively in consultation and joint decision-making.

(2) An employer is not required to disclose information—

(*a*) that is legally privileged;

(*b*) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;

(*c*) that is confidential and, if disclosed, may cause substantial harm to an *employee* or the employer; or

(*d*) that is private personal information relating to an *employee*, unless that *employee* consents to the disclosure of that information.

(2A) The employer must notify the *workplace forum* in writing if of the view that any information disclosed in terms of subsection (1) is confidential.

[Sub-s. (2A) inserted by s. 28 of Act No. 42 of 1996.]

(3) If there is a *dispute* about the disclosure of information, any party to the *dispute* may refer the *dispute* in writing to the Commission.

(4) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(5) The Commission must attempt to resolve the *dispute* through conciliation.

(6) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

(7) In any *dispute* about the disclosure of information contemplated in subsection (3), the commissioner must

first decide whether or not the information is relevant.

(8) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (2) (c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an *employee* or employer against the harm that the failure to disclose the information is likely to cause to the ability of the *workplace forum* to engage effectively in consultation and joint decision-making.

(9) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the *employee* or employer.

(10) When making an order in terms of subsection (9), the commissioner must take into account any breach of confidentiality in respect of information disclosed in terms of this section at that *workplace* and may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.

90. Inspection and copies of documents.—(1) Any documented information that is required to be disclosed by the employer in terms of section 89 must be made available on request to the members of the *workplace forum* for inspection.

(2) The employer must provide copies of the documentation on request to the members of the *workplace forum*.

91. Breach of confidentiality.—In any *dispute* about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in that *workplace* be withdrawn for a period specified in the arbitration award.

92. Full-time members of workplace forum.—(1) In a *workplace* in which l 000 or more *employees* are employed, the members of the *workplace forum* may designate from their number one full-time member.

(2) (*a*) The employer must pay a full-time member of the *workplace forum* the same *remuneration* that the member would have earned in the position the member held immediately before being designated as a full-time member.

(*b*) When a person ceases to be a full-time member of a *workplace forum* the employer must re-instate that person to the position that person held immediately before election or appoint that person to any higher position to which, but for the election, that person would have advanced.

93. Dissolution of workplace forum.—(1) A representative *trade union* in a *workplace* may request a ballot to dissolve a *workplace forum*.

(2) If a ballot to dissolve a *workplace forum* has been requested, an election officer must be appointed in terms of the constitution of the *workplace forum*.

(3) Within 30 days of the request for a ballot to dissolve the *workplace forum* the election officer must prepare and conduct the ballot.

(4) If more than 50 per cent of the *employees* who have voted in the ballot support the dissolution of the *workplace forum*, the *workplace forum* must be dissolved.

94. Disputes about workplace forums.—(1) Unless a *collective agreement* or this Chapter provides otherwise, any party to a *dispute* about the interpretation or application of this Chapter may refer that *dispute* to the Commission in writing, if that party is—

(*a*) one or more *employees* employed in the *workplace*;

(*a*A) a *workplace forum*;

[Para. (aA) inserted by s. 29 of Act No. 42 of 1996.]

(*b*) a registered *trade union* with members employed in the *workplace*;

(*c*) the representative *trade union*; or

(*d*) the employer.

(2) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

CHAPTER VI
TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

PART A—Registration and Regulation of Trade Unions and Employers' Organisations

95. Requirements for registration of trade unions or employers' organisations.—(1) Any *trade union* may apply to the *registrar* for registration if—

(*a*) it has adopted a name that meets the requirements of subsection (4);

(*b*) it has adopted a constitution that meets the requirements of subsections (5) and (6);

(*c*) it has an address in the *Republic*; and

(*d*) it is independent.

(2) A *trade union* is independent if—

(*a*) it is not under the direct or indirect control of any employer or *employers' organisation*; and

(*b*) it is free of any interference or influence of any kind from any employer or *employers' organisation*.

(3) Any *employers' organisation* may apply to the *registrar* for registration if—

(*a*) it has adopted a name that meets the requirements of subsection (4);

(*b*) it has adopted a constitution that meets the requirements of subsections (5) and (6), and

(*c*) it has an address in the *Republic*.

(4) Any *trade union* or *employers' organisation* that intends to register may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another *trade union* or *employers' organisation* that it is likely to mislead or cause confusion.

(5) The constitution of any *trade union* or *employers' organisation* that intends to register must—

(*a*) state that the *trade union* or *employers' organisation* is an association not for gain;

(*b*) prescribe qualifications for, and admission to, membership;

(*c*) establish the circumstances in which a member will no longer be entitled to the benefits of membership;

(*d*) provide for the termination of membership;

(*e*) provide for appeals against loss of the benefits of membership or against termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;

(*f*) provide for membership fees and the method for determining membership fees and other payments by members;

(*g*) prescribe rules for the convening and conducting of meetings of members and meetings of representatives of members, including the quorum required for, and the minutes to be kept of, those meetings;

(*h*) establish the manner in which decisions are to be made;

(*i*) establish the office of secretary and define its functions;

(*j*) provide for other *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, and define their respective functions;

(*k*) prescribe a procedure for nominating or electing *office-bearers* and, in the case of a *trade union*, *trade union representatives*;

(*l*) prescribe a procedure for appointing, or nominating and electing, *officials*;

(*m*) establish the circumstances and manner in which *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, may be removed from office;

(*n*) provide for appeals against removal from office of *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, prescribe a procedure for those appeals and determine the body to which those appeals may be made;

(*o*) establish the circumstances and manner in which a ballot must be conducted;

(*p*) provide that the *trade union* or *employers' organisation* before calling a *strike* or *lock-out*, must conduct a ballot of those of its members in respect of whom it intends to call the *strike* or *lock-out*;

(*q*) provide that members of the *trade union* or *employers' organisation* may not be disciplined or have their membership terminated for failure or refusal to participate in a *strike* or *lock-out* if—

(i) no ballot was held about the *strike* or *lock-out*; or

(ii) a ballot was held but a majority of the members who voted did not vote in favour of the *strike* or *lock-out*;

(*r*) provide for banking and investing its money;

(*s*) establish the purposes for which its money may be used;

(*t*) provide for acquiring and controlling property;

(*u*) determine a date for the end of its financial year;

(*v*) prescribe a procedure for changing its constitution; and

(*w*) prescribe a procedure by which it may resolve to wind up.

(6) The constitution of any *trade union* or *employers' organisation* which intends to register may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

(7) The *registrar* must not register a *trade union* or an *employers' organisation* unless the *registrar* is satisfied that the applicant is a genuine *trade union* or a genuine *employers' organisation*.

[Sub-s. (7) added by s. 18 of Act No. 12 of 2002.]

(8) The *Minister*, after consultation with *NEDLAC*, may by notice in the *Government Gazette* publish guidelines to be applied by the registrar in determining whether an applicant is a genuine *trade union* or a genuine *employers' organisation* and guidelines for the system of voting as contemplated in subsection (9).

[Sub-s. (8) added by s. 18 of Act No. 12 of 2002 and substituted by s. 8 (a) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(9) For the purpose of subsection (5), 'ballot' includes any system of voting by members that is recorded and in secret.

[Sub-s. (9) added by s. 8 (b) of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

96. Registration of trade unions or employers' organisations.—(1) Any *trade union* or *employers' organisation* may apply for registration by submitting to the registrar—

(*a*) a *prescribed* form that has been properly completed;

(*b*) a copy of its constitution; and

(*c*) any other information that may assist the *registrar* to determine whether or not the *trade union* or *employers' organisation* meets the requirements for registration.

(2) The *registrar* may require further information in support of the application.

(3) The *registrar*—

(*a*) must consider the application and any further information provided by the applicant; and

(*b*) if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant's name in the register of *trade unions* or the register of *employers' organisations*.

(4) If the *registrar* is not satisfied that the applicant meets the requirements for registration, the *registrar*—

(*a*) must send the applicant a written notice of the decision and the reasons for that decision; and

(*b*) in that notice, must inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(5) If, within that 30-day period, the applicant meets the requirements for registration, the *registrar* must register the applicant by entering the applicant's name in the appropriate register.

(6) If, within that 30-day period, an applicant has attempted to meet the requirements for registration but the *registrar* concludes that the applicant has failed to do so, the *registrar* must—

(*a*) refuse to register the applicant; and

(*b*) notify the applicant in writing of that decision.

(7) After registering the applicant, the *registrar* must—

(*a*) issue a certificate of registration in the applicant's name; and

(*b*) send the certificate and a certified copy of the registered constitution to the applicant.

97. Effect of registration of trade union or employers' organisation.—(1) A certificate of registration is sufficient proof that a registered *trade union* or registered *employers' organisation* is a body corporate.

(2) The fact that a person is a member of a registered *trade union* or a registered *employers' organisation* does not make that person liable for any of the obligations or liabilities of the *trade union* or *employers' organisation*.

(3) A member, *office-bearer* or *official* of a registered *trade union* or a registered *employers' organisation* or, in the case of a *trade union*, a *trade union representative* is not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by the member, *office-bearer*, *official* or *trade union representative* while performing their functions for the *trade union* or *employers' organisation*.

(4) *Service* of any document directed to a registered *trade union* or *employers' organisation* at the address

most recently provided to the *registrar* will be for all purposes *service* of that document on that *trade union* or *employers' organisation*.

98. Accounting records and audits.—(1) Every registered *trade union* and every registered *employers' organisation* must, to the standards of generally accepted accounting practice, principles and procedures—

(*a*) keep books and records of its income, expenditure, assets and liabilities; and

(*b*) within six months after the end of each financial year, prepare financial statements, including at least —

(i) a statement of income and expenditure for the previous financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Every registered *trade union* and every registered *employers' organisation* must arrange for an annual audit of its books and records of account and its financial statements by an *auditor* who must—

(*a*) conduct the audit in accordance with generally accepted auditing standards; and

(*b*) report in writing to the *trade union* or *employers' organisation* and in that report—

(i) express an opinion as to whether or not the *trade union* or *employers' organisation* has complied with those provisions of its constitution relating to financial matters; and

(ii) if the *trade union* is a party to an agency shop agreement referred to in section 25 or a closed shop agreement referred to in section 26 express an opinion as to whether or not the *trade union* has complied with the provisions of those sections.

(3) Every registered *trade union* and every registered *employers' organisation* must—

(*a*) make the financial statements and the *auditor's* report available to its members for inspection; and

(*b*) submit those statements and the *auditor's* report to a meeting or meetings of its members or their representatives as provided for in its constitution.

(4) Every registered *trade union* and every registered *employers' organisation* must preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets, and auditor's reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

99. Duty to keep records.—In addition to the records required by section 98, every registered *trade union* and every registered *employers' organisation* must keep—

(*a*) a list of its members;

(*b*) the attendance register, minutes or any other *prescribed* record of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and

[Para. (b) substituted by s. 9 of Act No. 8 of 2018 w.e.f. 1 January, 2019]

(*c*) the ballot papers or any documentary or electronic record of the ballot for a period of three years from the date of every ballot.

[Para. (c) substituted by s. 9 of Act No. 8 of 2018 w.e.f. 1 January, 2019]

100. Duty to provide information to registrar.—Every registered *trade union* and every registered *employers' organisation* must provide to the *registrar*—

(*a*) by 31 March each year, a statement, certified by the secretary that it accords with its records, showing the number of members as at 31 December of the previous year and any other related details that may be required by the *registrar*;

(*b*) within 30 days of receipt of its *auditor's* report, a certified copy of that report and of the financial statements;

(*c*) within 30 days of receipt of a written request by the *registrar*, an explanation of anything relating to the statement of membership, the *auditor's* report or the financial statements;

(*d*) within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers*, even if their appointment or election did not result in any changes to its *office-bearers*;

[Para. (d) amended by s. 10 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*e*) 30 days before a new address for *service* of documents will take effect, notice of that change of address; and

[Para. (e) amended by s. 10 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(*f*) the records referred to in section 99.

[Para. (f) added by s. 10 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

101. Changing constitution or name of registered trade unions or employers' organisations.—(1) A registered *trade union* or a registered *employers' organisation* may resolve to change or replace its constitution.

(2) The registered *trade union* or the registered *employers' organisation* must send the *registrar* a copy of the resolution and a certificate signed by its secretary stating that the resolution complies with its constitution.

(3) The *registrar* must—

(*a*) register the changed or new constitution if it meets the requirements for registration; and

(*b*) send the registered *trade union* or registered *employers' organisation* a copy of the resolution endorsed by the *registrar*, certifying that the change or replacement has been registered.

(4) The changed or new constitution takes effect from the date of the *registrar's* certification.

(5) A registered *trade union* or registered *employers' organisation* may resolve to change its name.

(6) The registered *trade union* or registered *employers' organisation* must send the *registrar* a copy of the resolution and the original of its current certificate of registration.

(7) If the new name of the *trade union* or *employers' organisation* meets the requirements of section 95 (4),20 the *registrar* must—

(*a*) enter the new name in the appropriate register and issue a certificate of registration in the new name of the *trade union* or *employers' organisation*;

(*b*) remove the old name from that register and cancel the earlier certificate of registration; and

(*c*) send the new certificate to the *trade union* or *employers' organisation*.

(8) The new name takes effect from the date that the *registrar* enters it in the appropriate register.

102. Amalgamation of trade unions or employers' organisations.—(1) Any registered—

(*a*) *trade union* may resolve to amalgamate with one or more other *trade unions*, whether or not those other *trade unions* are registered; and

(*b*) *employers' organisation* may resolve to amalgamate with one or more other *employers' organisations*, whether or not those other *employers' organisations* are registered.

(2) The amalgamating *trade unions* or amalgamating *employers' organisations* may apply to the *registrar* for registration of the amalgamated *trade union* or amalgamated *employers' organisation*, even if any of the amalgamating *trade unions* or amalgamating *employers' organisations* is itself already registered, and the *registrar* must treat the application as an application in terms of section 96.

(3) After the *registrar* has registered the amalgamated *trade union* or amalgamated *employers' organisation* the *registrar* must cancel the registration of each of the amalgamating *trade unions* or amalgamating *employers' organisations* by removing their names from the appropriate register.

(4) The registration of an amalgamated *trade union* or an amalgamated *employers' organisation* takes effect from the date that the *registrar* enters its name in the appropriate register.

(5) When the *registrar* has registered an amalgamated *trade union* or amalgamated *employers' organisation*—

(*a*) all the assets, rights, obligations and liabilities of the amalgamating *trade unions* or the amalgamating *employers' organisations* devolve upon and vest in the amalgamated *trade union* or amalgamated *employers' organisation*; and

(*b*) the amalgamated *trade union* or amalgamated *employers' organisation* succeeds the amalgamating *trade unions* or the amalgamating *employers' organisations* in respect of—

(i) any right that the amalgamating *trade union* or the amalgamating *employers' organisations* enjoyed;

(ii) any fund established in terms of *this Act* or any other law;

(iii) any arbitration award or court order;

(iv) any *collective agreement* or other agreement;

(v) membership of any *council*; and

(vi) any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating trade unions or amalgamating *employers' organisations*.

103. Winding-up of trade unions or employers' organisations.—(1) The Labour Court may order a *trade union* or *employers' organisation* to be wound up if—

(*a*) the *trade union* or *employers' organisation* has resolved to wind-up its affairs and has applied to the Court for an order giving effect to that resolution; or

(*b*) the *registrar* or any member of the *trade union* or *employers' organisation* has applied to the Court for its winding up and the Court is satisfied that the *trade union* or *employers' organisation* for some reason that cannot be remedied is unable to continue to function.

[Sub-s. (1) substituted by s. 19 (b) of Act No. 12 of 2002.]

(1A) If the *registrar* has cancelled the registration of a *trade union* or *employers' organisation* in terms of section 106 (2A), any person opposing its winding-up is required to prove that the *trade union* or *employers' organisation* is able to continue to function.

[Sub-s. (1A) inserted by s. 19 (c) of Act No. 12 of 2002.]

(2) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must—

(*a*) consider those interests before deciding whether or not to grant the order applied for; and

(*b*) if it grants the order applied for, include provisions in the order disposing of each of those interests.

(3) In granting an order in terms of subsection (1), the Labour Court may appoint a suitable person as liquidator, on appropriate conditions.

[Sub-s. (3) amended by s. 30 of Act No. 42 of 1996 (English text only).]

(4) (*a*) The registrar of the Labour Court must determine the liquidator's fees.

(*b*) The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

(*c*) The liquidator's fees are a first charge against the assets of the *trade union* or *employers' organisation*.

(5) If, after all the liabilities of the *trade union* or *employers' organisation* have been discharged, any assets remain which cannot be disposed of in accordance with the constitution of that *trade union* or *employers' organisation*, the liquidator must realise those assets and pay the proceeds to the Commission for its own use.

[Sub-s. (5) substituted by s. 19 (d) of Act No. 12 of 2002.]

(6) (*a*) The Labour Court may direct that the costs of the *registrar* or any other person who has brought an application in terms of subsection (1) (b) be paid from the assets of the *trade union* or *employers' organisation*.

(*b*) Any costs in terms of paragraph (a) rank concurrently with the liquidator's fees.

[S. 103 amended by s. 19 (a) of Act No. 12 of 2002. Sub-s. (6) added by s. 19 (e) of Act No. 12 of 2002.]

103A. Appointment of administrator.—(1) The Labour Court may order that a suitable person, who may be a Commissioner, be appointed to administer a *trade union* or *employers' organisation* on such conditions as the Court may determine if the—

(*a*) Court is satisfied that it is just and equitable to do so; and

(*b*) *trade union* or *employers' organisation* has resolved that an administrator be appointed and has applied to the Court for an order to give effect to that resolution; or

(*c*) *registrar* has applied to the Court to appoint an administrator.

(2) Without limiting the generality of subsection (1) (a), it may be just and equitable to make an order in terms of subsection (1) if—

(*a*) the *trade union* or *employers' organisation* fails materially to perform its functions; or

(*b*) there is serious mismanagement of the finances of the *trade union* or *employers' organisation.*

(3) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must consider their interests before deciding whether or not to grant the order.

(4) (*a*) The registrar of the Labour Court must determine the administrator's fees.

(*b*) The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

(*c*) The administrator's fees will be paid as an expense of the *trade union* or *employers' organisation.*

(5) The Labour Court may, on the application by the *trade union, employer's organisation* or *registrar*—

(*a*) vary or amend any prior order made in terms of this section; or

(*b*) if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions.

[S. 103A inserted by s. 16 of Act No. 6 of 2014.]

104. Winding-up of trade unions or employers' organisations by reason of insolvency.—Any person who seeks to sequestrate a *trade union* or *employers' organisation* by reason of insolvency must comply with the

Insolvency Act, 1936 (Act No. 24 of l936), and, for the purposes of this section, any reference to the court in that Act must be interpreted as referring to the Labour Court.

105. Declaration that trade union is no longer independent.—(1) Any registered *trade union* may apply to the Labour Court for an order declaring that another *trade union* is no longer independent.

(2) If the Labour Court is satisfied that a *trade union* is not independent, the Court must make a declaratory order to that effect.

[S. 105 amended by s. 20 of Act No. 12 of 2002.]

106. Cancellation of registration of trade unions or employers' organisations.—(1) The registrar of the Labour Court must notify the *registrar* if the Court—

(*a*) in terms of section 103 or 104 has ordered a registered *trade union* or a registered *employers' organisation* to be wound up; or

(*b*) in terms of section 105 has declared that a registered *trade union* is not independent.

[Sub-s. (1) substituted by s. 21 (a) of Act No. 12 of 2002.]

(2) When the *registrar* receives a notice from the Labour Court in terms of subsection (1), the *registrar* must cancel the registration of the *trade union* or *employers' organisation* by removing its name from the appropriate register.

(2A) The *registrar* may cancel the registration of a *trade union* or *employers' organisation* by removing its name from the appropriate register if the *registrar*—

(*a*) is satisfied that the *trade union* or *employers' organisation* is not, or has ceased to function as, a genuine *trade union* or *employers' organisation*, as the case may be; or

(*b*) has issued a written notice requiring the *trade union* or *employers' organisation* to comply with sections 98, 99 and 100 within a period of 60 days of the notice and the *trade union* or *employers' organisation* has, despite the notice, not complied with those sections.

[Sub-s. (2A) inserted by s. 21 (b) of Act No. 12 of 2002.]

(2B) The *registrar* may not act in terms of subsection (2A) unless the *registrar* has published a notice in the *Government Gazette* at least 60 days prior to such action—

(*a*) giving notice of the *registrar's* intention to cancel the registration of the *trade union* or *employers' organisation*; and

(*b*) inviting the *trade union* or *employers' organisation* or any other interested parties to make written representations as to why the registration should not be cancelled.

[Sub-s. (2B) inserted by s. 21 (b) of Act No. 12 of 2002.]

(3) When a *trade union's* or *employers' organisation's* registration is cancelled, all the rights it enjoyed as a result of being registered will end.

PART B—Regulation of Federations of Trade Unions and Employers' Organisations

107. Regulation of federations of trade unions or employers' organisations.—(1) Any federation of *trade unions* that has the promotion of the interests of *employees* as a primary object, and any federation of *employers' organisations* that has the promotion of the interests of employers as a primary object, must provide to the *registrar* —

(*a*) within three months of its formation, and after that by 31 March each year, the names and addresses of its members and the number of persons each member in the federation represents;

(*b*) within three months of its formation, and after that within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers*, even if their appointment or election did not result in any changes to its *office-bearers*;

(*c*) within three months of its formation, a certified copy of its constitution and an address in the *Republic* at which it will accept *service* of any document that is directed to it;

(*d*) within 30 days of any change to its constitution, or of the address provided to the *registrar* as required in paragraph (c), notice of that change; and

(*e*) within 14 days after it has resolved to wind up, a copy of that resolution.

(2) *Service* of any document directed to a federation of *trade unions* or a federation of *employers' organisations* at the address most recently provided to the *registrar* will be for all purposes, *service* of that document on that federation.

(3) The *registrar* must remove from the appropriate register the name of any federation that the *registrar* believes has been wound up or sequestrated.

108. Appointment of registrar of labour relations.—(1) The *Minister* must designate an officer of the Department of Labour as the registrar of labour relations to perform the functions conferred on the *registrar* by or in terms of *this Act*.

(2) (*a*) The *Minister* may designate any number of officers in the Department as deputy registrars of labour relations to assist the *registrar* to perform the functions of *registrar* in terms of *this Act*.

(*b*) A deputy registrar may exercise any of the functions of the *registrar* that have been generally or specifically delegated to the deputy.

(3) The deputy registrar of labour relations or if there is more than one, the most senior of them, will act as *registrar* whenever—

(*a*) the *registrar* is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of *registrar*; or

(*b*) the office of *registrar* is vacant.

(Date of commencement of s. 108: 1 January, 1996.)

(4) The *registrar* and the deputy *registrars* are independent and, subject only to the Constitution and the law, they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
[Sub-s. (4) added by s. 11 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(5) No person or organ of state may interfere with the functioning of the *registrar*.
[Sub-s. (5) added by s. 11 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

109. Functions of registrar.—(1) The *registrar* must keep—

(*a*) a register of registered *trade unions*;

(*b*) a register of registered *employers' organisations*;

(*c*) a register of federations of *trade unions* containing the names of the federations whose constitutions have been submitted to the *registrar*;

(*d*) a register of federations of *employers' organisations* containing the names of the federations whose constitutions have been submitted to the *registrar*; and

(*e*) a register of *councils*.

(2) Within 30 days of making an entry in, or deletion from, a register, the *registrar* must give notice of that entry or deletion in the *Government Gazette*.

(3) The *registrar*, on good cause shown, may extend or condone late compliance with any of the time periods established in this Chapter, except the period within which a person may note an appeal against a decision of the *registrar*.

(4) The *registrar* must perform all the other functions conferred on the *registrar* by or in terms of *this Act*.

(Date of commencement of s. 109: 1 January, 1996.)

110. Access to information.—(1) Any person may inspect any of the following documents in the *registrar's* office—

(*a*) the registers of registered *trade unions*, registered *employers' organisations*, federations of *trade unions*, federations of *employers' organisations* and *councils*;

(*b*) the certificates of registration and the registered constitutions of registered *trade unions* registered *employers' organisations*, and *councils* and the constitutions of federations of *trade unions* and federations of *employers' organisations*; and

(*c*) the *auditor's* report in so far as it expresses an opinion on the matters referred to in section 98 (2) (b) (ii).

(2) The *registrar* must provide a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the *prescribed* fee.

(3) Any person who is a member, *office-bearer* or *official* of a registered *trade union* or of a registered *employers' organisation*, or is a member of a party to a *council*, may inspect any document that has been provided to the *registrar* in compliance with *this Act* by that person's registered *trade union*, registered *employers' organisation* or *council*.

(4) The *registrar* must provide a certified copy of, or extract from, any document referred to in subsection (3) to any person who has a right in terms of that subsection to inspect that document and who has paid the *prescribed* fee.

(5) The *registrar* must provide any of the following information to any person free of charge—

(*a*) the names and work addresses of persons who are national *office-bearers* of any registered *trade union*, registered *employers' organisation*, federation or *council*;

(*b*) the address in the Republic at which any registered *trade union*, registered *employers' organisation*, federation or *council* will accept service of any document that is directed to it; and

(*c*) any of the details of a federation of *trade unions* or a federation of *employers' organisations* referred to in section 107 (1) (a), (c), and (*e*).

PART D—Appeals from Registrar's Decision

111. Appeals from registrar's decision.—(1) Within 30 days of the written notice of a decision of the *registrar*, any person who is aggrieved by the decision may demand in writing that the *registrar* provide written reasons for the decision.

(2) The *registrar* must give the applicant written reasons for the decision within 30 days of receiving a demand in terms of subsection (1).

(3) Any person who is aggrieved by a decision of the *registrar* may appeal to the Labour Court against that decision, within 60 days of—

(*a*) the date of the *registrar's* decision; or

(*b*) if written reasons for the decision are demanded, the date of those reasons.

(4) The Labour Court, on good cause shown, may extend the period within which a person may note an appeal against a decision of the *registrar*.

(5) An appeal in terms of this section against a decision by the *registrar* in terms of section 106 does not suspend the operation of the *registrar's* decision.

[Sub-s. (5) added by s. 17 of Act No. 6 of 2014.]

CHAPTER VII
DISPUTE RESOLUTION

PART A—Commission for Conciliation, Mediation and Arbitration

112. Establishment of Commission for Conciliation, Mediation and Arbitration.—The Commission for Conciliation, Mediation and Arbitration is hereby established as a juristic person.

(Date of commencement of s. 112 1 January, 1996.)

113. Independence of Commission.—The Commission is independent of the State, any political party, *trade union* employer, *employers' organisation*, federation of *trade unions* or federation of *employers' organisations*.

114. Area of jurisdiction and offices of Commission.—(1) The Commission has jurisdiction in all the provinces of the *Republic*.

(2) The *Minister*, after consulting the governing body, must determine the location for the Commission's head office.

(3) The Commission must maintain an office in each province of the *Republic* and as many local offices as it considers necessary.

115. Functions of Commission.—(1) The Commission must—

(*a*) attempt to resolve, through conciliation, any *dispute* referred to it in terms of *this Act*;

(*b*) if a *dispute* that has been referred to it remains unresolved after conciliation, arbitrate the *dispute* if—

(i) *this Act* requires arbitration and any party to the *dispute* has requested that the *dispute* be resolved through arbitration; or

(ii) all the parties to a *dispute* in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the Commission;

(*c*) assist in the establishment of *workplace forums* in the manner contemplated in Chapter V;

[Para. (c) amended by s. 18 (a) of Act No. 6 of 2014.]

(*d*) compile and publish information and statistics about its activities; and

[Para. (d) amended by s. 18 (a) of Act No. 6 of 2014.]

(*e*) at least every second year, review any rules made in terms of this section.

[Para. (e) added by s. 18 (a) of Act No. 6 of 2014.]

(2) The Commission may—

(*a*) if asked, advise a party to a *dispute* about the procedure to follow in terms of *this Act*;21

(*b*) if asked, assist a party to a *dispute* to obtain legal advice, assistance or representation;22

(*b*A) if requested, provide assistance of an administrative nature to an *employee* earning less than the threshold prescribed by the *Minister* under section 6 (3) of the *Basic Conditions of Employment Act* to serve any notice or document in respect of conciliation or arbitration proceedings in terms of *this Act*, provided that the *employee* remains responsible in law for any such service;

[Para. (bA) inserted by s. 18 (b) of Act No. 6 of 2014.]

(*c*) offer to resolve a *dispute* that has not been referred to the Commission through conciliation;23

(*c*A) make rules—

(i) to regulate, subject to Schedule 3, the proceedings at its meetings and at the meetings of any committee of the Commission;

(ii) . . . . . .

[Sub-para. (ii) deleted by s. 18 (c) of Act No. 6 of 2014.]

(iii) regulating the practice and procedure—

(*aa*) for any process to resolve a dispute through conciliation;

(*bb*) at arbitration proceedings; and

(iv) determining the amount of any fee that the Commission may charge under section 147, and regulating the payment of such a fee in detail;

[Para. (cA) inserted by s. 6 (a) of Act No. 127 of 1998.]

(*d*) 24

[Para. (d) deleted by s. 31 (a) of Act No. 42 of 1996.]

(*e*) 25

[Para. (e) deleted by s. 31 (a) of Act No. 42 of 1996.]

(*f*) conduct, oversee or scrutinise any election or ballot of a registered *trade union* or registered *employers' organisation* if asked to do so by that *trade union* or *employers' organisation*;

(*g*) publish guidelines in relation to any matter dealt with in *this Act*;

(*h*) conduct and publish research into matters relevant to its functions.

(*i*) . . . . . .

[Para. (i) deleted by s. 31 (a) of Act No. 42 of 1996.]

(2A) The Commission may make rules regulating—

(*a*) the practice and procedure in connection with the resolution of a *dispute* through conciliation or arbitration;

(*b*) the process by which conciliation is initiated, and the form, content and use of that process;

(*c*) the process by which arbitration or arbitration proceedings are initiated, and the form, content and use of that process;

(*d*) the joinder of any person having an interest in the *dispute* in any conciliation and arbitration proceedings;

(*e*) the intervention of any person as an applicant or respondent in conciliation or arbitration proceedings;

(*f*) the amendment of any citation and the substitution of any party for another in conciliation or arbitration proceedings;

(*g*) the hours during which offices of the Commission will be open to receive any process;

(*h*) any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to any proceedings;

(*i*) the forms to be used by parties and the Commission;

(*j*) the basis on which a commissioner may make any order as to costs in any arbitration;

(*k*) the right of any party to be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those

proceedings;

[Para. (k) substituted by s. 18 (d) of Act No. 6 of 2014.]

(*k*A) the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings;

[Para. (kA) inserted by s. 18 (e) of Act No. 6 of 2014.]

(*l*) the circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and

(*m*) all other matters incidental to performing the functions of the Commission.

[Sub-s. (2A) inserted by s. 22 (a) of Act No. 12 of 2002.]

(3) The Commission may provide *employees,* employers, registered *trade unions,* registered *employers' organisations,* federations of *trade unions,* federations of *employers' organisations* or *councils* with advice or training relating to the primary objects of *this Act* or any other employment law, including but not limited to—

(*a*) establishing collective bargaining structures;

(*b*) designing, establishing and electing *workplace forums* and creating deadlock-breaking mechanisms;

(*c*) the functioning of *workplace forums*;

(*d*) preventing and resolving *disputes* and *employees'* grievances;

(*e*) disciplinary procedures;

(*f*) procedures in relation to *dismissals*;

(*g*) the process of restructuring the *workplace*;

(*h*) affirmative action and equal opportunity programmes; and

(*i*) the prevention of sexual harassment in the *workplace*.

[Sub-s. (3) amended by s. 18 (f) of Act No. 6 of 2014. Para. (i) substituted by s. 31 (b) of Act No. 42 of 1996.]

(4) The Commission must perform any other duties imposed, and may exercise any other powers conferred, on it by or in terms of *this Act* and is competent to perform any other function entrusted to it by any other law.

(5) The governing body's rules of procedure, the terms of appointment of its members and other administrative matters are dealt with in Schedule 3.

(6) (*a*) A rule made under subsection (2) (cA) or (2A) must be published in the *Government Gazette*. The Commission will be responsible to ensure that the publication occurs.

(*b*) A rule so made will not have any legal force or effect unless it has been so published.

(*c*) A rule so made takes effect from the date of publication unless a later date is stipulated.

[Sub-s. (6) added by s. 6 (b) of Act No. 127 of 1998 and substituted by s. 22 (b) of Act No. 12 of 2002.]

116. Governing body of Commission.—(1) The Commission will be governed by the governing body, whose acts are acts of the Commission.26

(2) The governing body consists of—

(*a*) a chairperson and nine other members, each nominated by *NEDLAC* and appointed27 by the *Minister* to hold office for a period of three years; and

(*b*) the *director* of the Commission, who—

(i) is a member of the governing body only by virtue of having been appointed *director*; and

(ii) may not vote at meetings of the governing body.

(3) *NEDLAC* must nominate—

(*a*) one independent person for the office of chairperson;

(*b*) three persons proposed by those voting members of *NEDLAC* who represent organised labour; and

(*c*) three persons proposed by those voting members of *NEDLAC* who represent organised business;

(*d*) three persons proposed by those voting members of *NEDLAC* who represent the State.

(Date of commencement of s. 116: 1 January, 1996.)

(4) The governing body may appoint any of its members to act as chairperson whenever—

(*a*) the chairperson is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of the chairperson; or

(*b*) the office of the chairperson is vacant.

[Sub-s. (4) added by s. 12 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(5) An acting chairperson is competent to exercise and perform any of the powers of the chairperson.

[Sub-s. (5) added by s. 12 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

117. Commissioners of Commission.—(1) The governing body must appoint as commissioners as many competent persons as it considers necessary to perform the functions of commissioners by or in terms of *this Act* or any other law.

(2) The governing body—

(*a*) may appoint each commissioner—

(i) on either a full-time or a part-time basis; and

(ii) to be either a commissioner or a senior commissioner;

(*b*) must appoint each commissioner for a fixed term determined by the governing body at the time of appointment;

(*c*) may appoint a commissioner, who is not a senior commissioner, for a probationary period; and

(*d*) when making appointments, must have due regard to the need to constitute a Commission that is independent and competent and representative in respect of race and gender.

(3) Any reference in *this Act* to a commissioner must be interpreted also to mean a senior commissioner, unless otherwise indicated.

(4) The governing body must determine the commissioners' *remuneration*, allowances and any other terms and conditions of appointment not contained in this section.

(5) A commissioner may resign by giving written notice to the governing body.

(6) The governing body must prepare a code of conduct for the commissioners and ensure that they comply with the code of conduct in performing their functions.

(7) The governing body may remove a commissioner from office for—

(*a*) serious misconduct;

(*b*) incapacity; or

(*c*) a material violation of the Commissioner's code of conduct.

(8) Each commissioner is responsible to the *director* for the performance of the commissioner's functions.

(Date of commencement of s. 117: 1 January, 1996.)

118. Director of Commission.—(1) The governing body must appoint, as *director* of the Commission, a person who—

(*a*) is skilled and experienced in labour relations and dispute resolution; and

(*b*) has not been convicted of any offence involving dishonesty.

(2) The *director* must—

(*a*) perform the functions that are—

(i) conferred on the *director* by or in terms of *this Act* or by any other law;

(ii) delegated to the *director* by the governing body;

(*b*) manage and direct the activities of the Commission; and

(*c*) supervise the Commission's staff.

(3) The governing body must determine the *director's remuneration*, allowances and any other terms and conditions of appointment not contained in Schedule 3.

(4) A person appointed *director* automatically holds the office of a senior commissioner.

(5) Despite subsection (4), the provisions of section 117, with the exception of section 117 (6), do not apply to the *director*.

(6) The *director*, in consultation with the governing body, may delegate any of the functions of that office, except the functions mentioned in sections 120 and 138 (8), to a commissioner.

[Sub-s. (6) added by s. 7 of Act No. 127 of 1998.]

(Date of commencement of s. 118: 1 January, 1996.)

119. Acting director of Commission.—(1) The chairperson of the governing body may appoint any suitable

person to act as *director* whenever—

(*a*) the *director* is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of *director*; or

(*b*) the office of *director* is vacant.

(2) Only a senior commissioner may be appointed as acting director.

(3) An acting director is competent to exercise and perform any of the powers and functions of the *director*.

(Date of commencement of s. 119: 1 January, 1996.)

120. Staff of Commission.—(1) The *director* may appoint staff after consulting the governing body.

(2) The governing body must determine the *remuneration* and allowances and any other terms and conditions of appointment of staff members.

(Date of commencement of s. 120: 1 January, 1996.)

121. Establishment of committees of Commission.—(1) The governing body may establish committees to assist the Commission.

(2) A committee may consist of any combination of the following persons—

(*a*) a member of the governing body;

(*b*) the *director*;

(*c*) a commissioner;

(*d*) a staff member of the Commission; and

(*e*) any other person.

(3) The governing body must determine the *remuneration* and allowances and any other terms and conditions of appointment of committee members referred to in subsection (2) (e).

(4) The governing body may at any time vary or set aside a decision of a committee.

(5) The governing body may dissolve any committee.

(Date of commencement of s. 121: 1 January, 1996.)

122. Finances of Commission.—(1) The Commission will be financed and provided with working capital from—

(*a*) the moneys that the *Minister*, with the agreement of the Minister of Finance, must allocate to the Commission from public funds at the commencement of *this Act*;

(*b*) the moneys that Parliament may appropriate to the Commission from time to time;

(*c*) fees payable to the Commission in terms of *this Act*;

(*d*) grants, donations and bequests made to it; and

(*e*) income earned on the surplus moneys deposited or invested.

(2) The financial year of the Commission begins on 1 April in each year and ends on 31 March of the following year, except the first financial year which begins on the day *this Act* commences and ends on the first following 31 March.

(3) In each financial year, at a time determined by the *Minister*, the Commission must submit to the *Minister* a statement of the Commission's estimated income and expenditure, and requested appropriation from Parliament, for the following financial year.

(Date of commencement of s. 122: 13 September, 1996.)

123. Circumstances in which Commission may charge fees.—(1) The Commission may charge a fee only for —

(*a*) resolving *disputes* which are referred to it, in circumstances in which *this Act* allows the Commission, or a commissioner, to charge a fee;

(*b*) conducting, overseeing or scrutinising any election or ballot at the request of a registered *trade union* or *employers' organisation*; and

(*c*) providing advice or training in terms of section 115 (3).

(2) The Commission may not charge a fee unless—

(*a*) the governing body has established a tariff of fees; and

(*b*) the fee that is charged is in accordance with that tariff.

(3) The Commission must publish the tariff in the *Government Gazette*.

124. Contracting by Commission, and Commission working in association with any person.—(1) The governing body may—

(*a*) contract with any person to do work for the Commission or contract with an accredited agency to perform, whether for reward or otherwise, any function of the Commission on its behalf; and

[Para. (a) substituted by s. 32 of Act No. 42 of 1996.]

(*b*) perform any function of the Commission in association with any person.

(2) Every person with whom the Commission contracts or associates is bound by the requirement of independence that binds the Commission.

(Date of commencement of s. 124: 1 January, 1996.)

125. Delegation of governing body's powers, functions and duties.—(1) The governing body may delegate in writing any of its functions, other than the functions listed below, to any member of the governing body, the *director*, a commissioner, or any committee established by the Commission. The functions that the governing body may not delegate are—

(*a*) appointing the *director*;

(*b*) appointing commissioners, or removing a commissioner from office;

(*c*) depositing or investing surplus money;

(*d*) accrediting *councils* or private agencies, or amending, withdrawing or renewing their accreditation; or

(*e*) sub-sidising accredited *councils* or accredited agencies.

(2) The governing body may attach conditions to a delegation and may amend or revoke a delegation at any time.

(3) A function delegated to the *director* may be performed by any commissioner or staff member of the Commission authorised by the *director*, unless the terms of that delegation prevent the *director* from doing so.

(4) The governing body may vary or set aside any decision made by a person acting in terms of any delegation made in terms of subsection (1).

(5) The governing body, by delegating any function, is not divested of any of its powers, nor is it relieved of any function or duty that it may have delegated. This rule also applies if the *director* sub-delegates the performance of a function in terms of subsection (3).

(Date of commencement of s. 125: 1 January, 1996.)

126. Limitation of liability and limitation on disclosure of information.—(1) In this section, "the Commission" means—

(*a*) the governing body;

(*b*) a member of the governing body;

(*c*) the *director*;

(*d*) a commissioner;

(*e*) a staff member of the Commission;

(*f*) a member of any committee established by the governing body; and

(*g*) any person with whom the governing body has contracted to do work for, or in association with whom it performs a function of, the Commission.

(2) The Commission is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.

(3) The Commission may not disclose to any person or in any court any information, knowledge or document that it acquired on a confidential basis or without prejudice in the course of performing its functions except on the order of a court.

PART B—Accreditation of and Subsidy to Councils and Private Agencies

127. Accreditation of councils and private agencies.—(1) Any *council* or private agency may apply to the governing body in the *prescribed* form for accreditation and for accreditation of the persons to perform any of the following functions—

(*a*) resolving *disputes* through conciliation; and

(*b*) arbitrating *disputes* that remain unresolved after conciliation, if *this Act* requires arbitration.

[Sub-s. (1) amended by s. 13 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(2) For the purposes of this section, the reference to *disputes* must be interpreted to exclude *disputes* as contemplated in—

(*a*) sections 16, 21 and 22;28

(*b*) section 24 (2) to (5);29

(*c*) section 24 (6) and (7) and section 26 (11);30

(*d*) section 45;31

(*e*) section 61 (5) to (8);32

(*f*) section 62;33

(*g*) section 63;34

(*h*) section 69 (8) to (10);35

(*i*) section 86;36

(*j*) section 89;37

(*k*) section 94.38

(3) The governing body may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the governing body.

(4) The governing body may accredit an applicant to perform any function for which it seeks accreditation, after considering the application, any further information provided by the applicant and whether—

(*a*) the services provided by the applicant meet the Commission's standards;

(*b*) the applicant is able to conduct its activities effectively;

(*c*) the persons appointed by the applicant to perform those functions will do so in a manner independent of the State, any political party, *trade union*, employer, *employers' organisation*, federation of *trade unions* or federation of *employers' organisations*;

(*d*) the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers;

(*e*) the applicant has an acceptable code of conduct to govern the persons whom it appoints to perform those functions;

(*f*) the applicant uses acceptable disciplinary procedures to ensure that each person it appoints to perform those functions will subscribe, and adhere, to the code of conduct; and

[Para. (f) amended by s. 33 (a) of Act No. 42 of 1996.]

(*g*) the applicant promotes a service that is broadly representative of South African society.

[Para. (g) amended by s. 33 (b) of Act No. 42 of 1996.]

(*h*) . . . . . .

[Para. (h) deleted by s. 33 (c) of Act No. 42 of 1996.]

(5) If the governing body decides—

(*a*) to accredit the applicant, the governing body must—

(i) enter the applicant's name in the register of accredited *councils* or the register of accredited agencies;

(ii) issue a certificate of accreditation in the applicant's name stating the period and other terms of accreditation;

(iii) send the certificate to the applicant; and

(iv) . . . . . .

[Sub-para. (iv) deleted by s. 23 (a) of Act No. 12 of 2002.]

(*b*) not to accredit the applicant, the governing body must advise the unsuccessful applicant in writing of its decision.

(5A) The governing body must annually publish a list of accredited councils and accredited agencies.

[Sub-s. (5A) inserted by s. 23 (b) of Act No. 12 of 2002.]

(6) The terms of accreditation must state the extent to which the provisions of each section in Part C of this

Chapter apply to the accredited *council* or accredited agency.

(7) (*a*) Any person may inspect the registers and certificates of accredited *councils* and accredited agencies kept in the Commission's offices.

(*b*) The Commission must provide a certified copy of, or extract from, any of the documents referred to in paragraph (a) to any person who has paid the *prescribed* fee.

(Date of commencement of s. 127: 13 September, 1996.)

128. General provisions relating to accreditation.—(1) (*a*) An accredited *council* or accredited agency may charge a fee for performing any of the functions for which it is accredited in circumstances in which this Act allows a commissioner to charge a fee.

[Para. (a) substituted by s. 34 of Act No. 42 of 1996 and by s. 24 (a) of Act No. 12 of 2002.]

(*b*) A fee charged in terms of paragraph (a) must be in accordance with the tariff of fees determined by the Commission.

(2) (*a*) An accredited *council*, accredited agency, or any person engaged by either of them to perform the functions for which it has been accredited, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising those functions.

(*b*) An accredited *council*, accredited agency, or any person engaged by either of them to perform the functions for which it has been accredited, may not disclose to any person or in any court any information, knowledge or document that it or that person acquired on a confidential basis or without prejudice in the course of performing those functions except on the order of a court.

(Date of commencement of s. 128: 13 September, 1996.)

(3) (*a*) (i) An accredited *council* may confer on any person who is accredited by the governing body and appointed by the *council* to resolve a *dispute*, the powers of a commissioner in terms of section 142, read with the changes required by the context.

(ii) For this purpose, any reference in that section to the *director* must be read as a reference to the secretary of the *bargaining council*.

(*b*) An accredited private agency may confer on any person who is accredited by the governing body and appointed by the agency to resolve a *dispute*, the powers of a commissioner in terms of section 142 (i) (*a*) to (*e*), (2) and (7) to (9), read with the changes required by the context.

[Sub-s. (3) added by s. 24 (b) of Act No. 12 of 2002 and substituted by s. 14 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

129. Amendment of accreditation.—(1) An accredited *council* or accredited agency may apply to the governing body in the *prescribed* form to amend its accreditation.

(2) The governing body must treat the application as an application in terms of section 127.

130. Withdrawal of accreditation.— If an accredited *council*, accredited agency or a person accredited by the governing body fails to comply to a material extent with the terms of its accreditation, the governing body may withdraw its accreditation after having given reasonable notice of the withdrawal to that *council*, accredited agency or the accredited person.

[S. 130 substituted by s. 15 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

131. Application to renew accreditation.—(1) An accredited *council* or accredited agency may apply to the governing body in the *prescribed* form to renew its accreditation either in the current or in an amended form.

(2) The governing body must treat the application for renewal as an application in terms of section 127.

132. Subsidy to council or private agency.—(1) (*a*) Any *council* may apply to the governing body in the *prescribed* form for a subsidy for performing any dispute resolution functions that the *council* is required to perform in terms of *this Act*, and for training persons to perform those functions.

(*b*) Any accredited agency, or a private agency that has applied for accreditation, may apply to the governing body in the *prescribed* form for a subsidy for performing any dispute resolution functions for which it is accredited or has applied for accreditation, and for training persons to perform those functions.

[Sub-s. (1) substituted by s. 35 of Act No. 42 of 1996.]

(2) The governing body may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the governing body.

(3) The governing body may grant a subsidy to the applicant after considering the application, any further information provided by the applicant and—

(*a*) the need for the performance by the applicant of the functions for which it is accredited;

(*b*) the extent to which the public uses the applicant to perform the functions for which it is accredited;

(*c*) the cost to users for the performance by the applicant of the functions for which it is accredited:

(*d*) the reasons for seeking the subsidy;

(*e*) the amount requested; and

(*f*) the applicant's ability to manage its financial affairs in accordance with established accounting practice, principles and procedures.

(4) If the governing body decides—

(*a*) to grant a subsidy to the applicant, the governing body must—

(i) notify the applicant in writing of the amount, duration and the terms of the subsidy; and

(ii) as soon as practicable after the decision, publish the written notice in the *Government Gazette*; or

(*b*) not to grant a subsidy to the applicant, the governing body must advise the unsuccessful applicant in writing of its decision.

(5) A subsidy granted in terms of subsection (4) (a)—

(*a*) may not be paid to a *council* or private agency unless it has been accredited; and

(*b*) lapses at the end of the Commission's financial year within which it was granted.

(6) (*a*) Any person may inspect a written notice referred to in subsection (4) (a) in the Commission's offices.

(*b*) The Commission must provide a certified copy of, or extract from, any written notice referred to in paragraph (a) to any person who has paid the *prescribed* fee.

(7) If an accredited *council* or accredited agency fails to comply to a material extent with the terms of its subsidy, the governing body may withdraw the subsidy after having given reasonable notice of the withdrawal to that *council* or agency.

(8) (*a*) An accredited *council* or accredited agency that has been granted a subsidy may apply to the governing body in the *prescribed* form to renew its subsidy, either in the current or in an amended form and amount.

(*b*) The governing body must treat the application for renewal as an application in terms of subsections (1) to (4).

(Date of commencement of s. 132: 13 September, 1996.)

PART C—Resolution of Disputes under Auspices of Commission

133. Resolution of disputes under auspices of Commission.—(1) The Commission must appoint a commissioner to attempt to resolve through conciliation—

(*a*) any *dispute* referred to it in terms of section 134; and

(*b*) any other *dispute* that has been referred to it in terms of *this Act*.

(2) If a *dispute* remains unresolved after conciliation, the Commission must arbitrate the *dispute* if—

(*a*) *this Act* requires the *dispute* to be arbitrated and any party to the *dispute* has requested that the *dispute* be resolved through arbitration; or

(*b*) all the parties to the *dispute* in respect of which the Labour Court has jurisdiction consent in writing to arbitration under the auspices of the Commission.

[Sub-s. (2) substituted by s. 25 of Act No. 12 of 2002.]

134. Disputes about matters of mutual interest.—(1) Any party to a *dispute* about a matter of mutual interest may refer the *dispute* in writing to the Commission, if the parties to the *dispute* are—

(*a*) on the one side—

(i) one or more *trade unions*;

(ii) one or more *employees*; or

(iii) one or more *trade unions* and one or more *employees*; and

(*b*) on the other side—

(i) one or more *employers' organisations*;

(ii) one or more employers; or

(iii) one or more *employers' organisations* and one or more employers.

(2) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been

served on all the other parties to the *dispute*.

135. Resolution of disputes through conciliation.—(1) When a *dispute* has been referred to the Commission, the Commission must appoint a commissioner to attempt to resolve it through conciliation.

(2) The appointed commissioner must attempt to resolve the *dispute* through conciliation within 30 days of the date the Commission received the referral: However the parties may agree to extend the 30-day period.

(2A) If an extension of the 30-day period referred to in subsection (2) is necessary to ensure a meaningful conciliation process, the commissioner or a party may apply to the director in accordance with any rules made in terms of section 115 (2A) for an extension of the period, which may not exceed five days.

[Sub-s. (2A) inserted by s. 16 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(2B) The director may only extend the period referred to in subsection (2A) if the director is satisfied that—

(*a*) an extension is necessary to ensure a meaningful conciliation process;

(*b*) the refusal to agree to the extension is unreasonable; and

(*c*) there are reasonable prospects of reaching an agreement.

[Sub-s. (2B) inserted by s. 16 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(2C) Subsections (2A) and (2B) do not apply to instances where the State is the employer.

[Sub-s. (2C) inserted by s. 16 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(3) The commissioner must determine a process to attempt to resolve the *dispute* which may include—

(*a*) mediating the *dispute*;

(*b*) conducting a fact-finding exercise; and

(*c*) making a recommendation to the parties, which may be in the form of an advisory arbitration award.

(3A) If a single commissioner has been appointed, in terms of subsection (1), in respect of more than one *dispute* involving the same parties, that commissioner may consolidate the conciliation proceedings so that all the *disputes* concerned may be dealt with in the same proceedings.

[Sub-s. (3A) inserted by s. 8 (a) of Act No. 127 of 1998.]

(4) . . . . . .

[Sub-s. (4) substituted by s. 8 (b) of Act No. 127 of 1998 and deleted by s. 26 of Act No. 12 of 2002.]

(5) When conciliation has failed, or at the end of the 30-day period or any further period agreed between the parties—

(*a*) the commissioner must issue a certificate stating whether or not the *dispute* has been resolved;

(*b*) the Commission must *serve* a copy of that certificate on each party to the *dispute* or the person who represented a party in the conciliation proceedings; and

(*c*) the commissioner must file the original of that certificate with the Commission.

[Sub-s. (5) amended by s. 36 (b) of Act No. 42 of 1996.]

(6) (*a*) If a *dispute* about a matter of mutual interest has been referred to the Commission and the parties to the *dispute* are engaged in an *essential service* then, despite subsection (1), the parties may consent within seven days of the date the Commission received the referral—

(i) to the appointment of a specific commissioner by the Commission to attempt to resolve the *dispute* through conciliation; and

(ii) to that commissioner's terms of reference.

(*b*) If the parties do not consent to either of those matters within the seven day period, the Commission must as soon as possible—

(i) appoint a commissioner to attempt to resolve the *dispute*; and

(ii) determine the commissioner's terms of reference.

136. Appointment of commissioner to resolve dispute through arbitration.—(1) If *this Act* requires a *dispute* to be resolved through arbitration, the Commission must appoint a commissioner to arbitrate that *dispute* if—

(*a*) a commissioner has issued a certificate stating that the *dispute* remains unresolved; and

(*b*) within 90 days after the date on which that certificate was issued, any party to the *dispute* has requested that the *dispute* be resolved through arbitration. However, the Commission, on good cause shown, may condone a party's non-observance of that time-frame and allow a request for arbitration filed by the party after the expiry of the 90-day period.

[Para. (b) substituted by s. 9 (a) of Act No. 127 of 1998.]

(2) A commissioner appointed in terms of subsection (1) may be the same commissioner who attempted to resolve the *dispute* through conciliation.

(3) Any party to the *dispute* who wants to object to the arbitration also being conducted by the commissioner who conciliated had attempted to resolve the *dispute* through conciliation, may do so by filing an objection in that regard with the Commission within seven days after the date on which the commissioner's certificate was issued, and must satisfy the Commission that a copy of the objection has been *served* on all the other parties to the *dispute*.

[Sub-s. (3) substituted by s. 9 (b) of Act No. 127 of 1998.]

(4) When the Commission receives an objection it must appoint another commissioner to resolve the *dispute* by arbitration.

(5) (*a*) The parties to a *dispute* may request the Commission, in appointing a commissioner in terms of subsection (1) or (4), to take into account their stated preference, to the extent that this is reasonably practicable in all the circumstances.

(*b*) The stated preference contemplated in paragraph (a) must—

(i) be in writing;

(ii) list no more than five commissioners;

(iii) state that the request is made with the agreement of all the parties to the *dispute*; and

(iv) be submitted within 48 hours of the date of the certificate referred to in subsection (1) (a).

(6) If the circumstances contemplated in subsection (1) exist and the parties to the *dispute* are engaged in an *essential service* then the provisions of section 135 (6) apply, read with the changes required by the context, to the appointment of a commissioner to resolve the *dispute* through arbitration.

137. Appointment of senior commissioner to resolve dispute through arbitration.—(1) In the circumstances contemplated in section 136 (1), any party to the *dispute* may apply to the *director* to appoint a senior commissioner to attempt to resolve the *dispute* through arbitration.

(2) When considering whether the *dispute* should be referred to a senior commissioner, the *director* must hear the party making the application, any other party to the *dispute* and the commissioner who conciliated the *dispute*.

(3) The *director* may appoint a senior commissioner to resolve the *dispute* through arbitration, after having considered—

(*a*) the nature of the questions of law raised by the *dispute*;

(*b*) the complexity of the *dispute*;

(*c*) whether there are conflicting arbitration awards that are relevant to the *dispute*; and

(*d*) the public interest.

(4) The *director* must notify the parties to the *dispute* of the decision and—

(*a*) if the application has been granted, appoint a senior commissioner to arbitrate the *dispute*; or

(*b*) if the application has been refused, confirm the appointment of the commissioner initially appointed, subject to section 136 (4).

[Para. (b) substituted by s. 37 of Act No. 42 of 1996.]

(5) The *director's* decision is final and binding.

(6) No person may apply to any court of law to review the *director's* decision until the *dispute* has been arbitrated.

138. General provisions for arbitration proceedings.—(1) The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the *dispute* fairly and quickly, but must deal with the substantial merits of the *dispute* with the minimum of legal formalities.

(2) Subject to the discretion of the commissioner as to the appropriate form of the proceedings, a party to the *dispute* may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the commissioner.

(3) If all the parties consent, the commissioner may suspend the arbitration proceedings and attempt to resolve the *dispute* through conciliation.

(4) . . . . . .

[Sub-s. (4) substituted by s. 10 of Act No. 127 of 1998 and deleted by s. 27 (a) of Act No. 12 of 2002.]

(5) If a party to the *dispute* fails to appear in person or to be represented at the arbitration proceedings, and that party—

(*a*) had referred the *dispute* to the Commission, the commissioner may dismiss the matter; or

(*b*) had not referred the *dispute* to the Commission, the commissioner may—

(i) continue with the arbitration proceedings in the absence of that party; or

(ii) adjourn the arbitration proceedings to a later date.

(6) The commissioner must take into account any *code of good practice* that has been issued by *NEDLAC* or guidelines published by the Commission in accordance with the provisions of *this Act* that is relevant to a matter being considered in the arbitration proceedings.

(7) Within 14 days of the conclusion of the arbitration proceedings—

(*a*) the commissioner must issue an arbitration award with brief reasons, signed by that commissioner;

(*b*) the Commission must *serve* a copy of that award on each party to the *dispute* or the person who represented a party in the arbitration proceedings; and

(*c*) . . . . . .

[Para. (c) deleted by s. 19 of Act No. 6 of 2014.]

(8) On good cause shown, the *director* may extend the period within which the arbitration award and the reasons are to be *served* and filed.

(9) The commissioner may make any appropriate arbitration award in terms of *this Act*, including, but not limited to, an award—

(*a*) that gives effect to any *collective agreement*;

(*b*) that gives effect to the provisions and primary objects of *this Act*;

(*c*) that includes, or is in the form of, a declaratory order.

(10) The commissioner may make an order for the payment of costs according to the requirements of law and fairness in accordance with rules made by the Commission in terms of section 115 (2A) (j) and having regard to—

(*a*) any relevant Code of Good Practice issued by *NEDLAC* in terms of section 203;

(*b*) any relevant guideline issued by the Commission.

[Sub-s. (10) substituted by s. 27 (b) of Act No. 12 of 2002.]

139. Special provisions for arbitrating disputes in essential services.—(1) If a *dispute* about a matter of mutual interest proceeds to arbitration and any party is engaged in an *essential service*—

(*a*) within 30 days of the date of the certificate referred to in section 136 (1) (a), or within a further period agreed between the parties to the *dispute*, the commissioner must complete the arbitration and issue an arbitration award with brief reasons signed by that commissioner;

(*b*) the Commission must *serve* a copy of that award on each party to the *dispute* or the person who represented a party in the arbitration proceedings; and

(*c*) the Commission must file the original of that award with the registrar of the Labour Court.

(2) The commissioner may not include an order for costs in the arbitration award unless a party, or the person who represented the party in the arbitration proceedings, acted in a frivolous or vexatious manner in its conduct during the arbitration proceedings.

140. Special provisions for arbitrations about dismissals for reasons related to conduct or capacity.—(1) . . . . . .

[Sub-s. (1) deleted by s. 28 of Act No. 12 of 2002.]

(2) If, in terms of section 194 (1), the commissioner finds that the *dismissal* is procedurally unfair, the commissioner may charge the employer an arbitration fee.

141. Resolution of disputes if parties consent to arbitration under auspices of Commission.—(1) If a *dispute* remains unresolved after conciliation, the Commission must arbitrate the *dispute* if a party to the *dispute* would otherwise be entitled to refer the *dispute* to the Labour Court for adjudication and, instead, all the parties agree in writing to arbitration under the auspices of the Commission.

[Sub-s. (1) substituted by s. 29 (a) of Act No. 12 of 2002.]

(2) The arbitration proceedings must be conducted in accordance with the provisions of sections 136, 137 and 138, read with the changes required by the context.

(3) The arbitration agreement contemplated in subsection (1) may be terminated only with the written consent of all the parties to that agreement, unless the agreement itself provides otherwise.

[Sub-s. (3) substituted by s. 29 (b) of Act No. 12 of 2002.]

(4) Any party to the arbitration agreement may apply to the Labour Court at any time to vary or set aside that agreement, which the Court may do on good cause.

(5) (*a*) If any party to an arbitration agreement commences proceedings in the Labour Court against any other party to that agreement about any matter that the parties agreed to refer to arbitration, any party to those proceedings may ask the Court—

(i) to stay those proceedings and refer the *dispute* to arbitration; or

(ii) with the consent of the parties and where it is expedient to do so, continue with the proceedings with the Court acting as arbitrator, in which case the Court may only make an order corresponding to the award that an arbitrator could have made.

(*b*) If the Court is satisfied that there is sufficient reason for the *dispute* to be referred to arbitration in accordance with the arbitration agreement, the Court may stay those proceedings, on any conditions.

(6) If the provisions of subsection (1) apply, the commissioner may make an award that the Labour Court could have made.

[Sub-s. (6) amended by s. 39 of Act No. 42 of 1996.]

142. Powers of commissioner when attempting to resolve disputes.—(1) A commissioner who has been appointed to attempt to resolve a *dispute* may—

(*a*) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the *dispute*;

(*b*) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the *dispute*, to appear before the commissioner to be questioned or to produce that book, document or object;

(*c*) call, and if necessary subpoena, any expert to appear before the commissioner to give evidence relevant to the resolution of the *dispute*;

(*d*) call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the *dispute*;

(*e*) administer an oath or accept an affirmation from any person called to give evidence or be questioned;

(*f*) at any reasonable time, but only after obtaining the necessary written authorisation—

(i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the *dispute* is to be found or is suspected on reasonable grounds of being found there; and

(ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the *dispute*; and

(iii) take a statement in respect of any matter relevant to the resolution of the *dispute* from any person on the premises who is willing to make a statement; and

[Sub-para. (iii) added by s. 40 of Act No. 42 of 1996.]

(*g*) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Commission.

(2) A subpoena issued for any purpose in terms of subsection (1) must be signed by the *director* and must—

(*a*) specifically require the person named in it to appear before the commissioner;

(*b*) sufficiently identify the book, document or object to be produced; and

(*c*) state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in subsection (1) (f)—

(*a*) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 13 of the Constitution, and then only on the application of the commissioner setting out under oath or affirmation the following information—

(i) the nature of the *dispute*;

(ii) the relevance of any book, document or object to the resolution of the *dispute*;

(iii) the presence of any book, document or object on the premises; and

(iv) the need to enter, inspect or seize the book, document or object; and

(*b*) in all other cases, may be given by the *director*.

(4) The owner or occupier of any premises that a commissioner is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that a commissioner requires to enter those premises and to carry out the inspection or seizure.

(5) The commissioner must issue a receipt for any book, document or object seized in terms of subsection

(4).

(6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any document, book or object in terms of this section.

(7) (*a*) The Commission must pay the *prescribed* witness fee to each person who appears before a commissioner in response to a subpoena issued by the commissioner.

(*b*) Any person who requests the Commission to issue a subpoena must pay the *prescribed* witness fee to each person who appears before a commissioner in response to the subpoena and who remains in attendance until excused by the commissioner.

(*c*) The Commission may on good cause shown waive the requirement in paragraph (b) and pay to the witness the *prescribed* witness fee.

[Sub-s. (7) substituted by s. 30 (a) of Act No. 12 of 2002.]

(8) A person commits contempt of the Commission—

(*a*) if, after having been subpoenaed to appear before the commissioner, the person without good cause does not attend at the time and place stated in the subpoena;

(*b*) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the commissioner;

(*c*) by refusing to take the oath or to make an affirmation as a witness when a commissioner so requires;

(*d*) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subsection (6);

(*e*) if the person, without good cause, fails to produce any book, document or object specified in a subpoena to a commissioner;

(*f*) if the person wilfully hinders a commissioner in performing any function conferred by or in terms of *this Act*;

(*g*) if the person insults, disparages or belittles a commissioner, or prejudices or improperly influences the proceedings or improperly anticipates the commissioner's award;

(*h*) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;

(*i*) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

(9) (*a*) A commissioner may make a finding that a party is in contempt of the Commission for any of the reasons set out in subsection (8).

(*b*) The commissioner may refer the finding, together with the record of the proceedings, to the Labour Court for its decision in terms of subsection (11).

[Sub-s. (9) substituted by s. 30 (b) of Act No. 12 of 2002.]

(10) Before making a decision in terms of subsection (11), the Labour Court—

(*a*) must subpoena any person found in contempt to appear before it on a date determined by the Court;

(*b*) may subpoena any other person to appear before it on a date determined by the Court; and

(*c*) may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person's right to represent a party in the Commission and the Labour Court be suspended.

[Sub-s. (10) added by s. 30 (c) of Act No. 12 of 2002.]

(11) The Labour Court may confirm, vary or set aside the finding of a commissioner.

[Sub-s. (11) added by s. 30 (c) of Act No. 12 of 2002.]

(12) If any person fails to appear before the Labour Court pursuant to a subpoena issued in terms of subsection (10) (a), the Court may make any order that it deems appropriate in the absence of that person.

[Sub-s. (12) added by s. 30 (c) of Act No. 12 of 2002.]

142A. Making settlement agreement arbitration award.—(1) The Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any *dispute* that has been referred to the Commission, an arbitration award.

(2) For the purposes of subsection (1), a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is entitled to refer to arbitration in terms of either section 74 (4) or 75 (7).

[S. 142A inserted by s. 31 of Act No. 12 of 2002.]

143. Effect of arbitration awards.—(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.

[Sub-s. (1) substituted by s. 32 (a) of Act No. 12 of 2002 and by s. 20 (a) of Act No. 6 of 2014.]

(2) If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise.

(3) An arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1).

[Sub-s. (3) added by s. 32 (b) of Act No. 12 of 2002.]

(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court.

[Sub-s. (4) added by s. 32 (b) of Act No. 12 of 2002 and substituted by s. 20 (b) of Act No. 6 of 2014.]

(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

[Sub-s. (5) added by s. 20 (c) of Act No. 6 of 2014.]

(6) Subsections (1), (4) and (5), as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014, and applies to an arbitration award issued after such commencement date.

[Sub-s. (6) added by s. 20 (c) of Act No. 6 of 2014.]

144. Variation and rescision of arbitration awards and rulings.—Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the *director* for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling—

(*a*) erroneously sought or erroneously made in the absence of any party affected by that award;

(*b*) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;

[Para. (b) amended by s. 21 of Act No. 6 of 2014.]

(*c*) granted as a result of a mistake common to the parties to the proceedings; or

[Para. (c) amended by s. 21 of Act No. 6 of 2014.]

(*d*) made in the absence of any party, on good cause shown.

[S. 144 substituted by s. 33 of Act No. 12 of 2002. Para. (d) added by s. 21 of Act No. 6 of 2014.]

145. Review of arbitration awards.—(1) Any party to a *dispute* who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award—

(*a*) within six weeks of the date that the award was *served* on the applicant, unless the alleged defect involves the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004; or

[Para. (a) substituted by s. 36 (1) of Act No. 12 of 2004.]

(*b*) if the alleged defect involves an offence referred to in paragraph (a), within six weeks of the date that the applicant discovers such offence.

[Para. (b) substituted by s. 36 (1) of Act No. 12 of 2004.]

(1A) The Labour Court may on good cause shown condone the late filing of an application in terms of subsection (1).

[Sub-s. (1A) inserted by s. 34 of Act No. 12 of 2002.]

(2) A defect referred to in subsection (1), means—

(*a*) that the commissioner—

(i) committed misconduct in relation to the duties of the commissioner as an arbitrator;

(ii) committed a gross irregularity in the conduct of the arbitration proceedings; or

(iii) exceeded the commissioner's powers; or

(*b*) that an award has been improperly obtained.

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) If the award is set aside, the Labour Court may—

(*a*) determine the *dispute* in the manner it considers appropriate; or

(*b*) make any order it considers appropriate about the procedures to be followed to determine the *dispute*.

(5) Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

[Sub-s. (5) added by s. 22 of Act No. 6 of 2014.]

(6) Judgment in an application brought under subsection (1) must be handed down as soon as reasonably possible.

[Sub-s. (6) added by s. 22 of Act No. 6 of 2014.]

(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).

[Sub-s. (7) added by s. 22 of Act No. 6 of 2014.]

(8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must —

(*a*) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

(*b*) in the case of an order of compensation, be equivalent to the amount of compensation awarded.

[Sub-s. (8) added by s. 22 of Act No. 6 of 2014.]

(9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.

[Sub-s. (9) added by s. 22 of Act No. 6 of 2014.]

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and subsection (9) applies to an arbitration award issued after such commencement date.

[Sub-s. (10) added by s. 22 of Act No. 6 of 2014.]

146. Exclusion of Arbitration Act.—The Arbitration Act, 1965 (Act No. 42 of 1965), does not apply to any arbitration under the auspices of the Commission.

147. Performance of dispute resolution functions by Commission in exceptional circumstances.—(1) (*a*) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* is about the interpretation or application of a *collective agreement*, the Commission may—

(i) refer the *dispute* for resolution in terms of the procedures provided for in that *collective agreement*; or

(ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

(*b*) The Commission may charge the parties to a *collective agreement* a fee for performing the dispute resolution functions if—

(i) their *collective agreement* does not provide a procedure as requested in section 24 (1);39 or

(ii) the procedure provided in the *collective agreement* is not operative.

(*c*) The Commission may charge a party to a *collective agreement* a fee if that party has frustrated the resolution of the *dispute*.

(2) (*a*) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the parties to the *dispute* are parties to a *council*, the Commission may—

(i) refer the *dispute* to the *council* for resolution; or

(ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

(*b*) The Commission may charge the parties to a *council* a fee for performing the dispute resolution functions if the *council's* dispute resolution procedures are not operative.

(3) (*a*) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the parties to the *dispute* fall within the *registered scope* of a *council* and that one or more parties to the *dispute* are not parties to the *council*, the Commission may—

(i) refer the *dispute* to the *council* for resolution; or

(ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

(*b*) The Commission may charge the parties to a *council* a fee for performing the dispute resolution functions if the *council's* dispute resolution procedures are not operative.

(4) (*a*) If a *dispute* has been referred to the Commission and not all the parties to the *dispute* fall within the *registered scope* of a *council* or fall within the *registered scope* of two or more *councils*, the Commission must resolve the *dispute* in terms of *this Act*.

(*b*) In the circumstances contemplated in paragraph (a), the Commission has exclusive jurisdiction to resolve that *dispute*.

(5) (*a*) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been referred to an accredited agency, the Commission may—

(i) refer the *dispute* to the accredited agency for resolution; or

(ii) appoint a commissioner to resolve the *dispute* in terms of *this Act*.

[Para. (a) amended by s. 41 (a) of Act No. 42 of 1996.]

(*b*) The Commission may—

(i) charge the accredited agency a fee for performing the dispute resolution functions if the accredited agency's dispute resolution procedures are not operative; and

(ii) review the continued accreditation of that agency.

(6) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been resolved through private dispute resolution in terms of a private agreement between the parties to the *dispute*, the Commission may—

(*a*) refer the *dispute* to the appropriate person or body for resolution through private dispute resolution procedures; or

(*b*) appoint a commissioner to resolve the *dispute* in terms of *this Act*.

[Sub-s. (6) substituted by s. 41 (b) of Act No. 42 of 1996.]

(6A) For the purpose of making a decision in terms of subsection (6), the Commission must appoint a commissioner to resolve the *dispute*—

(*a*) if an *employee* earning less than the threshold prescribed by the *Minister,* in terms of section 6 (3) of the *Basic Conditions of Employment Act,* is required to pay any part of the cost of the private *dispute* resolution procedures; or

(*b*) if the person or body appointed to resolve the *dispute* is not independent of the employer.

[Sub-s. (6A) inserted by s. 23 of Act No. 6 of 2014.]

(7) Where the Commission refers the *dispute* in terms of this section to a person or body other than a commissioner the date of the Commission's initial receipt of the *dispute* will be deemed to be the date on which the Commission referred the *dispute* elsewhere.

(8) The Commission may perform any of the dispute resolution functions of a *council* or an accredited agency appointed by the *council* if the *council* or accredited agency fails to perform its dispute resolution functions in circumstances where, in law, there is an obligation to perform them.

[Sub-s. (8) added by s. 41 (c) of Act No. 42 of 1996.]

(9) For the purposes of subsections (2) and (3), a party to a *council* includes the members of a registered *trade union* or registered *employers' organisation* that is a party to the *council*.

[Sub-s. (9) added by s. 41 (c) of Act No. 42 of 1996.]

148. Commission may provide advice.—(1) If asked, the Commission may advise any party to a *dispute* in terms of *this Act* about the procedure to be followed for the resolution of that *dispute*.

(2) In response to a request for advice, the Commission may provide the advice that it considers appropriate.

149. Commission may provide assistance.—(1) If asked, the Commission may assist an *employee* or employer who is a party to a *dispute*—

(*a*) together with Legal Aid South Africa,40 to arrange for advice or assistance by a *legal practitioner*;

[Para. (*a*) amended by s. 25 of Act No. 39 of 2014.]

(*b*) together with Legal Aid South Africa, to arrange for a *legal practitioner*—

(i) to attempt to avoid or settle any proceedings being instituted against an *employee* or employer in

terms of *this Act*;

(ii) to attempt to settle any proceedings instituted against an *employee* or employer in terms of *this Act*;

(iii) to institute on behalf of the *employee* or employer any proceedings in terms of *this Act*;

(iv) to defend or oppose on behalf of the *employee* or employer any proceedings instituted against the *employee* or employer in terms of *this Act*; or

[Para. (*b*) amended by s. 25 of Act No. 39 of 2014.]

(*c*) by providing any other form of assistance that the Commission considers appropriate.

(2) The Commission may provide the assistance referred to in subsection (1) after having considered—

(*a*) the nature of the questions of law raised by the *dispute*;

(*b*) the complexity of the *dispute*;

(*c*) whether there are conflicting arbitration awards that are relevant to the *dispute*; and

(*d*) the public interest.

(3) As soon as practicable after having received a request in terms of subsection (1), but not later than 30 days of the date the Commission received the request, the Commission must advise the applicant in writing whether or not it will assist the applicant and, if so, the form that the assistance will take.

150. Commission may appoint commissioner to conciliate in public interest.—(1) Despite any provision to the contrary in *this Act*, the *director* may appoint one or more commissioners who must attempt to resolve the *dispute* through conciliation, whether or not that *dispute* has been referred to the Commission or a *bargaining council*—

(*a*) with the consent of the parties; or

(*b*) in the absence of consent by the parties, if the *director* believes it is in the public interest to do so.

(2) Before appointing a commissioner in terms of this section, the *director* must consult—

(*a*) the parties to the *dispute*; and

(*b*) the secretary of a *bargaining council* with jurisdiction over the parties to the *dispute.*

(3) The *director* may appoint a commissioner who has already conciliated that *dispute.*

(4) In addition, to assist a commissioner appointed in terms of subsection (1), the *director* may appoint—

(*a*) one person from a list of at least five names submitted by the representatives of organised labour on the governing body of the Commission; and

(*b*) one person from a list of at least five names submitted by the representatives of organised business on the governing body of the Commission.

(5) Unless the parties to the *dispute* agree otherwise, the appointment of a commissioner in terms of this section does not affect any entitlement, of an *employee* to *strike* or an employer to *lock-out,* that the party to the dispute may have acquired in terms of Chapter IV.

[S. 150 amended by s. 35 (a) and (b) of Act No. 12 of 2002 and substituted by s. 24 of Act No. 6 of 2014.]

150A. Advisory arbitration panel in public interest.—(1) The *director* may appoint an advisory arbitration panel (referred to in sections 150A to 150D as the "panel") in the public interest to make an advisory arbitration award (referred to in sections 150 A to 150 D as the "award") in order to facilitate a dispute—

(*a*) on the *director's* own accord or on application of one of the parties to the *dispute*;

(*b*) after consultation in the *prescribed* manner with the parties to the *dispute*; and

(*c*) in the *prescribed* manner setting out the panel's terms of reference as provided for in section 150C (1).

(2) The *director* must establish an advisory arbitration panel contemplated in subsection (1) to facilitate a resolution of the *dispute* at any time after a commissioner has issued a certificate of unresolved *dispute* under section 135 (5) (a) or a notice of the commencement of the *strike* or *lockout* contemplated in section 64 (1) (b), (c) and (d), whichever is the earlier—

(*a*) subject to subsection (3)—

(i) if directed to do so by the *Minister*; or

(ii) on application by a party to the *dispute*;

(*b*) if ordered to do so by the Labour Court in terms of subsection (4); or

(*c*) by agreement of the parties.

(3) The *director* may only appoint the panel in terms of subsection (2) (a) if the *director* has reasonable grounds to believe that any one or more of the following circumstances exists—

(*a*) The *strike* or *lockout* is no longer functional to collective bargaining in that it has continued for a protracted period of time and no resolution of the *dispute* appears to be imminent;

(*b*) there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the *strike* or *lockout* through the threat or use of violence or the threat of or damage to property; or

(*c*) the *strike* or *lockout* causes or has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for the normal social and economic functioning of the community or society.

(4) The Labour Court may only make an order requiring the *director* to appoint the panel in terms of subsection (2) (b)—

(*a*) on application made by a person or association of persons that will be materially affected by any one or more of the circumstances contemplated in subsection (3) (b) and (c); and

(*b*) if the Court considers that there are reasonable grounds that any one or more of the circumstances contemplated in subsection (3) (b) and (c) exist.

(5) A person may not apply to any court of law to stay or review the establishment or proceedings of an advisory arbitration panel until the panel has issued its award.

[S. 150A inserted by s. 17 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

150B. Composition of advisory arbitration panel.—(1) The panel contemplated in section 150A (1) must consist of—

(*a*) a senior commissioner as the chairperson of the panel; and

(*b*) subject to subsection (2)—

(i) an assessor appointed by the employer party to the *dispute*; and

(ii) an assessor appointed by the trade union party to the *dispute*.

(2) If the employer or *trade union* party to the dispute fails or refuses to appoint an assessor within the prescribed time period, the *director* must appoint an assessor from the relevant list of assessors determined in terms of subsection (3).

(3) *NEDLAC* must, in the *prescribed* manner, provide the *director* with two lists of assessors which shall consist of—

(*a*) the employer list of assessors which must be determined by organised business as defined in section 1 of the National Economic Develop-ment and Labour Advisory Act, 1994 (Act No. 35 of 1994); and

(*b*) the *trade union* list of assessors which must be determined by organised labour as defined in section 1 of the Act referred to in paragraph (a).

(4) If the employer or *trade union* party to the *dispute* fails or refuses to participate in the proceedings of the panel established in terms of section 150A, the *director* must appoint a person with the requisite expertise to represent the interests of that party in the proceedings.

(5) The chairperson of the panel, after consultation with the assessors appointed in terms of this section, may—

(*a*) conduct the arbitration in a manner that the chairperson considers appropriate in order to make an advisory award fairly and quickly but must deal with the substantial merits of the *dispute* with minimal legal formalities;

(*b*) exercise the powers of a commissioner under section 142;

(*c*) order the disclosure of all relevant information—

(i) subject to section 16 (5), (10), (11), (12) and (13); and

(ii) only if that information is necessary in order to make the factual finding and recommendations contemplated in section 150C (1) (a) and (b).

(6) The panel must conduct its proceedings and issue an award within seven days of the arbitration hearing or any reasonable period extended by the *director* as the case may be, taking into account the urgency of a resolution of the *dispute* arising from the circumstances contemplated in section 150A (3) (a) to (c).

(7) The appointment of the panel does not interrupt or suspend the right to *strike* or the recourse to *lockout* in accordance with Chapter IV.

[S. 150B inserted by s. 17 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

150C. Advisory arbitration award.—(1) An award must be in the *prescribed* form and include—

(*a*) a report on factual findings;

(*b*) recommendations for the resolution of the *dispute*;

(*c*) motivation for why the recommendations ought to be accepted by the parties; and

(*d*) the seven-day period within which the parties to the *dispute* must either indicate acceptance or rejection of the award.

(2) If the chairperson is not able to secure consensus of both assessors in respect of the award contemplated in subsection (1), the chairperson must issue the award on behalf of the panel.

(3) The chairperson must serve the advisory arbitration award on the parties to the *dispute* to allow them to consider the award and consult and take such measures as may be necessary to ensure that the award is not made publicly available before the *Minister* has published the award in terms of subsection (7).

(4) A party to the dispute may apply to the chairperson in the *prescribed* form for an extension of the time period in subsection (1) (d) for no more than five days.

(5) (*a*) The parties to the *dispute* may indicate their acceptance or rejection of the award within the period contemplated in subsection (1) (d).

(*b*) If a party to the *dispute* fails to indicate either its acceptance or rejection of the award within the period contemplated in subsection (1) (d), the party is deemed to have accepted the award.

(*c*) If a party rejects the award, it must motivate its rejection in the *prescribed* manner.

(6) An employers' organisation or *trade union* party to a *dispute* must, in accordance with its constitution, consult with its members before rejecting an award in terms of subsection (5) (a).

(7) The *Minister* must, within four days of the award being issued, publish the award in the *prescribed* manner for public dissemination.

(8) Nothing in this section may be construed to prevent any party to the *dispute* to request the panel to reconvene in order to seek an explanation of the award or to mediate a settlement of the *dispute* based on the award or a variation of the award.

[S. 150C inserted by s. 17 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

150D. Effect of advisory arbitration award.—(1) An advisory arbitration award is only binding on a party and its members to the *dispute* if—

(*a*) one or more of the—

(i) *trade unions* party to the *dispute* has accepted or deemed to have accepted the award in terms of section 150C (5) (b) or subsection (2); or

(ii) employer organisations party to the *dispute* has accepted or is deemed to have accepted the award in terms of section 150C (5) (b); or

(*b*) it is binding in terms of subsection (3) or 150C (5) (b).

(2) Subject to subsection (3), the binding nature of an advisory arbitration award is determined in accordance with section 23 as if the award is a *collective agreement* for the purposes of that section.

(3) If the parties to the dispute are parties to a *bargaining council*—

(*a*) the binding nature of an award is determined in accordance with section 31 as if the award is a *collective agreement* for the purposes of that section;

(*b*) the *bargaining council* may, subject to paragraph (c), apply to the *Minister* to have the award extended in accordance with section 32 as if the award is a *collective agreement* for the purposes of that section, to persons who—

(i) are not members of the parties to the *council*; or

(ii) have rejected the award in terms of section 150C (5) (c);

(*c*) the Minister may extend the advisory arbitration award in accordance with section 32 as if the award is a *collective agreement* for the purposes of that section if the parties have been deemed to have accepted the award in terms of section 150C (5) (b).

[S. 150D inserted by s. 17 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

PART D—Labour Court

151. Establishment and status of Labour Court.—(1) The Labour Court is hereby established as a court of law and equity.

[Sub-s. (1) amended by s. 11 of Act No. 127 of 1998.]

(2) The Labour Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a Division of the High Court of South Africa has in

relation to matters under its jurisdiction.

[Sub-s. (2) substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(3) The Labour Court is a court of record.

152. Composition of Labour Court.—(1) The Labour Court consists of—

(*a*) a Judge President;

(*b*) a Deputy Judge President; and

(*c*) as many judges as the President may consider necessary, acting on the advice of *NEDLAC* and in consultation with the Minister of Justice and the Judge President of the Labour Court.

(2) The Labour Court is constituted before a single judge.

(3) The Labour Court may sit in as many separate courts as the available judges may allow.

153. Appointment of judges of Labour Court.—(1) (*a*) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission provided for in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), (in this Part and Part E called the Judicial Service Commission), and after consultation with the Minister of Justice, must appoint a Judge President of the Labour Court.

[Para. (a) substituted by s. 12 (a) (i) of Act No. 127 of 1998.]

(*b*) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, and after consultation with the Minister of Justice and the Judge President of the Labour Court must appoint the Deputy Judge President of the Labour Court.

[Para. (b) amended by s. 12 (a) (ii) of Act No. 127 of 1998.]

(2) The Judge President and the Deputy Judge President of the Labour Court—

(*a*) must be judges of the Supreme Court; and

(*b*) must have knowledge, experience and expertise in labour law.

(3) The Deputy Judge President must act as Judge President of the Labour Court whenever the Judge President is unable to do so for any reason.

(4) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, and after consultation with the Minister of Justice and the Judge President of the Labour Court may appoint one or more persons who meet the requirements of subsection (6) as judges of the Labour Court.

[Sub-s. (4) amended by s. 12 (b) of Act No. 127 of 1998.]

(5) The Minister of Justice**,** after consultation with the Judge President of the Labour Court, may appoint one or more persons who meet the requirements of subsection (6) to serve as acting judges of the Labour Court for such a period as the Minister of Justice in each case may determine.

[Sub-s. (5) substituted by s. 42 (a) of Act No. 42 of 1996.]

(6) A judge of the Labour Court must—

(*a*) (i) be a judge of the High Court; or

[Sub-para. (i) amended by s. 12 (c) of Act No. 127 of 1998.]

(ii) be a person who is a *legal practitioner*; and

[Sub-para. (ii) substituted by s. 42 (b) of Act No. 42 of 1996.]

(*b*) have knowledge, experience and expertise in labour law.

(Date of commencement of s. 153: 1 January, 1996.)

154. Tenure, remuneration and terms and conditions of appointment of Labour Court judges.—(1) A judge of the Labour Court holds office until discharged from active service in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

[Sub-s. (1) substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(2) A judge of the Labour Court who is also a judge of the High Court may resign as a judge of the Labour Court by giving written notice to the President.

[Sub-s. (2) substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(3) . . . . . .

[Sub-s. (3) amended by s. 13 of Act No. 127 of 1998 and deleted by s. 55 (1) (b) of Act No. 10 of 2013.]

(4) Neither the tenure of office nor the *remuneration* and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 2001, is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Court.

[Sub-s. (4) amended by s. 13 of Act No. 127 of 1998 and substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(5) The Judges' Remuneration and Conditions of Employment Act, 2001, as applicable to a judge of the High Court, apply, read with the changes required by the context, to a judge of the Labour Court who is not a judge of the High Court.

[Sub-s. (5) amended by s. 43 (a) of Act No. 42 of 1996, by s. 13 of Act No. 127 of 1998 and substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(6) A person who has been appointed a judge of the Labour Court and who is not a judge of the High Court may perform the functions of a judge of the Labour Court only after having taken an oath or made a solemn affirmation in the *prescribed* form before the Judge President of the Labour Court.

[Sub-s. (6) amended by s. 13 of Act No. 127 of 1998.]

(7) . . . . . .

[Sub-s. (7) amended by s. 13 of Act No. 127 of 1998 and deleted by s. 55 (1) (b) of Act No. 10 of 2013.]

(8) Despite the expiry of the period of a person's appointment as a judge of the Labour Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only—

(*a*) for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person's appointment or which, having been so disposed of before or after the expiry of that person's appointment, have been re-opened; and

(*b*) for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.

[Sub-s. (8) added by s. 43 (b) of Act No. 42 of 1996.]

(9) The provisions of subsections (4), (5), (6) and (8) apply, read with the changes required by the context, to acting judges appointed in terms of section 153 (5).

[Sub-s. (9) added by s. 43 (b) of Act No. 42 of 1996 and substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(10) (*a*) Any judge of the Labour Court holding office immediately before the commencement of Schedule 2 of the Superior Courts Act, 2013, who is not a judge of the High Court, may not later than 30 days after such commencement, inform the Minister of Justice in writing that he or she chooses to continue in office in terms of this section as it existed prior to such commencement.

(*b*) Any judge referred to in paragraph (a) who does not choose to continue in office in terms of this section as it existed prior to such commencement—

(i) shall continue to hold that office in accordance with this section as amended by Schedule 2 to the Superior Courts Act, 2013; and

(ii) his or her period of service as a Labour Court judge prior to such commencement shall, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001, be deemed to be active service as contemplated in that Act.

[Sub-s. (10) added by s. 55 (1) (b) of Act No. 10 of 2013.]

(Date of commencement of s. 154: 1 January, 1996.)

155. Officers of Labour Court.—(1) The Minister of Justice, subject to the laws governing the *public service*, must appoint the following officers of the Labour Court—

(*a*) a person who has experience and expertise in labour law and administration to be the registrar of the Labour Court; and

(*b*) one or more deputy registrars and so many other officers of the Labour Court as the administration of justice requires.

(2) (*a*) The officers of the Labour Court, under the supervision and control of the registrar of that Court must perform the administrative functions of the Labour Court.

(*b*) A deputy registrar of the Labour Court may perform any of the functions of the registrar of that Court that have been delegated generally or specifically to the deputy registrar.

(3) The deputy registrar of the Labour Court or, if there is more than one, the most senior will act as registrar of the Labour Court whenever—

(*a*) the registrar is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of registrar; or

(*b*) the office of registrar is vacant.

(4) The officers of the Labour Court must provide secretarial and administrative assistance to the Rules Board for Labour Courts.

(Date of commencement of s. 155: 1 January, 1996.)

156. Area of jurisdiction and seat of Labour Court.—(1) The Labour Court has jurisdiction in all the provinces of the *Republic*.

(2) The Minister of Justice, acting on the advice of *NEDLAC*, must determine the seat of the Labour Court.

(3) The functions of the Labour Court may be performed at any place in the *Republic*.

(Date of commencement of s. 156: 1 January, 1996.)

157. Jurisdiction of Labour Court.—(1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from—

(*a*) employment and from labour relations;

(*b*) any *dispute* over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and

(*c*) the application of any law for the administration of which the *Minister* is responsible.

[Sub-s. (2) substituted by s. 14 of Act No. 127 of 1998.]

(3) Any reference to the court in the Arbitration Act, 1965 (Act No. 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any *dispute* that may be referred to arbitration in terms of *this Act*.

(4) (*a*) The Labour Court may refuse to determine any *dispute*, other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the *dispute* through conciliation.

(*b*) A certificate issued by a commissioner or a *council* stating that a *dispute* remains unresolved is sufficient proof that an attempt has been made to resolve that *dispute* through conciliation.

(5) Except as provided for in section 158 (2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if *this Act* or any *employment law* requires the *dispute* to be resolved through arbitration.

[Sub-s. (5) substituted by s. 25 of Act No. 6 of 2014.]

158. Powers of Labour Court.—(1) The Labour Court may—

(*a*) make any appropriate order, including—

(i) the grant of urgent interim relief;

(ii) an interdict;

(iii) an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of *this Act*;

(iv) a declaratory order;

(v) an award of compensation in any circumstances contemplated in *this Act*;

(vi) an award of damages in any circumstances contemplated in *this Act*; and

(vii) an order for costs;

(*b*) order compliance with any provision of *this Act* or any *employment law*;

[Para. (b) substituted by s. 26 (a) of Act No. 6 of 2014.]

(*c*) make any arbitration award or any settlement agreement an order of the Court;

[Para. (c) substituted by s. 36 (a) of Act No. 12 of 2002.]

(*d*) request the Commission to conduct an investigation to assist the Court and to submit a report to the Court;

(*e*) determine a *dispute* between a registered *trade union* or registered *employers' organisation* and any one of the members or applicants for membership thereof, about any alleged non-compliance with—

(i) the constitution of that *trade union* or *employers' organisation* (as the case may be); or

(ii) section 26 (5) (b);

[Para. (e) substituted by s. 44 of Act No. 42 of 1996.]

(*f*) subject to the provisions of *this Act*, condone the late filing of any document with, or the late referral of any *dispute* to, the Court;

(*g*) subject to section 145, review the performance or purported performance of any function provided for in *this Act* on any grounds that are permissible in law;

[Para. (g) substituted by s. 36 (b) of Act No. 12 of 2002.]

(*h*) review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law;

(*i*) hear and determine any appeal in terms of section 35 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993); and

(*j*) deal with all matters necessary or incidental to performing its functions in terms of *this Act* or any other law.

(1A) For the purposes of subsection (1) (c), a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is only entitled to refer to arbitration in terms of section 22 (4), 74 (4) or 75 (7).

[Sub-s. (1A) inserted by s. 36 (c) of Act No. 12 of 2002.]

(1B) The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any *bargaining council* in terms of the provisions of *this Act* before the *issue in dispute* has been finally determined by the Commission or the *bargaining council,* as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the *issue in dispute* has been finally determined.

[Sub-s. (1B) inserted by s. 26 (b) of Act No. 6 of 2014.]

(2) If at any stage after a *dispute* has been referred to the Labour Court, it becomes apparent that the *dispute* ought to have been referred to arbitration, the Court may—

(*a*) stay the proceedings and refer the *dispute* to arbitration; or

(*b*) if it is expedient to do so, continue with the proceedings, in which case the Court may only make any order that a commissioner or arbitrator would have been entitled to make: Provided that in relation to the question of costs, the provisions of section 162 (2) (a) are applicable.

[Para. (b) substituted by s. 26 (c) of Act No. 6 of 2014.]

(3) The reference to "arbitration" in subsection (2) must be interpreted to include arbitration—

(*a*) under the auspices of the Commission;

(*b*) under the auspices of an accredited *council*;

(*c*) under the auspices of an accredited agency;

(*d*) in accordance with a private dispute resolution procedure; or

(*e*) if the *dispute* is about the interpretation or application of a *collective agreement*.

(4) (*a*) The Labour Court, on its own accord or, at the request of any party to the proceedings before it may reserve for the decision of the Labour Appeal Court any question of law that arises in those proceedings.

(*b*) A question may be reserved only if it is decisive for the proper adjudication of the *dispute*.

(*c*) Pending the decision of the Labour Appeal Court on any question of law reserved in terms of paragraph (a), the Labour Court may make any interim order.

(5) A judgment of the Labour Court must be handed down as soon as reasonably possible.

[Sub-s. (5) added by s. 26 (d) of Act No. 6 of 2014.]

159. Rules Board for Labour Courts and rules for Labour Court.—(1) The Rules Board for Labour Courts is hereby established.

(2) The Board consists of—

(*a*) the Judge President of the Labour Court, who is the chairperson;

(*b*) the Deputy Judge President of the Labour Court; and

(*c*) the following persons, to be appointed for a period of three years by the Minister of Justice, acting on the advice of *NEDLAC*—

(i) a practising advocate with knowledge, experience and expertise in labour law;

(ii) a practising attorney with knowledge, experience and expertise in labour law;

(iii) a person who represents the interests of *employees*;

(iv) a person who represents the interests of employers; and

(v) a person who represents the interests of the State.

(3) The Board may make rules to regulate the conduct of proceedings in the Labour Court including, but not limited to—

(*a*) the process by which proceedings are brought before the Court, and the form and content of that process;

(*b*) the period and process for noting appeals;

(*c*) the taxation of bills of costs;

(*d*) after consulting with the Minister of Finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of the Labour Court, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and

(*e*) all other matters incidental to performing the functions of the Court, including any matters not expressly mentioned in this subsection that are similar to matters about which the Rules Board for Courts of Law may make rules in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

[Para. (e) amended by s. 45 (a) of Act No. 42 of 1996.]

(4) The Board may alter or repeal any rule that it makes.

(5) Five members of the Board are a quorum at any meeting of the Board.

(6) The Board must publish any rules that it makes, alters or repeals in the *Government Gazette*.

(7) (*a*) A member of the Board who is a judge of the High Court may be paid an allowance determined in terms of subsection (9) in respect of the performance of the functions of a member of the Board.

(*b*) Notwithstanding anything to the contrary in any other law, the payment, in terms of paragraph (a), of an allowance to a member of the Board who is a judge of the High Court, will be in addition to any salary or allowances, including allowances for re-imbursement of travelling and subsistence expenses, that is paid to that person in the capacity of a judge of that Court.

[Sub-s. (7) added by s. 45 (b) of Act No. 42 of 1996 and amended by s. 15 of Act No. 127 of 1998.]

(8) A member of the Board who is not a judge of the High Court nor subject to the Public Service Act, 1994, will be entitled to the remuneration, allowances (including allowances for re-imbursement of travelling and subsistence expenses), benefits and privileges determined in terms of subsection (9).

[Sub-s. (8) added by s. 45 (b) of Act No. 42 of 1996 and amended by s. 15 of Act No. 127 of 1998.]

(9) The remuneration, allowances, benefits and privileges of the members of the Board—

(*a*) are determined by the Minister of Justice with the concurrence of the Minister of Finance;

(*b*) may vary according to rank functions to be performed and whether office is held in a full-time or part-time capacity; and

(*c*) may be varied by the Minister of Justice under any law in respect of any person or category of persons.

[Sub-s. (9) added by s. 45 (b) of Act No. 42 of 1996.]

(10) (*a*) Pending publication in the *Government Gazette* of rules made by the Board, matters before the Court will be dealt with in accordance with such general directions as the Judge President of the Labour Court, or any other judge or judges of that Court designated by the Judge President for that purpose, may consider appropriate and issue in writing.

(*b*) Those directions will cease to be of force on the date of the publication of the Board's rules in the *Government Gazette*, except in relation to proceedings already instituted before that date. With regard to those proceedings, those directions will continue to apply unless the Judge President of the Labour Court has withdrawn them in writing.

[Sub-s. (10) added by s. 45 (b) of Act No. 42 of 1996.]

(11) The Judge President must ensure that the Rules Board for Labour Courts meet at least once every two years to review the rules of the Labour Court.

[Sub-s. (11) added by s. 27 of Act No. 6 of 2014.]

(Date of commencement of s. 159: 1 January, 1996.)

160. Proceedings of Labour Court to be carried on in open court.—(1) The proceedings in the Labour Court must be carried on in open court.

(2) Despite subsection (1), the Labour Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a court of a provincial division of the Supreme Court could have done so.

161. Representation before Labour Court.—(1) In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by—

(*a*) a *legal practitioner*;

(*b*) a *director* or *employee* of the party;

(*c*) any *office-bearer* or *official* of that party's registered *trade union* or registered *employers' organisation*;
[Para. (c) substituted by s. 28 (a) of Act No. 6 of 2014.]

(*d*) a designated agent or official of a *council*; or
[Para. (d) substituted by s. 37 of Act No. 12 of 2002.]

(*e*) an official of the Department of Labour.
[S. 161 substituted by s. 16 of Act No. 127 of 1998 and amended by s. 28 (b) of Act No. 6 of 2014.]

(2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs (b) to (e) of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court.
[Sub-s. (2) added by s. 28 (b) of Act No. 6 of 2014.]

162. Costs.—(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Court may take into account—

(*a*) whether the matter referred to the Court ought to have been referred to arbitration in terms of *this Act* and, if so, the extra costs incurred in referring the matter to the Court; and

(*b*) the conduct of the parties—

(i) in proceeding with or defending the matter before the Court; and

(ii) during the proceedings before the Court.

(3) The Labour Court may order costs against a party to the *dispute* or against any person who represented that party in those proceedings before the Court.

163. Service and enforcement of orders of Labour Court.—Any decision, judgment or order of the Labour Court may be *served* and executed as if it were a decision, judgment or order of the High Court.
[S. 163 amended by s. 17 of Act No. 127 of 1998.]

164. Seal of Labour Court.—(1) The Labour Court for use as occasion may require will have an official seal of a design prescribed by the President by proclamation in the *Government Gazette*.

(2) The registrar of the Labour Court must keep custody of the official seal of the Labour Court.

165. Variation and rescission of orders of Labour Court.—The Labour Court, acting of its own accord or on the application of any affected party may vary or rescind a decision, judgment or order—

(*a*) erroneously sought or erroneously granted in the absence of any party affected by that judgment or order;

(*b*) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or

(*c*) granted as a result of a mistake common to the parties to the proceedings.

166. Appeals against judgment or order of Labour Court.—(1) Any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the Labour Appeal Court against any final judgment or final order of the Labour Court.

(2) If the application for leave to appeal is refused, the applicant may petition the Labour Appeal Court for leave to appeal.

(3) Leave to appeal may be granted subject to any conditions that the Court concerned may determine.

(4) Subject to the Constitution and despite any other law, an appeal against any final judgment or final order of the Labour Court in any matter in respect of which the Labour Court has exclusive jurisdiction may be brought only to the Labour Appeal Court.

Part E—Labour Appeal Court

167. Establishment and status of Labour Appeal Court.—(1) The Labour Appeal Court is hereby established as a court of law and equity.

(2) The Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court in respect of the matters within its exclusive jurisdiction.

(3) The Labour Appeal Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which the Supreme Court of Appeal has in relation to matters under its jurisdiction.

[Sub-s. (3) amended by s. 18 of Act No. 127 of 1998.]

(4) The Labour Appeal Court is a court of record.

168. Composition of Labour Appeal Court.—(1) The Labour Appeal Court consists of—

(*a*) the Judge President of the Labour Court, who by virtue of that office is Judge President of the Labour Appeal Court;

(*b*) the Deputy Judge President, who by virtue of that office is Deputy Judge President of the Labour Appeal Court; and

(*c*) such number of other judges who are judges of the Labour Court or High Court, as may be required for the effective functioning of the Labour Appeal Court.

[Para. (c) substituted by s. 46 of Act No. 42 of 1996, amended by s. 19 of Act No. 127 of 1998 and substituted by s. 29 of Act No. 6 of 2014.]

(2) The Labour Appeal Court is constituted before any three judges whom the Judge President designates from the panel of judges contemplated in subsection (1).

(3) No judge of the Labour Appeal Court may sit in the hearing of an appeal against a judgment or an order given in a case that was heard before that judge.

169. Appointment of other judges of Labour Appeal Court.—(1) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, after consultation with the Minister of Justice and the Judge President of the Labour Appeal Court, must appoint the judges of the Labour Appeal Court referred to in section 168 (1) (c).

[Sub-s. (1) amended by s. 20 (a) of Act No. 127 of 1998.]

(2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the High Court to serve as acting judges of the Labour Appeal Court.

[S. 169 substituted by s. 47 of Act No. 42 of 1996. Sub-s. (2) amended by s. 20 (b) of Act No. 127 of 1998.]

(Date of commencement of s. 169: 1 January, 1996.)

170. Tenure, remuneration and terms and conditions of appointment of Labour Appeal Court judges.—(1) A judge of the Labour Appeal Court must be appointed for a fixed term determined by the President at the time of appointment.

(2) A judge of the Labour Appeal Court may resign from that office by giving written notice to the President.

[Sub-s. (2) substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(3) (*a*) A judge of the Labour Appeal Court holds office until—

(i) the judge's term of office in the Labour Appeal Court ends;

(ii) the judge's resignation takes effect;

(iii) the judge is removed from office;

(iv) the judge ceases to be a judge of the High Court; or

(v) the judge dies.

(*b*) The Judge President and the Deputy Judge President of the Labour Appeal Court hold their offices for as long as they hold their respective offices of Judge President and Deputy Judge President of the Labour Court.

[Sub-s. (3) amended by s. 21 of Act No. 127 of 1998.]

(4) Neither the tenure of office nor the *remuneration* and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Appeal Court.

[Sub-s. (4) amended by s. 21 of Act No. 127 of 1998 and substituted by s. 55 (1) (b) of Act No. 10 of 2013.]

(5) . . . . . .

[Sub-s. (5) amended by s. 21 of Act No. 127 of 1998 and deleted by s. 55 (1) (b) of Act No. 10 of 2013.]

(6) Despite the expiry of the period of a person's appointment as a judge of the Labour Appeal Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only—

(*a*) for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person's appointment or which, having been so disposed of before or after the expiry of that person's appointment, have been re-opened;

and

(*b*) for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.

[Sub-s. (6) added by s. 48 of Act No. 42 of 1996.]

(7) The provisions of subsections (2) to (6) apply, read with the changes required by the context, to acting judges appointed in terms of section 169 (2).

[Sub-s. (7) added by s. 48 of Act No. 42 of 1996.]

(Date of commencement of s. 170: 1 January, 1996.)

171. Officers of Labour Appeal Court.—(1) The registrar of the Labour Court is also the registrar of the Labour Appeal Court.

(2) Each of the deputy registrars and other officers of the Labour Court also holds the corresponding office in relation to the Labour Appeal Court.

(3) (*a*) The officers of the Labour Appeal Court, under the supervision and control of the registrar of that Court must perform the administrative functions of the Labour Appeal Court.

(*b*) A deputy registrar of the Labour Appeal Court may perform any of the functions of the registrar of that Court that have been delegated generally or specifically to the deputy registrar.

(4) The deputy registrar of the Labour Appeal Court or, if there is more than one, the most senior will act as registrar of the Labour Appeal Court whenever—

(*a*) the registrar is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of registrar; or

(*b*) the office of registrar is vacant.

(Date of commencement of s. 171: 1 January, 1996.)

172. Area of jurisdiction and seat of Labour Appeal Court.—(1) The Labour Appeal Court has jurisdiction in all the provinces of the *Republic*.

(2) The seat of the Labour Court is also the seat of the Labour Appeal Court.

(3) The functions of the Labour Appeal Court may be performed at any place in the *Republic*.

(Date of commencement of s. 172: 1 January, 1996.)

173. Jurisdiction of the Labour Appeal Court.—(1) Subject to the Constitution and despite any other law, the Labour Appeal Court has exclusive jurisdiction—

(*a*) to hear and determine all appeals against the final judgments and the final orders of the Labour Court; and

(*b*) to decide any question of law reserved in terms of section 158 (4).

(2) . . . . . .

[Sub-s. (2) deleted by s. 22 (a) of Act No. 127 of 1998.]

(3) . . . . . .

[Sub-s. (3) amended by s. 22 (b) of Act No. 127 of 1998 and deleted by s. 38 of Act No. 12 of 2002.]

(4) A decision to which any two judges of the Labour Appeal Court agree is the decision of the Court.

174. Powers of Labour Appeal Court on hearing of appeals.—The Labour Appeal Court has the power—

(*a*) on the hearing of an appeal to receive further evidence, either orally or by deposition before a person appointed by the Labour Appeal Court, or to remit the case to the Labour Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Labour Appeal Court considers necessary; and

(*b*) to confirm, amend or set aside the judgment or order that is the subject of the appeal and to give any judgment or make any order that the circumstances may require.

175. Labour Appeal Court may sit as court of first instance.—Despite the provisions of this Part, the Judge President may direct that any matter before the Labour Court be heard by the Labour Appeal Court sitting as a court of first instance, in which case the Labour Appeal Court is entitled to make any order that the Labour Court would have been entitled to make.

176. Rules for Labour Appeal Court.—(1) The Rules Board for Labour Courts established by section 159 may make rules to regulate the conduct of proceedings in the Labour Appeal Court.

(2) The Board has all the powers referred to in section 159 when it makes rules for the Labour Appeal Court.

(3) The Board must publish in the *Government Gazette* any rules that it makes, alters or repeals.

(Date of commencement of s. 176: 1 January, 1996.)

177. Proceedings of Labour Appeal Court to be carried on in open court.—(1) The proceedings in the Labour Appeal Court must be carried on in open court.

(2) Despite subsection (1), the Labour Appeal Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a High Court could have done so.

[Sub-s. (2) amended by s. 23 of Act No. 127 of 1998.]

178. Representation before Labour Appeal Court.—Any person who, in terms of section 161, may appear before the Labour Court has the right to appear before the Labour Appeal Court.

179. Costs.—(1) The Labour Appeal Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Appeal Court may take into account—

(*a*) whether the matter referred to the Court should have been referred to arbitration in terms of *this Act* and, if so, the extra costs incurred in referring the matter to the Court; and

(*b*) the conduct of the parties—

(i) in proceeding with or defending the matter before the Court; and

(ii) during the proceedings before the Court.

(3) The Labour Appeal Court may order costs against a party to the *dispute* or against any person who represented that party in those proceedings before the Court.

180. Service and enforcement of orders.—Any decision, judgment or order of the Labour Appeal Court may be *served* and executed as if it were a decision, judgment or order of the High Court.

[S. 180 amended by s. 24 of Act No. 127 of 1998.]

181. Seal of Labour Appeal Court.—(1) The Labour Appeal Court for use as the occasion may require will have an official seal of a design prescribed by the President by proclamation in the *Government Gazette*.

(2) The registrar of the Labour Appeal Court must keep custody of the official seal of the Labour Appeal Court.

182. Judgments of Labour Appeal Court binding on Labour Court.—A judgment of the Labour Appeal Court is binding on the Labour Court.

183. Labour Appeal Court final court of appeal.—Subject to the Constitution and despite any other law, no appeal lies against any decision, judgment or order given by the Labour Appeal Court in respect of—

(*a*) any appeal in terms of section 173 (1) (a);

(*b*) its decision on any question of law in terms of section 173 (1) (b); or

(*c*) any judgment or order made in terms of section 175.

Part F—General Provisions applicable to Courts established by this Act

184. General provisions applicable to courts established by this Act.—Sections 5,41 18,42 25,43 30,44 31,45 39,46 40,47 and 42,48 of the Supreme Court Act, 1959 (Act No. 59 of 1959) apply, read with the changes required by the context, in relation to the Labour Court, or the Labour Appeal Court, or both, to the extent that they are not inconsistent with *this Act*.

CHAPTER VIII
UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE

[Heading substituted by s. 39 of Act No. 12 of 2002.]

185. Right not to be unfairly dismissed or subjected to unfair labour practice.—Every employee has the right not to be—

(*a*) unfairly dismissed; and

(*b*) subjected to unfair labour practice.

[S. 185 substituted by s. 40 of Act No. 12 of 2002.]

186. Meaning of dismissal and unfair labour practice.—(1) "Dismissal" means that—

(*a*) an employer has terminated employment with or without notice;

[Para. (a) substituted by s. 30 (a) of Act No. 6 of 2014.]

(*b*) an employee employed in terms of a fixed term contract of employment reasonably expected the employer—

(i) to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

(ii) to retain the *employee* in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the *employee* on less favourable terms, or did not offer to retain the *employee*;

[Para. (b) substituted by s. 30 (a) of Act No. 6 of 2014.]

(*c*) an employer refused to allow an *employee* to resume work after she—

(i) took maternity leave in terms of any law, *collective agreement* or her contract of employment; or

(ii) . . . . . .

[Sub-para. (ii) deleted by s. 95 (4) of Act No. 75 of 1997.]

(*d*) an employer who dismissed a number of *employees* for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another; or

(*e*) an *employee* terminated employment with or without notice because the employer made continued employment intolerable for the *employee*; or

[Para. (e) substituted by s. 30 (b) of Act No. 6 of 2014.]

(*f*) an *employee* terminated employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the *employee* with conditions or circumstances at work that are substantially less favourable to the *employee* than those provided by the old employer.

[Para. (f) added by s. 41 (b) of Act No. 12 of 2002 and substituted by s. 30 (b) of Act No. 6 of 2014.]

(2) "Unfair labour practice" means any unfair act or omission that arises between an employer and an *employee* involving—

(*a*) unfair conduct by the employer relating to the promotion, demotion, probation (excluding *disputes* about dismissals for a reason relating to probation) or training of an *employee* or relating to the provision of benefits to an *employee*;

(*b*) the unfair suspension of an *employee* or any other unfair disciplinary action short of dismissal in respect of an *employee*;

(*c*) a failure or refusal by an employer to reinstate or re-employ a former *employee* in terms of any agreement; and

(*d*) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the *employee* having made a protected disclosure defined in that Act.

[S. 186 amended by s. 41 (a) of Act No. 12 of 2002. Sub-s. (2) added by s. 41 (c) of Act No. 12 of 2002.]

187. Automatically unfair dismissals.—(1) A *dismissal* is automatically unfair if the employer, in dismissing the *employee*, acts contrary to section 549 or, if the reason for the *dismissal* is—

(*a*) that the *employee* participated in or supported, or indicated an intention to participate in or support, a *strike* or *protest action* that complies with the provisions of Chapter IV;50

(*b*) that the *employee* refused, or indicated an intention to refuse, to do any work normally done by an *employee* who at the time was taking part in a *strike* that complies with the provisions of Chapter IV or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health;

(*c*) a refusal by *employees* to accept a demand in respect of any matter of mutual interest between them and their employer;

[Para. (c) substituted by s. 31 of Act No. 6 of 2014.]

(*d*) that the *employee* took action, or indicated an intention to take action, against the employer by—

(i) exercising any right conferred by *this Act*; or

(ii) participating in any proceedings in terms of *this Act*;

(*e*) the *employee's* pregnancy, intended pregnancy, or any reason related to her pregnancy;

(*f*) that the employer unfairly discriminated against an *employee*, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;

(*g*) a transfer, or a reason related to a transfer, contemplated in section 197 or 197A; or

[Para. (g) added by s. 42 of Act No. 12 of 2002.]

(*h*) a contravention of the Protected Disclosures Act, 2000, by the employer, on account of an *employee* having made a protected disclosure defined in that Act.

[Para. (h) added by s. 42 of Act No. 12 of 2002.]

(2) Despite subsection (1) (f)—

(*a*) a *dismissal* may be fair if the reason for *dismissal* is based on an inherent requirement of the particular job;

(*b*) a *dismissal* based on age is fair if the *employee* has reached the normal or agreed retirement age for persons employed in that capacity.

188. Other unfair dismissals.—(1) A *dismissal* that is not automatically unfair, is unfair if the employer fails to prove—

(*a*) that the reason for *dismissal* is a fair reason—

(i) related to the *employee's* conduct or capacity; or

(ii) based on the employer's *operational requirements*; and

(*b*) that the *dismissal* was effected in accordance with a fair procedure.

(2) Any person considering whether or not the reason for *dismissal* is a fair reason or whether or not the *dismissal* was effected in accordance with a fair procedure must take into account any relevant *code of good practice* issued in terms of *this Act*.51

188A. Inquiry by arbitrator.—(1) An employer may, with the consent of the *employee* or in accordance with a collective agreement, request a *council,* an accredited agency or the Commission to appoint an arbitrator to conduct an inquiry into allegations about the conduct or capacity of that *employee*.

[S. 188A amended by s. 32 (a) of Act No. 6 of 2014. Sub-s. (1) substituted by s. 32 (b) of Act No. 6 of 2014.]

(2) The request must be in the *prescribed* form.

(3) The *council*, accredited agency or the Commission must appoint an arbitrator on receipt of—

(*a*) payment by the employer of the *prescribed* fee; and

(*b*) the *employee's* written consent to the inquiry.

(4) (*a*) An *employee* may only consent to an inquiry in terms of this section after the *employee* has been advised of the allegation referred to in subsection (1).

(*b*) Despite any other provision in *this Act*, an *employee* earning more than the amount determined by the *Minister* in terms of section 6 (3) of the *Basic Conditions of Employment Act* at the time, may agree in a contract of employment to the holding of an inquiry in terms of this section.

[Sub-s. (4) substituted by s. 32 (c) of Act No. 6 of 2014.]

(5) In any inquiry in terms of this section a party to the *dispute* may appear in person or be represented only by—

(*a*) a co-employee;

(*b*) a *director* or *employee*, if the party is a juristic person;

(*c*) an office bearer or official of that party's registered *trade union* or registered *employers' organisation*; or

[Para. (c) substituted by s. 32 (e) of Act No. 6 of 2014.]

(*d*) a legal practitioner, on agreement between the parties or if permitted by the arbitrator in accordance with the rules regulating representation at an arbitration before the Commission.

[Sub-s. (5) amended by s. 32 (d) of Act No. 6 of 2014. Para. (d) substituted by s. 32 (e) of Act No. 6 of 2014.]

(6) Section 138, read with the changes required by the context, applies to any inquiry in terms of this section.

[Sub-s. (6) substituted by s. 32 (f) of Act No. 6 of 2014.]

(7) An arbitrator appointed in terms of this section has all the powers conferred on a commissioner by section 142 (1) (a) to (e), (2) and (7) to (9), read with the changes required by the context, and any reference in that section to the *director* for the purpose of this section, must be read as a reference to—

(*a*) the secretary of the *council,* if the inquiry is held under the auspices of the *council;*

[Para. (a) substituted by s. 32 (g) of Act No. 6 of 2014.]

(*b*) the *director* of the accredited agency, if the inquiry is held under the auspices of an accredited agency.

[Para. (b) substituted by s. 32 (g) of Act No. 6 of 2014.]

(8) The ruling of the arbitrator in an inquiry has the same status as an arbitration award, and the provisions of sections 143 to 146 apply with the changes required by the context to any such ruling.

[Sub-s. (8) substituted by s. 32 (h) of Act No. 6 of 2014.]

(9) An arbitrator conducting an inquiry in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, rule as to what action, if any, may be taken against the *employee.*

[Sub-s. (9) substituted by s. 32 (h) of Act No. 6 of 2014.]

(10) (*a*) A private agency may only appoint an arbitrator to conduct an inquiry in terms of this section if it is accredited for arbitration by the Commission.

(*b*) A *council* may only appoint an arbitrator to conduct an inquiry in terms of this section in respect of which the employer or the *employee* is not a party to the *council,* if the *council* has been accredited for arbitration by the Commission.

[Sub-s. (10) substituted by s. 32 (h) of Act No. 6 of 2014.]

(11) Despite subsection (1), if an *employee* alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act No. 26 of 2000), that *employee* or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the *employee.*

[Sub-s. (11) added by s. 32 (i) of Act No. 6 of 2014.]

(12) The holding of an inquiry by a arbitrator in terms of this section and the suspension of an *employee* on full pay pending the outcome of such an inquiry do not constitute an occupational detriment as contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

[S. 188A inserted by s. 43 of Act No. 12 of 2002. Sub-s. (12) added by s. 32 (i) of Act No. 6 of 2014.]

189. Dismissals based on operational requirements.—(1) When an employer contemplates dismissing one or more *employees* for reasons based on the employer's *operational requirements*, the employer must consult—

(*a*) any person whom the employer is required to consult in terms of a *collective agreement*;

(*b*) if there is no *collective agreement* that requires consultation—

(i) a *workplace forum*, if the *employees* likely to be affected by the proposed *dismissals* are employed in a *workplace* in respect of which there is a *workplace forum*; and

(ii) any registered *trade union* whose members are likely to be affected by the proposed *dismissals*;

(*c*) if there is no *workplace forum* in the *workplace* in which the *employees* likely to be affected by the proposed *dismissals* are employed, any registered *trade union* whose members are likely to be affected by the proposed *dismissals*; or

(*d*) if there is no such *trade union*, the *employees* likely to be affected by the proposed *dismissals* or their representatives nominated for that purpose.

(2) The employer and the other consulting parties must in the consultation envisaged by subsections (1) and (3) engage in a meaningful joint consensus-seeking process and attempt to reach consensus on—

(*a*) appropriate measures—

(i) to avoid the *dismissals*;

(ii) to minimise the number of *dismissals*;

(iii) to change the timing of the *dismissals*; and

(iv) to mitigate the adverse effects of the *dismissals*;

(*b*) the method for selecting the *employees* to be dismissed; and

(*c*) the severance pay for dismissed *employees*.

(3) The employer must issue a written notice inviting the other consulting party to consult with it and disclose in writing all relevant information, including, but not limited to—

(*a*) the reasons for the proposed *dismissals*;

(*b*) the alternatives that the employer considered before proposing the *dismissals*, and the reasons for rejecting each of those alternatives;

(*c*) the number of *employees* likely to be affected and the job categories in which they are employed;

(*d*) the proposed method for selecting which *employees* to dismiss;

(*e*) the time when, or the period during which, the *dismissals* are likely to take effect;

(*f*) the severance pay proposed;

(*g*) any assistance that the employer proposes to offer to the *employees* likely to be dismissed;

(*h*) the possibility of the future re-employment of the *employees* who are dismissed;

(*i*) the number of *employees* employed by the employer; and

(*j*) the number of *employees* that the employer has dismissed for reasons based on its *operational requirements* in the preceding 12 months.

(4) (*a*) The provisions of section 16 apply, read with the changes required by the context, to the disclosure of information in terms of subsection (3).

(*b*) In any *dispute* in which an arbitrator or the Labour Court is required to decide whether or not any information is relevant, the onus is on the employer to prove that any information that it has refused to disclose is not relevant for the purposes for which it is sought.

(5) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter dealt with in subsections (2), (3) and (4) as well as any other matter relating to the proposed *dismissals*.

(6) (*a*) The employer must consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing.

(*b*) If any representation is made in writing the employer must respond in writing.

(7) The employer must select the *employees* to be dismissed according to selection criteria—

(*a*) that have been agreed to by the consulting parties; or

(*b*) if no criteria have been agreed, criteria that are fair and objective.

[S. 189 substituted by s. 44 of Act No. 12 of 2002.]

189A. Dismissals based on operational requirements by employers with more than 50 employees.—(1) This section applies to employers employing more than 50 *employees* if—

(*a*) the employer contemplates dismissing by reason of the employer's *operational requirements*, at least—

(i) 10 *employees*, if the employer employs up to 200 *employees*;

(ii) 20 *employees*, if the employer employs more than 200, but not more than 300, *employees*;

(iii) 30 *employees*, if the employer employs more than 300, but not more than 400, *employees*;

(iv) 40 *employees*, if the employer employs more than 400, but not more than 500, *employees*; or

(v) 50 *employees*, if the employer employs more than 500 *employees*; or

(*b*) the number of *employees* that the employer contemplates dismissing together with the number of *employees* that have been dismissed by reason of the employer's *operational requirements* in the 12 months prior to the employer issuing a notice in terms of section 189 (3), is equal to or exceeds the relevant number specified in paragraph (a).

(2) In respect of any dismissal covered by this section—

(*a*) an employer must give notice of termination of employment in accordance with the provisions of this section;

(*b*) despite section 65 (1) (c), an *employee* may participate in a *strike* and an employer may *lock out* in accordance with the provisions of this section;

(*c*) the consulting parties may agree to vary the time periods for facilitation or consultation;

(*d*) a consulting party may not unreasonably refuse to extend the period for consultation if such an extension is required to ensure meaningful consultation.

[Para. (d) added by s. 33 (a) of Act No. 6 of 2014.]

(3) The Commission must appoint a facilitator in terms of any regulations made under subsection (6) to assist the parties engaged in consultations if—

(*a*) the employer has in its notice in terms of section 189 (3) requested facilitation; or

(*b*) consulting parties representing the majority of employees whom the employer contemplates dismissing have requested facilitation and have notified the Commission within 15 days of the notice.

(4) This section does not prevent an agreement to appoint a facilitator in circumstances not contemplated in subsection (3).

(5) If a facilitator is appointed in terms of subsection (3) or (4) the facilitation must be conducted in terms of any regulations made by the *Minister* under subsection (6) for the conduct of such facilitations.

(6) The *Minister*, after consulting *NEDLAC* and the Commission, may make regulations relating to—

(*a*) the time period, and the variation of time periods, for facilitation;

(*b*) the powers and duties of facilitators;

(*c*) the circumstances in which the Commission may charge a fee for appointing a facilitator and the amount of the fee; and

(*d*) any other matter necessary for the conduct of facilitations.

(7) If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of section 189 (3)—

(*a*) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the *Basic Conditions of Employment Act*; and

(*b*) a registered *trade union* or the *employees* who have received notice of termination may either—

(i) give notice of a *strike* in terms of section 64 (1) (b) or (d); or

(ii) refer a *dispute* concerning whether there is a fair reason for the *dismissal* to the Labour Court in terms of section 191 (11).

(8) If a facilitator is not appointed—

(*a*) a party may not refer a *dispute* to a *council* or the Commission unless a period of 30 days has lapsed from the date on which notice was given in terms of section 189 (3); and

(*b*) once the periods mentioned in section 64 (1) (a) have elapsed—

(i) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the *Basic Conditions of Employment Act*; and

(ii) a registered trade union or the *employees* who have received notice of termination may—

(*aa*) give notice of a *strike* in terms of section 64 (1) (b) or (d); or

(*bb*) refer a *dispute* concerning whether there is a fair reason for the *dismissal* to the Labour Court in terms of section 191 (11).

(9) Notice of the commencement of a *strike* may be given if the employer dismisses or gives notice of *dismissal* before the expiry of the periods referred to in subsections (7) (a) or (8) (b) (i).

(10) (*a*) A consulting party may not—

(i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning whether there is a fair reason for that dismissal to the Labour Court;

(ii) refer a dispute about whether there is a fair reason for a dismissal to the Labour Court, if it has given notice of a strike in terms of this section in respect of that dismissal.

(*b*) If a trade union gives notice of a strike in terms of this section—

(i) no member of that trade union, and no employee to whom a collective agreement concluded by that trade union dealing with consultation or facilitation in respect of dismissals by reason of the employers' operational requirements has been extended in terms of section 23 (1) (d), may refer a dispute concerning whether there is a fair reason for dismissal to the Labour Court;

(ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.

(11) The following provisions of Chapter IV apply to any *strike* or *lock-out* in terms of this section:

(*a*) Section 64 (1) and (3) (a) to (d), except that—

(i) section 64 (1) (a) does not apply if a facilitator is appointed in terms of this section;

(ii) an employer may only *lock out* in respect of a *dispute* in which a *strike* notice has been issued;

(*b*) subsection (2) (a), section 65 (1) and (3);

(*c*) section 66 except that written notice of any proposed secondary strike must be given at least 14 days prior to the commencement of the *strike*;

(*d*) sections 67, 68, 69 and 76.

(12) (*a*) During the 14-day period referred to in subsection (11) (c), the *director* must, if requested by an employer who has received notice of any intended secondary strike, appoint a commissioner to attempt to resolve any *dispute*, between the employer and the party who gave the notice, through conciliation.

(*b*) A request to appoint a commissioner or the appointment of a commissioner in terms of paragraph (a) does not affect the right of *employees* to strike on the expiry of the 14-day period.

(13) If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an application for an order—

(*a*) compelling the employer to comply with a fair procedure;

(*b*) interdicting or restraining the employer from dismissing an *employee* prior to complying with a fair procedure;

(*c*) directing the employer to reinstate an *employee* until it has complied with a fair procedure;

(*d*) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.

(14) Subject to this section, the Labour Court may make any appropriate order referred to in section 158 (1) (a).

(15) An award of compensation made to an *employee* in terms of subsection (14) must comply with section 194.

(16) The Labour Court may not make an order in respect of any matter concerning the disclosure of information in terms of section 189 (4) that has been the subject of an arbitration award in terms of section 16.

(17) (*a*) An application in terms of subsection (13) must be brought not later than 30 days after the employer has given notice to terminate the *employee's* services or, if notice is not given, the date on which the *employees* are dismissed.

(*b*) The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph (a).

(18) The Labour Court may not adjudicate a *dispute* about the procedural fairness of a *dismissal* based on the employer's *operational requirements* in any *dispute* referred to it in terms of section 191 (5) (b) (ii).

(19) . . . . . .

[Sub-s. (19) deleted by s. 33 (b) of Act No. 6 of 2014.]

(20) For the purposes of this section, an "employer" in the *public service* is the executing authority of a national department, provincial administration, provincial department or organisational component contemplated in section 7 (2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994).

[S. 189A inserted by s. 45 of Act No. 12 of 2002.]

190. Date of dismissal.—(1) The date of *dismissal* is the earlier of—

(*a*) the date on which the contract of employment terminated; or

(*b*) the date on which the *employee* left the service of the employer.

(2) Despite subsection (1)—

(*a*) if an employer has offered to renew on less favourable terms, or has failed to renew a fixed-term contract of employment, the date of *dismissal* is the date on which the employer offered the less favourable terms or the date the employer notified the *employee* of the intention not to renew the contract;

(*b*) if the employer refused to allow an *employee* to resume work, the date of *dismissal* is the date on which the employer first refused to allow the *employee* to resume work;

(*c*) if an employer refused to re-instate or re-employ the *employee*, the date of *dismissal is* the date on which the employer first refused to re-instate or re-employ that *employee*;

(*d*) if an employer terminates an *employee's employment* on notice, the date of *dismissal* is the date on which the notice expires or, if it is an earlier date, the date on which the *employee* is paid all outstanding salary.

[Para. (d) added by s. 34 of Act No. 6 of 2014.]

191. Disputes about unfair dismissals and unfair labour practices52**.**—(1) (*a*) If there is a *dispute* about the fairness of a *dismissal*, or a *dispute* about an unfair labour practice, the dismissed *employee* or the *employee* alleging the unfair labour practice may refer the *dispute* in writing to—

(i) a *council*, if the parties to the *dispute* fall within the registered *scope* of that *council*; or

(ii) the Commission, if no *council* has jurisdiction.

(*b*) A referral in terms of paragraph (a) must be made within—

(i) 30 days of the date of a *dismissal* or, if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the *dismissal*;

(ii) 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the *employee* became aware of the act or occurrence.

[Sub-s. (1) substituted by s. 46 (b) of Act No. 12 of 2002.]

(2) If the *employee* shows good cause at any time, the *council* or the Commission may permit the *employee* to refer the *dispute* after the relevant time limit in subsection (1) has expired.

[Sub-s. (2) substituted by s. 46 (c) of Act No. 12 of 2002.]

(2A) Subject to subsections (1) and (2), an *employee* whose contract of employment is terminated by notice, may refer the *dispute* to the *council* or the Commission once the *employee* has received that notice.

[Sub-s. (2A) inserted by s. 46 (d) of Act No. 12 of 2002.]

(3) The *employee* must satisfy the *council* or the Commission that a copy of the referral has been *served* on the employer.

(4) The *council* or the Commission must attempt to resolve the *dispute* through conciliation.

(5) If a *council* or a commissioner has certified that the *dispute* remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the *council* or the Commission received the referral and the *dispute* remains unresolved—

(*a*) the *council* or the Commission must arbitrate the *dispute* at the request of the *employee* if—

(i) the *employee* has alleged that the reason for *dismissal* is related to the *employee*'s conduct or capacity, unless paragraph (b) (iii) applies;

(ii) the *employee* has alleged that the reason for *dismissal* is that the employer made continued employment intolerable or the employer provided the employee with substantially less favourable conditions or circumstances at work after a transfer in terms of section 197 or 197A, unless the *employee* alleges that the contract of employment was terminated for a reason contemplated in section 187;

[Sub-para. (ii) substituted by s. 46 (e) of Act No. 12 of 2002.]

(iii) the *employee* does not know the reason for *dismissal*; or

(iv) the *dispute* concerns an unfair labour practice; or

[Sub-para. (iv) added by s. 46 (f) of Act No. 12 of 2002.]

(*b*) the *employee* may refer the *dispute to* the Labour Court for adjudication if the *employee* has alleged that the reason for *dismissal* is—

(i) automatically unfair;

(ii) based on the employer's *operational requirements*;

(iii) the *employees* participation in a *strike* that does not comply with the provisions of Chapter IV; or

(iv) because the *employee* refused to join, was refused membership of or was expelled from a *trade union* party to a closed shop agreement.

[Sub-s. (5) amended by s. 35 (a) of Act No. 6 of 2014.]

(5A) Despite any other provision in the Act, the *council* or Commission must commence the arbitration immediately after certifying that the *dispute* remains unresolved if the *dispute* concerns—

(*a*) the *dismissal* of an *employee* for any reason relating to probation;

(*b*) any unfair labour practice relating to probation;

(*c*) any other *dispute* contemplated in subsection (5) (a) in respect of which no party has objected to the matter being dealt with in terms of this subsection.

[Sub-s. (5A) inserted by s. 46 (g) of Act No. 12 of 2002.]

(6) Despite subsection (5) (a) or (5A), the *director* must refer the *dispute* to the Labour Court, if the *director* decides, on application by any party to the *dispute*, that to be appropriate after considering—

(*a*) the reason for *dismissal*;

(*b*) whether there are questions of law raised by the *dispute*;

(*c*) the complexity of the *dispute*;

(*d*) whether there are conflicting arbitration awards that need to be resolved;

(*e*) the public interest.

[Sub-s. (6) substituted by s. 46 (h) of Act No. 12 of 2002.]

(7) When considering whether the *dispute* should be referred to the Labour Court, the *director* must give the parties to the *dispute* and the commissioner who attempted to conciliate the *dispute*, an opportunity to make representations.

(8) The *director* must notify the parties of the decision and refer the *dispute*—

(*a*) to the Commission for arbitration; or

(*b*) to the Labour Court for adjudication.

(9) The *director's* decision is final and binding.

(10) No person may apply to any court of law to review the *director's* decision until the *dispute* has been arbitrated or adjudicated, as the case may be.

(11) (*a*) The referral, in terms of subsection (5) (b), of a *dispute* to the Labour Court for adjudication, must be made within 90 days after the *council* or (as the case may be) the commissioner has certified that the *dispute* remains unresolved.

(*b*) However, the Labour Court may condone non-observance of that time-frame on good cause shown.

[Sub-s. (11) added by s. 25 of Act No. 127 of 1998.]

(12) An *employee* who is dismissed by reason of the employer's *operational requirements* may elect to refer the *dispute* either to arbitration or to the Labour Court if—

(*a*) the employer followed a consultation procedure that applied to that *employee* only, irrespective of whether that procedure complied with section 189;

(*b*) the employer's *operational requirements* lead to the *dismissal* of that *employee* only; or

(*c*) the employer employs less than ten *employees,* irrespective of the number of *employees* who are dismissed.

[Sub-s. (12) added by s. 46 (i) of Act No. 12 of 2002 and substituted by s. 35 (b) of Act No. 6 of 2014.]

(13) (*a*) An *employee* may refer a *dispute* concerning an alleged unfair labour practice to the Labour Court for adjudication if the *employee* has alleged that the *employee* has been subjected to an occupational detriment by the employer in contravention of section 3 of the Protected Disclosures Act, 2000, for having made a protected disclosure defined in that Act.

(*b*) A referral in terms of paragraph (a) is deemed to be made in terms of subsection (5) (b).

[S. 191 amended by s. 46 (a) of Act No. 12 of 2002. Sub-s. (13) added by s. 46 (i) of Act No. 12 of 2002.]

192. Onus in dismissal disputes.—(1) In any proceedings concerning any *dismissal*, the *employee* must establish the existence of the *dismissal*.

(2) If the existence of the *dismissal* is established, the employer must prove that the *dismissal* is fair.

193. Remedies for unfair dismissal and unfair labour practice.—(1) If the Labour Court or an arbitrator appointed in terms of *this Act* finds that a *dismissal* is unfair, the Court or the arbitrator may—

(*a*) order the employer to re-instate the *employee* from any date not earlier than the date of *dismissal*;

(*b*) order the employer to re-employ the *employee*, either in the work in which the *employee* was employed before the *dismissal* or in other reasonably suitable work on any terms and from any date not earlier than the date of *dismissal*; or

(*c*) order the employer to pay compensation to the *employee*.

(2) The Labour Court or the arbitrator must require the employer to re-instate or re-employ the *employee* unless—

(*a*) the *employee* does not wish to be re-instated or re-employed;

(*b*) the circumstances surrounding the *dismissal* are such that a continued employment relationship would be intolerable;

(*c*) it is not reasonably practicable for the employer to re-instate or re-employ the *employee*; or

(*d*) the *dismissal* is unfair only because the employer did not follow a fair procedure.

(3) If a *dismissal* is automatically unfair or, if a *dismissal* based on the employer's *operational requirements is* found to be unfair, the Labour Court in addition may make any other order that it considers appropriate in the circumstances.53

(4) An arbitrator appointed in terms of this Act may determine any unfair labour practice *dispute* referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation.

[S. 193 amended by s. 47 (a) of Act No. 12 of 2002. Sub-s. (4) inserted by s. 47 (b) of Act No. 12 of 2002.]

194. Limits on compensation.—(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair either because the employer did not prove that the reason for *dismissal* was a fair reason relating to the employee's conduct or capacity or the employer's *operational requirements* or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' remuneration calculated at the *employee's* rate of *remuneration* on the date of *dismissal*.

[Sub-s. (1) substituted by s. 48 (a) of Act No. 12 of 2002.]

(2) . . . . . .

[Sub-s. (2) deleted by s. 48 (b) of Act No. 12 of 2002.]

(3) The compensation awarded to an *employee* whose *dismissal* is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of 24 months' *remuneration* calculated at the *employee's* rate of *remuneration* on the date of *dismissal*.

(4) The compensation awarded to an *employee* in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months *remuneration*.

[Sub-s. (4) added by s. 48 (c) of Act No. 12 of 2002.]

195. Compensation is in addition to any other amount.—An order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to which the *employee* is entitled in terms of any law, *collective agreement* or contract of employment.

196. . . . . . .

[S. 196 repealed by s. 95 (5) of Act No. 75 of 1997.]

197. Transfer of contract of employment.—(1) In this section and in section 197A—

(*a*) "business" includes the whole or a part of any business, trade, undertaking or service; and

(*b*) "transfer" means the transfer of a business by one employer ("the old employer") to another employer ("the new employer") as a going concern.

(2) If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6)—

(*a*) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;

(*b*) all the rights and obligations between the old employer and an *employee* at the time of the transfer continue in force as if they had been rights and obligations between the new employer and the *employee*;

(*c*) anything done before the transfer by or in relation to the old employer, including the *dismissal* of an employee or the commission of an unfair labour practice or act of unfair discrimination, is considered to have been done by or in relation to the new employer; and

(*d*) the transfer does not interrupt an *employee's* continuity of employment, and an *employee's* contract of employment continues with the new employer as if with the old employer.

(3) (*a*) The new employer complies with subsection (2) if that employer employs transferred *employees* on terms and conditions that are on the whole not less favourable to the *employees* than those on which they were employed by the old employer.

(*b*) Paragraph (a) does not apply to *employees* if any of their conditions of employment are determined by a collective agreement.

(4) Subsection (2) does not prevent an employee from being transferred to a pension, provident, retirement or similar fund other than the fund to which the employee belonged prior to the transfer, if the criteria in section 14 (1) (c) of the Pension Funds Act, 1956 (Act No. 24 of 1956), are satisfied.53a

(5) (*a*) For the purposes of this subsection, the *collective agreements* and arbitration awards referred to in paragraph (b) are agreements and awards that bound the old employer in respect of the *employees* to be transferred, immediately before the date of transfer.

(*b*) Unless otherwise agreed in terms of subsection (6), the new employer is bound by—

(i) any arbitration award made in terms of this Act, the common law or any other law;

(ii) any *collective agreement* binding in terms of section 23; and

(iii) any *collective agreement* binding in terms of section 32 unless a commissioner acting in terms of section 62 decides otherwise.

(6) (*a*) An agreement contemplated in subsection (2) must be in writing and concluded between—

(i) either the old employer, the new employer, or the old and new employers acting jointly, on the one hand; and

(ii) the appropriate person or body referred to in section 189 (1), on the other.

(*b*) In any negotiations to conclude an agreement contemplated by paragraph (a), the employer or employers contemplated in subparagraph (i), must disclose to the person or body contemplated in subparagraph (ii), all relevant information that will allow it to engage effectively in the negotiations.

(*c*) Section 16 (4) to (14) applies, read with the changes required by the context, to the disclosure of information in terms of paragraph (b).

(7) The old employer must—

(*a*) agree with the new employer to a valuation as at the date of transfer of—

(i) the leave pay accrued to the transferred *employees* of the old employer;

(ii) the severance pay that would have been payable to the transferred *employees* of the old employer in the event of a dismissal by reason of the employer's operational requirements; and

(iii) any other payments that have accrued to the transferred *employees* but have not been paid to *employees* of the old employer;

(*b*) conclude a written agreement that specifies—

(i) which employer is liable for paying any amount referred to in paragraph (a), and in the case of the apportionment of liability between them, the terms of that apportionment; and

(ii) what provision has been made for any payment contemplated in paragraph (a) if any *employee* becomes entitled to receive a payment;

(*c*) disclose the terms of the agreement contemplated in paragraph (b) to each *employee* who after the transfer becomes employed by the new employer; and

(*d*) take any other measure that may be reasonable in the circumstances to ensure that adequate provision is made for any obligation on the new employer that may arise in terms of paragraph (a).

(8) For a period of 12 months after the date of the transfer, the old employer is jointly and severally liable with the new employer to any *employee* who becomes entitled to receive a payment contemplated in subsection (7) (a) as a result of the *employee's dismissal* for a reason relating to the employer's *operational requirements* or the employer's liquidation or sequestration, unless the old employer is able to show that it has complied with the provisions of this section.

(9) The old and new employer are jointly and severally liable in respect of any claim concerning any term or condition of employment that arose prior to the transfer.

(10) This section does not affect the liability of any person to be prosecuted for, convicted of, and sentenced for, any offence.

[S. 197 substituted by s. 49 of Act No. 12 of 2002.]

197A. Transfer of contract of employment in circumstances of insolvency.—(1) This section applies to a transfer of a business—

(*a*) if the old employer is insolvent; or

(*b*) if a scheme of arrangement or compromise is being entered into to avoid winding-up or sequestration for reasons of insolvency.

(2) Despite the Insolvency Act, 1936 (Act No. 24 of 1936), if a transfer of a business takes place in the circumstances contemplated in subsection (1), unless otherwise agreed in terms of section 197 (6)—

(*a*) the new employer is automatically substituted in the place of the old employer in all contracts of employment in existence immediately before the old employer's provisional winding-up or sequestration;

(*b*) all the rights and obligations between the old employer and each *employee* at the time of the transfer remain rights and obligations between the old employer and each employee;

(*c*) anything done before the transfer by the old employer in respect of each *employee* is considered to have been done by the old employer;

(*d*) the transfer does not interrupt the *employee's* continuity of employment and the employee's contract of employment continues with the new employer as if with the old employer.

(3) Section 197 (3), (4), (5) and (10) applies to a transfer in terms of this section and any reference to an agreement in that section must be read as a reference to an agreement contemplated in section 197 (6).

(4) Section 197 (5) applies to a *collective agreement* or arbitration binding on the employer immediately before the employer's provisional winding-up or sequestration.

(5) Section 197 (7), (8) and (9) does not apply to a transfer in accordance with this section.

[S. 197A inserted by s. 50 of Act No. 12 of 2002.]

197B. Disclosure of information concerning insolvency.—(1) An employer that is facing financial difficulties

that may reasonably result in the winding-up or sequestration of the employer, must advise a consulting party contemplated in section 189 (1).

(2) (*a*) An employer that applies to be wound up or sequestrated, whether in terms of the Insolvency Act, 1936, or any other law, must at the time of making application, provide a consulting party contemplated in section 189 (1) with a copy of the application.

(*b*) An employer that receives an application for its winding-up or sequestration must supply a copy of the application to any consulting party contemplated in section 189 (1), within two days of receipt, or if the proceedings are urgent, within 12 hours.

[S. 197B inserted by s. 50 of Act No. 12 of 2002.]

CHAPTER IX
REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS

[Heading to Ch. IX substituted by s. 36 of Act No. 6 of 2014.]

198. Temporary Employment Services.—(1) In this section, "temporary employment services" means any person who, for reward, procures for or provides to a client other persons—

(*a*) who perform work for the client; and

[Para. (a) substituted by s. 37 (a) of Act No. 6 of 2014.]

(*b*) who are remunerated by the temporary employment service.

(2) For the purposes of *this Act*, a person whose services have been procured for or provided to a client by a temporary employment service is the *employee* of that temporary employment service, and the temporary employment service is that person's employer.

(3) Despite subsections (1) and (2), a person who is an independent contractor is not an *employee* of a temporary employment service, nor is the temporary employment service the employer of that person.

(4) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any of its *employees*, contravenes—

(*a*) a *collective agreement* concluded in a *bargaining council* that regulates terms and conditions of employment;

(*b*) a binding arbitration award that regulates terms and conditions of employment;

(*c*) the *Basic Conditions of Employment Act*; or

(*d*) a sectoral determination made in terms of the *Basic Conditions of Employment Act*.

[Para. (d) substituted by s. 37 (b) of Act No. 6 of 2014.]

(4A) If the client of a temporary employment service is jointly and severally liable in terms of section 198 (4) or is deemed to be the employer of an *employee* in terms of section 198A (3) (b)—

(*a*) the *employee* may institute proceedings against either the temporary employment service or the client or both the temporary employment service and the client;

(*b*) a labour inspector acting in terms of the *Basic Conditions of Employment Act* may secure and enforce compliance against the temporary employment service or the client as if it were the employer, or both; and

(*c*) any order or award made against a temporary employment service or client in terms of this subsection may be enforced against either.

[Sub-s. (4A) inserted by s. 37 (c) of Act No. 6 of 2014.]

(4B) (*a*) A temporary employment service must provide an *employee* whose service is procured for or provided to a client with written particulars of *employment* that comply with section 29 of the *Basic Conditions of Employment Act,* when the *employee* commences *employment.*

(*b*) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to a person whose services were procured for or provided to a client by a temporary employment service in terms of subsection 198 (1) prior to the commencement of the Labour Relations Act, 2014.

[Sub-s. (4B) inserted by s. 37 (c) of Act No. 6 of 2014.]

(4C) An *employee* may not be employed by a temporary employment service on terms and conditions of *employment* which are not permitted by *this Act,* any *employment law,* sectoral determination or *collective agreement* concluded in a *bargaining council* applicable to a client to whom the *employee* renders services.

[Sub-s. (4C) inserted by s. 37 (c) of Act No. 6 of 2014.]

(4D) The issue of whether an *employee* of a temporary employment service is covered by a *bargaining council* agreement or sectoral determination, must be determined by reference to the sector and area in which the client is engaged.

[Sub-s. (4D) inserted by s. 37 (c) of Act No. 6 of 2014.]

(4E) In any proceedings brought by an *employee,* the Labour Court or an arbitrator may—

(*a*) determine whether a provision in an *employment* contract or a contract between a temporary employment service and a client complies with subsection (4C); and

(*b*) make an appropriate order or award.

[Sub-s. (4E) inserted by s. 37 (c) of Act No. 6 of 2014.]

(4F) No person must perform the functions of a temporary employment service unless it is registered in terms of any applicable legislation, and the fact that a temporary employment service is not registered will not constitute a defence to any claim instituted in terms of this section or 198A.

(Pending amendment: Sub-s. (4F) to be inserted by s. 37 of Act No. 6 of 2014 –the coming into operation of section 198 (4F) is suspended until the date when the applicable legislation contemplated in section 198 (4F) enters into force – date not determined.)

(Date of commencement f sub-s. (4F) to be proclaimed.)

(5) Two or more *bargaining councils* may agree to bind the following persons, if they fall within the combined *registered scope* of those *bargaining councils* to a *collective agreement* concluded in any one of them—

(*a*) temporary employment service;

(*b*) a person employed by a temporary employment service; and

(*c*) a temporary employment service client.

(6) An agreement concluded in terms of subsection (5) is binding only if the *collective agreement* has been extended to non-parties within the *registered scope* of the *bargaining council*.

(7) Two or more *bargaining councils* may agree to bind the following persons, who fall within their combined *registered scope*, to a *collective agreement*—

(*a*) a temporary employment service;

(*b*) a person employed by a temporary employment service; and

(*c*) a temporary employment service's client.

(8) An agreement concluded in terms of subsection (7) is binding only if—

(*a*) each of the contracting *bargaining councils* has requested the *Minister* to extend the agreement to non-parties falling within its *registered scope*;

(*b*) the *Minister* is satisfied that the terms of the agreement are not substantially more onerous than those prevailing in the corresponding *collective agreements* concluded in the *bargaining councils*; and

(*c*) the *Minister* by notice in the *Government Gazette*, has extended the agreement as requested by all the *bargaining councils* that are parties to the agreement.

198A. Application of section 198 **to employees earning below earnings threshold.**—(1) In this section, a "temporary service" means work for a client by an *employee*—

(*a*) for a period not exceeding three months;

(*b*) as a substitute for an *employee* of the client who is temporarily absent; or

(*c*) in a category of work and for any period of time which is determined to be a temporary service by a *collective agreement* concluded in a *bargaining council,* a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8).

(2) This section does not apply to *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6 (3) of the *Basic Conditions of Employment Act.*

(3) For the purposes of *this Act,* an *employee*—

(*a*) performing a temporary service as contemplated in subsection (1) for the client is the *employee* of the temporary employment services in terms of section 198 (2); or

(*b*) not performing such temporary service for the client is—

(i) deemed to be the *employee* of that client and the client is deemed to be the employer; and

(ii) subject to the provisions of section 198B, employed on an indefinite basis by the client.

(4) The termination by the temporary employment services of an *employee's* service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of subsection (3) (b) or because the employee exercised a right in terms of this Act, is a *dismissal.*

(5) An *employee* deemed to be an *employee* of the client in terms of subsection (3) (b) must be treated on the whole not less favourably than an *employee* of the client performing the same or similar work, unless there is a justifiable reason for different treatment.

(6) The *Minister* must by notice in the *Government Gazette* invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the *Minister* in terms of subsection (1) (c).

(7) The *Minister* must consult with *NEDLAC* before publishing a notice or a provision in a sectoral determination contemplated in subsection (1) (c).

(8) If there is conflict between a *collective agreement* concluded in a *bargaining council,* a sectoral determination or a notice by the *Minister* contemplated in subsection (1) (c)—

(*a*) the *collective agreement* takes precedence over a sectoral determination or notice; and

(*b*) the notice takes precedence over the sectoral determination.

(9) Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of section 198 (1) before the commencement of the Labour Relations Amendment Act, 2014, acquire the rights contemplated in subsections (3), (4) and (5) with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

[S. 198A inserted by s. 38 of Act No. 6 of 2014.]

198B. Fixed term contracts with employees earning below earnings threshold.—(1) For the purpose of this section, a "fixed term contract" means a contract of employment that terminates on—

(*a*) the occurrence of a specified event;

(*b*) the completion of a specified task or project; or

(*c*) a fixed date, other than an *employee's* normal or agreed retirement age, subject to subsection (3).

(2) This section does not apply to—

(*a*) *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6 (3) of the *Basic Conditions of Employment Act*;

(*b*) an employer that employs less than 10 *employees,* or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—

(i) the employer conducts more than one business; or

(ii) the business was formed by the division or dissolution for any reason of an existing business; and

(*c*) an *employee* employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or *collective agreement.*

(3) An employer may employ an *employee* on a fixed term contract or successive fixed term contracts for longer than three months of *employment* only if—

(*a*) the nature of the work for which the *employee* is employed is of a limited or definite duration; or

(*b*) the employer can demonstrate any other justifiable reason for fixing the term of the contract.

(4) Without limiting the generality of subsection (3), the conclusion of a fixed term contract will be justified if the *employee*—

(*a*) is replacing another *employee* who is temporarily absent from work;

(*b*) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;

(*c*) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;

(*d*) is employed to work exclusively on a specific project that has a limited or defined duration;

(*e*) is a non-citizen who has been granted a work permit for a defined period;

(*f*) is employed to perform seasonal work;

(*g*) is employed for the purpose of an official public works scheme or similar public job creation scheme;

(*h*) is employed in a position which is funded by an external source for a limited period; or

(*i*) has reached the normal or agreed retirement age applicable in the employer's business.

(5) *Employment* in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration.

(6) An offer to employ an *employee* on a fixed term contract or to renew or extend a fixed term contract, must

—

(*a*) be in writing; and

(*b*) state the reasons contemplated in subsection (3) (a) or (b).

(7) If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract as contemplated in subsection (3) and that the term was agreed.

(8) (*a*) An *employee* employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an *employee* employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.

(*b*) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.

(9) As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an *employee* employed in terms of a fixed term contract and an *employee* employed on a permanent basis with equal access to opportunities to apply for vacancies.

(10) (*a*) An employer who employs an *employee* in terms of a fixed term contract for a reason contemplated in subsection (4) (d) for a period exceeding 24 months must, subject to the terms of any applicable *collective agreement,* pay the *employee* on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the *Basic Conditions of Employment Act.*

(*b*) An *employee* employed in terms of a fixed-term contract, as contemplated in paragraph (a)*,* before the commencement of the Labour Relations Amendment Act, 2014, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.

(11) An *employee* is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed term contract, the employer offers the *employee* employment or procures employment for the *employee* with a different employer, which commences at the expiry of the contract and on the same or similar terms.

[S. 198B inserted by s. 38 of Act No. 6 of 2014.]

198C. Part-time employment of employees earning below earnings threshold.—(1) For the purpose of this section—

(*a*) a part-time *employee* is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who works less hours than a comparable full-time *employee*; and

(*b*) a comparable full-time *employee*—

(i) is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who is identifiable as a full-time *employee* in terms of the custom and practice of the employer of that *employee*; and

(ii) does not include a full-time *employee* whose hours of work are temporarily reduced for *operational requirements* as a result of an agreement.

(2) This section does not apply—

(*a*) to *employees* earning in excess of the threshold determined by the *Minister* in terms of section 6 (3) of the *Basic Conditions of Employment Act*;

(*b*) to an employer that employs less than 10 *employees* or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—

(i) the employer conducts more than one business; or

(ii) the business was formed by the division or dissolution, for any reason, of an existing business;

(*c*) to an *employee* who ordinarily works less than 24 hours a month for an employer; and

(*d*) during an *employee's* first three months of continuous *employment* with an employer.

(3) Taking into account the working hours of a part-time *employee,* irrespective of when the part-time *employee* was employed, an employer must—

(*a*) treat a part-time *employee* on the whole not less favourably than a comparable full-time *employee* doing the same or similar work, unless there is a justifiable reason for different treatment; and

(*b*) provide a part-time *employee* with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time *employee.*

(4) Subsection (3) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time employees employed before the commencement of the Labour Relations Amendment Act, 2014.

(5) After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time *employee* with the same access to opportunities to apply for vacancies as it provides to full-time *employees*.

(6) For the purposes of identifying a comparable full-time *employee*, regard must be had to a full-time *employee*

employed by the employer on the same type of *employment* relationship who performs the same or similar work—

(*a*) in the same *workplace* as the part-time *employee;* or

(*b*) if there is no comparable full-time *employee* who works in the same *workplace,* a comparable full-time *employee* employed by the employer in any other *workplace.*

[S. 198C inserted by s. 38 of Act No. 6 of 2014.]

198D. General provisions applicable to sections 198A **to** 198C**.**—(1) Any *dispute* arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or a *bargaining council* with jurisdiction for conciliation and, if not resolved, to arbitration.

(2) For the purposes of sections 198A (5), 198B (8) and 198C (3) (a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account—

(*a*) seniority, experience or length of service;

(*b*) merit;

(*c*) the quality or quantity of work performed; or

(*d*) any other criteria of a similar nature,

and such reason is not prohibited by section 6 (1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

(3) A party to a dispute contemplated in subsection (1), other than a dispute about a dismissal in terms of section 198A (4), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.

(4) The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.

(5) If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.

(6) The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in subsection (3) or (5).

[S. 198D inserted by s. 38 of Act No. 6 of 2014.]

199. Contracts of employment may not disregard or waive collective agreements or arbitration awards.—(1) A contract of employment, whether concluded before or after the coming into operation of any applicable *collective agreement* or arbitration award, may not—

(*a*) permit an *employee* to be paid *remuneration* that is less than that prescribed by that *collective agreement* or arbitration award;

(*b*) permit an *employee* to be treated in a manner, or to be granted any benefit, that is less favourable than that prescribed by that *collective agreement* or arbitration award; or

(*c*) waive the application of any provision of that *collective agreement* or arbitration award.

(2) A provision in any contract that purports to permit or grant any payment, treatment, benefit, waiver or exclusion prohibited by subsection (1) is invalid.

200. Representation of employees or employers.—(1) A registered *trade union* or registered *employers' organisation* may act in any one or more of the following capacities in any *dispute* to which any of its members is a party—

(*a*) in its own interest;

(*b*) on behalf of any of its members;

(*c*) in the interest of any of its members.

(2) A registered *trade union* or a registered *employers' organisation* is entitled to be a party to any proceedings in terms of *this Act* if one or more of its members is a party to those proceedings.

200A. Presumption as to who is employee.—(1) Until the contrary is proved, for the purposes of *this Act,* any *employment law* and section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936), a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an *employee,* if any one or more of the following factors are present—

(*a*) the manner in which the person works is subject to the control or direction of another person;

(*b*) the person's hours of work are subject to the control or direction of another person;

(*c*) in the case of a person who works for an organisation, the person forms part of that organisation;

(*d*) the person has worked for that other person for an average of at least 40 hours per month over the last three months;

(*e*) the person is economically dependent on the other person for whom he or she works or renders services;

(*f*) the person is provided with tools of trade or work equipment by the other person; or

(*g*) the person only works for or renders services to one person.

[Sub-s. (1) amended by s. 39 of Act No. 6 of 2014.]

(2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6 (3) of the *Basic Conditions of Employment Act*.

(3) If a proposed or existing work arrangement involves persons who earn amounts equal to or below the amounts determined by the Minister in terms of section 6 (3) of the *Basic Conditions of Employment Act*, any of the contracting parties may approach the Commission for an advisory award on whether the persons involved in the arrangement are *employees*.

(4) NEDLAC must prepare and issue a Code of Good Practice that sets out guidelines for determining whether persons, including those who earn in excess of the amount determined in subsection (2) are *employees*.

[S. 200A inserted by s. 51 of Act No. 12 of 2002.]

200B. Liability for employer's obligations.—(1) For the purposes of *this Act* and any other *employment law,* "employer" includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of *this Act* or any other *employment law.*

(2) If more than one person is held to be the employer of an *employee* in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of *this Act* or any other *employment law.*

[S. 200B inserted by s. 40 of Act No. 6 of 2014.]

201. Confidentiality.—(1) A person commits an offence by disclosing any information relating to the financial or business affairs of any other person or any business, trade or undertaking if the information was acquired by the first-mentioned person in the performance of any function or exercise of any power in terms of *this Act*, in any capacity, by or on behalf of—

(*a*) a *council*;

(*b*) any independent body established by a *collective agreement* or determination to grant exemptions from the provisions of the *collective agreement* or determination;

(*c*) the *registrar*;

(*d*) the Commission; and

(*e*) an accredited agency.

(2) Subsection (1) does not apply if the information was disclosed to enable a person to perform a function or exercise a power in terms of *this Act*.

(3) (*a*) A person convicted of an offence in terms of this section, may be sentenced to a fine not exceeding R10 000.

(*b*) The *Minister*, in consultation with the Minister of Justice, may from time to time by notice in the *Government Gazette*, amend the maximum amount of the fine referred to in paragraph (a).

[Sub-s. (3) substituted by s. 49 of Act No. 42 of 1996.]

202. Service of documents.—(1) If a registered *trade union* or a registered *employers' organisation* acts on behalf of any of its members in a *dispute*, *service* on that *trade union* or *employers' organisation* of any document directed to those members in connection with that *dispute*, will be sufficient *service* on those members for the purposes of *this Act*.

(2) *Service* on the Office of the State Attorney of any legal process directed to the State in its capacity as an employer is *service* on the State for the purposes of *this Act*.

203. Codes of good practice.—(1) *NEDLAC* may—

(*a*) prepare and issue codes of good practice; and

(*b*) change or replace any code of good practice.

(2) Any *code of good practice*, or any change to or replacement of a *code of good practice*, must be published in the *Government Gazette*.

(2A) The *Minister* may issue a *code of good practice* by publishing it in the *Government Gazette* in accordance with the provisions of this section, if—

(*a*) proposals relating to the *code of good practice* have been tabled and considered by *NEDLAC*; and

(*b*) *NEDLAC* has reported to the Minister that it has been unable to reach agreement on the matter.

[Sub-s. (2A) inserted by s. 41 of Act No. 6 of 2014.]

(2B) Subsection (2A) applies to the amendment or replacement of an existing *code of good practice*.

[Sub-s. (2B) inserted by s. 41 of Act No. 6 of 2014.]

(3) Any person interpreting or applying *this Act* must take into account any relevant *code of good practice*.

(4) A *Code of Good Practice* issued in terms of this section may provide that the code must be taken into account in applying or interpreting any employment law.

[Sub-s. (4) added by s. 52 of Act No. 12 of 2002.]

(Date of commencement of s. 203: 1 January, 1996.)

204. Collective agreement, arbitration award or wage determination to be kept by employer.—Unless a *collective agreement*, arbitration award or determination made in terms of the *Basic Conditions of Employment Act* provides otherwise, every employer on whom the *collective agreement*, arbitration award, or determination, is binding must—

(*a*) keep a copy of that *collective agreement*, arbitration award or determination available in the workplace at all times;

(*b*) make that copy available for inspection by any *employee*; and

(*c*) give a copy of that *collective agreement*, arbitration award or determination—

(i) to an *employee* who has paid the *prescribed* fee; and

(ii) free of charge, on request, to an *employee* who is a *trade union representative* or a member of a *workplace forum*.

[S. 204 amended by s. 53 of Act No. 12 of 2002.]

205. Records to be kept by employer.—(1) Every employer must keep the records that an employer is required to keep in compliance with any applicable—

(*a*) *collective agreement*;

(*b*) arbitration award;

(*c*) determination made in terms of the *Wage Act*.

(2) An employer who is required to keep records in terms of subsection (1) must—

(*a*) retain those records in their original form or a reproduced form for a period of three years from the date of the event or end of the period to which they relate; and

(*b*) submit those records in their original form or a reproduced form in response to a demand made at any reasonable time, to any agent of a *bargaining council*, commissioner or any person whose functions in terms of *this Act* include the resolution of *disputes*.

(3) (*a*) An employer must keep a record of the *prescribed* details of any *strike*, *lock-out* or *protest action* involving its *employees*.

(*b*) An employer must submit those records in the *prescribed* manner to the *registrar*.

206. Effect of certain defects and irregularities.—(1) Despite any provision in *this Act* or any other law, a defect does not invalidate—

(*a*) the constitution or the registration of any registered *trade union* registered *employers' organisation* or *council*;

(*b*) any *collective agreement* or arbitration award that would otherwise be binding in terms of *this Act*;

(*c*) any act of a *council*; or

(*d*) any act of the *director* or a commissioner.

(2) A defect referred to in subsection (1) means—

(*a*) a defect in, or omission from, the constitution of any registered *trade union*, registered *employers' organisation* or *council*;

(*b*) a vacancy in the membership of any *council*; or

(*c*) any irregularity in the appointment or election of—

(i) a representative to a *council*;

(ii) an alternate to any representative to a *council*;

(iii) a chairperson or any other person presiding over any meeting of a *council* or a committee of a *council*; or

(iv) the *director* or a commissioner.

(Date of commencement of s. 206: 1 January, 1996.)

207. Ministers empowered to add to and change Schedules.—(1) The *Minister*, after consulting *NEDLAC*, by notice in the *Government Gazette* may change, replace or add to Schedules 2 and 4 to *this Act* and the Schedule envisaged in subsection (3).

[Sub-s. (1) substituted by s. 50 (a) of Act No. 42 of 1996 and by s. 26 (a) of Act No. 127 of 1998.]

(2) . . . . . .

[Sub-s. (2) deleted by s. 26 (b) of Act No. 127 of 1998.]

(3) The *Minister*, after consulting *NEDLAC*, by notice in the *Government Gazette*, may add to *this Act* a further Schedule containing a model constitution for a *statutory council*.

(4) The Minister for the Public Service and Administration, after consulting the Public Service Co-ordinating Bargaining Council, by notice in the *Government Gazette*, may add to *this Act* a further Schedule regulating the establishment and the constitutions of *workplace forums* in the *public service*.

(5) The *Minister* may add to, change or replace any page header or footnote.

(6) . . . . . .

[Sub-s. (6) substituted by s. 50 (b) of Act No. 42 of 1996 (English text only) and deleted by s. 26 (b) of Act No. 127 of 1998.]

(Date of commencement of s. 207: 1 January, 1996.)

208. Regulations.—The *Minister*, after consulting *NEDLAC* and when appropriate, the Commission, may make regulations not inconsistent with *this Act* relating to—

(*a*) any matter that in terms of *this Act* may or must be *prescribed*; and

(*b*) any matter that the *Minister* considers necessary or expedient to *prescribe* or have governed by regulation in order to achieve the primary objects of *this Act*.

(Date of commencement of s. 208: 1 January, 1996.)

208A. Delegations.—(1) The *Minister*, in writing, may delegate to the Director- General or any other officer of the Department of Labour any power, function or duty conferred or imposed upon the *Minister* in terms of *this Act*, except the powers, functions and duties contemplated in section 32 (but excluding subsections (5) (c) and (6)) and sections 44, 207 and 208.

[Sub-s. (1) substituted by s. 18 of Act No. 8 of 2018 w.e.f. 1 January, 2019.]

(2) A delegation in terms of subsection (1) does not limit or restrict the competence of the *Minister* to exercise or perform any power, function or duty that has been delegated.

(3) The Minister may make a delegation subject to any conditions or restrictions that are deemed fit.

(4) The *Minister* may at any time—

(*a*) withdraw a delegation made in terms of subsection (1); and

(*b*) withdraw or amend any decision made by a person in exercising a power or performing a function or duty delegated in terms of subsection (1).

[S. 208A inserted by s. 51 of Act No. 42 of 1996.]

209. This Act binds the State.—*This Act* binds the State.

210. Application of Act when in conflict with other laws.—If any conflict, relating to the matters dealt with in *this Act*, arises between *this Act* and the provisions of any other law save the Constitution or any Act expressly amending *this Act*, the provisions of *this Act* will prevail.

211. Amendment of laws.—Each of the laws referred to in items 1 and 2 of Schedule 5 is hereby amended to the extent specified in those items.

212. Repeal of laws, and transitional arrangements.—(1) Each of the laws referred to in the first two columns of Schedule 6 is hereby repealed to the extent specified opposite that law in the third column of that Schedule.

(2) The repeal of those laws does not affect any transitional arrangements made in Schedule 7.

(3) The transitional arrangements in Schedule 7 must be read and applied as substantive provisions of *this Act*.

213. Definitions.—In this Act, unless the context otherwise indicates—

"area" includes any number of areas, whether or not contiguous;

"auditor" means any person who is registered to practise in the Republic as a public accountant and auditor;

"bargaining council" means a bargaining council referred to in section 27 and includes, in relation to the *public service*, the bargaining councils referred to in section 35;

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

[Definition of "Basic Conditions of Employment Act" substituted by s. 54 (a) of Act No. 12 of 2002.]

"code of good practice" means a code of practice issued by *NEDLAC* in terms of section 203 (1) of this Act;

"collective agreement" means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered *trade unions*, on the one hand and, on the other hand—

(*a*) one or more employers;

(*b*) one or more registered *employers' organisations*; or

(*c*) one or more employers and one or more registered *employers' organisations*;

"Commission" mean the Commission for Conciliation, Mediation and Arbitration established by section 112;

[Definition of "Commission" inserted by s. 42 (a) of Act No. 6 of 2014.]

"council" includes a bargaining council and a statutory council;

"director" means the director of the Commission appointed in terms of section 118 (1) and includes any acting director appointed in terms of section 119;

[Definition of "director" amended by s. 52 of Act No. 42 of 1996.]

"dismissal" means dismissal as defined in section 186;

"dispute" includes an alleged dispute;

[Definition of "dispute" amended by s. 52 of Act No. 42 of 1996.]

"employee"54 means—

(*a*) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any *remuneration*; and

(*b*) any other person who in any manner assists in carrying on or conducting the business of an employer,

and **"employed"** and **"employment"** have meanings corresponding to that of "employee";

[Definition of "employee" amended by s. 52 of Act No. 42 of 1996.]

"employers' organisation" means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and *employees* or *trade unions*;

"employment law" includes this Act, any other Act the administration of which has been assigned to the *Minister*, and any of the following Acts:

(*a*) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

[Para. (a) substituted by s. 42 (b) of Act No. 6 of 2014.]

(*b*) the Skills Development Act, 1998 (Act No. 97 of 1998);

(*c*) the Employment Equity Act, 1998 (Act No. 55 of 1998);

(*d*) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

[Para. (d) amended by s. 42 (c) of Act No. 6 of 2014.]

(*e*) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

[Definition of "employment law" substituted by s. 54 (b) of Act No. 12 of 2002. Para. (*f*) added by s. 42 (c) of Act No. 6 of 2014.]

(*f*) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

[Definition of "employment law" substituted by s. 54 (b) of Act No. 12 of 2002. Para. (f) added by s. 42 (c) of Act No. 6 of 2014.]

"essential service" means—

(*a*) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;

(*b*) the Parliamentary service;

(*c*) the South African Police Services;

"issue in dispute", in relation to a *strike* or *lock-out*, means the demand, the grievance, or the *dispute* that forms the subject matter of the *strike* or *lock-out*;

"legal practitioner" means any person admitted to practise as an advocate or an attorney in the *Republic*;

"lock-out" means the exclusion by an employer of *employees* from the employer's workplace, for the purpose of compelling the *employees* to accept a demand in respect of any matter of mutual interest between employer and *employee*, whether or not the employer breaches those *employees'* contracts of employment in the course of or for the purpose of that exclusion;

"Minister" means the Minister of Labour;

"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"office-bearer" means a person who holds office in a *trade union*, *employers' organisation*, federation of *trade unions*, federation of *employers' organisations* or *council* and who is not an *official*;

"official" in relation to a *trade union*, *employers' organisation*, federation of *trade unions* or federation of *employers' organisations* means a person employed as the secretary, assistant secretary or organiser of a *trade union*, *employers' organisation* or federation, or in any other *prescribed* capacity, whether or not that person is employed in a full-time capacity. And, in relation to a *council* means a person employed by a *council* as secretary or in any other *prescribed* capacity, whether or not that person is employed in a full-time capacity;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;

"prescribed" means prescribed from time to time by regulation in terms of section 208;

"protest action" means the partial or complete concerted refusal to work, or the retardation or obstruction of work, for the purpose of promoting or defending the socio-economic interests of workers, but not for a purpose referred to in the definition of *strike*;

"public service" means the national departments, provincial administrations, provincial departments and government components contemplated in section 7 (2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), but excluding—

(*a*) the members of the South African National Defence Force;

(*b*) the National Intelligence Agency; and

(*c*) the South African Secret Service.

[Definition of "public service" substituted by s. 54 (c) of Act No. 12 of 2002 and amended by s. 43 of Act No. 30 of 2007.]

"registered scope" means—

(*a*) in the case of the Public Service Co-ordinating Bargaining Council, the public service as a whole, subject to section 36;

(*b*) in the case of *bargaining councils* established for *sectors* in the *public service*, the *sector* designated by the Public Service Co-ordinating Bargaining Council in terms of section 37 (1);

[Para. (b) substituted by s. 54 (d) of Act No. 12 of 2002.]

(*c*) in the case of any other *council*, the *sector* and *area* in respect of which it is registered in terms of *this Act*;

"registrar" means the registrar of labour relations appointed in terms of section 108 and includes—

(*a*) any deputy registrar appointed in terms of that section when acting on the direction or under a general or special delegation of the registrar; and

(*b*) any acting registrar appointed in terms of that section;

"remuneration" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and **"remunerate"** has a corresponding meaning;

"Republic"—

(*a*) when used to refer to the State as a constitutional entity, means the Republic of South Africa as

defined in section 1 of the Constitution; and

(*b*) when used in the territorial sense, means the national territory of the Republic as defined in section 1 of the Constitution;

"sector" means, subject to section 37, an industry or a service;

"serve" means to send by electronic mail, registered post, telegram, telex, telefax or to deliver by hand, and—

(*a*) in respect of the Labour Courts, any other method of service specified in the rules of the Labour Court;

(*b*) in respect of the Commission, any other method of service specified in the Rules of the Commission;

(*c*) in respect of a *bargaining council,* any other method of service specified in a *collective agreement* concluded in the *bargaining council*;

[Definition of "serve" substituted by s. 42 (d) of Act No. 6 of 2014.]

"statutory council" means a council established in terms of Part E of Chapter III;

"strike" means the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a *dispute* in respect of any matter of mutual interest between employer and *employee*, and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory;

"this Act" includes the section numbers, the Schedules, except Schedules 4 and 8, and any regulations made in terms of section 208, but does not include the page headers, the headings or footnotes;

"trade union" means an association of *employees* whose principal purpose is to regulate relations between *employees* and employers, including any *employers' organisations*;

"trade union representative" means a member of a trade union who is elected to represent employees in a *workplace*;

"Wage Act" means the Wage Act, 1957 (Act No. 5 of 1957);

"working hours" means those hours during which an *employee* is obliged to work;

"workplace"—

(*a*) in relation to the *public service*—

(i) for the purposes of collective bargaining and *dispute* resolution, the *registered* scope of the Public Service Co-ordinating Bargaining Council or a *bargaining council* in a *sector* in the *public service*, as the case may be; or

(ii) for any other purpose, a national department, provincial administration, provincial department or organisational component contemplated in section 7 (2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), or any other part of the *public service* that the Minister for Public Service and Administration, after consultation with the Public Service Co-ordinating Bargaining Council, demarcates as a workplace;

[Para. (a) substituted by s. 54 (e) of Act No. 12 of 2002.]

(*b*) . . . . . .

[Para. (b) deleted by s. 54 (f) of Act No. 12 of 2002.]

(*c*) in all other instances means the place or places where the *employees* of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where *employees* work in connection with each independent operation, constitutes the workplace for that operation; and

"workplace forum" means a workplace forum established in terms of Chapter V.

214. Short title and commencement.—(1) *This Act* is called the Labour Relations Act, 1995.

(2) *This Act* will come into operation on a date to be determined by the President by proclamation in the *Government Gazette*, except in the case of any provision in relation to which some other arrangement regarding commencement is made elsewhere in *this Act*.

[Sub-s. (2) substituted by s. 53 of Act No. 42 of 1996.]

Schedule 1

ESTABLISHMENT OF BARGAINING COUNCILS FOR PUBLIC SERVICE

[Schedule 1 amended by s. 54 of Act No. 42 of 1996.]

1. Definitions for this Schedule.—In this Schedule, unless the context otherwise indicates—

"Education Labour Relations Act" means the Education Labour Relations Act, 1993 (Act No. 146 of 1993);

"Education Labour Relations Council" means the bargaining council established by section 6 (1) of the Education Labour Relations Act;

"National Negotiating Forum" means the National Negotiating Forum established for the South African Police Service by the South Africa Police Service Labour Relations Regulations, 1995;

"Public Service Bargaining Council" means the council referred to in section 5 (1) of the Public Service Labour Relations Act;

"Public Service Labour Relations Act" means the Public Service Labour Relations Act, 1994 (promulgated by Proclamation No. 105 of 1994).

2. Establishment of Public Service Co-ordinating Bargaining Council.—(1) As soon as practicable after the commencement of *this Act*, the Commission, by notice in the *Government Gazette*, must invite the *employee* and employer representatives in the Education Labour Relations Council, the National Negotiating Forum and the central chamber of the Public Service Bargaining Council to attend a meeting, with a view to those representatives agreeing on a constitution for the Public Service Co-ordinating Bargaining Council.

(2) The Commission must appoint a commissioner to chair the meeting and facilitate the conclusion of an agreement on a constitution that meets the requirements of section 30, read with the changes required by the context.

(3) The parties to the Education Labour Relations Council, the National Negotiating Forum and the central chamber of the Public Service Bargaining Council will be the founding parties to the Public Service Co-ordinating Bargaining Council.

(4) If an agreement is concluded and the *registrar* is satisfied that the constitution meets the requirements of section 30, the *registrar* must register the Public Service Co-ordinating Bargaining Council by entering its name in the register of *councils*.

(5) If no agreement is concluded on a constitution, the *registrar* must—

(*a*) determine the constitution for the Public Service Co-ordinating Bargaining Council;

(*b*) register the Public Service Co-ordinating Bargaining Council by entering its name in the register of *councils*; and

(*c*) certify the constitution as the constitution of the Public Service Co-ordinating Bargaining Council.

(6) After registering the Public Service Co-ordinating Bargaining Council, the *registrar* must—

(*a*) issue a certificate of registration that must specify the *registered scope* of the Public Service Co-ordinating Bargaining Council; and

(*b*) send the certificate and a certified copy of the constitution to the Public Service Co-ordinating Bargaining Council.

3. Establishment of bargaining council in sectors.—(1) The departmental and provincial chambers of the Public Service Bargaining Council are deemed to be *bargaining councils* established in terms of section 37 (3) (a) of *this Act*, subject to any designation in terms of section 37 (1) of *this Act*.

(2) The Education Labour Relations Council is deemed to be a *bargaining council* established in terms of section 37 (3) (b) of *this Act*.

(3) The National Negotiating Forum is deemed to be a *bargaining council* established for a sector designated in terms of section 37 (2).

(4) If the President designates a *sector* in terms of section 37 (2), the President must inform the Commission and instruct it to convene a meeting of the representatives of the registered *trade unions* with members employed in the *sector*.

(5) The Commission must publish a notice in the *Government Gazette* inviting registered *trade unions* with members employed in the *sector* to attend a meeting.

(6) The Commission must appoint a commissioner to chair the meeting and facilitate the conclusion of an agreement on—

(*a*) the registered *trade unions* to be parties to the *bargaining council*; and

(*b*) a constitution that meets the requirements of section 30, read with the changes required by the context.

(7) If agreement is concluded, the *registrar* must—

(*a*) admit the registered *trade unions* as parties to the *bargaining council*; and

(*b*) if satisfied that the constitution meets the requirements of section 30, register the *bargaining council by* entering its name in the register of *councils*.

(8) If no agreement is concluded on—

(*a*) the registered *trade union* to be admitted, the Commission must decide which *trade union* should be admitted;

(*b*) a constitution, the *registrar*, in accordance with the decisions made by the Commission in paragraph (a), must determine a constitution that meets the requirements of section 30, read with the changes required by the context.

(9) The *registrar* must register the *bargaining council* for the *sector* by entering its name in the register of *councils*.

(10) After registering the bargaining council the registrar must—

(*a*) issue a certificate of registration that must specify the *registered scope* of the *bargaining council*; and

(*b*) send the certificate and a certified copy of the constitution to the *bargaining council*.

Schedule 2

GUIDELINES FOR CONSTITUTION OF WORKPLACE FORUM

1. Introduction.—(1) This Schedule contains guidelines for the constitution of a *workplace forum*. It is intended to guide representative *trade unions* that wish to establish a *workplace forum*, employers and commissioners.

(2) *This Act* places the highest value on the establishment of *workplace forums* by agreement between a representative *trade union* and an employer. The role of the commissioner is to facilitate an agreement establishing the structure and functions of a *workplace forum*. If agreement is not possible, either in whole or in part, the commissioner must refer to this Schedule, using its guidelines in a manner that best suits the particular *workplace* involved.

(3) For convenience, the guidelines follow the sequence of the paragraphs in section 82 of *this Act*.

2. Number of seats in workplace forums (section 82 (1) (a)**).**—The formula to determine the number of seats in the *workplace forum* should reflect the size, nature, occupational structure and physical location of the *workplace*. *A* guideline may be—

(*a*) in a *workplace* in which 100 to 200 *employees* are employed, five members:

(*b*) in a *workplace* in which 201 to 600 *employees* are employed, eight members:

(*c*) in a *workplace* in which 601 to 1 000 *employees* are employed, 10 members;

(*d*) in a *workplace* in which more than 1 000 *employees* are employed, 10 members for the first 1 000 *employees*, plus an additional member for every additional 500 *employees*, up to a maximum of 20 members.

3. Distribution of seats to reflect occupational structure (section 82 (1) (b)**).**—The formula to determine the distribution of seats in the *workplace forum* must reflect the occupational structure of the *workplace*.

Example:

There are 300 *employees* in a workplace. The occupational structure is as follows: 200 *employees* are manual *employees*; 50 are administrative and clerical *employees*; and 50 are supervisory, managerial and technical *employees*. The six seats may be distributed as follows—

4 seats for members to be elected from candidates nominated from among the manual employees

1 seat for members to be elected from candidates nominated from among the administrative and clerical employees

1 seat for members to be elected from candidates nominated from among the supervisory, managerial and technical employees.

4. Elections (section 82 (1) (c)**,** (d)**,** (g)**,** (h)**,** (i) **and** (j)**).**—(1) The constitution must include provisions concerning the appointment of an election officer.

Example:

(*a*) Every election or by-election in relation to a *workplace forum* must be conducted by an election officer appointed by agreement between the representative *trade union* and the employer.

(*b*) If the *trade union* and the employer cannot agree, the *trade union* may apply to the Commission to appoint an election officer.

(*c*) The Commission must appoint an election officer to conduct a by-election only if it is satisfied that the *workplace forum* cannot function adequately without a by-election.

(2) The constitution must set out what the election officer should do and the procedure for an election.

Example:

(*a*) Thirty days before each election of members of the *workplace forum*, the election officer must—

(i) prepare a list of all *employees* in the *workplace*; and

(ii) call for nominations for members of the *workplace forum*.

(*b*) Any *employee* may be nominated as a candidate for election as a member of the *workplace f*orum by—

(i) any registered *trade union* with members employed in the *workplace*;

(ii) a petition signed by not less than 20 per cent of the *employees* in the *workplace* or 100 *employees*, whichever number of *employees* is the smaller.

(*c*) Any *employee* who is a member or has previously served as a member of a *workplace forum* is eligible for re-election.

(*d*) Fourteen days before each election of members of the *workplace forum*, the election officer must—

(i) confirm that the nominated candidates qualify for election;

(ii) publish a list of all qualified candidates who have been properly nominated; and

(iii) prepare a ballot for the election, listing the nominated candidates in alphabetical order by surname.

(*e*) Voting must be by secret ballot.

(*f*) Every *employee* is entitled to vote in the election of the *workplace forum* during *working hours* at the employer's premises.

(*g*) Every *employee* in the *workplace* is entitled to cast a number of votes equal to the number of members to be elected to the *workplace forum*.

(*h*) Every *employee* may cast one or more of those votes in favour of any candidate.

5. Terms of office (section 82 (1) (k)**,** (l) **and** (m)**).**—(1) The constitution must provide that the members of a *workplace forum* remain in office until the first meeting of the newly elected *workplace forum*.

(2) The constitution must include provisions allowing the members to resign or to be removed from office.

Example:

(*a*) A member of a *workplace forum* may resign by giving written notice to the chairperson.

(*b*) A member of a *workplace forum must* vacate that office—

(i) when the member's resignation takes effect;

(ii) if the member is promoted to senior managerial status;

(iii) if the member is transferred from the *workplace*;

(iv) if the member's employment is terminated;

(v) as a result of an award of a commissioner; or

(vi) if the representative *trade union* that nominated a member removes the member.

(*c*) The representative *trade union*, the employer, or the *workplace forum* may apply to the Commission to have a member of the *workplace forum* removed from office on the grounds of gross dereliction of the duties of office.

(*d*) Twenty percent of the *employees* in the *workplace* may submit a signed petition to the Commission applying for the removal from office of a member of the *workplace forum* on the grounds of gross dereliction of the duties of office.

(*e*) An application to remove a member of a *workplace forum* from office must be decided by arbitration under the auspices of the Commission.

(*f*) A by-election to fill any vacancy in the *workplace forum* must be conducted by an election officer.

6. Meetings of workplace forum (section 82 (1) (n)**).**—The constitution must include provisions governing meetings of the *workplace forum*.

Example:

(*a*) The first meeting of a newly elected *workplace forum* must be convened by the election officer as soon as practicable after the election.

(*b*) At that meeting the members of the *workplace forum* must elect from among their number a chairperson and a deputy chairperson.

(*c*) The *workplace forum* must meet whenever necessary, but at least once a month.

(*d*) A quorum of the *workplace forum* must be a majority of the members of the *workplace forum* holding office at any time.

(*e*) A decision of the majority of the *workplace forum* present at the meeting must be the decision of the *workplace forum*.

(*f*) The meetings between members of the *workplace forum* and the *employees* should be at least four times a year.

Example 1:

In a *workplace* that is a single place, the meetings with the *employees* should be with all the members of the *workplace forum*.

Example 2:

In a *workplace* that is geographically dispersed, the meetings with the *employees* need not be with all the members of the *workplace forum*, but with one or more members of the *workplace forum*.

7. Time off for members of workplace forum (section 82 (1) (p)**).**—The constitution must include provisions governing time off for members to perform their functions.

Example:

(*a*) A member of a *workplace forum* entitled to take reasonable time off during *working hours* with pay for the purpose of—

(i) performing the functions and duties of a member; and

(ii) undergoing training relevant to the performance of those functions and duties.

(*b*) The right to time off is subject to conditions that are reasonable, so as to prevent the undue disruption of work.

(*c*) The costs associated with the training must be paid by the employer, if those costs are reasonable, having regard to the size and capabilities of the employer.

8. Facilities to be provided to workplace forum (section 82 (1) (r)**).**—The constitution must require the employer to provide adequate facilities to the workplace *forum* to perform its functions.

Example:

(*a*) The employer must provide, at its cost—

(i) fees, facilities and materials that are necessary for the conduct of elections and by-elections of the *workplace forum*; and

(ii) administrative and secretarial facilities that are appropriate to enable the members of the *workplace forum* to perform their functions and duties.

(*b*) These facilities must include, but are not limited to, a room in which the *workplace forum* may meet and access to a telephone.

(*c*) The costs incurred by the employer in complying with the provisions of paragraphs (a) and (b) must be reasonable, having regard to the size and capabilities of the employer.

9. Experts (section 82 (1) (t)**).**—The constitution may provide for the use of experts.

Example:

(*a*) A *workplace forum* may ask experts to assist it in the performance of any of its functions.

(*b*) An expert must ensure that there is no conflict of interest between the assistance given to one *workplace forum* and another.

(*c*) An expert may attend any meeting of the *workplace forum* and, at its request, address any meetings of the *workplace forum* including a meeting with the employer or the *employees*.

(*d*) An expert is entitled to any information to which the *workplace forum* is entitled and may inspect and copy any document.

10. Establishment of co-ordinating and subsidiary workplace forums (section 82 (2) (b)**).**—(1) Where an employer carries on or conducts two or more operations that are independent of each other by reason of their size, function and organisation, the constitution may provide for the establishment of a co-ordinating *workplace forum* with jurisdiction over those matters contained in sections 84 and 86 that affect the *employees* generally and for the establishment of a subsidiary *workplace forum* in each of the *workplaces* with jurisdiction over those matters that affect only the employees in that *workplace*.

(2) Where the employer has a *workplace* that is geographically dispersed and there are matters that are of local interest rather than general interest, the constitution may establish a co-ordinating *workplace forum* with general jurisdiction and subsidiary *workplace forum* with local interest jurisdiction.

Example:

A bank with a head office may have many branches dispersed around the country. If the branches are not regarded as separate *workplaces*, the bank may have one *workplace forum* for all its *employees* or the constitution may allow for the establishment of a co-ordinating *workplace forum* at head office level and in certain or all of the branches allow the establishment of subsidiary *workplace forums* that will deal with matters that affect only the *employees* in those branches.

Schedule 3
COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION

1. Remuneration and allowances of members of governing body.—The *Minister*, after consulting the Minister of Finance, must determine the *remuneration* and allowances and any other terms and conditions of appointment of members of the governing body.

2. Resignation and removal from office of member of governing body.—(1) A member of the governing body may resign by giving notice to the governing body.

(2) The *Minister*, acting on the advice of *NEDLAC*, may remove a member of the governing body from office for —

(*a*) serious misconduct;

(*b*) incapacity; or

(*c*) being absent from three consecutive meetings of the governing body without good cause or prior permission from the chairperson.

3. Vacancies in governing body.—(1) A vacancy in the governing body exists whenever—

(*a*) a member's term of office ends;

(*b*) a member's resignation takes effect;

(*c*) a member is removed from office; or

(*d*) a member dies.

(2) The *Minister* must fill a vacancy in the governing body as soon as is practicable. In the meantime, the Commission's proceedings and decisions continue to be valid.

(3) If a vacancy—

(*a*) is owing to the end of a member's term of office, the *Minister* may re-appoint the member, or appoint another person nominated by *NEDLAC* in accordance with section 116 (2) and (3);

(*b*) is owing to any other cause, the *Minister* must appoint another person nominated by *NEDLAC* in accordance with section 116 (2) and (3) to replace the member and serve the unexpired portion of the replaced member's term of office.

4. Proceedings of governing body.—(1) The governing body must determine procedures for its meetings.

(2) A quorum for a meeting of the governing body is three members of the governing body. The quorum must include—

(*a*) one member who was nominated by those voting members of *NEDLAC* who represent organised business;

(*b*) one member who was nominated by those voting members of *NEDLAC* who represent organised labour; and

(*c*) one member who was nominated by those voting members of *NEDLAC* who represent the State.

(3) Despite subitem (2), a meeting of the governing body may be held in the absence of any member representing organised business or organised labour or the State, if those members have agreed to the meeting proceeding in the absence of that member and to issues which may be dealt with in the absence of that member.

(4) If the chairperson is absent from a meeting of the governing body, the members present must elect one of themselves to preside at that meeting, and at that meeting that member may exercise or perform any function of the chairperson.

(5) A defect or error in the appointment of a member of the Commission does not affect the validity of the Commission's proceedings or decisions.

5. Director of Commission.—(1) The *director* may resign by giving written notice to the governing body.

(2) The governing body may remove the *director* from office for—

(*a*) serious misconduct;

(*b*) incapacity;

(*c*) a material violation of the Commission's code of conduct; or

(*d*) being absent from three consecutive meetings of the governing body without good cause or prior permission from the chairperson.

(3) A vacancy in the office of *director* exists whenever—

(*a*) the *director* reaches the age of 65;

(*b*) the *director's* resignation takes effect;

(*c*) the governing body removes the *director* from office; or

(*d*) the *director* dies.

(4) The governing body must appoint a *director* in accordance with the provisions of section 118 as soon as practicable after the office of the *director* becomes vacant.

6. Bank account.—The governing body must open and maintain an account in the name of the Commission with a bank registered in the *Republic*, or with another registered financial institution approved by the Minister of Finance and, subject to item 7, must—

(*a*) deposit to that account any money that the Commission receives; and

(*b*) make all payments on behalf of the Commission from that account.

7. Investment of surplus money.—The governing body may resolve to invest any money that the Commission does not immediately require to meet current expenditure or contingencies—

(*a*) on call or short-term deposit with any bank that meets the requirements stated in item 6;

(*b*) if the *Minister*, with the concurrence of the Minister of Finance, gives written approval of the duration and other terms of the investment, in an investment account with the Corporation for Public Deposits.

8. Accounting and auditing.—The Commission must, to the standards of generally accepted accounting practice, principles and procedures—

(*a*) keep books and records of its income, expenditure, assets and liabilities;

(*b*) as soon as practicable after the end of each financial year, prepare financial statements, including at least a statement of income and expenditure for the previous financial year and a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year; and

(*c*) each year, arrange for the Auditor-General to audit its books and records of account and its financial statements.

9. Annual report.—(1) As soon as practicable after the end of each financial year, the Commission must provide the *Minister* with a report concerning the activities and the financial position of the Commission during the previous financial year.

(2) The *Minister* must table the Commission's annual report in Parliament within 14 days of receiving it from the Commission, but if Parliament is not in session at that time, the *Minister* must table the report within 14 days of the beginning of the next session of Parliament.

Schedule 4
DISPUTE RESOLUTION: FLOW DIAGRAMS

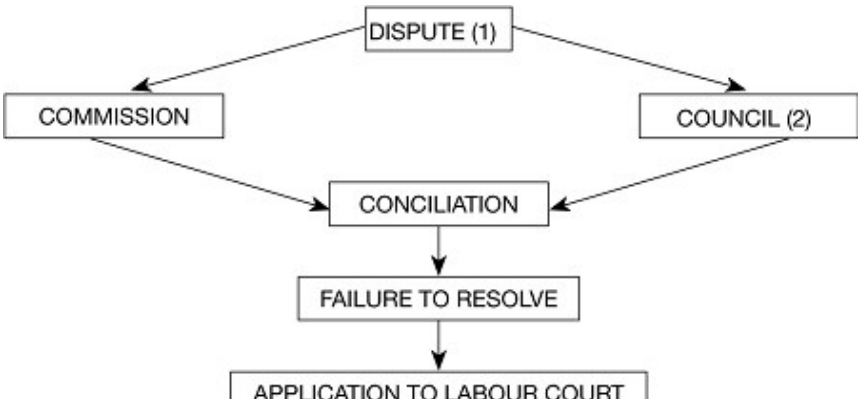
This Schedule contains flow diagrams that provide guidelines to the procedures for the resolution of some of the more important *disputes* that may arise under *this Act*. This Schedule is not part of *this Act*. It does not have the force of law. The flow diagrams are intended only to provide assistance to those parties who may become involved in a *dispute*.

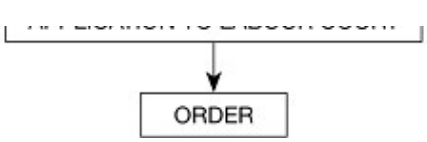
The flow diagrams do not indicate the rights that parties may have to seek urgent interim relief, nor do they indicate the right of review or appeal that parties have to the Labour Court or the Labour Appeal Court in certain cases. *This Act* sets out the circumstances in which these rights are available.

Awards and determinations by arbitrators are enforceable ultimately by the Labour Court.

FLOW DIAGRAM 1
FREEDOM OF ASSOCIATION

CHAPTER II (Section 9)

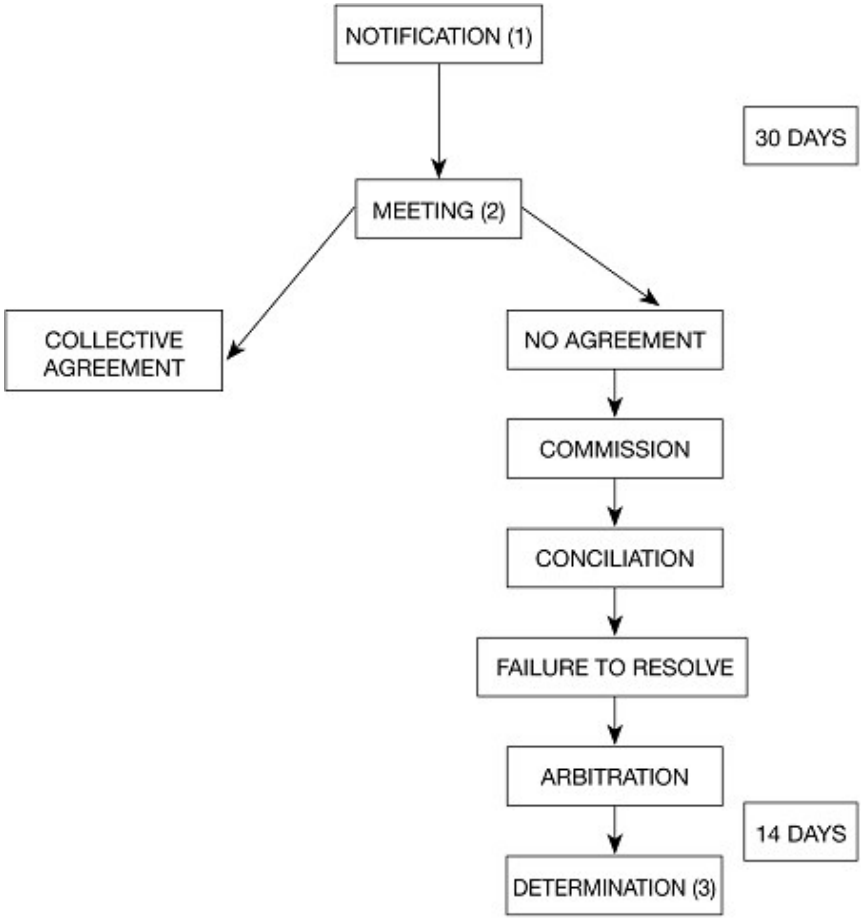




1. This procedure is relevant to the interpretation or application of Chapter II. For example, if an employer threatens to dismiss an employee unless the employee resigns from a trade union, that employee can enforce the rights conferred by this chapter in terms of this procedure. If a trade union threatens to boycott an employer, for example, because the employer institutes proceedings against the union, the employer can enforce its rights in the same way.
2. The dispute must be referred to a council if the parties to the dispute fall within the council's registered scope.

FLOW DIAGRAM 2
ORGANISATIONAL RIGHTS

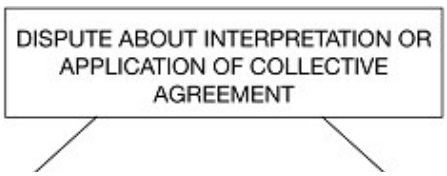
CHAPTER III (Section 21)

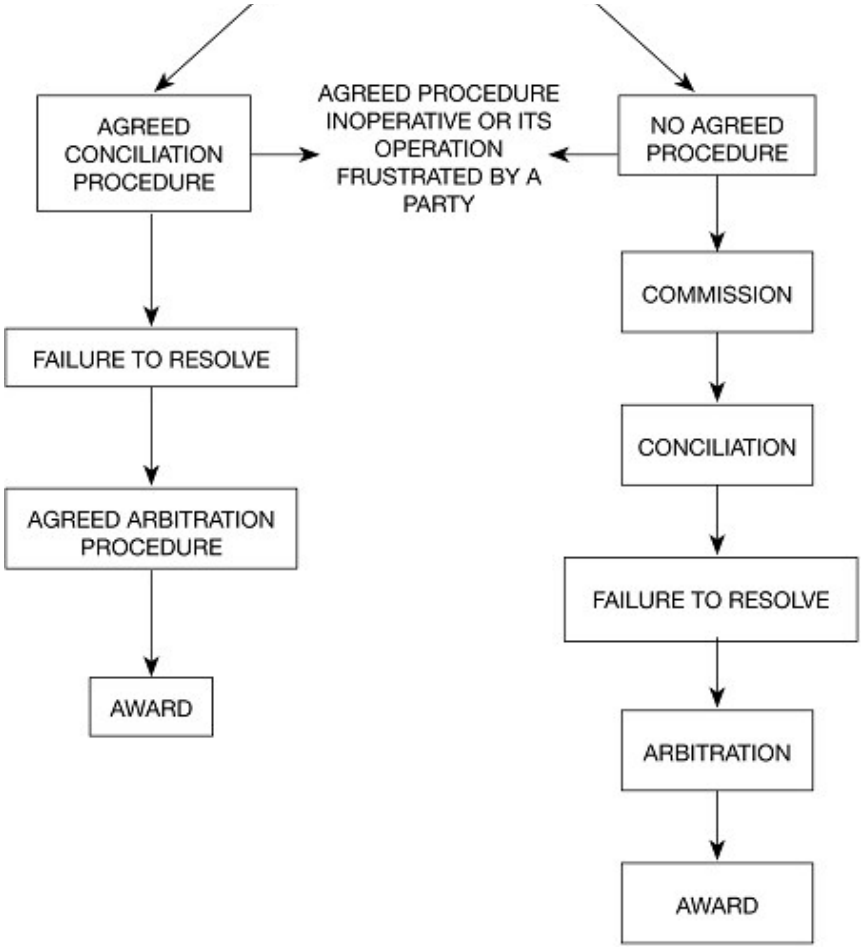


1. A registered trade union may notify an employer that it intends to exercise organisational rights. The content of the notice is described in s 21 (2). For example, if a registered trade union is sufficiently representative, it may notify the employer that it seeks to exercise the rights of access.
2. The object of the meeting is to conclude a collective agreement on the exercise of the organisational right. If there is no agreement, the trade union can elect to exercise a right to strike, or it can refer the dispute to the commission. If the trade union elects not to strike, it cannot refer a dispute over the organisational rights to the Commission for a period of 12 months.
3. The Act contemplates disputes and therefore determinations about the definition of a workplace, the representativeness of the union and the manner in which organisational rights are exercised.

FLOW DIAGRAM 3
COLLECTIVE AGREEMENTS

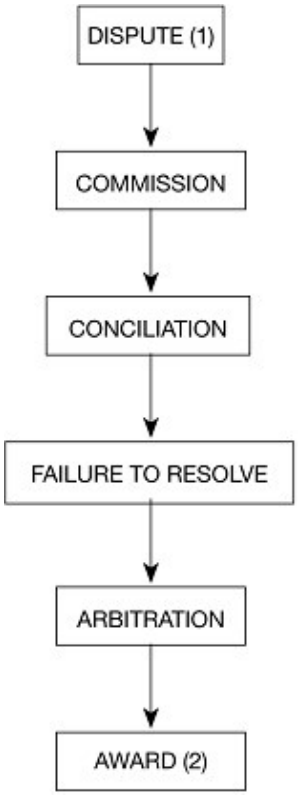
CHAPTER III (Section 24)





FLOW DIAGRAM 4
COLLECTIVE AGREEMENTS
(Agency Shop and Closed Shop Agreements)

CHAPTER III (Section 24 (6) AND (7)))



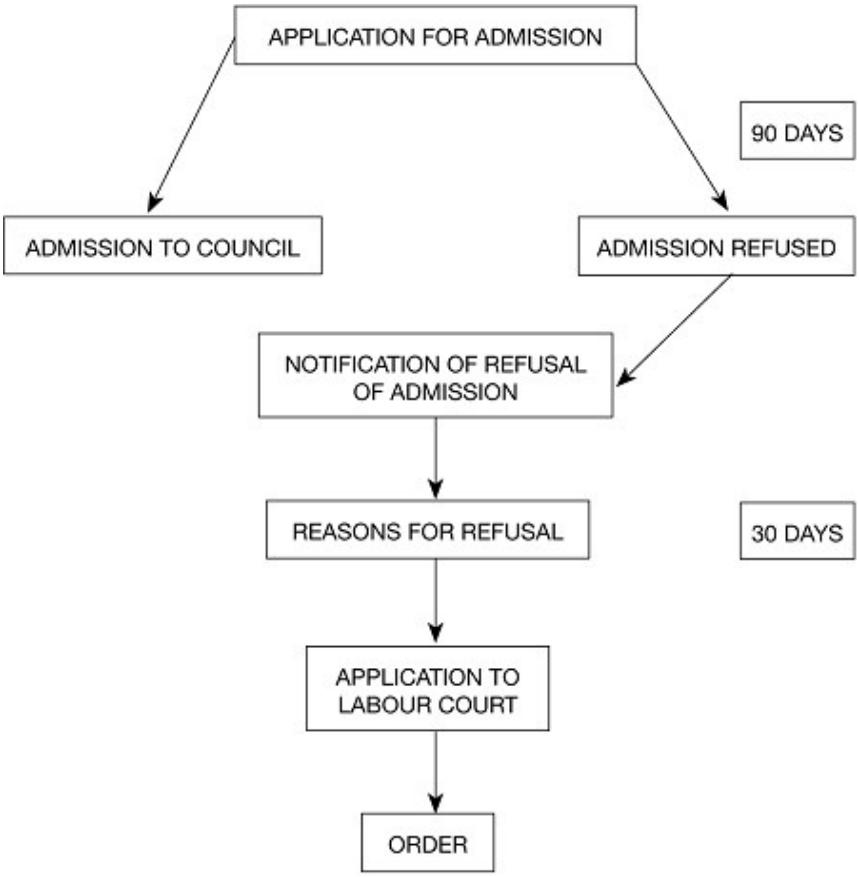
1. This procedure is about the interpretation or application of closed shop and agency shop agreements. For example, if the contributions deducted from wages in terms of those agreements are used for purposes other than those referred to in

sections 23 (3) (d) or 26 (3) (d), that dispute may be referred to the Commission. Dismissal disputes involving closed shops are dealt with in Chapter VIII – see flow diagram No. 11.

2. Section 24 (7) confers a limited right of appeal to the Labour against some awards.

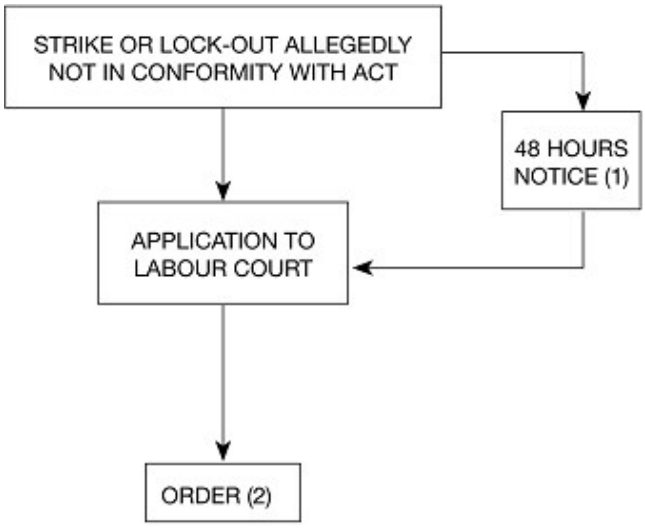
FLOW DIAGRAM 5
COUNCILS
(Admission of Parties)

CHAPTER III (Section 56)



FLOW DIAGRAM 6
STRIKES & LOCK-OUTS
(Not in compliance with the Act)

CHAPTER IV (Section 68)

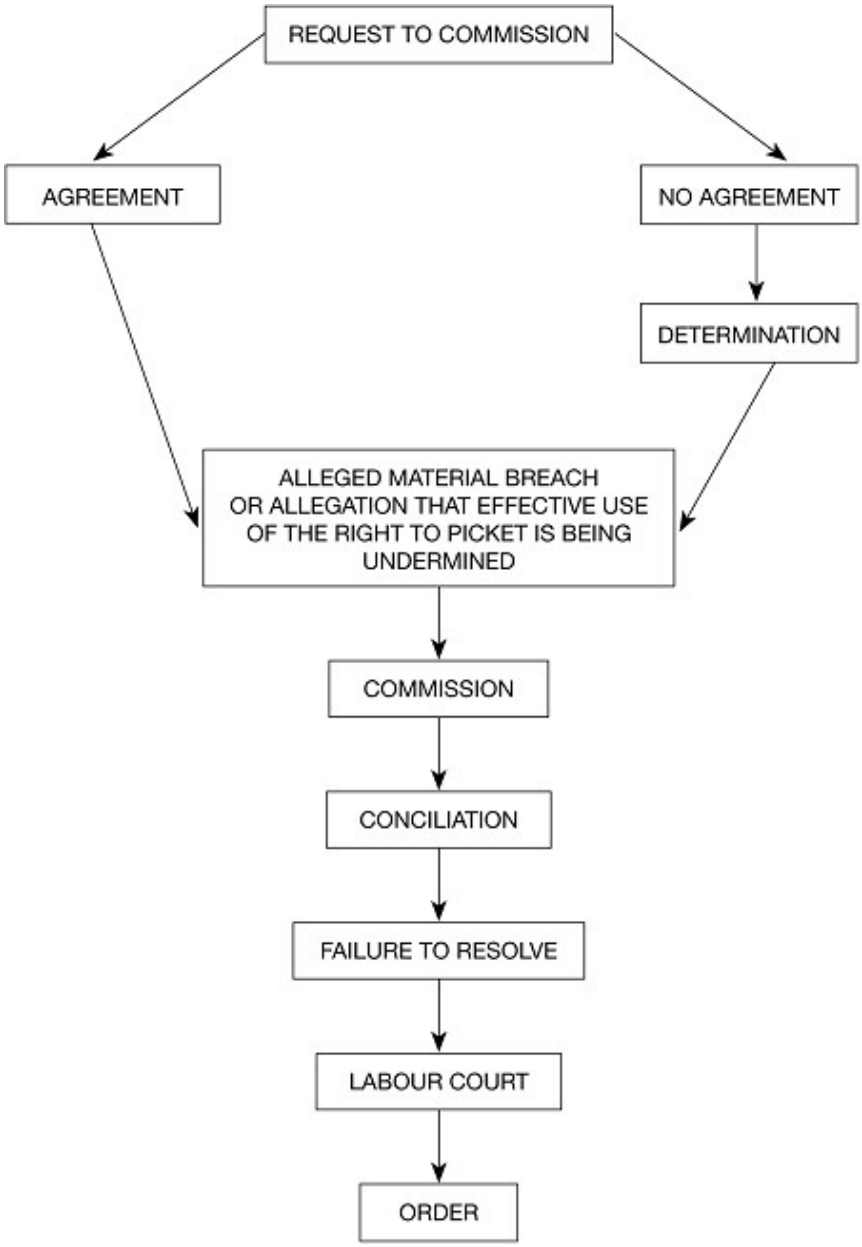


1. The notice requirement is dealt with in s. 68 (2). Shorter notice may be permitted in the circumstances specified in that section. Notice is not required if the employees are engaged in an essential service or a maintenance service.

2. The orders that the Labour Court may grant include restraining orders and an order for the payment of compensation.

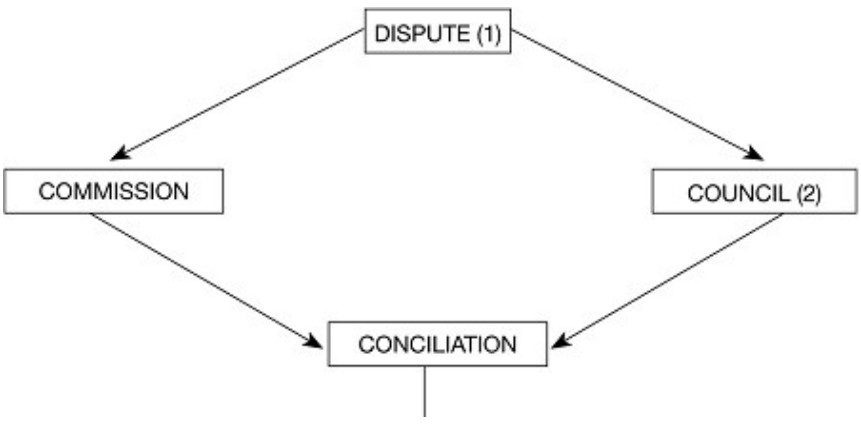
FLOW DIAGRAM 7
PICKETING

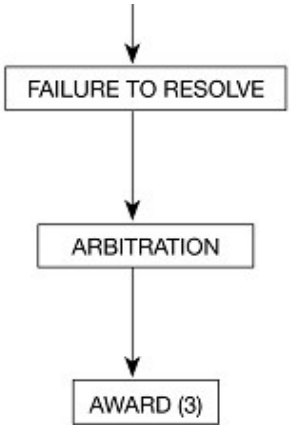
CHAPTER IV (Section 69)



FLOW DIAGRAM 8
ESSENTIAL SERVICES
(Dispute of interest in essential service)

CHAPTER IV (Section 74)

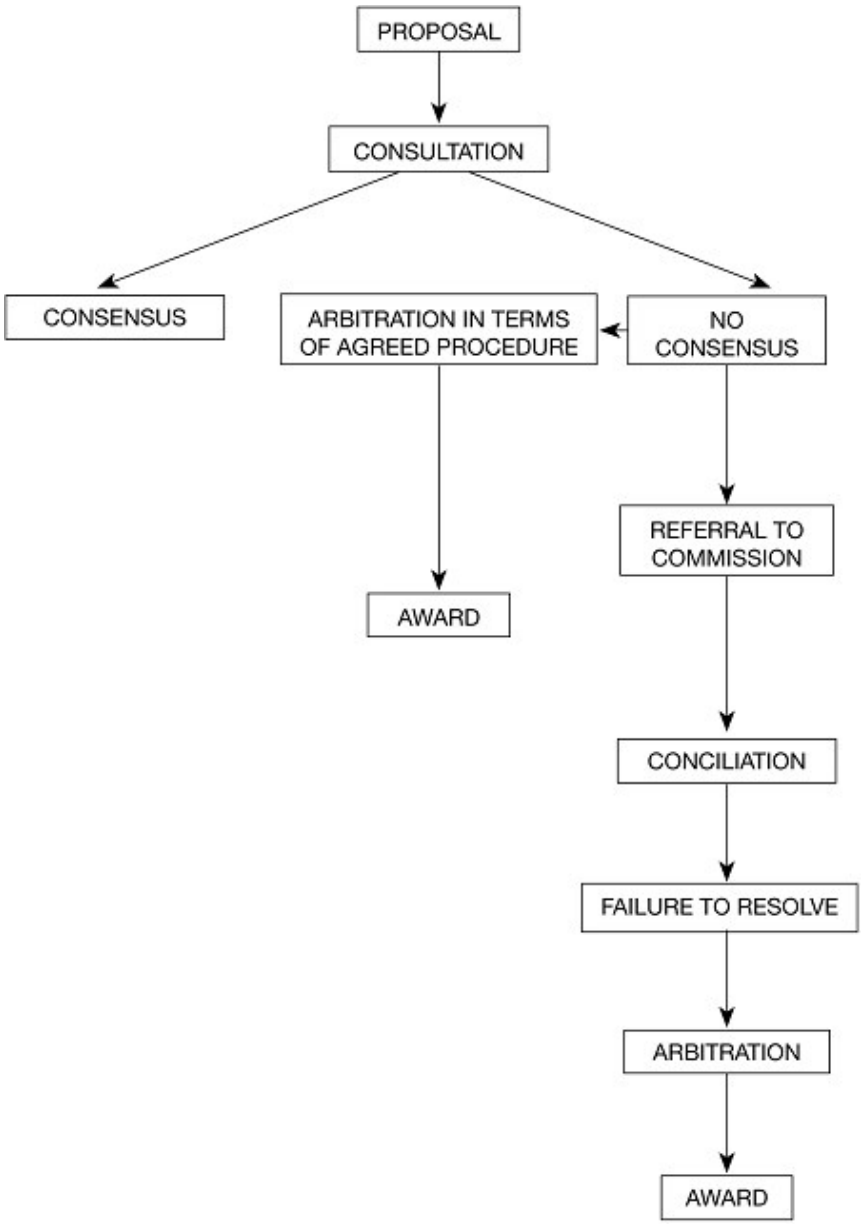




1. A dispute of interest in an essential service may, for example, include a dispute about wages. Because employees may not strike and employers may not lock out (see s. 65 (1) (d)) any party may refer the dispute to a council or the commission.
2. The dispute must be referred to a council if the parties to the dispute fall within the council's registered scope.
3. In the case of an award that binds the State and that has financial implications, special parliamentary procedures are prescribed (see s. 74 (5) to (7)).

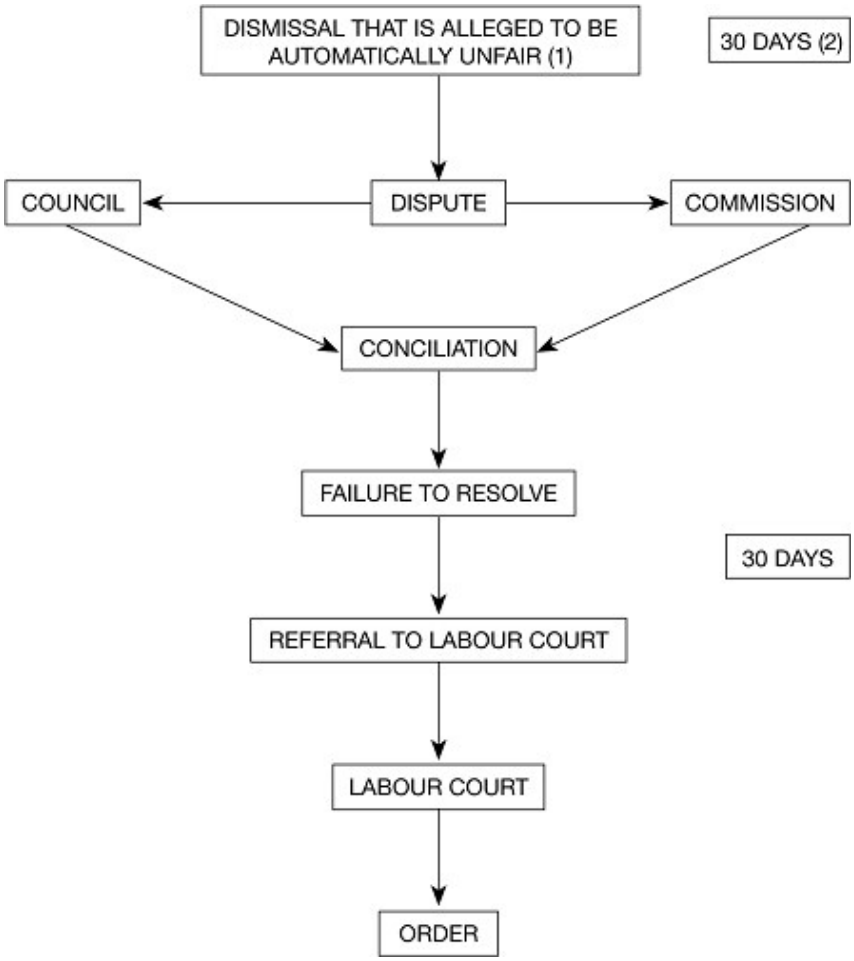
FLOW DIAGRAM 9
WORKPLACE FORUM (1)

CHAPTER V (Section 86)



FLOW DIAGRAM 10
UNFAIR DISMISSAL (1)
(Automatically Unfair Reasons)

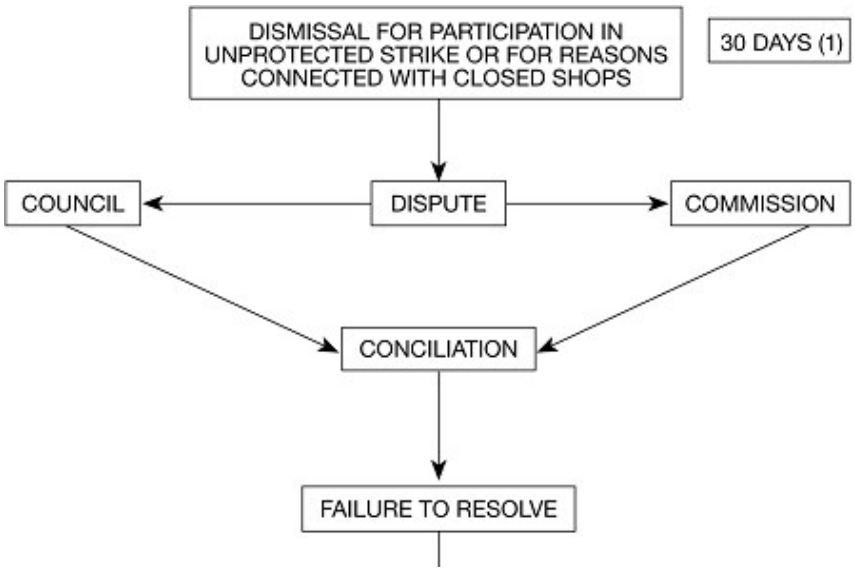
CHAPTER VIII (Section 191)

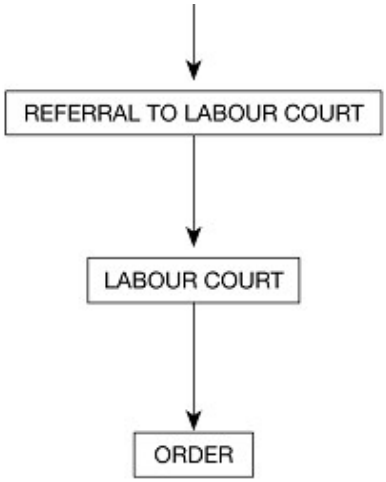


1. Examples of dismissals that are automatically unfair include dismissal for participation in a protected strike, dismissal on account of pregnancy and dismissal that amounts to an act of discrimination.
2. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted of there is good cause to do so.

FLOW DIAGRAM 11
UNFAIR DISMISSAL (2)
(Strikes and reasons related to closed shops))

CHAPTER VIII (Section 191)

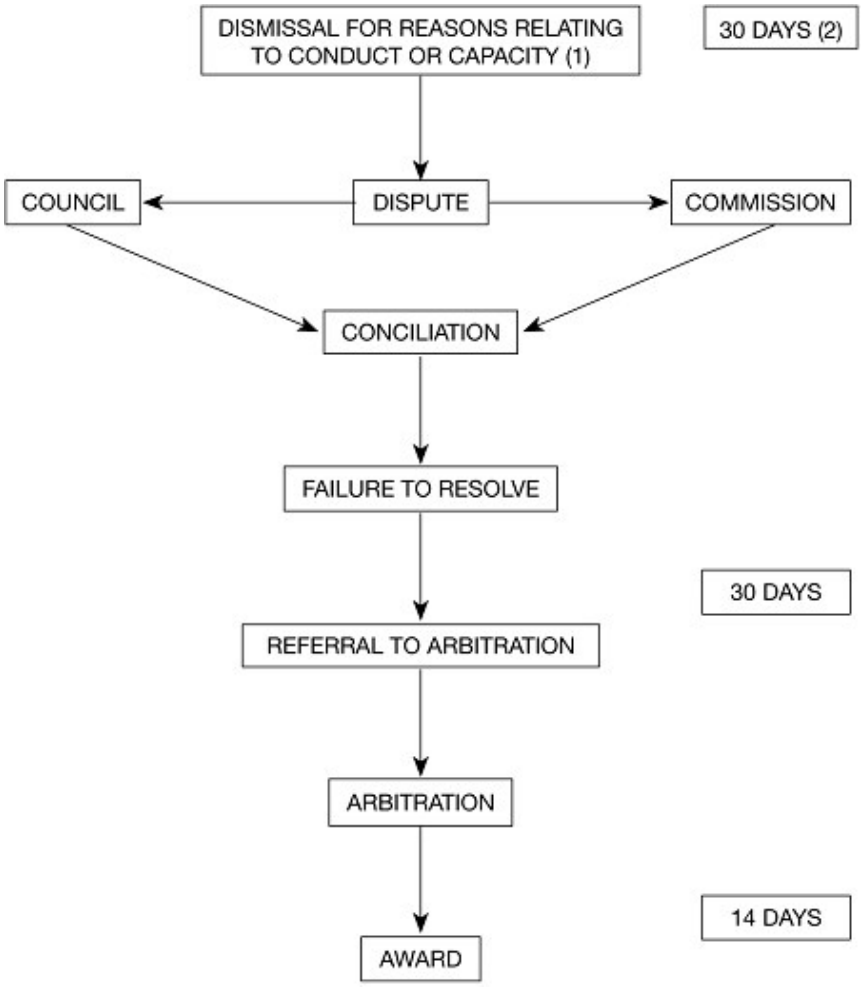




1. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted of there is good cause to do so.

FLOW DIAGRAM 12
UNFAIR DISMISSAL (3)
(Misconduct/Incapacity)

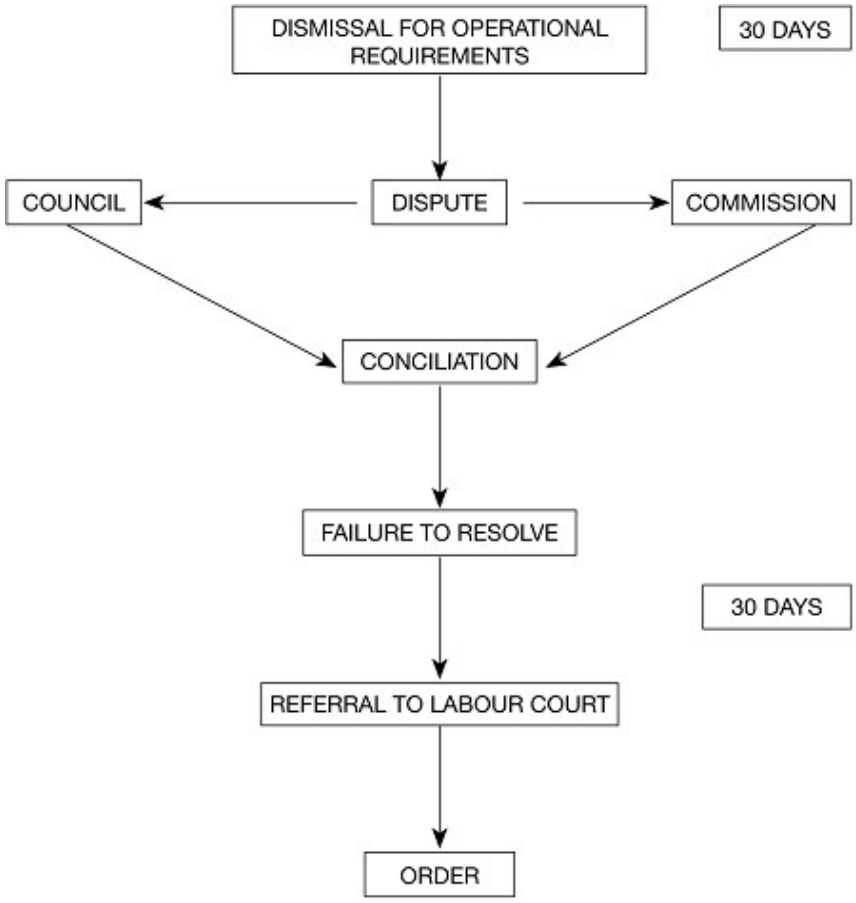
CHAPTER VIII (Section 191)



1. Dismissal for misconduct and incapacity is dealt with in the Code of Good Practice. Dismissal in Schedule 8.
2. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted if there is good cause to do so.

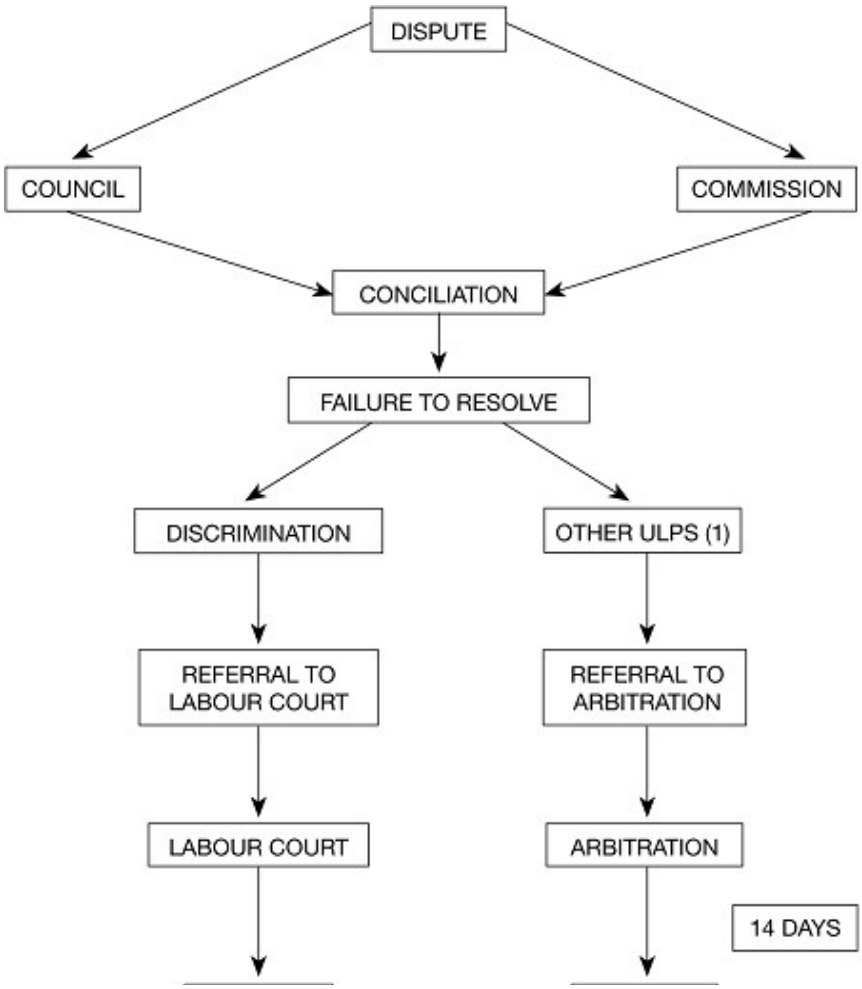
FLOW DIAGRAM 13
UNFAIR DISMISSAL (4)
(Operational requirements)

CHAPTER VIII (Section 191)



FLOW DIAGRAM 14
UNFAIR LABOUR PRACTICE

CHAPTER 7 (Item 2)



1. Other unfair labour practices include unfair conduct by the employer relating to promotion/demotion, training or the provision of benefits, unfair suspension, the failure to re-instate or re-employ an employee in terms of any agreement (see Item 2, Schedule 7).

Schedule 5
AMENDMENT OF LAWS
[Schedule 5 amended by s. 55 of Act No. 42 of 1996 and by s. 27 of Act No. 127 of 1998.]

1. Amendment of section 1 **of Basic Conditions of Employment Act.**—Section 1 of the *Basic Conditions of Employment Act* is hereby amended by the substitution for subsection (3), of the following section—

"(3) The Mines and Works Act, 1956 (Act No. 27 of 1956), the Wage Act, 1957 (Act No. 5 of 1957), the Manpower Training Act, 1981 (Act No. 56 of 1981) and the Labour Relations Act, 1995, as well as any matter regulated under any of them in respect of an employee, shall not be affected by this Act, but this Act shall apply in respect of any such employee in so far as a provision thereof provides for any matter which is not regulated by or under any of the said Acts in respect of such employee.".

2. Amendment of section 35 **of Occupational Health and Safety Act.**—Section 35 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), is hereby amended—

(*a*) by the substitution for the words "industrial court", wherever they occur in subsection (3), of the words "Labour Court"; and

(*b*) by the substitution of subsection (4) of the following subsection—

"(4) Any person who wishes to appeal in terms of subsection (3), shall within 60 days after the chief inspector's decision was given, lodge the appeal with the registrar of the Labour Court in accordance with the Labour Relations Act, 1995, and the rules of the Labour Court.".

3. Amendment of section 2 **of Pension Funds Act, 1956.**—Section 2 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The provisions of this Act shall not apply in relation to any pension fund which has been established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), before the Labour Relations Amendment Act, 1998, has come into operation, nor in relation to a pension fund so established or continued and which, in terms of a collective agreement concluded in that council after the coming into operation of the Labour Relations Amendment Act, 1998, is continued or further continued (as the case may be). However, such a pension fund shall from time to time furnish the registrar with such statistical information as may be requested by the Minister.".

4. Amendment of section 2 **of Medical Schemes Act, 1967.**—Section 2 (1) of the Medical Schemes Act, 1967 (Act No. 72 of 1967), is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(*g*) shall, subject to the provisions of subsection (2A), apply with reference to—

(i) a particular medical scheme established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), before the Labour Relations Amendment Act, 1998, has come into operation;

(ii) a particular medical scheme which was established or continued in the circumstances mentioned in subparagraph (i) and which, in terms of a collective agreement so concluded in that council after the coming into operation of the Labour Relations Amendment Act, 1998, is continued or further continued (as the case may be),

only if the Minister, at the request of the Minister of Labour and by notice in the *Gazette*, has declared the said provisions to be applicable with reference to such a particular medical scheme;".

5. Amendment of section 1 **of Insurance Act, 1943.**—Section 1 (1) of the Insurance Act, 1943 (Act No. 27 of 1943), is hereby amended by the substitution for paragraph (d) of the definition of "insurance business" of the following paragraph:

"(*d*) any transaction under the Labour Relations Act, 1995 (Act No. 66 of 1995);".

6. Amendment of section 2 **of Friendly Societies Act, 1956.**—Section 2 (1) of the Friendly Societies Act, 1956 (Act No. 25 of 1956), is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(*g*) the relief or maintenance of members, or any group of members, when unemployed or in distressed circumstances, otherwise than in consequence of the existence of a strike or lock-out as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);".

7. Amendment of section 3 **of Friendly Societies Act, 1956.**—Section 3 (1) of the Friendly Societies Act, 1956, is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(*a*) which has been established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995. However, such a friendly society shall from time to time furnish the registrar with such statistical information as may be requested by the Minister;".

Schedule 6
LAWS REPEALED BY SECTION 212

Number and year of law	*Short title*	*Extent of repeal*
Act No. 28 of 1956	Labour Relations Act, 1956	The whole
Act No. 41 of 1959	Industrial Conciliation Amendment Act, 1959	The whole
Act No. 18 of 1961	Industrial Conciliation Amendment Act, 1961	The whole
Act No. 43 of 1966	Industrial Conciliation Amendment Act, 1966	The whole
Act No. 61 of 1966	Industrial Conciliation Further Amendment Act, 1966	The whole
Act No. 104 of 1967	Industrial Conciliation Amendment Act, 1967	The whole
Act No. 21 of 1970	Industrial Conciliation Amendment Act, 1970	The whole
Act No. 94 of 1979	Industrial Conciliation Amendment Act, 1979	The whole
Act No. 95 of 1980	Industrial Conciliation Amendment Act, 1980	The whole
Act No. 57 of 1981	Labour Relations Amendment Act, 1981	The whole
Act No. 51 of 1982	Labour Relations Amendment Act, 1982	The whole
Act No. 2 of 1983	Labour Relations Amendment Act, 1983	The whole
Act No. 81 of 1984	Labour Relations Amendment Act, 1984	The whole
Act No. 83 of 1988	Labour Relations Amendment Act, 1988	The whole
Act No. 9 of 1991	Labour Relations Amendment Act, 1991	The whole
Act No. 129 of 1993	General Law Third Amendment Act, 1993	Section 9 only
Act No. 146 of 1993	Education Labour Relations Act, 1993	The whole
Act No. 147 of 1993	Agricultural Labour Act, 1993	Chapter 1 only
Act No. 50 of 1994	Agricultural Labour Amendment Act, 1994	Section 1 only
Proclamation No. 105 of 1994	Public Service Labour Relations Act, 1994	The whole
Proclamation No. 128 of 1994	Education Labour Relations Act, Amendment Proclamation, 1994	The whole except section 6
Proclamation No. 134 of 1994	—	Sections 1 and 2 only
—	South African Police Service Labour Relations Regulations, 1995	The whole

Schedule 7

TRANSITIONAL ARRANGEMENTS

[Schedule 7 amended by s. 56 of Act No. 42 of 1996, by Proclamation No. R.1734 of 1 November 1996, by Government Notice No. R.2025 of 6 December 1996, by Government Notice No. R.440 of 27 March 1997, by Government Notice No. R.654 of 9 May 1997, by s. 64 of Act No. 55 of 1998, by s. 28 of Act No. 127 of 1998 and by s. 55 (a) and (b) of Act No. 12 of 2002.]

Part A—Definitions for this Schedule

1. Definitions for this Schedule.—In this Schedule, unless the context otherwise indicates—

"Agricultural Labour Act" means the Agricultural Labour Act, 1993 (Act No. 147 of 1993);

"Education Labour Relations Act" means the Education Labour Relations Act, 1993 (Act No. 146 of 1993);

"Education Labour Relations Council" means the bargaining council established in terms of section 6 (1) of the Education Labour Relations Act;

"Labour Relations Act" means the Labour Relations Act, 1956 (Act No. 28 of 1956);

"labour relations laws" means the Labour Relations Act, the Educational Labour Relations Act, Chapter 4 of the Agricultural Labour Act and the Public Service Labour Relations Act;

"National Negotiating Forum" means the National Negotiating Forum established for the South African Police Service by the South African Police Service Labour Relations Regulations, 1995;

"pending" means pending immediately before *this Act* comes into operation;

"public service" does not include the education *sector*;

"Public Service Bargaining Council" means the bargaining council referred to in section 5 (1) of the Public Service Labour Relations Act;

"Public Service Labour Relations Act" means the Public Service Labour Relations Act, 1994 (promulgated by Proclamation No. 105 of 1994);

"registrar" means the registrar of labour relations designated in terms of section 108; and

"trade union" includes an *employee* organisation.

Part B—Unfair Labour Practices

2. . . . . . .

3. . . . . . .

4. . . . . . .

Part C—*Provisions concerning existing Trade Unions*, *Employers' Organisations*, *Industrial Councils and Conciliation Boards*

5. Existing registered trade unions and employers' organisations.—(1) A *trade union* or *employers' organisation* registered or deemed to be registered in terms of the labour relations laws immediately before the commencement of *this Act*, will be deemed to be a registered *trade union* or registered *employers' organisation* under *this Act* and continues to be a body corporate.

(2) As soon as practicable after the commencement of *this Act*, the *registrar* must enter—

(*a*) the name of the *trade union* in the register of *trade unions*;

(*b*) the name of the *employers' organisation* in the register of *employers' organisations*.

(3) A *trade union* or *employers' organisation* whose name has been entered in the appropriate register must be issued with a new certificate of registration.

(4) If any provision of the constitution of the *trade union* or *employers' organisation* does not comply with the requirements of section 95, the *registrar* may direct that *trade union* or *employers' organisation*, in writing, to rectify its constitution and submit it to the *registrar* within a period specified in the direction, which period may not be shorter than three months.

(5) If a *trade union* or *employers' organisation* fails to comply with a direction issued to it in terms of subitem (4), the *registrar* must notify the *trade union* or *employers' organisation* that cancellation of its registration is being considered because of the failure, and give the *trade union* or *employers' organisation* an opportunity to show cause why its registration should not be cancelled within 30 days of the notice.

(6) If, when the 30-day period expires, the relevant *trade union* or *employers' organisation* has not shown cause why its registration should not be cancelled, the *registrar* must cancel the registration of that *trade union* or *employers' organisation* by removing its name from the appropriate register or take other lesser steps that are appropriate and not inconsistent with *this Act*.

(7) The *registrar* must notify the relevant *trade union* or *employers' organisation* whether the registration of the *trade union* or *employers' organisation* has been cancelled.

(8) Cancellation in terms of subitem (6) takes effect—

(*a*) if the *trade union* or the *employers' organisation* has failed, within the time contemplated in section 111 (3), to appeal to the Labour Court against the cancellation, when that period expires; or

(*b*) if the *trade union* or the *employers' organisation* has lodged an appeal, when the decision of the *registrar* has been confirmed by the Labour Court.

6. Pending applications by trade unions or employers' organisations for registration, variation of scope, alteration of constitution or name.—(1) Any pending application in terms of the labour relations laws for the registration, variation of scope of registration or alteration of the constitution or name of a *trade union* or an *employers' organisation* must be dealt with by the *registrar* as if the application had been made in terms of *this Act*.

(2) The registrar appointed in terms of the Public Service Labour Relations Act and the secretary of the

Education Labour Relations Council appointed in terms of the Education Labour Relations Act must forward any pending application referred to in subitem (1) to the *registrar*.

(3) In any pending appeal in terms of section 16 of the Labour Relations Act or in terms of section 11 of the Education Labour Relations Act or in terms of section 11 of the Public Service Labour Relations Act, the *Minister* or the registrar of the industrial court or the registrar of the Supreme Court, as the case may be, must refer the matter back to the *registrar* who must deal with the application as if it were an application made in terms of *this Act*.

(4) When dealing with any application referred to in subitem (1) or (2), the *registrar*—

(*a*) may condone any technical non-compliance with the provisions of *this Act*; and

(*b*) may require the applicant to amend its application within 60 days in order to comply with the provisions of *this Act*.

7. Industrial councils.—(1) An industrial council registered or deemed to be registered in terms of the Labour Relations Act immediately before the commencement of *this Act*, will be deemed to be a *bargaining council* under *this Act* and continues to be a body corporate.

(2) As soon as practicable after the commencement of *this Act*, the registrar must enter the name of the *bargaining council* in the register of *councils*.

(3) A *bargaining council* whose name has been entered in the register of *councils* must be issued with a certificate of registration.

(4) If any provisions of the constitution of a *bargaining council* does not comply with the requirements of section 30, the registrar may direct the *bargaining council*, in writing, to rectify its constitution and submit it to the *registrar* within a period specified in the direction, which period may not be shorter than three months.

(5) If a *bargaining council* fails to comply with a direction issued to it in terms of subitem (4), the *registrar* must notify the *bargaining council* that cancellation of its registration is being considered because of the failure, and give the *bargaining council* an opportunity to show cause why its registration should not be cancelled within 30 days of the notice.

(6) If, when the 30-day period expires, the *bargaining council* has not shown cause why its registration should not be cancelled, the *registrar* must cancel the registration of that *bargaining council* by removing its name from the register of *councils* or take other lesser steps that are appropriate and not inconsistent with *this Act*.

(7) The *registrar* must notify the *bargaining council* whether the registration of the *bargaining council* has been cancelled.

(8) Cancellation in terms of subitem (6) takes effect—

(*a*) if the *bargaining council* has failed, within the time contemplated in section 111 (3), to appeal to the Labour Court against the cancellation, when that period expires; or

(*b*) if the *bargaining council* has lodged an appeal, when the decision of the *registrar* has been confirmed by the Labour Court.

8. Pending applications by industrial councils for registration and variation of scope.—(1) Any pending application for the registration or the variation of the scope of registration of an industrial council in terms of the Labour Relations Act must be dealt with as if it were an application made in terms of *this Act*.

(2) In any pending appeal in terms of section 16 of the Labour Relations Act against the refusal to register or vary the scope of an industrial council, the *Minister* or the registrar of the Supreme Court, as the case may be, must refer the matter to the registrar of labour relations, who must consider the application anew as if it were an application for registration made in terms of *this Act*.

(3) When dealing with the application referred to in subitem (1) or (2), the *registrar* may—

(*a*) require the applicant to amend its application within 60 days in order to comply with the provision of *this Act*; and

(*b*) condone technical non-compliance with the provisions of *this Act*.

8A. Pending enquiries by industrial registrar.—Any pending enquiry conducted by the industrial registrar under section 12 (3) of the Labour Relations Act, must, after the commencement of *this Act*, be continued and dealt with further by the same person in terms of the Labour Relations Act as if it had not been repealed.

9. Pending applications by industrial councils for alterations of constitution or name.—The provisions in item 6 apply, read with the changes required by the context, to any pending application for the alteration of the constitution or the name of an industrial council in terms of the Labour Relations Act.

10. Pending application for admission of parties to industrial councils.—(1) Any pending application for admission of a party to an industrial council in terms of section 21A of the Labour Relations Act must be dealt with by the industrial council as if it were an application made in terms of *this Act*.

(2) Any pending appeal before the industrial court against a decision of an industrial council in terms of section 21A of the Labour Relations Act must be dealt with by the industrial court as if the application had been made for admission as a party to a bargaining council in terms of *this Act*.

(3) An appeal against a decision of an industrial council as contemplated in section 21A of the Labour Relations Act may, despite the repeal of that Act, be instituted after the commencement of *this Act*, and must be heard by the Labour Court and dealt with as if the application for admission had been made in terms of *this Act*.

11. Pending applications to wind up and cancel registration of trade unions, employers' organisations and industrial councils.—Any pending application to wind up or to cancel the registration of a *trade union*, *employers' organisation* or industrial council registered in terms of any labour relations law must be dealt with by the *registrar* as if the labour relations laws had not been repealed.

12. Existing agreements and awards of industrial councils and conciliation boards.—(1) (*a*) Any agreement promulgated in terms of section 48, any award binding in terms of sections 49 and 50, and any order made in terms of section 51A, of the Labour Relations Act and in force immediately before the commencement of *this Act*, remains in force and enforceable, subject to paragraphs (b) and (c) of this subitem, and to subitem (5B), for a period of 18 months after the commencement of *this Act* or until the expiry of that agreement, award or order, whichever is the shorter period, in all respects, as if the Labour Relations Act had not been repealed.

(*b*) On the request of any council deemed by item 7 (1) to be a *bargaining council*, an agreement referred to in paragraph (a) that had been concluded in that council—

(i) if it expires before the end of the 18-month period referred to in paragraph (a), may be extended or declared effective in accordance with the provisions of subsection (4) (a) of section 48 of the Labour Relations Act, for a period ending before or on the expiry of that 18-month period, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements extended or declared effective in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement extended or declared effective on the authority of this subparagraph as if those various provisions had not been repealed. However, the *Minister* may not on the authority of this subparagraph declare an agreement to be effective if it expires after 31 March 1997;

(ii) may be cancelled, in whole or in part, in accordance with the provisions of subsection (5) of section 48 of the Labour Relations Act, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements wholly or partly cancelled in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement wholly or partly cancelled on the authority of this subparagraph as if those various provisions had not been repealed.

(*c*) An agreement referred to in paragraph (a) that had been concluded by parties to a conciliation board—

(i) if it expires before the end of the 18-month period referred to in paragraph (a), may, at the request of the parties that were represented on that conciliation board at the time of the conclusion of that agreement, be extended in accordance with, and in the manner provided for in, paragraph (b) (i) which will apply, read with the changes required by the context, in relation to the extension of agreements of that nature;

(ii) may, at the request of those parties, be cancelled, in whole or in part, in accordance with paragraph (b) (ii) which will apply, read with the changes required by the context, in relation to the cancellation of agreements of that nature.

(1A) (*a*) An agreement referred to in subitem (1) that had been concluded in a council deemed by item 7 (1) to be a *bargaining council*, may be amended or amplified by a further agreement concluded in that *bargaining council* and promulgated in accordance with the provisions of subsections (1) and (2) of section 48 of the Labour Relations Act, which provisions will apply in all respects, read with the changes required by the context, for the purposes of this paragraph as if they had not been repealed.

(*b*) Sub-items (1) (b), (3) and (8) (*a*) will apply to any further agreement concluded and promulgated on the authority of paragraph (a) of this subitem, in all respects as if it were an agreement referred to in subitem (1) (a).

(2) An agreement promulgated in terms of section 12 of the Education Labour Relations Act and in force immediately before the commencement of *this Act* remains in force for a period of 18 months after the commencement of *this Act* or until the expiry of that agreement, whichever is the shorter period, as if the provisions of that Act had not been repealed.

(3) Despite the provisions of subitem (1), an agreement referred to in section 24 (1) (x) of the Labour Relations Act that is in force immediately before the commencement of *this Act* will be deemed to be a closed shop agreement concluded in compliance with section 26 of *this Act* except that—

(*a*) the requirements in section 26 (3) (d) and section 98 (2) (b) (ii) become applicable at the commencement of the next financial year of the *trade union* party to the agreement; and

(*b*) the commencement date of the closed shop agreement shall be deemed to be the commencement date of *this Act*.

(4) Any pending request for the promulgation of an agreement in terms of section 48 of the Labour Relations Act must be dealt with as if the Labour Relations Act had not been repealed.

(5) Any request made before the expiry of six months after the commencement of *this Act* for the promulgation of an agreement entered into before the commencement of *this Act* must be dealt with as if the Labour Relations Act had not been repealed.

(5A) Any exemption from an agreement or award, or from an order, contemplated in subitem (1), that was in force immediately before the commencement of *this Act*, will remain in force for a period of 18 months after the

commencement of *this Act* or until the period for which the exemption had been granted, has expired, whichever is the shorter period, as if the Labour Relations Act had not been repealed.

(5B) Any one or more of or all the provisions of an order referred to in subitem (1) (a), may be cancelled, suspended or amended by the *Minister* in accordance with the provisions of section 51A (4) (a) of the Labour Relations Act, which provisions will apply for the purposes of this subitem as if they had not been repealed.

(6) Any pending application for an exemption from all or any of the provisions of any agreement or award remaining in force in terms of subitem (1), or for an exemption from any provision of an order remaining in force in terms of that subitem, must—

(*a*) in the case of that agreement or award, be dealt with in terms of the provisions of section 51 and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects, read with the changes required by the context, as if the provisions in question had not been repealed;

(*b*) in the case of that order, be dealt with in terms of the provisions of section 51A and, whenever applicable, any other relevant provisions, of the Labour Relations Act as if the provisions in question had not been repealed.

(7) An exclusion granted in terms of section 51 (12) of the Labour Relations Act will remain in force until it is withdrawn by the *Minister*.

(8) After the commencement of *this Act* and despite the repeal of the Labour Relations Act—

(*a*) any person or class of persons bound by an agreement or award remaining in force in terms of subitem (1), may apply in accordance with the provisions of section 51 of the Labour Relations Act for an exemption from all or any of the provisions of that agreement or award (as the case may be). Any application so made, must be dealt with in terms of the provisions of section 51 and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects as if the provisions in question had not been repealed;

(*b*) any person bound by an order remaining in force in terms of subitem (1), may apply in accordance with the provisions of section 51A of the Labour Relations Act for exemption from any provision of that order. Any application so made, must be dealt with in terms of the provisions of section 51A and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects as if the provisions in question had not been repealed.

12A. Designated agents.—(1) Any person appointed under section 62 of the Labour Relations Act as a designated agent of an industrial council deemed by item 7 (1) to be a *bargaining council*, who holds that office immediately before the commencement of *this Act*, will be deemed to be a designated agent appointed for that *bargaining council* under section 33 of *this Act*.

(2) The certificate of appointment that had been issued in terms of section 62 (2) of the Labour Relations Act to that designated agent, will be deemed to have been issued in terms of section 33 (2) of *this Act*.

13. Existing agreements including recognition agreements.—(1) For the purposes of this section, an agreement—

(*a*) includes a recognition agreement;

(*b*) excludes an agreement promulgated in terms of section 48 of the Labour Relations Act;

(*c*) means an agreement about terms and conditions of employment or any other matter of mutual interest entered into between one or more registered *trade unions*, on the one hand, and on the other hand—

(i) one or more employers;

(ii) one or more registered *employers' organisations*; or

(iii) one or more employers and one or more registered *employers' organisations*.

(2) Any agreement that was in force immediately before the commencement of *this Act* is deemed to be a *collective agreement* concluded in terms of *this Act*.

(3) Any registered *trade union* that is party to an agreement referred to in subitem (1) and (2) in terms of which that *trade union* was recognised or the purposes of collective bargaining is entitled to the organisational rights conferred by sections 11 to 16 of Chapter III as may be regulated by that agreement and in respect of *employees* that it represents in terms of the agreement, for so long as the *trade union* remains recognised in terms of the agreement as the collective bargaining agent of those *employees*.

(4) If the parties to an agreement referred to in subsection (1) or (2) have not provided for a procedure to resolve any *dispute* about the interpretation or application of the agreement as contemplated in section 24 (1), the parties to the agreement must attempt to agree a procedure as soon as practicable after the commencement of *this Act*.

(5) An existing non-statutory agency shop or closed shop agreement is not binding unless the agreement complies with the provisions of this item. Sections 25 and 26 of this Act become effective 180 days after the commencement of this item.

14. Public Service Bargaining Council.—(1) The Public Service Bargaining Council will continue to exist, subject to item 20.

(2) The departmental and provincial chambers will continue to exist, subject to item 20.

(3) Within 30 days after the commencement of this Act, the chambers of the Public Service Bargaining Council must furnish the *registrar* with copies of their constitutions signed by their authorised representatives.

(4) The constitutions of the chambers of the Public Service Bargaining Council, are deemed to be in compliance with section 30. However, where any provision of the constitution of a chamber does not comply with the requirements of section 30, the *registrar* may direct the chamber to rectify its constitution and re-submit the rectified constitution within the period specified in the direction, which period may not be shorter than three months.

(5) If a chamber fails to comply with a direction issued to it in terms of subitem (5), the *registrar* must—

(*a*) determine the amendments to the constitution in order to meet the requirements of section 30; and

(*b*) send a certified copy of the constitution to the chamber.

(6) A chamber of the Public Service Bargaining Council must deal with any pending application for admission of a party to it in terms of section 10 of the Public Service Labour Relations Act as if the application had been made in terms of *this Act*.

(7) Any pending appeal before the industrial court or an arbitrator against a decision of the Public Service Bargaining Council in terms of section 10 of the Public Service Labour Relations Act must, despite the repeal of any of the labour relations laws, be dealt with by the industrial court or arbitrator as if the application had been made in terms of *this Act*.

(8) Despite the repeal of the Public Service Labour Relations Act, an appeal in terms of section 10 of that Act against a decision of a chamber of the Public Service Bargaining Council may be instituted after the commencement of *this Act* and must be heard by the Labour Court and dealt with as if the application had been made in terms of *this Act*.

15. Collective agreements in the public service.—The following provisions, read with the changes required by the context, of the Public Service Labour Relations Act, despite the repeal of that Act, will have the effect and status of a *collective agreement* binding on the State, the parties to the chambers of the Public Service Bargaining Council and all *employees* in the *public service*—

(*a*) section 1 for the purposes of this item unless the context otherwise indicates;

(*b*) section 4 (10);

(*c*) section 5 (2), (3), (4) (a) and (5);

(*d*) section 7;

(*e*) section 8, except that the reference to section 5 (1) should be a reference to item 14 (1);

(*f*) section 9 (3);

(*g*) section 10 (4) and (5);

(*h*) section 12;

(*i*) section 13, except that the reference to agreements should be a reference to *collective agreements* including the *collective agreement* contemplated in this item;

(*j*) sections 14, 15 and 16 (2);

(*k*) section 17, except that the following subsection must be substituted for subsection (4) (b)—

"If the application of a trade union for recognition is refused, the trade union, within 90 days of the notice of the refusal, may refer the dispute to arbitration."; and

(*l*) section 18, except that—

(i) the following subsection must be substituted for subsection (10) (a)—

"An employee who or the employee organisation which in terms of subsection (1) has declared a dispute, requested that a conciliation board be established and submitted the completed prescribed form, may refer the dispute to arbitration or to the Labour Court in terms of the provisions of this Act and, in respect of a dispute not contemplated by this Act, to any other court if—

(i) a meeting of a conciliation board is not convened as contemplated in subsection (3);

(ii) the head of department concerned fails to request the appointment of a chairperson in terms of subsection (5);

(iii) where applicable, the Commission fails to appoint a chairperson of the conciliation board in terms of subsection (5);

(iv) the parties involved in the conciliation board have failed to agree to extend the period of office of the conciliation board in terms of subsection (7) until a settlement is reached;

(v) the conciliation board does not succeed in settling the dispute within the period contemplated in subsection (7); or

(vi) the parties to the dispute agree that they will not be able to settle the dispute and submit written proof thereof to the Commission or relevant court."; and

(ii) any reference to the Department of Labour should be a reference to the Commission.

16. Education Labour Relations Council.—(1) The Education Labour Relations Council will continue to exist, subject to item 20.

(2) The *registered scope* of the Education Labour Relations Council in the State and those *employees* in respect of which the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994) applies.

(3) Within 30 days after the commencement of *this Act*, the Education Labour Relations Council must furnish the *registrar* with a copy of its constitution signed by its authorised representatives, and with the other information or documentation.

(4) The constitution agreed on between the parties to the Education Labour Relations Council is deemed to be in compliance with *this Act*: However, where any provision of the constitution does not comply with the requirements of section 30, the *registrar* may direct the Council to rectify its constitution and re-submit the rectified constitution within the period specified in the direction, which period may not be shorter than three months.

(5) If the Education Labour Relations Council fails to comply with a direction issued to it in terms of subitem (5), the *registrar* must—

(*a*) determine the amendments to the constitution in order to meet the requirements of section 30; and

(*b*) send a certified copy of the constitution to the Council.

(6) The Education Labour Relations Council must deal with any pending application for admission to it in terms of the Education Labour Relations Act as if the application had been made in terms of *this Act*.

(7) Any pending appeal before the industrial court or an arbitrator against a decision of the Education Labour Relations Council must, despite the repeal of any of the labour relations laws, be dealt with by the industrial court or arbitrator as if the application had been made in terms of *this Act*.

(8) Despite the repeal of the Education Labour Relations Act, any appeal against a decision of the Education Labour Relations Council may be instituted after the commencement of *this Act* and must be heard by the Labour Court and dealt with as if the application had been made in terms of *this Act*.

17. Education sector collective agreements.—The following provisions, read with the changes required by the context, of the Education Labour Relations Act, despite the repeal of that Act, will have the effect and status of a *collective agreement* binding on the State, the parties to the Education Labour Relations Council and all *employees* within *registered scope*—

(*a*) section 6 (2) and (3);

(*b*) section 8 (3), (4) and (5) (a);

(*c*) section 10 (3) and (4);

(*d*) section 12 (1) to (4), except that the disputes referred to in subsections (2) and (4) may be referred to arbitration only; and

(*e*) section 13 and section 14 (2).

18. Negotiating Forums in South African Police Service.—(1) The National Negotiating Forum will continue to exist subject to item 20.

(2) The *registered scope* of the National Negotiating Forum is the State and those *employees* in respect of whom the South African Police Service Rationalisation Proclamation, 1995 and the Act contemplated in section 214 of the Constitution applies.

(3) Within fourteen days of the commencement of *this Act*, or signing of its constitution by its authorised representatives, whichever is the later, the National Negotiating Forum must furnish the *register* with a copy of its constitution signed by its authorised representatives, and with the other information or documentation.

(4) The constitution agreed to by the National Negotiating Forum is deemed to be in compliance with this Act. However where any provision of the constitution does not comply with the requirements of section 30, the *registrar* may direct the National Negotiating Forum to rectify its constitution and re-submit the rectified constitution within fourteen days.

(5) The National Commissioner of the South African Police Service must deal with any pending application for registration and recognition in terms of the South African Police Service Labour Regulations as if the application had been made in terms of *this Act*.

19. Collective agreements in South African Police Service.—The provisions of the South African Police Service Labour Relations Regulations, read with the changes required by the context, despite the repeal of those regulations, will have the effect and status of a *collective agreement* binding on the State, the parties to the National Negotiating Forum and all the employees within its *registered scope*.

20. Consequences for public service bargaining institutions when Public Service Co-ordinating Bargaining Council is established.—When the Public Service Co-ordinating Bargaining Council is established in terms of item 2 of Schedule 1—

(*a*) the Public Service Bargaining Council and its chamber at central level will cease to exist; and

(*b*) the following chambers of the former Public Service Bargaining Council will continue to exist as juristic persons, despite paragraph (a), namely—

(i) the chamber for each department, which will be deemed to be a *bargaining council* that has been established under section 37 (3) (a) of *this Act* for that department;

(ii) the chamber of each provincial administration, which will be deemed to be a *bargaining council* that has been established under section 37 (3) (a) for that provincial administration; and

(*c*) the Education Labour Relations Council will be deemed to be a *bargaining council* that has been established in terms of section 37 (3) (b) of *this Act* for the education sector;

(*d*) the National Negotiating Forum will be deemed to be a *bargaining council* that has been established in terms of section 37 (3) (b) of *this Act* for the South African Police Service.

Part E—Disputes and Courts

21. Disputes arising before commencement of this Act.—(1) Any *dispute* contemplated in the labour relations laws that arose before the commencement of *this Act* must be dealt with as if those laws had not been repealed.

(2) Despite subsection (1) a *strike* or *lock-out* that commences after *this Act* comes into operation will be dealt with in terms of *this Act*. This rule applies even if the *dispute* giving rise to the *strike* or *lock-out* arose before *this Act* comes into operation.

(3) For the purposes of a *strike* or *lock-out* referred to in subitem (2), compliance with section 65 (1) (d) of the Labour Relations Act, section 19 (1) (b) of the Public Service Labour Relations Act and section 15 (1) (b) of the Education Labour Relations Act will be deemed to be compliance with section 64 (1) (a) of *this Act*.

21A. Dispute resolution by councils before their accreditation.—(1) Despite the provisions of section 52, a *council* may attempt to resolve through conciliation—

(*a*) any *dispute* that may be referred to it in terms of *this Act* before 1 December 1996; and

(*b*) if the *council* has applied for accreditation in terms of section 127 of *this Act* before 1 December 1996, also any *dispute* so referred to it after 1 December 1996 but before the governing body of the Commission has made a decision on that application in terms of section 127 (5) of *this Act*.

(2) For the purposes of subitem (1), any person appointed by a *council* to perform on its behalf the dispute resolution function referred to in that subitem, will be competent to exercise any of the powers conferred on a commissioner by section 142 of *this Act*, except the powers contemplated in subsection (1) (c) and (d) of that section. In applying that section for the purposes of this subitem, that section must be read with the changes required by the context, and any reference in that section to the *director* must be read as a reference to the secretary of the *council*.

(3) A *council* must refer to the Commission, for arbitration, any *dispute* that—

(*a*) was referred to the *council* in terms of *this Act* on the authority of subitem (1); and

(*b*) remains unresolved after the *council* has attempted to resolve it through conciliation; and

(*c*) is by *this Act* required to be resolved through arbitration.

22. Courts.—(1) In any pending *dispute* in respect of which the industrial court or the agricultural labour court had jurisdiction and in respect of which proceedings had not been instituted before the commencement of *this Act*, proceedings must be instituted in the industrial court or agricultural labour court (as the case may be) and dealt with as if the labour relations laws had not been repealed. The industrial court or the agricultural labour court may perform or exercise any of the functions and powers that it had in terms of the labour relations laws when it determines the *dispute.*

(2) Any *dispute* in respect of which proceedings were pending in the industrial court or the agricultural labour court must be proceeded with as if the labour relations laws had not been repealed.

(2A) In relation to any proceedings which, in terms of this Schedule, are brought or continued before the industrial court, the rules which, immediately before the commencement of *this Act*, were in force under the

provisions of paragraph (c) or (d) of section 17 (22) of the Labour Relations Act, will apply as if those provisions had not been repealed, subject to subitem (2B).

(2B) The *Minister*, after consultation with the president of the industrial court, may make rules in accordance with the provisions of paragraph (c) of section 17 (22) of the Labour Relations Act, and, in accordance with the provisions of paragraph (d) of that section, may repeal or alter any rule so made as well as any of the rules contemplated in subitem (2A), as if those provisions had not been repealed and the *Minister* were the Board contemplated in those provisions.

(3) Any pending appeal before the Labour Appeal Court established by section 17A of the Labour Relations Act must be dealt with by the Labour Appeal Court as if the labour relations laws had not been repealed.

(4) Any pending appeal from a decision of that Labour Appeal Court or any appeal to the Appellate Division from a decision of the Labour Appeal Court in terms of section 17C and section 64 of the Labour Relations Act must be dealt with as if the labour relations laws had not been repealed.

(5) Any appeal from a decision of the industrial court or the agricultural labour court in terms of subitem (1) or (2), must be made to the Labour Appeal Court established by section 167 of *this Act*, and that Labour Appeal Court must deal with the appeal as if the labour relations laws had not been repealed.

(6) Despite the provisions of any other law but subject to the Constitution, no appeal will lie against any judgment or order given or made by the Labour Appeal Court established by *this Act* in determining any appeal brought in terms of subitem (5).

22A. Minister may authorise Commission to perform industrial court's functions.—(1) The *Minister*, after consulting the Commission, may authorise the Commission, by notice in the *Government Gazette*, to perform the industrial court's functions in terms of item 22 (1)—

(*a*) in respect of the Republic as a whole or any province specified in the notice; and

(*b*) with effect from a date so specified.

(2) The authorisation of the Commission in terms of subitem (1)—

(*a*) does not affect the competence of the industrial court in terms of item 22 (1) to decide and finalise all pending matters that are partly heard by it as at the date when the authorisation takes effect, nor does it relieve that court of its functions, duties and responsibility with regard to those matters;

(*b*) does not empower the Commission to perform any of the industrial court's functions with regard to the matters mentioned in paragraph (a); and

(*c*) has the effect of substituting the Commission for the industrial court in so far as all other pending matters are concerned.

(3) In the application of this item—

(*a*) the provisions of item 22 (1) will apply to the Commission in all respects as if it were the industrial court; and

(*b*) the rules governing the proceedings at the industrial court in terms of item 22 (2A) and (2B) will apply to the proceedings at all pending matters to be decided by the Commission by virtue of its authorisation in terms of this item.

Part F—Pension Matters

23. Continuation of existing pension rights of staff members of Commission upon assuming employment.—(1) Any staff member of the Commission who, immediately before assuming employment with the Commission, is a member of the Government Service Pension Fund, the Temporary Employees Pension Fund or any other pension fund or scheme administered by the Department of Finance (hereinafter referred to as an officer or employee), may upon assuming that employment—

(*a*) choose to remain a member of that pension fund, and from the date of exercising the choice, the officer or employee, despite the provisions of any other law, will be deemed to be a dormant member of the relevant pension fund within the contemplation of section 15 (1) (a) of the General Pensions Act, 1979 (Act No. 29 of 1979);

(*b*) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), as if the Commission had been declared an associated institution under section 4 of that Act; or

(*c*) request to become a member of any other pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956).

(2) In the case where an officer or employee becomes a member of a fund after making a request in terms of subitem (1) (b) or (*c*)—

(*a*) the pension fund of which the officer or employee was a member ("the former fund") must transfer to the pension fund of which the officer or employee becomes a member of ("the new fund") an amount equal to the funding level of the former fund multiplied by its actuarial liability in respect of that officer

or employee at the date the officer or employee assumes office with the Commission, increased by the amount of interest calculated on that amount at the prime rate of interest from the date when employment with the Commission commenced up to the date of transfer of the amount;

(*b*) membership of the officer or employee of the former fund will lapse from the date when employment with the Commission commenced, and from that date the officer or employee will cease to have any further claim against the former fund except as provided in paragraph (a); and

(*c*) the former fund must transfer any claim it may have against the officer or employee, to the new fund.

(3) In the case where an officer or employee becomes a member of a new fund after a request in terms of subitem (1) (c) the State must pay the new fund an amount equal to the difference between the actuarial liability of the former fund in respect of the officer or employee as on the date of the commencement of employment with the Commission, and the amount transferred in terms of subitem (2) (c) to the new fund, increased by the amount of interest thereon calculated at the prime rate from the date of commencement of employment up to the date of the transfer of the amount.

(4) Sub-items (2) and (3) will apply, read with the changes required by the context, in respect of any officer or employee who, by reason of having made a choice in terms of subitem (1) (a), has become a dormant member and thereafter requests that the pension benefits that had accrued, be transferred in terms of section 15A (1) of the General Pensions Act, 1979, to another pension fund referred to in that Act or a pension fund registered in terms of the Pension Funds Act, 1956.

(5) If, after an officer or employee has become a member of any other pension fund, by reason of having made a choice in terms of subitem (1) (c), a lump sum benefit has become payable by that pension fund by reason of the death, or the withdrawal or resignation from the pension fund, or retirement, of the officer or employee, or the winding-up of the pension fund, then, for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), the pension fund will be deemed, in relation to such officer or employee, to be a fund referred to in paragraph (a) of the definition of "pension fund" in section 1 of that Act.

(6) For the purposes of this item—

"actuarial liability" of a pension fund in respect of a particular member or a group of members of the fund, means the actuarial liability that is determined by an actuary who the *Minister* has nominated for that purpose;

"funding level", in relation to a pension fund, means the market value of the assets of the fund stated as a percentage of the total actuarial liability of the fund, after those assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the responsible Minister; and

"prime rate of interest" means the average prime rate of interest of the three largest banks in the *Republic*.

Part G—Essential Services

24. Essential services in the public service.—(1) An essential service contemplated in section 20 (1) of the Public Service Labour Relations Act, will be deemed to have been designated an essential service in terms of *this Act* for a period ending on a date 10 months after the commencement of *this Act* or on the date of the publication of the notice of designation mentioned in subitem (2), in the *Government Gazette*, whichever date occurs first.

(2) The essential services committee must, in the case of the services contemplated in section 20 (1) of the Public Service Labour Relations Act, as soon as possible after the commencement of *this Act* make a new designation, under section 71 of *this Act*, of services that are essential services. Such a designation will be effective from the date of the publication of the notice of designation in the *Government Gazette* in terms of section 71 (8) of *this Act*.

25. Essential services provided for in the Labour Relations Act.—(1) The services in which employers referred to in paragraphs (a) and (b) of section 46 (1) of the Labour Relations Act, and *employees* referred to in paragraphs (e) and (f) of that section, are engaged, as well as any service contemplated in paragraph (a) or (b) of section 46 (7) of that Act in which the employers and *employees* to whom a notice in terms of the latter section applied immediately before the commencement of *this Act*, are engaged, will be deemed to have been designated essential services in terms of *this Act* for a period ending on a date 10 months after the commencement of *this Act* or on the date of the publication of the notice of designation mentioned in subitem (2), in the *Government Gazette*, whichever date occurs first.

(2) The essential services committee must, in the case of the services contemplated in subitem (1), as soon as possible after the commencement of *this Act* make a new designation, under section 71 of *this Act*, of services that are essential services. Such a designation will be effective from the date of the publication of the notice of the designation in the *Government Gazette* in terms of section 71 (8) of *this Act*.

Part H—Transitional Provisions Arising out of the Application of the Labour Relations Amendment Act, 2002

26. Definitions.—In this part—

(*a*) **"Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995); and

(*b*) **"Amendment Act"** means the Labour Relations Amendment Act, 2002.

27. Representation in conciliation and arbitration.—(1) Until such time as rules made by the Commission in terms of section 115 (2A) (k) of the Act come into force—

(*a*) sections 135 (4), 138 (4) and 140 (1) of the Act remain in force as if they had not been repealed, and any reference in this item to those sections is a reference to those sections prior to amendment by this Amendment Act;

(*b*) a *bargaining council* may be represented in arbitration proceedings in terms of section 33A of the Act by a person specified in section 138 (4) of the Act or by a designated agent or an official of the *council*;

(*c*) the right of any party to be represented in proceedings in terms of section 191 of the Act must be determined by—

(i) section 138 (4) read with section 140 (1) of the Act for *disputes* about a *dismissal*; and

(ii) section 138 (4) of the Act for *disputes* about an unfair labour practice.

[Subitem (1) amended by s. 44 of Act No. 6 of 2014.]

(2) Despite subitem 1 (a), section 138 (4) of the Act does not apply to an arbitration conducted in terms of section 188A of the Act.

28. Order for costs in arbitration.—Section 138 (10) of the Act, before amendment by the Amendment Act, remains in effect as if it had not been amended until such time as the rules made by the Commission in terms of section 115 (2A) (j) of the Act come into effect.

29. Arbitration in terms of section 33A**.**—(1) Until such time as the *Minister* promulgates a notice in terms of section 33A (13) of the Act, an arbitrator conducting an arbitration in terms of section 33A of the Act may impose a fine in terms of section 33A (8) (b) of the Act subject to the maximum fines set out in Table One and Two of this item.

(2) The maximum fine that may be imposed by an arbitrator in terms of section 33A (8) (b) of the Act—

(*a*) for a failure to comply with a provision of a *collective agreement* not involving a failure to pay any amount of money, is the fine determined in terms of Table One; and

(*b*) involving a failure to pay an amount due in terms of a *collective agreement*, is the greater of the amounts determined in terms of Table One and Table Two.

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provisions within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four or more previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

TABLE TWO: MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in	200% of the amount due, including any

respect of the same provision within three years	interest owing on the amount at the date of the order

30. Unfair labour practice.—(1) Any *dispute* about an unfair labour practice referred to a *council* or Commission in accordance with items 3 (1) and (2) of this Schedule prior to the commencement of the Amendment Act must be dealt with as if items 2, 3 and 4 of this Schedule had not been repealed.

(2) (*a*) A *dispute* concerning any act or omission constituting an alleged unfair labour practice that occurred prior to the commencement of the Amendment Act that had not been referred to a *council* or Commission in terms of item 3 (1) and 3 (2) prior to the commencement of the Amendment Act must be dealt with in terms of section 191 of the Act.

(*b*) If a *dispute* contemplated in paragraph (a) is not referred to conciliation in terms of section 191 (1) (a) of the Act within 90 days of the commencement of the Amendment Act, the *employee* alleging the unfair labour practice must apply for condonation in terms of section 191 (2) of the Act.

(*c*) Subitem (*a*) does not apply to an unfair labour practice in relation to probation.

31. Bargaining councils in public service.—Any *bargaining council* that was established or deemed to be established in terms of section 37 (3) of the Act prior to the Amendment Act coming into force is deemed to have been established in terms of section 37 (2) of the Act.

32. Expedited applications in terms of section 189A (13)**.**—Until such time as rules are made in terms of section 159 of the Act—

(*a*) the Labour Court may not grant any order in terms of section 189A (13) or (14) of the Act unless the applicant has given at least four days' notice to the respondent of an application for an order in terms of subsection (1). However, the Court may permit a shorter period of notice if—

(i) the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;

(ii) the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and

(iii) the applicant has shown good cause why a period shorter than four days should be permitted;

(*b*) an application made in terms of section 189A (13) must be enrolled by the Labour Court on an expedited basis.

Schedule 8

CODE OF GOOD PRACTICE: DISMISSAL

[Schedule 8 amended by s. 57 of Act No. 42 of 1996 and by s. 56 of Act No. 12 of 2002.]

1. Introduction.—(1) This *code of good practice* deals with some of the key aspects of *dismissal* for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of *employees* employed in an establishment may warrant a different approach.

(2) *This* Act emphasises the primary of *collective agreements*. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of *collective agreements*, or the outcome of joint decision-making by an employer and a *workplace forum*.

(3) The key principle in this Code is that employers and *employees* should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While *employees* should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their *employees*.

2. Fair reasons for dismissal.—(1) A *dismissal* is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a *dismissal* is for a fair reason is determined by the facts of the case, and the appropriateness of *dismissal* as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.

(2) *This Act* recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the *employee*, the capacity of the *employee*, and the *operational requirements* of the employer's business.

(3) *This Act* provides that a *dismissal* is automatically unfair if the reason for the *dismissal* is one that amounts to an infringement of the fundamental rights of *employees* and *trade unions*, or if the reason is one of those listed in section 187. The reasons include participation in a lawful *strike*, intended or actual pregnancy and acts of discrimination.

(4) In cases where the *dismissal* is not automatically unfair, the employer must show that the reason for *dismissal* is a reason related to the *employee's* conduct or capacity, or is based on the *operational requirements* of the business. If the employer fails to do that, or fails to prove that the *dismissal* was effected in accordance with a fair procedure, the *dismissal* is unfair.

Disciplinary procedures prior to dismissal

3. Disciplinary measures short of dismissal.—(1) All employers should adopt disciplinary rules that establish the standard of conduct required of their *employees*. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to *employees* in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.

(2) The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for *employees* to know and understand what standards are required of them. Efforts should be made to correct *employees'* behaviour through a system of graduated disciplinary measures such as counselling and warnings.

(3) Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of *dismissal*. Dismissal should be reserved for cases of serious misconduct or repeated offences.

Dismissals for misconduct

(4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others physical assault on the employer, a fellow *employee*, client or customer and gross insubordination. Whatever the merits of the case for *dismissal* might be, a *dismissal* will not be fair if it does not meet the requirements of section 188.

(5) When deciding whether or not to impose the penalty of *dismissal*, the employer should in addition to the gravity of the misconduct consider factors such as the *employee's* circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.

(6) The employer should apply the penalty of *dismissal* consistently with the way in which it has been applied to the same and other *employees* in the past, and consistently as between two or more *employees* who participate in the misconduct under consideration.

4. Fair procedure.—(1) Normally, the employer should conduct an investigation to determine whether there are grounds for *dismissal*. This does not need to be a formal enquiry. The employer should notify the *employee* of the allegations using a form and language that the *employee* can reasonably understand. The *employee* should be allowed the opportunity to state a case in response to the allegations. The *employee* should be entitled to a reasonable time to prepare the response and to the assistance of a *trade union representative* or fellow *employee*. After the enquiry, the employer should communicate the decision taken, and preferably furnish the *employee* with written notification of that decision.

(2) Discipline against a *trade union representative* or an *employee* who is an *office-bearer* or *official* of a *trade union* should not be instituted without first informing and consulting the *trade union*.

(3) If the *employee* is dismissed, the *employee* should be given the reason for *dismissal* and reminded of any rights to refer the matter to a *council* with jurisdiction or to the Commission or to any *dispute* resolution procedures established in terms of a *collective agreement*.

(4) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. Disciplinary records.—Employers should keep records for each *employee* specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6. Dismissals and industrial action.—(1) Participation in a *strike* that does not comply with the provisions of chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve *dismissal*. The substantive fairness of *dismissal* in these circumstances must be determined in the light of the facts of the case, including—

(*a*) the seriousness of the contravention of *this Act*;

(*b*) attempts made to comply with *this Act*; and

(*c*) whether or not the *strike* was in response to unjustified conduct by the employer.

(2) Prior to *dismissal* the employer should, at the earliest opportunity, contact a *trade union official* to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the *employees* and what sanction will be imposed if they do not comply with the ultimatum. The *employees* should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the *employees* in question, the employer may dispense with them.

7. Guidelines in cases of dismissal for misconduct.—Any person who is determining whether a dismissal for misconduct is unfair should consider—

(*a*) whether or not the *employee* contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and

(*b*) if a rule or standard was contravened, whether or not—

(i) the rule was a valid or reasonable rule or standard;

(ii) the *employee* was aware, or could reasonably be expected to have been aware, of the rule or standard;

(iii) the rule or standard has been consistently applied by the employer; and

(iv) *dismissal* with an appropriate sanction for the contravention of the rule or standard.

8. Probation.—(1) (*a*) An employer may require a newly-hired *employee* to serve a period of probation before the appointment of the *employee* is confirmed.

(*b*) The purpose of probation is to give the employer an opportunity to evaluate the *employee's* performance before confirming the appointment.

(*c*) Probation should not be used for purposes not contemplated by this Code to deprive *employees* of the status of permanent employment. For example, a practice of dismissing *employees* who complete their probation periods and replacing them with newly-hired *employees*, is not consistent with the purpose of probation and constitutes an unfair labour practice.

(*d*) The period of probation should be determined in advance and be of reasonable duration. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the *employee's* suitability for continued employment.

(*e*) During the probationary period, the *employee's* performance should be assessed. An employer should give an *employee* reasonable evaluation, instruction, training, guidance or counselling in order to allow the *employee* to render a satisfactory service.

(*f*) If the employer determines that the *employee's* performance is below standard, the employer should advise the *employee* of any aspects in which the employer considers the *employee* to be failing to meet the required performance standards. If the employer believes that the *employee* is incompetent, the employer should advise the *employee* of the respects in which the *employee* is not competent. The employer may either extend the probationary period or dismiss the *employee* after complying with subitems (*g*) or (*h*), as the case may be.

(*g*) The period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve.

(*h*) An employer may only decide to dismiss an *employee* or extend the probationary period after the employer has invited the *employee* to make representations and has considered any representations made. A *trade union* representative or fellow *employee* may make the representations on behalf of the *employee*.

(*i*) If the employer decides to dismiss the *employee* or to extend the probationary period, the employer should advise the *employee* of his or her rights to refer the matter to a *council* having jurisdiction, or to the Commission.

(*j*) Any person making a decision about the fairness of a *dismissal* of an *employee* for poor work performance during or on expiry of the probationary period ought to accept reasons for *dismissal* that may be less compelling than would be the case in *dismissals* effected after the completion of the probationary period.

(2) After probation, an *employee* should not be dismissed for unsatisfactory performance unless the employer has—

(*a*) given the *employee* appropriate evaluation, instruction, training, guidance or counselling; and

(*b*) after a reasonable period of time for improvement, the *employee* continues to perform unsatisfactorily.

(3) The procedure leading to *dismissal* should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of *dismissal*, to remedy the matter.

(4) In the process, the *employee* should have the right to be heard and to be assisted by a *trade union representative* or a fellow *employee*.

9. Guidelines in cases of dismissal for poor work performance.—Any person determining whether a *dismissal* for poor work performance is unfair should consider—

(*a*) whether or not the *employee* failed to meet a performance standard; and

(*b*) if the *employee* did not meet a required performance standard whether or not—

(i) the *employee* was aware, or could reasonably be expected to have been aware, of the required performance standard;

(ii) the *employee* was given a fair opportunity to meet the required performance standard; and

(iii) *dismissal* was an appropriate sanction for not meeting the required performance standard.

10. Incapacity: Ill health and injury.—(1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an *employee* is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the *employee* is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of *dismissal*. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured *employee*. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the *employee* to accommodate the *employee's* disability.

(2) In the process of the investigation referred to in subsection (1) the *employee* should be allowed the opportunity to state a case in response and to be assisted by a *trade union representative* or fellow *employee*.

(3) The degree of incapacity is relevant to the fairness of any *dismissal*. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.

(4) Particular consideration should be given to *employees* who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the *employee* is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury.—Any person determining whether a dismissal arising from ill health or injury is unfair should consider—

(*a*) whether or not the *employee* is capable of performing the work; and

(*b*) if the *employee* is not capable—

(i) the extent to which the *employee* is able to perform the work;

(ii) the extent to which the *employee's* work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the *employee's* duties might be adapted; and

(iii) the availability of any suitable alternative work.

Schedule 9

MODEL CONSTITUTION FOR A STATUTORY COUNCIL

[Schedule 9 added by Government Notice No. R.443 of 27 March 1997.]

CONTENTS OF CONSTITUTION

Note:—*This is a model constitution. The parties to the council are free to draft their own constitution or to adapt this model to suit their own requirements provided* the constitution *complies with the provisions of the Act.*

1. Name.—The name of this statutory council is

2. Registered scope.—The registered scope of the council is specified in the council's certificate of registration attached to this constitution.

3. Powers and functions.—(1) The powers and functions of the council are—

(*a*) to perform the dispute resolution functions referred to in section 51 of the Act;

(*b*) to promote and establish training and education schemes;

(*c*) to establish and administer pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the council or their members; and

(*d*) to conclude collective agreements to give effect to the matters mentioned in paragraphs (a), (b) and (c).

(2) The council may agree to the inclusion of any of the functions of a bargaining council referred to in section 28 (1) (a), (b), (c), (e), (h), (i) and (j) of the Act as functions of the council.

(3) The council is only able to exercise these powers and perform these functions within its registered scope.

Note:—*There is an alternative method of giving effect to* section 43 (2) *of the Act which permits statutory councils to agree to include any of the other functions of a bargaining council. The council could, through its amending provisions* (*clause 17*)*, amend clause 3* (*1*) *by including any one or more of those functions.*

4. Parties.—(1) The founding parties to the council are—

(*a*) the following employers' organisation(s)—

(i) ; and

(ii) ; and

(iii) ; and

(names)

(*b*) the following trade union(s)—

(i) ; and

(ii) ; and

(iii)

(names)

(2) Any registered trade union or registered employers' organisation that has members that fall within the registered scope of the council may apply in writing to the council for admission as a party.

(3) The application must be accompanied by—

(*a*) a certified copy of the applicant's registered constitution;

(*b*) a certified copy of the applicant's certificate of registration;

(*c*) details of the applicant's membership within the registered scope of the council, including, in the case of an employers' organisation, the number of employees that its members employ within the council's registered scope;

(*d*) a statement of the reasons why the applicant ought to be admitted as a party to the council; and

(*e*) any other information on which the applicant relies in support of the application.

(4) The council, within 90 days of receiving an application for admission, must decide whether to grant or refuse the applicant admission, and must advise the applicant of its decision, failing which the council is deemed to have refused the applicant admission.

(5) If the council refuses to admit an applicant it must, within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

5. Appointment of representatives.—(1) The council consists of—

(*a*) ..... representatives of the employers' organisations that are parties to the council, ... of whom represent(s) small and medium enterprises; and

(*b*) ..... representatives of the trade unions that are parties to the council.

Note:—*The number of representatives representing employers in* paragraph (a) *must be equal to the number of representatives representing employees in* paragraph (b)*.*

In the event that there are no employers' organisations party to the council, representatives will be appointed by the Minister to represent employer interests, and the provisions in the constitution *concerning the appointment of representatives will have to be adapted to deal with this situation.*

The employer representation must make provision for one or more representatives representing small and medium enterprises.

In the event that there are no trade unions party to the council, representatives will be appointed by the Minister to represent employee interests, and the provisions in the constitution *concerning the appointment of representatives will have to be adapted to deal with this situation.*

(2) The representatives will be allocated among the parties to the council as follows—

(*a*) employers' organisation(s)— number of representatives—

(names)

(*b*) trade union(s)— number of representatives—

(names)

Note:—*The allocation may be determined according to a formula based on representativeness, with the Secretary of the Council making a determination on an annual basis.*

(3) Subject to sub-clause (2) and to its own constitution, each party to the council may appoint—

(*a*) its representatives to the council; and

(*b*) an alternate for each of its representatives.

(4) (*a*) A representative or an alternate will hold office for 12 months and will be eligible for re-appointment at the end of that term.

(*b*) A representative or an alternate whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a representative until that representative's successor assumes office.

(5) Despite sub-clause (4)—

(*a*) a party may withdraw any of its representatives or alternatives after having given at least 21 days' notice in writing to the secretary;

(*b*) a representative who, without good cause, is absent from three consecutive meetings of the council, is disqualified from continuing in that office.

(6) If the office of any representative or alternate becomes vacant, the party that appointed the representative or alternate may appoint another representative or alternate for the unexpired portion of the predecessor's term of office.

6. Council meetings.—(1) The council must hold—

(*a*) an annual general meeting in the month of ..... each year; and

(*b*) an ordinary meeting at least once every ..... month(s).

(2) A special meeting of the council—

(*a*) may be called at any time by the chairperson with a view to disposing of urgent business; and

(*b*) must be called by the chairperson within 14 days of—

(i) receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... representatives; or

(ii) the adoption of a resolution by the council calling for a special meeting.

(3) At the annual general meeting the council must—

(*a*) elect the additional members of the executive committee;

(*b*) elect the chairperson and the deputy chairperson of the council;

(*c*) appoint the members of the panel of conciliators referred to in clause 11 (1) (*a*);

(*d*) appoint the members of the panel of arbitrators referred to in clause 11 (1) (*b*);

(*e*) appoint the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the council;

(*f*) consider the annual financial statements of the council and the auditor's report on those statements; and

(*g*) consider and approve, with or without any amendments, the budget of the council for the next financial year as prepared in terms of clause 15 (10).

(4) The secretary must prepare a written notice of every council meeting stating the date, time and venue of the meeting and the business to be transacted, and must send the notice to each representative by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.

Note:—*There is no restriction as to the kind of service.* The constitution *can stipulate any form of service e.g. service by hand, faxed transmission or electronic mail.*

(5) At least half of the total number of employer representatives and half of the total number of employee representatives form a quorum and must be present before a meeting may begin or continue.

(6) If, at the time fixed for a meeting to begin or continue, and for 30 minutes after that time, there is no quorum present, the meeting must be adjourned to the same place at the same time on the corresponding day in the following week unless that day is a public holiday, in which case the meeting must be adjourned to the day immediately after that public holiday.

(7) A meeting that has been adjourned in terms of sub-clause (6) may proceed on the date to which it was adjourned with the representatives present at the time called for the meeting, regardless of whether or not notice has been given in terms of sub-clause (4) and whether or not a quorum is present.

(8) The secretary must cause minutes to be kept of the proceedings at council meetings.

(9) At every meeting of the council—

(*a*) the secretary must read the minutes of the previous meeting, unless they were previously circulated; and

(*b*) after the minutes have been confirmed, with or without any amendments, the chairperson must sign the minutes.

(10) A motion proposed at a meeting may not be considered unless it has been seconded. The chairperson may require a motion to be submitted in writing, in which case the chairperson must read the motion to the meeting.

(11) Unless this constitution provides otherwise, all motions must be decided by a majority of votes of those present and entitled to vote and voting must be by show of hands.

Note:—The constitution *could stipulate that certain matters should be decided by ballot.*

(12) Each representative has one vote on any matter before the council for its decision. However, if at the meeting the employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.

(13) If any question which the executive committee considers to be extremely urgent arises between meetings of the council, and it is possible to answer that question by a simple 'yes' or 'no', the executive committee may direct the secretary to cause a vote of the representatives on the council to be taken by post. A proposal subjected to a postal vote may be adopted only if it is supported by at least two-thirds of the total number of representatives who are entitled to vote.

(14) The executive committee may adopt general rules of procedure for its meetings and for the meetings of the council and its other committees. However, in the event of any conflict between those rules and the provisions of this constitution, the provisions of this constitution will prevail.

7. Executive committee.—(1) The council will have an executive committee that consists of the chairperson and the deputy chairperson of the council, who are members by virtue of their respective offices, and ..... additional members elected in accordance with sub-clause (3).

(2) Subject to the directions and control of the council, the executive committee may exercise and perform the powers, functions and duties of the council relating to the supervision and control of the everyday management and administration of the council. In addition, the executive committee may—

(*a*) investigate and report to the council on any matter connected with the sector in respect of which the council is registered;

(*b*) do anything necessary to give effect to decisions of the council;

(*c*) monitor and enforce collective agreements concluded in the council; and

(*d*) exercise and perform any power, function and duty that is conferred or imposed on the executive committee by or in terms of this constitution or that is delegated by the council to the executive committee. However, the council may not delegate to the executive committee the powers, functions and duties contemplated in clauses 4 (4) and (5), 6 (3), 16 and 17 and sub-clauses (3) and (6) of this clause, and the power of the council to delegate.

Note:—*Admission of parties.*

Various functions to be performed by the council at its annual general meeting.

Winding-up of council.

Changing council's constitution.

Election and appointment of additional members of the executive committee.

(3) At the annual general meeting, the council must elect the additional members of the executive committee and an alternate for each of them. The additional members and their alternates must be representatives in the council, and half of the additional members, as well as their alternates, must be nominated by the employer representatives in the council, whilst the other half of the additional members, as well as their alternates, must be nominated by the employee representatives in the council.

(4) (*a*) An additional member of the executive committee will hold office for 12 months and will be eligible for re-election at the end of that term.

(*b*) An additional member of the executive committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the executive committee until that member's successor assumes office.

(5) An additional member of the executive committee—

(*a*) may resign from the committee at any time after having given at least 21 days' notice in writing to the secretary;

(*b*) must vacate office immediately—

(i) in the case of the resignation, when the resignation takes effect; or

(ii) upon ceasing to be a representative in the council.

(6) (*a*) If the seat of an additional member of the executive committee becomes vacant, the council must fill the vacancy from the number of the candidates nominated for that purpose by—

(i) the employer representatives in the council, if that seat had been held by an additional member representing the employers; or

(ii) the employee representatives in the council, if that seat had been held by an additional member representing employees.

(*b*) A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.

(7) The executive committee must hold an ordinary meeting at least once every .....

(8) A special meeting of the executive committee—

(*a*) may be called at any time by the chairperson with a view to disposing of urgent business; and

(*b*) must be called by the chairperson within ..... days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... members of the executive committee.

(9) The secretary must prepare a written notice of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the committee by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.

Note:—*There are no restrictions as to the kind of service.* The constitution *can stipulate any form of service e.g. service by hand, faxed transmission or electronic mail.*

(10) At least half of the members of the executive committee representing employers and half of the members of that committee representing employees form a quorum and must be present before a meeting may begin or continue.

(11) Each member of the executive committee has one vote on any matter before the committee for its decision. However, if at the meeting the members representing employers and those representing employees are not equal in number, the side that is in the majority must withdraw so many of its members from voting as may be

necessary to ensure that the two sides are of equal numerical strength at the time of voting.

(12) In relation to any matter before the executive committee for its decision, the decision of a majority of those members of the executive committee who are present at the meeting and entitled to vote, will be the decision of the committee.

8. Other committees.—(1) The council may appoint other committees to perform any of its functions, including investigating and reporting to the council on any matter, but excluding the non-delegateable functions referred to in clause 7 (2) (*d*).

Note:—*For example, a council that has been established for two or more sectors, could appoint a sectoral committee for each sector to conclude collective agreements on matters specific to that sector.*

(2) (*a*) Half of the members of any committee so appointed must be nominated by the employer representatives, and the other half by the employee representatives.

(*b*) Subject to paragraph (a), committee members must be—

(i) employers or employees within the registered scope of the council;

(ii) office-bearers or officials of the parties to the council.

(3) A majority of the total number of the members of a committee forms a quorum and must be present before the meeting may begin or continue.

(4) The provisions of clause 7 relating to the calling and conduct of meetings, read with the changes required by the context, apply to meeting of any committee contemplated in this clause.

9. Chairperson and deputy chairperson.—(1) (*a*) At the annual general meeting, the council must elect a chairperson and deputy chairperson.

(*b*) Subject to sub-clauses (3) and (6) (*a*), the serving chairperson of the council at the time of the annual general meeting will be the chairperson of the meeting and preside over the election of the next chairperson.

(2) The chairperson of the meeting must call for nominations for the office of chairperson. A person will have been nominated if proposed by one and seconded by another representative in the council.

(3) If the serving chairperson is nominated for another term, the council, by a show of hands, must elect a representative in the council to act as chairperson of the meeting during the election of the next chairperson.

(4) (*a*) If only one candidate is nominated, the candidate will be deemed to have been elected the new chairperson unopposed, and must be declared by the chairperson of the meeting to have been so elected.

(*b*) If two or more candidates are nominated, the chairperson of the meeting must conduct a vote by ballot, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected the new chairperson.

(5) If an equal number of votes are cast for two or more candidates, and no other candidate has drawn a higher number of votes than those candidates, the chairperson of the meeting will cause to be determined by lot which one of those candidates is to become the new chairperson.

(6) (*a*) Upon having been declared elected, the new chairperson must preside over the meeting and must call for nominations for the office of deputy chairperson.

(*b*) If the newly elected chairperson is an employer representative, only employee representatives may be nominated for deputy chairperson, and vice versa.

(*c*) The provisions of sub-clauses (2), (4) and (5), read with the changes required by the context, apply to the election of the deputy chairperson.

(7) (*a*) The chairperson and the deputy chairperson hold their respective offices until the next election of the chairperson or deputy chairperson (as the case may be) takes place, or, if the chairperson or deputy chairperson ceases to be a representative in the council on any date before that election, until that date. Each of them will be eligible for re-election if still a representative when their respective terms as chairperson and deputy chairperson expire.

(*b*) If the office of chairperson or deputy chairperson becomes vacant before the next election of the chairperson or deputy chairperson (as the case may be) the executive committee must elect a person as chairperson or deputy chairperson (as the case may be) to hold office until that next election.

(*c*) An election contemplated in paragraph (b) must be held in accordance with sub-clauses (2), (4), (5) and (6), read with the changes required by the context.

(8) The chairperson must preside over the meetings of the council, and must—

(*a*) sign the minutes of council meetings after those minutes have been confirmed;

(*b*) sign cheques drawn in the council's bank account; and

(*c*) perform any other functions and duties entrusted to the chairperson by this constitution as well as

those that are generally associated with the office of a chairperson.

(9) The deputy chairperson must preside over meetings of the council and perform the function and duties of the chairperson whenever the chairperson is absent or for any reason unable to act or to perform those functions and duties.

(10) If both the chairperson and deputy chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the council, by a show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties.

(11) A chairperson or deputy chairperson who has not been elected from amongst the representatives in the council is not entitled to vote on any matter before the council or the executive committee.

(12) A chairperson or deputy chairperson may be removed from office by the council for serious neglect of duty, serious misconduct or due to incapacity.

10. Officials and employees.—(1) The council must appoint a secretary who will be responsible for the administrative and secretarial work arising from the functioning of the council and for performing the functions and duties imposed on the secretary by or in terms of the Act and this constitution. That work and those duties and functions include—

(*a*) to keep and maintain the books and records of account that the council may direct in order fully to reflect the financial transactions and state of affairs of the council;

(*b*) to attend all meetings of the council and its executive committee and record the minutes of the proceedings at those meetings;

(*c*) to conduct the correspondence of the council, keeping originals of letters received and copies of letters sent;

(*d*) at each meeting of the council, to read significant correspondence that has taken place since the previous meeting;

(*e*) to bank all moneys received on behalf of the council within three days of receipt;

(*f*) whenever required by the council, but at least once in every quarter of the financial year, to submit to the council statements of its financial affairs and position;

(*g*) to prepare, for submission at the annual general meeting of the council, a budget for the next financial year and an annual report summarising the key activities of the council; and

(*h*) to counter-sign cheques drawn on the council's bank account.

(2) The secretary must—

(*a*) retain a copy of the confirmed and signed minutes of every meeting of the council, the executive committee and any other committee of the council in safe custody at the office of the council for a period of at least three years from the date those minutes were confirmed;

(*b*) retain every financial statement referred to in sub-clause (1) (*f*), and all vouchers and records relating to statements of that nature, for at least three years from the date of the statement; and

(*c*) sign the certificates of appointment to be issued to the persons appointed by the Minister as designated agents of the council.

(3) The council may appoint any additional officials and any number of employees that may be necessary to assist the secretary in performing the functions and duties of that office.

(4) The council may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the council.

(5) Where there are two or more suitable candidates for appointment to the position of secretary or a designated agent, the council must elect the secretary or designated agent by conducting a ballot of the representatives present at the meeting at which the appointment is to be made, with the candidate receiving the highest number of votes being appointed.

(6) The secretary, designated agents and other officials and employees of the council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

11. Panels of conciliators and arbitrators.—(1) At its annual general meeting, the council must appoint—

(*a*) a panel of conciliators, consisting of ..... members, for the purpose of conciliating disputes; and

(*b*) a panel of arbitrators, consisting of ..... members, for the purpose of determining disputes.

(2) The council may remove a member of the panel of conciliators or arbitrators from office—

(*a*) for serious misconduct;

(*b*) due to incapacity; or

(*c*) if at least one half of the employer representatives in the council and at least one half of the employee representatives in the council have voted in favour of the removal of that member from office.

(3) If for any reason there is a vacancy in the panel of conciliators or the panel of arbitrators, the council may appoint a new member to the relevant panel for the unexpired portion of the predecessor's term of office.

(4) Unless the parties to a dispute have agreed on a member of the panel of conciliators or the panel of arbitrators to conciliate or arbitrate their dispute, the secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute.

(5) (*a*) A person may be appointed to both the panel of conciliators and the panel of arbitrators.

(*b*) A member of the panel of conciliators or the panel of arbitrators whose term of office expires, will be eligible for re-appointment to the relevant panel at the end of that term.

12. Disputes referred to council for conciliation.—(1) In this clause, a dispute means any dispute between any of the parties to the council that may be referred to a council in terms of the Act except a dispute contemplated in clause 14.

Note:—*A dispute about the interpretation or application of the provisions of* Chapter II *of the Act* (*see* section 9)*, about the interpretation or application of the provisions of a collective agreement concluded in the council that could form the subject matter of proposed strike or lock-out* (*see* section 64 (1))*, in any case where the parties to the dispute are engaged in an essential service* (*see* section 74)*, about an unfair dismissal* (*see* section 191)*, about severance pay* (*see* section 196)*, or about an unfair labour practice* (*see* item 2 *in* Schedule 7) *may be referred to a council in terms of the Act.*

(2) For the purposes of sub-clause (1), a party to the council includes the members of any party to the council.

(3) Any party to a dispute may refer the dispute in writing to the council.

(4) The party who refers the dispute must satisfy the secretary that a copy of the referral has been served on all the other parties to the dispute.

(5) If satisfied that the referral has been served in compliance with sub-clause (4), the secretary—

(*a*) may, if there is a collective agreement binding on the parties to the dispute that provides for an alternative procedure for resolving disputes, refer the dispute for resolution in terms of that procedure; or

(*b*) must appoint a member of the panel of conciliators to attempt to resolve the dispute through conciliation.

(6) Nothing in this clause prevents an officer or an employee of the council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of sub-clause (5) (*b*).

13. Disputes referred to council for arbitration.—(1) For the purpose of this clause, a dispute means any dispute between any of the parties to the council that—

(*a*) has been referred to a conciliator in terms of clause 12, but remains unresolved, and—

(i) the Act requires that the dispute be arbitrated and any party to the dispute has requested that the dispute be resolved through arbitration; or

Note:—*The Act requires councils to arbitrate the following types of disputes:* (*1*) *Unfair dismissal disputes if :* (*a*) *the reason is related to the employee's conduct or capacity.* (*This does not apply to an employee's participation in an unprotected strike*)*;* (*b*) *the reason is that the employer made continued employment intolerable; and* (*c*) *the employee does not know the reason for the dismissal.* (*See* section 191 (5) (a) *of the Act*)*.*

(*2*) *Disputes about severance pay.* (*See* section 196 *of the Act*)*.*

(*3*) *Unfair labour practice disputes, but excluding a dispute concerning unfair discrimination.* (*See* item 2 (1) (a) *in* Schedule 7 *to the Act*)*.*

(*4*) *Disputes in essential services as contemplated in* section 74 (1) *of the Act.*

(ii) all the parties to the dispute consent to arbitration; or

(*b*) it is a dispute about the interpretation or application of the provisions of this constitution.

(2) Any party to a dispute may request that the dispute be resolved through arbitration.

(3) The secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

(4) The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the

minimum of legal formalities.

(5) The arbitration proceedings must be conducted in accordance with the provisions of sections 138 and 142 and, if applicable, sections 139, 140 and 141, of the Act, read with the changes required by the context.

14. Procedure for negotiation of collective agreements.—(1) Any party to the council may introduce proposals for the conclusion of a collective agreement in the council.

(2) The proposals must be submitted to the secretary in writing and must identify the other parties to the proposed agreement.

(3) Within seven days of submission of the proposals, the secretary must serve copies of the proposals on the other parties to the council.

(4) Within 21 days of submission of the proposals, the chairperson must call a special meeting of the executive committee to consider the proposals and decide on a process for negotiating the proposals, including—

(*a*) the introduction of counter-proposals;

(*b*) whether the negotiations should be conducted by the council, the executive committee or any other committee of the council;

(*c*) the appointment of a conciliator from the panel of conciliators to facilitate the negotiations; and

(*d*) the timetable for the negotiations.

(5) If no negotiation process is agreed—

(*a*) the secretary must appoint a conciliator from the panel or conciliators to facilitate negotiations and the conclusion of a collective agreement;

(*b*) the council must meet at least twice within 30 days of the meeting of the executive committee to negotiate on the proposals and any counter-proposals, unless a collective agreement has been concluded;

(*c*) the conciliator must facilitate the negotiations at those meetings and the conclusion of a collective agreement.

(6) If no collective agreement is concluded in the course of a process or procedure contemplated in this clause,—

(*a*) the parties to the council may—

(i) agree to refer the dispute to arbitration; or

(ii) resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or

(*b*) Any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the employers and employees engaged in that service be resolved through arbitration.

(7) In the circumstances contemplated in sub-clause (6) (*a*) (i) or (*b*), the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

(8) The provisions of clause 13 (4) and (5) will apply to arbitration proceedings conducted in terms of this clause.

(9) (*a*) During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.

(*b*) If any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party—

(i) if they participate in a strike, will forfeit the protection they would have enjoyed in terms of section 67 of the Act;

(ii) if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of section 67 of the Act.

15. Finances.—(1) The council may raise funds by charging a levy on employees and employers within the registered scope of the council.

(2) The council must open and maintain an account in its name with a bank of its choice that is registered in the Republic, and—

(*a*) deposit all moneys it receives in that account within three days of receipt; and

(*b*) pay the expenses of and make all payments on behalf of the council by cheques drawn on that account.

(3) The council may invest any surplus funds not immediately required for current expenditure or

contingencies, in—

(*a*) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;

(*b*) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);

(*c*) a registered unit trust;

(*d*) any other manner approved by the registrar.

(4) All payments from the council's funds must be—

(*a*) approved by the council; and

(*b*) made by cheques drawn on the council's bank account and signed by the chairperson or deputy chairperson and counter-signed by the secretary. However, the council, by special resolution, may authorise any representative in the council, official or employee of the council to sign or counter-sign cheques drawn on the council's bank account in the event of both the chairperson and the deputy chairperson or the secretary not being readily available for that purpose.

(5) (*a*) Despite sub-clause (4), the council may maintain a petty cash account, out of which the secretary may make cash payments not exceeding R ..... at any one occasion.

(*b*) Funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by sub-clause (4).

(*c*) Except with the approval of the council, cheques drawn to transfer funds to petty cash may not exceed R ..... per month in aggregate.

(*d*) The council may determine the form of the records to be kept for the petty cash account.

(6) At the end of each quarter of the financial year, the secretary must prepare a statement showing the income and expenditure of the council for that quarter, and another reflecting its assets, liabilities and financial position as at the end of that period.

(7) The financial year of the council begins on 1 ..... in each year and ends on ..... of the following year, except the first financial year, which begins on the day that the council is registered and ends on .....

(8) Not later than ..... after the end of the financial year, the secretary must prepare a statement of the council's financial activity in respect of that financial year, showing—

(*a*) all moneys received for the council—

(i) in terms of any collective agreement published in terms of the Act; and

(ii) from any other sources;

(*b*) expenditure incurred on behalf of the council, under the following heads—

(i) remuneration and allowances of officials and employees;

(ii) amounts paid to representatives and alternates in respect of their attendance at meetings, the travelling and subsistence expenses incurred by them, and the salary or wage deducted or not received by them due to their absence from work by reason of their involvement with the council;

(iii) remuneration and allowances of members of the panel of conciliators and arbitrators;

(iv) office accommodation;

(v) printing and stationery requirements; and

(vi) miscellaneous operating expenditure; and

(*c*) the council's assets, liabilities and financial position as at the end of that financial year.

(9) (*a*) The annual financial statements must be signed by the secretary and counter-signed by the chairperson, and submitted to an auditor for auditing and preparing a report to the council.

(*b*) Certified copies of the audited statements and the auditor's report must be made available for inspection at the office of the council to members and representatives of the parties, who are entitled to make copies of those statements and the auditor's report.

(*c*) The secretary must send certified copies of the audited financial statements and the auditor's report to the registrar within 30 days of receipt thereof.

(10) Every year the secretary must prepare, for submission at the annual general meeting of the council, a budget for the council for the next financial year.

(11) At the annual general meeting the council must appoint an auditor to perform the audit of the council for

the next financial year.

16. Winding-up.—(1) At a special meeting called for that purpose, the council, by resolution adopted by a majority of the total number of representatives in the council, may decide to be wound up.

(2) Upon adoption of a resolution to wind-up, the secretary must take the necessary steps to ensure that—

(*a*) application is immediately made to the Labour Court for an order giving effect to that resolution; and

(*b*) the council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the council at the disposal and under the control of that liquidator.

(3) Each party to the council remains liable for any of its unpaid liabilities to the council as at the adoption of a resolution to wind-up the council.

(4) If all the liabilities of the council have been discharged, the council must transfer any remaining assets to —

(*a*) a bargaining council within the same or a similar sector, that has been agreed upon at the special meeting referred to in sub-clause (1);

(*b*) the Commission, if—

(i) there is no bargaining council within the same or a similar sector; or

(ii) the parties to the council fail to agree on a bargaining council that is to receive the remaining assets.

17. Changing constitution.—(1) The council may change this constitution at any time—

(*a*) by a resolution adopted by unanimous vote of all the representatives in the council on a motion to amend tabled without prior notice; or

(*b*) by a resolution adopted by at least two-thirds of all the representatives in the council after at least—

(i) one month's notice of that motion to amend had been given to the secretary; and

(ii) two weeks' notice of that motion had been given to all the other representatives.

(2) Any amendment to this constitution becomes effective after the resolution effecting that amendment has been certified by the registrar in terms of section 57 (3) of the Act.

18. Necessary first steps.—(1) With a view to making the council operative and functional without delay, the provisions contained in the Annexure to this constitution will apply and must be read as one with this constitution until the requirements and procedures contemplated in those provisions have been complied with.

(2) Any act performed in compliance with the provisions contained in the Annexure will be deemed to have been performed in terms of and in accordance with this constitution.

19. Definitions.—In this constitution, any expression that is defined in the Act has that meaning and unless the context otherwise indicates—

"chairperson" means the chairperson of the council who, by virtue of that office, is also the chairperson of the executive committee;

"deputy chairperson" means the deputy chairperson of the council who, by virtue of that office, is also the deputy chairperson of the executive committee;

"executive committee" means the executive committee of the council; contemplated in clause 7;

"Minister" means the Minister of Labour;

"secretary" means the secretary of the council; and

"the Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995).

ANNEXURE

Necessary First Steps to be Followed by Council.

1. At the first meeting of the council, which will be held

.....

.....

Note:—*State the date on which, or specify the period after the occurrence of a particular event* (*e.g. registration of the Council*)*, on expiry of which the meeting must be held, as well as the time and venue of the meeting.*

(*a*) the council, by a show of hands, must select a suitable person to act as chairperson of that meeting, subject to paragraph (c), as well as another to keep the minutes of the meeting;

(*b*) the council must elect the chairperson and the deputy chairperson and the additional members of the executive committee in the manner set out in clauses 9 and 7 respectively, read with the changes required by the context;

(*c*) the newly elected chairperson of the council must take over the chair at that meeting;

(*d*) the council must appoint the officials contemplated in clause 6 (3) (*c*), (*d*) and (*e*); and

(*e*) the council must appoint an auditor to perform the audit of the council in respect of its first financial year.

2. The secretary, in the manner contemplated in clause 10 (1) (*g*), must as soon as possible prepare, for submission at the next ordinary meeting of the council, a budget for the council for its first financial year.

[**NOTE:** *According to the above model constitution, the council's certificate of registration is, upon receipt, to be attached to its constitution* (*see clause 2*)*. If not so attached,* the constitution *of a council following the model will be incomplete*.]

Schedule 10

POWERS OF DESIGNATED AGENT OF BARGAINING COUNCIL

[Schedule 10 added by Government Notice No. R.1865 of 15 November 1996 and substituted by s. 57 of Act No. 12 of 2002.]

(Section 33)

(1) A designated agent may, without warrant or notice at any reasonable time, enter any *workplace* or any other place where an employer carries on business or keeps employment records, that is not a home, in order to monitor or enforce compliance with a *collective agreement* concluded in the *bargaining council*.

(2) A designated agent may only enter a home or any place other than a place referred to in subitem (1)—

(*a*) with the consent of the owner or occupier; or

(*b*) if authorised to do so by the Labour Court in terms of subitem (3);

(3) The Labour Court may issue an authorisation contemplated in subitem (2) (b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place, in order to monitor or enforce compliance with a *collective agreement* concluded in the *bargaining council*.

(4) If it is practicable to do so, the employer and a *trade union* representative must be notified that the designated agent is present at a *workplace* and of the reason for the designated agent's presence.

(5) In order to monitor or enforce compliance with a *collective agreement* a designated agent may—

(*a*) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a *collective agreement* relates, and require that disclosure to be under oath or affirmation;

(*b*) inspect and question a person about any record or document to which a *collective agreement* relates;

(*c*) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;

(*d*) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;

(*e*) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in subitems (1) and (2);

(*f*) question a person about any work performed; and

(*g*) perform any other prescribed function necessary for monitoring or enforcing compliance with a *collective agreement*.

(6) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.

(7) A designated agent must—

(*a*) produce on request a copy of the authorisation referred to in subitem (3);

(*b*) provide a receipt for any record or document removed in terms of subitem (5) (e); and

(*c*) return any removed record, document or item within a reasonable time.

(8) Any person who is questioned by a designated agent in terms of subitem (5) must answer all questions lawfully put to that person truthfully and to the best of that person's ability.

(9) An answer by any person to a question by a designated agent in terms of this item may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.

(10) Every employer and each *employee* must provide any facility and assistance at a *workplace* that is reasonably required by a designated agent to effectively perform the designated agent's functions.

(11) The *bargaining council* may apply to the Labour Court for an appropriate order against any person who—

(*a*) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;

(*b*) refuses or fails to comply with any requirement of the designated agent in terms of this item; or

(*c*) hinders the designated agent in the performance of the agent's functions in terms of this item.

(12) For the purposes of this Schedule, a *collective agreement* is deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of section 49 (1) of the *Basic Conditions of Employment Act*.

Footnotes

1 An italicised word or phrase indicates that the word or phrase is defined in section 213 of this Act.

2 Section 27, which is in the Chapter on Fundamental Rights in the Constitution entrenches the following rights:

"(1) Every person shall have the right to fair labour practices.

(2) Workers shall have the right to form and join trade unions and employers shall have the right to form and join employers' organisations.

(3) Workers and employers shall have the right to organise and bargain collectively.

(4) Workers shall have the right to strike for the purpose of collective bargaining.

(5) Employers' recourse to the lockout for the purpose of collective bargaining shall not be impaired subject to subsection 33 (1)."

(Editorial Note: Wording published as per original *Government Gazette*. It is suggested that section 27, referred to in the footnote above, is intended to be section 23 of the Constitution. Kindly refer to the Constitution of the Republic of South Africa, 1996.)

3 See flow diagram No. 1 in Schedule 4.

4 See flow diagram No. 2 in Schedule 4.

5 See flow diagram No. 3 in Schedule 4.

6 See flow diagram No. 4 in Schedule 4.

7 Section 56 provides for a procedure for the admission of parties to a council.

8 Schedule 1 deals with the procedure for the establishment of the Public Service Co-ordinating bargaining Council.

9 The provisions of section 29 deal with the procedure for the registration of a bargaining council.

10 Section 29 deals with the procedure for the registration of bargaining councils.

11 The following disputes contemplated by subsection (3) must be referred to a council: disputes about the interpretation or application of the provisions of Chapter II. (see section 9); disputes that form the subject matter of a proposed strike or lockout (see section 64 (1)); disputes in essential services (see section 74); disputes about unfair dismissals (see section 191); disputes about severance pay (see section 196); and disputes about unfair labour practices (see item 2 in Schedule 7).

The following disputes contemplated by subsection (3) may not be referred to a council: disputes about organisational rights (see sections 16, 21 and 22); disputes about collective agreements where the agreement does not provide for a procedure or the procedure is inoperative or any party frustrates the resolution of the dispute (see section 24 (2) to (5)); disputes about agency shops and closed shops (see section 24 (6) and (7) and section 26 (11)); disputes about determinations made by the Minister in respect of proposals made by a statutory council (see section 45); disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled (see section 61 (5) to (8)); disputes about the demarcation of sectors and areas of councils (see section 62); disputes about the interpretation or application of Part C (bargaining councils), Part D (bargaining councils in the public service), Part E (statutory councils) and Part F (general provisions concerning councils) (see section 63); disputes concerning pickets (see section 69 (8) to (10)); disputes about proposals that are the subject of joint decisionmaking in workplace forums (see section 86); disputes about the disclosure of information to workplace forums (see section 89) and disputes about the interpretation or application of the provisions of Chapter V which deals with workplace forums (see section 94).

[Footnote 11 amended by Act No. 12 of 2002]

12 See flow diagram No. 5 in Schedule 4.

13 Essential services agreed minimum services and maintenance services are regulated in sections 71 to 75.

14 These sections deal with organisational rights.

15 See flow diagram No. 6 in Schedule 4.

16 See flow diagram No. 7 in Schedule 4.

17 A Maintenance Service has been defined in section 75

18 See flow diagram No. 8 in Schedule 4.

19 See flow diagram No. 9 in Schedule 4

20 These are the requirements relating to the name of a trade union or employers' organisation to be registered.

21 See section 148.

22 See section 149.

23 See section 149.

24 . . . . . .

25 . . . . . .

26 See item 4 of Schedule 3 for the governing body's rules of procedure.

27 See items 1 to 3 of Schedule 3 for the terms of appointment of members of the governing body.

28 These sections deal with disputes about organisational rights.

29 These subsections deal with disputes about collective agreements where the agreement does not provide for a procedure, the procedure is inoperative or any party frustrates the resolution of the dispute.

30 These subsections deal with disputes about agency shops and closed shops.

31 This section deals with disputes about determinations made by the Minister in respect of proposals made by a statutory council.

32 These subsections deal with disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled.

33 This section deals with disputes about the demarcation of sectors and areas of councils.

34 This section deals with disputes about the interpretation or application of Parts C to F of Chapter III, Part C deals with bargaining councils, Part D with bargaining councils in the public service, Part E with statutory councils and Part F with general provisions concerning councils.

35 This section concerns disputes about pickets during strikes and lockouts.

36 This section deals with disputes about proposals that are the subject of joint decision making.

37 This section deals with disputes about the disclosure of information to workplace forums.

38 This section deals with disputes about the interpretation or application of Chapter V which deals with workplace forums.

39 Section 24 (1) states that every collective agreement must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement.

40 The Legal Aid Board is established in terms of section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969).

41 Scope and execution of process.

42 Certified copies of court records admissible as evidence.

43 No process to be issued against judge except with consent of court.

44 Manner of securing attendance of witnesses or the production of any document.

45 Manner in which witness may be dealt with on refusal to give evidence or produce document.

46 Property not liable to be seized in execution.

47 Offences relating to execution.

48 Witness fees.

49 Section 5 confers protections relating to the right to freedom of association and on members of workplace forums.

50 Chapter IV deals with industrial action and conduct in support of industrial action. Section 67 (4) and (5) provide —

"(4) An employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike.

(5) Subsection (4) does not preclude an employer from fairly dismissing an employee in compliance with the provisions of Chapter VIII for a reason related to the employee's conduct during the strike, or for a reason based on the employer's operational requirements."

Section 77 (3) provides—

"A person who takes part in protest action or in any conduct in contemplation or in furtherance of protest action that complies with subsection (1), enjoys the protections conferred by section 67."

51 See Schedule 8, the Code of Good Practice: Dismissal.

52 See flow diagrams Nos. 10, 11, 12 and 13 in Schedule 4.

53 The Court, for example, in the case of a dismissal that constitutes an act of discrimination may wish to issue an interdict obliging the employer to stop the discriminatory practice in addition to one of the other remedies it may grant.

53a Section 14 (1) (c) of the Pensions Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable, and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in terms of the fund rules, and to additional benefits which have become established practice.

[Footnote 53a inserted by Act No. 12 of 2002.]

54 "Employee" is given a different and specific meaning in section 78 in Chapter V.