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# GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

No. 1877.

13 December 1995

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 66 of 1995: Labour Relations Act, 1995.

## ACT

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

to give effect to section 27 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.

*(English text signed by the President.  
Assented to 29 November 1995.)*

**B**E IT ENACTED by the Parliament of the Republic of South Africa as follows:--

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## CHAPTER I PURPOSE, APPLICATION AND INTERPRETATION

### 1. Purpose of this Act

The purpose of *this Act*<sup>1</sup> 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 27 of the Constitution;<sup>2</sup> 5
- (b) to give effect to obligations incurred by the *Republic* as a member state of the International Labour Organisation; 10
- (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 15
- (d) to promote—

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 lock-out for the purpose of collective bargaining shall not be impaired, subject to subsection 33(1)."



- (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 National Intelligence Agency; and
- (c) the South African Secret Service.
- (d) → insert Schedule 10/2002

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*;

(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;
    - (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; 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.

**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*;

(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 disputes<sup>3</sup>

- (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. See flow diagram No. 1 in Schedule 4.

- (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.

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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 members' 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 in 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 *workplace*, 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, term 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 *working 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 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 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 Part<sup>4</sup>**

- (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*.

4. See flow diagram No. 2 in Schedule 4.



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

**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 possible.

**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*.

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- (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 to the other parties.

**24. Disputes about collective agreements**

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- (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, 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.
- (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.<sup>5</sup>
- (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*.<sup>6</sup>
- (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.

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**25. Agency shop agreements**

- (1) A representative *trade union* and an employer or *employers' organisation* may <sup>submit</sup> 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 its *employees* who are identified in the agreement and who are not 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 agency shop agreement applies.

5. See flow diagram No. 3 in Schedule 4.  
6. See flow diagram No. 4 in Schedule 4.

- (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 ~~part of the~~ amount 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*.
- (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.

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- (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 <sup>membership subscription or levy</sup> part of the amount deducted may be—

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- (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*.

(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 terminate.
- (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 1 note (3) s27

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—

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- (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; and
- (j) to confer on workplace forums additional matters for consultation.

(k) + (l) added  
3/12/2002

(2)(3) inserted 1/127/95

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. The notice must inform the general public that they—~~

(3) inserted  
4/1/2002

- (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.

(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.

(15) added 4/12/2002

30. Constitution of bargaining council

(1) The constitution of every bargaining council must <sup>at least</sup> provide for—

Am. 5/2/96

- (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;

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- (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;<sup>7</sup>
- (p) a procedure for changing its constitution; and
- (q) a procedure by which it may resolve to wind up.

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Section 56 provides for a procedure for the admission of parties to a council.

(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) *hokisi 5/12/96*

**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 only the parties to the *bargaining council* who are parties to the *collective agreement*. *Subst 6/12/96*

**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) Within 60 days of receiving the request, the *Minister* must extend the *collective agreement*, as requested, by publishing a notice in the Government Gazette 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.

(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); *Subst 7/12/96*

(b) the majority of *employees* employed within the *registered scope* of the *bargaining council* are members of the *trade unions* that are party to the *bargaining council*; 15

(c) the members of the *employers’ organisations* that are party to the *bargaining council* employ the majority of the *employees* employed within the *registered scope* of the *bargaining council*;

(d) the non-parties specified in the request fall within the *bargaining council’s registered scope*; 20

(e) the *collective agreement* establishes or appoints an independent body to grant exemptions to non-parties and to determine the terms of those exemptions from the provisions of the *collective agreement* as soon as possible; *Subst 2/12/98*

(f) the *collective agreement* contains criteria that must be applied by the independent body when it considers applications for exemptions, and that those criteria are fair and promote the primary objects of *this Act*; and 25

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

(4) For the purpose of subsection (3)(e), a *bargaining council* in its appointment of the members of the independent body must have due regard to the nominations made by the institutions listed in the schedule promulgated in terms of section 207(6).

Del. 2/12/98

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

(a) the parties to the *bargaining council* are sufficiently representative within the *registered scope* of the *bargaining council*; and

Subst 7/12/96

Subst 5/12/2002

(b) the *Minister* is satisfied that the failure to extend the agreement may undermine collective bargaining at *sectoral* level.

(6) (a) After a notice has been published in terms of subsection (2), 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.

(b) The provisions of subsections (3) and (5), read with the changes required by the context, apply in respect of the publication of any notice in terms of this subsection.

(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) inserted 7/12/96 (10) added 5/12/2002

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 help it enforce any *collective agreement* concluded in that *bargaining council*.

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(1A) ...

(1) subst 6/12/2002

(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*.

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(3) Within the *registered scope* of the *bargaining council*, a designated agent of the *bargaining council* has all the powers conferred on a commissioner by section 142, read with the changes required by the context, except the powers conferred by section 142(1)(c) and (d). Any reference in that section to the *director* for the purpose of this section, must be read as a reference to the secretary of the *bargaining council*.

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(3) subst 6/12/2002

(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*.

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33 A inserted 7/12/2002

34. Amalgamation of bargaining councils

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(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.<sup>8</sup>
- (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* that 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 designate a *sector* of the *public service* for the establishment of a *bargaining council*.
- (2) Despite subsection (1), the President, after consulting the Public Service Co-ordinating Bargaining Council, may designate a *sector* of the *public service* for the establishment of a *bargaining council* if the uniform rules, norms and standards applicable to the *public service* are not appropriate to regulate employment in that *sector*.

8. Schedule 1 deals with the procedure for the establishment of the Public Service Co-ordinating Bargaining Council.

- (3) A bargaining council for a sector designated by—
  - (a) the Public Service Co-ordinating Bargaining Council must be established in terms of its constitution;
  - (b) the President must be established in terms of Schedule 1.
- (4) (a) The President may designate a sector for the establishment of a bargaining council in respect of employees of the State or organs of the State but who are not employees engaged in the public service.
- (b) A bargaining council must be established in respect of a sector designated by the President in terms of paragraph (a) and the provisions of item 3(3) to (9) of Schedule 1 apply.
- (c) A bargaining council established in terms of paragraph (b) will be deemed to be a bargaining council in the public service for the purposes of this Act.
- (5) A bargaining council established in terms of subsection (3) or (4) 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.

Subst 8/12/96  
8/12/2002

38. Dispute resolution committee

- (1) The Minister for the Public Service and Administration, after consulting NEDLAC and the Public Service Co-ordinating Bargaining Council, must establish a dispute resolution committee under the auspices of the Commission, and appoint to that committee persons who have knowledge and experience of labour law and labour relations in the public service.

- (2) The functions of the dispute resolution committee are to resolve any jurisdictional dispute between the Public Service Co-ordinating Bargaining Council and any bargaining council established in terms of section 37(3).
- (3) If there is a jurisdictional dispute between the Public Service Co-ordinating Bargaining Council and a bargaining council established in terms of section 37(3), any party to the dispute may refer the dispute in writing to the dispute resolution committee.
- (4) The party who refers the dispute to the dispute resolution committee must satisfy it that a copy of the referral has been served on the Public Service Co-ordinating Bargaining Council.
- (5) The dispute resolution committee must attempt to resolve the dispute as soon as possible through conciliation.
- (6) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
- (7) The Minister for the Public Service and Administration must determine the remuneration and allowances and any other terms and conditions of appointment of committee members. The expenditure incurred for that purpose will be defrayed from public funds.

Subst 9/12/96  
Subst 8/12/2002

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)<sup>9</sup> 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;

9. The provisions of section 29 deal with the procedure for the registration of a bargaining council.

(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—

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- (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* and 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' organisation*; 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' organisations* 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). 5
- (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). 10
- (8) The *Minister* must notify the *registrar* of agreements concluded and decisions made in terms of this section, and the *registrar* must— 15
- (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 20
  - (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 sections 31, and 32<sup>35</sup> apply, read with the changes required by the context.

Am. 10/12/96

(4) substituted 3/12/98

**44. Ministerial determinations**

(1) substituted 10/12/2002

- (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 wage board in terms of the *Wage Act*.~~

- (2) The *Minister* may promulgate the *statutory council's* ~~recommendations as a~~ determination under the *Wage Act* if satisfied that the *statutory council* has complied with sections 7 and 9 of the *Wage Act*. For that purpose the provisions of sections 7 and 9 to 12 of the *Wage Act*, read with the changes required by the context, apply to the *statutory council* as if it was the *wage board*.

(2) substituted 10/12/2002

- (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,<sup>10</sup> 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.

10. Section 29 deals with the procedure for the registration of bargaining councils.

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) ~~The registrar~~

(3) (4) + (5)  
(2) سکتی  
11/12/2002

(a) after consultation with a *council*, must fix a date for an annual review of the representativeness of the *council*;

(b) must conduct that review once every year by that date; and

(c) if satisfied that the *council* remains representative, must issue a certificate of representativeness that must include the following particulars—

(i) the number of *employees* employed within the *registered scope* of the *council*;

(ii) the number of those *employees* who are members of the *trade unions* that are party to the *council*; and

(iii) the number of *employees* employed within the *registered scope* of the *council* by the members of the *employers' organisations* that are party to the *council*.

(3) سکتی  
11/12/2002  
(3) A certificate of representativeness issued in terms of subsection (2) is sufficient proof of the representativeness of the *council* for the following year.

(4) + (5)  
سکتی  
11/12/2002

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*.

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(ii) ~~hosted~~ 11/12/96

(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*<sup>11</sup> and any party to that *dispute* is not a party to that *council*, the *council* must attempt to resolve the *dispute*—

11. The following disputes 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 lock-out (see section 84(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 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 decision-making 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).

- (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) ~~hosted~~ 11/12/96  
(7) (8) + (9) added 12/12/2002

52. Accreditation of council or appointment of accredited agency

Every *council* must—

- (a) apply to the Commission for accreditation to perform any of the functions referred to in section 51; or
- (b) appoint an accredited agency to perform any of the functions referred to in section 51.

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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 *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.

- (5) The money of a *bargaining council* or of any fund established by a *bargaining 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*.

(5) added ... 13/12/2002

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

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their appointment or election did not result in any changes to its office-bearers; and

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

(f) added 14/12/2002

(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; and

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

(4) added 14/12/2002

**55. Delegation of functions to committee of council**

(1) A council may delegate any of its functions to a committee on any conditions, but any decision of a committee may be amended or set aside by the council.

Subs 17 + 2/16

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

(3) The council, 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.

**56. Admission of parties to council<sup>12</sup>**

(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.

12. See flow diagram No. 5 in Schedule 4.

- (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.

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- (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*.

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**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* or ~~NEDLAC~~, may vary the *registered scope* of the *council*.
- (2) The provisions of section 29 apply, read with the changes required by the context, to a variation in terms of this section.
- (3) ... added 15/12/2002

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**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

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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.

(c) - (8) hml 4/12/98

**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) + (15) added 16/12/2002

62. Disputes about demarcation between sectors and areas

- (1) Any registered *trade union*, employer, <sup>employee</sup> 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.
- (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

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- (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) *handwritten: 10/12/96*
- (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* <sup>*has arisen*</sup> ~~did not~~ arise in the course of arbitration proceedings or proceedings in the Labour Court; or
  - (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— 5
- (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— 10
- (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— 15
- (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 20
- (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* 25

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; and

(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;

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(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*;
  - (d) that person is engaged in—
    - (i) an *essential service*; or
    - (ii) a maintenance service.<sup>13</sup>
- (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.<sup>14</sup>
- (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*—

13. Essential services, agreed minimum services and maintenance services are regulated in sections 71 to 75.

14. These sections deal with organisational rights.

- (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 the *Wage Act* and that regulates the *issue in dispute*, during the first year of that determination.

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 <sup>that is law</sup> and referred to a *council* if the striking *employees*, employed within the registered scope of <sup>Am. 19/22/96</sup> that *council*, have a material interest in that demand. 10
- (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; 15
  - (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 20
  - (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 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) Any act in contemplation or in furtherance of a protected *strike* or a protected *lock-out* that is a contravention of the *Basic Conditions of Employment Act* or the *Wage Act* does not constitute an offence.

**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—<sup>15</sup>

15. See flow diagram No. 8 in Schedule 4.

(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*, having regard to—

(b) same as  
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(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* was premeditated; 10

(cc) the *strike* or *lock-out* 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; 15

(iii) the duration of the *strike* or *lock-out*; and

(iv) the financial position of the employer, *trade union* or *employees* —respectively.

(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— 20

(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<sup>16</sup>

(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

16. See flow diagram No. 7 in Schedule 4.

(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~~ —

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(a) in any place to which the public has access but outside the premises of an employer; or

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(b) with the permission of the employer, inside the employer's premises.

(3) The permission referred to in subsection (2)(b) may not be unreasonably withheld.

(4) If requested to do so by the registered *trade union* or the employer, the Commission 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*.

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(5) If there is no agreement, the Commission must establish picketing rules, 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; and

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(b) any relevant *code of good practice*.

(6) The rules established by the Commission may provide for picketing by employees on their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld.

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- (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 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 an agreement concluded in terms of subsection (4); or
  - (d) an alleged material breach of a rule established in terms of subsection (5).
- (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.

**70. Essential services committee**

- (1) The *Minister*, after consulting *NEDLAC*, and in consultation with the Minister for the Public Service and Administration, must establish an essential services committee under the auspices of the Commission and appoint to that committee, on any terms, persons who have knowledge and experience of labour law and labour relations.

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- (2) The functions of the essential services committee are—
  - (a) to conduct investigations as to whether or not the whole or a part of any service is an *essential service*, and then to decide whether or not to designate the whole or a part of that service as an *essential service*;
  - (b) to determine *disputes* as to whether or not the whole or a part of any service is an *essential service*; and
  - (c) to determine whether or not the whole or a part of any service is a maintenance service.<sup>17</sup>
- (3) At the request of a *bargaining council*, the essential services committee must conduct an investigation in terms of subsection (2)(a).

**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

17. A maintenance service is defined in section 75.

(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 essential services committee designates the whole or a part of a service as an *essential service*, the committee must publish a notice to that effect in the Government Gazette.

(9) The essential services committee may vary or cancel the designation of the whole or a part of a service as an *essential service*, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.

(10) The Parliamentary service and the South African Police Service are deemed to have been designated an essential service in terms of this section.

#### 72. Minimum services

The essential services committee may ratify any *collective agreement* that provides for the maintenance of minimum services in a service designated as an *essential service*, in which case—

(a) the agreed 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.

#### 73. Disputes about whether a service is an essential service

(1) Any party to a *dispute* about either 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*; or

(b) whether or not an *employee* or employer is engaged in a service designated as an *essential service*.

(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 services<sup>18</sup>

(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—

18. See flow diagram No. 8 in Schedule 4.

- (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 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; and
- (b) the period referred to in subsection (5)(b), that period will run from the expiry of the period referred to in subsection (a) or from the beginning of the next session of Parliament.

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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 is a maintenance service.
- (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 service is a maintenance service.

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Am. 22/2/96

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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

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(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 temporary employment service 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*—

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(i) employ and dismiss *employees* on behalf of the employer;

(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 ~~remaining~~ provisions of this Chapter do not apply. Am. 24/12/96
- (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*. 5
- (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). 10
- (4) The constitution of the applicant governs the nomination, election and removal from office of elected representatives of the applicant in the *workplace*. 10
- (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*. 15

### 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; 5
- (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; 10
- (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— 15
  - (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; 20
- (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; 5
- (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; 10
- (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; 15
- (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; 20
- (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; 25

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- (s) provide for <sup>the designation of</sup> full-time members of the *workplace forum* where there are more than 1 000 *employees* in a *workplace*;
  - (t) provide that the <sup>workplace</sup> forum may invite any expert to attend <sup>the</sup> meetings of the *workplace forum*, 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* <sup>is</sup> entitled to inspect and copy;
  - (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*; ~~and~~
  - (v) provide that the representative *trade union* and the employer, by agreement, may change the constitution of the *workplace forum* ~~and~~
  - (w) ~~establish the manner in which decisions are to be made.~~
- (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*.

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(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 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 forums* 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.

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### 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.<sup>19</sup>

19. See flow diagram No. 9 in Schedule 4.

- (8) (a) An arbitration award is about a proposal referred to in subsection (1)(d) 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 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).

**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), 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.
- (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 of the nature of the information disclosed in terms of subsection (1) is*
- (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, that 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 1 000 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 reinstate 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*;

(vi) a *workplace forum*

inserted 29/12/96

- (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.

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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.

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(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;

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- (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.

(1) + (8) added 18/12/2002

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 or on behalf of 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 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; and
- (c) the ballot papers for a period of three years from the date of every ballot.

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

**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),<sup>20</sup> 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

20. These are the requirements relating to the name of a trade union or employers' organisation to be registered.

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 unions* 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 registered trade unions or registered employers' organisations

- (1) ~~The Labour Court may order a registered trade union or registered 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 of labour relations 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.

(1A)
- (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 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.

10 subsec  
+ (1A) inserted  
19/12/2002

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- (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 registered ~~trade union or registered employers' organisation~~ have been discharged, any assets remain that 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.~~

**104. Winding-up of trade unions or employers' organisations by reason of insolvency**

Any person who seeks to wind-up a *trade union* or *employers' organisation* 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.

**105. Cancellation of registration of trade union that 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.

**106. Cancellation of registration of trade unions or employers' organisations**

- (1) The registrar of the Labour Court must notify the registrar of labour relations if the Court—

- (a) in terms of section 103 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.

(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.

(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 sequestered.

**PART C—REGISTRAR OF LABOUR RELATIONS**

**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.

**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*.

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*; 5
  - (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 10
  - (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*. 15
- (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*. 20
- (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*; 5
  - (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). 10

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. 15
- (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 20
  - (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*.

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.

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; and

(d) compile and publish information and statistics about its activities.

(2) The Commission may—

(a) if asked, advise a party to a dispute about the procedure to follow in terms of this Act;<sup>21</sup>

(b) if asked, assist a party to a dispute to obtain legal advice, assistance or representation;<sup>22</sup>

(c) offer to resolve a dispute that has not been referred to the Commission through conciliation;<sup>23</sup>

(C.A) 6/27/98

21. See section 148.

22. See section 149.

23. See section 150.

- Del. 31/12/96
- (d) ~~accredit~~ *councils* or private agencies;<sup>24</sup>
  - (e) subsidise accredited *councils* or accredited agencies;<sup>25</sup>
  - (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; and
  - (i) sexual harassment in the workplace.
- Del. 31/12/96  
12A, inserted 22/12/2002
- (3) If asked, 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*, 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*;

24. See section 127.

25. See section 132.

- (g) the process of restructuring the workplace;
  - (h) affirmative action and equal opportunity programmes; and
  - (i) <sup>the provision of</sup> sexual harassment in the *workplace*. Am. 31/12/96
- (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) ~~hated~~ 6/12/98 & ~~sub~~ 22/12/2002

116. Governing body of Commission

- (1) The Commission will be governed by the governing body, whose acts are acts of the Commission.<sup>26</sup>
- (2) The governing body consists of—
- (a) a chairperson and nine other members, each nominated by *NEDLAC* and appointed<sup>27</sup> 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;

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.



- (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.

### 117. Commissioners of Commission

- (1) The governing body must appoint as commissioners as many adequately qualified 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.

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- (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 Commission's code of conduct.
- (8) Each commissioner is responsible to the *director* for the performance of the commissioner's functions.

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### 118. Director of Commission

- (1) The governing body must appoint, as *director* of the Commission, a person who—

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- (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*.

(c) *Amend 7/12/98*

**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*.

**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.

**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.

**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.

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**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.

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**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; and
  - (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.

Subsect 32/12/95  
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**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) subsidising 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).

**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 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.

(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;<sup>28</sup>
- (b) section 24(2) to (5);<sup>29</sup>
- (c) section 24(6) and (7) and section 26(11);<sup>30</sup>
- (d) section 45;<sup>31</sup>
- (e) section 61(5) to (8);<sup>32</sup>
- (f) section 62;<sup>33</sup>

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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.

- (g) section 63;<sup>34</sup>
- (h) section 69(8) to (10);<sup>35</sup>
- (i) section 86;<sup>36</sup>
- (j) section 89;<sup>37</sup>
- (k) section 94.<sup>38</sup>

(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*,

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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 lock-outs.

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.

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*
- (g) the applicant promotes a service that is broadly representative of South African society *and* .
- (h) if the applicant charges a fee to the users of its services, the fee is reasonable.

*Am. 33/42/96*

*Del 33/42/96*

(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) as soon as practicable after the decision, publish the certificate of accreditation in the Government Gazette; or

*(1) added  
23/12/2002*

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- (b) not to accredit the applicant, the governing body must advise the unsuccessful applicant in writing of its decision.
- (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.

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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 the Commission, or a commissioner, to charge a fee.~~ *in 74/42/96*
- (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,

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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.

(3) added -- 24/12/2012

**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* or accredited agency 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* or accredited agency.

**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) Any accredited *council* or accredited agency, or *council* or private agency that has applied for accreditation, may apply to the governing body in the *prescribed* form for a subsidy—

- (a) for performing any function for which the *council* or private agency is accredited or for which it has applied for accreditation; and
- (b) for training persons to perform those functions.

Subs 3/12/12

(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).

**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 that *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 to arbitration under the auspices of the Commission.

**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.
- (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) inserted 8/12/98

(4) In the conciliation proceedings a party to the *dispute* may appear in person or be

Subst 8/12/98

(4) deleted by 20/12/2000

represented only by a co-employee or by a member, an *office-bearer* or *official* of that party's *trade union* or *employers' organisation* and, if the party is a juristic person, by a director or an *employee*.

(5) <sup>with conciliation has failed, or at</sup> At the end of the 30-day period or any further period agreed between the parties—

Am. 36/12/96

- (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.
- (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.

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**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) any party to the *dispute* has requested that the *dispute* be resolved through arbitration

Subst 9/127/98

(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 objects to the arbitration being conducted by the same commissioner who conciliated the *dispute*, may file an objection with the Commission and must satisfy the Commission that a copy of the objection has been served on all the other parties to the *dispute*.

Subst 9/127/98

(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)*.
- (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.

Am. 37/12/96

**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) In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by a *legal practitioner*, a co-employee or by a member, office-bearer or official of that party's *trade union* or *employers' organisation* and, if the party is a juristic person, by a director or an *employee*.

Subst 16/12/98  
Subst 27/12/2002

- (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) the Commission must file the original of that award with the registrar of the Labour Court.
- (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.

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- (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 not include an order for costs in the arbitration award unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner—
  - (a) by proceeding with or defending the *dispute* in the arbitration proceedings; or
  - (b) in its conduct during the arbitration proceedings.

Am. 29/12/96  
Subst 27/12/2002

**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) If the *dispute* being arbitrated is about the fairness of a *dismissal* and a party has alleged that the reason for the *dismissal* relates to the *employee's* conduct or capacity, the parties, despite section 138(4), are not entitled to be represented by a *legal practitioner* in the arbitration proceedings unless—
  - (a) the commissioner and all the other parties consent; or
  - (b) the commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation, after considering—
    - (i) the nature of the questions of law raised by the *dispute*;
    - (ii) the complexity of the *dispute*;
    - (iii) the public interest; and
    - (iv) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the *dispute*.
- (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.

(1) Deleted  
29/12/2002

141. Resolution of disputes if parties consent to arbitration under auspices of Commission

(1) subject  
2/12/2002

(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 to arbitration under the auspices of the Commission.

(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) subject  
2/12/2002

(3) The arbitration agreement contemplated in subsection (1) may be terminated only with the consent of all the parties to that agreement, unless the agreement itself provides otherwise.

(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.

4m.31/12/95

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
- noted 4/1/92 hc*  
(g) *(iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person in the premises who is willing to give a statement.*  
(g) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Commissioner. 5
- (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 10
  - (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— 15
    - (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 20
    - (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). 5
- (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 book, document or object in terms of this section. 10
- (7) 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. 30/12/2000
- (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; 15
  - (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; 20
  - (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; 25

- (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) The Commission may refer any contempt to the Labour Court for an appropriate order.~~  
30/12/2002

(10) (11) + (12) ... added  
14/12/2002 31/12/2002

**143. Effect of arbitration awards**

~~(1) An arbitration award issued by a commissioner is final and binding and may be made an order of the Labour Court in terms of section 158(1)(c), unless it is an advisory arbitration award.~~  
1/12/2002 32/12/2002

(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.

32/12/2002 (3) + (4) ... added

**144. Variation and rescission of arbitration awards**

~~Any commissioner who has issued an arbitration award, acting of the commissioner's own accord or, on the application of any affected party, may vary or rescind an arbitration award—~~  
14/12/2002 33/12/2002

- (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; or
- (c) granted as a result of a mistake common to the parties to the proceedings.

**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 corruption; or
- (b) if the alleged defect involves corruption, within six weeks of the date that the applicant discovers the corruption.

(1A) ... inserted 31/12/2002

(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*.

**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 required by section 24(1);<sup>39</sup> 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

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.



(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 in terms of a *collective agreement between the parties to the dispute*, the Commission may—

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(i) refer the *dispute* to the accredited agency for resolution; or

(ii) appoint a commissioner to resolve the *dispute* in terms of *this Act*.

(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) (a) 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—

(i) refer the *dispute* to the appropriate person or body for resolution through private dispute resolution procedures; or

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(ii) appoint a commissioner to resolve the *dispute* in terms of *this Act*.

Am. 1/1/96

(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.

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(8) Am. 1/1/96

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*.

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(2) In response to a request for advice, the Commission may provide the advice that it considers appropriate.

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149. Commission may provide assistance

(1) If asked, the Commission may assist an *employee* or employer who is a party to a *dispute*—

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- (a) together with the Legal Aid Board,<sup>40</sup> to arrange for advice or assistance by a *legal practitioner*;
  - (b) together with the Legal Aid Board, 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
  - (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

40. The Legal Aid Board is established in terms of section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969).

- (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 offer to resolve dispute through conciliation

- (1) If the Commission is aware of a *dispute* that has not been referred to it, and if resolution of the *dispute* would be in the public interest, the Commission may offer to appoint a commissioner to attempt to resolve the *dispute* through conciliation.
- (2) The Commission may appoint a commissioner only if all the parties to the *dispute* consent to that appointment.

(1) subsec 35(1) 2/2002  
(2) add. 35(1) 2/2002

PART D — LABOUR COURT

151. Establishment and status of Labour Court

- (1) The Labour Court is hereby established as a court of lawal equity. Am. 11/27/98
- (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 provincial division of the Supreme Court has in relation to the matters under its jurisdiction.
- (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 as defined in section 105 of the Constitution, and after consultation with the Minister of Justice must appoint a Judge President of the Labour Court.
- (b) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission ~~as defined in section 105 of the Constitution~~, 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.
- (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.

Subst 12/127/98

Am. 12/127/98

- (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 ~~as defined in section 105 of the Constitution~~, 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.
- (5) ~~The President, acting on the advice of *NEDLAC* and the Judicial Service Commission as defined in section 105 of the Constitution~~, and after consultation with the Minister of Justice <sup>after consultation with</sup> and 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 <sup>for such a period as the Minister of Justice in each case may determine.</sup>
- (6) A judge of the Labour Court must—
  - (a) (i) be a judge of the <sup>High</sup> Supreme Court; or
  - (ii) be a person who <sup>has</sup> ~~has been~~ a legal practitioner for a cumulative ~~period of at least 10 years before that person's appointment~~; and
  - (b) have knowledge, experience and expertise in labour law.

Am. 12/127/98  
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Am. 12/127/98  
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Am. 12/127/98  
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154. Tenure, remuneration and terms and conditions of appointment of Labour Court judges

- (1) A judge of the Labour Court must be appointed for a period determined by the President at the time of appointment.
- (2) A judge of the Labour Court may resign by giving written notice to the President.

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- (3) (a) Any judge of the Labour Court who is also a judge of the <sup>High</sup> Supreme Court holds office until—
- Am. 13/12/95
- (i) the judge's period of office in the Labour 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 <sup>High</sup> Supreme Court; or
  - (v) the judge dies.
- (b) Any other judge of the Labour Court holds office until—
- (i) the judge's period of office ends;
  - (ii) the judge's resignation takes effect;
  - (iii) the judge is removed from office; or
  - (iv) the judge dies.
- (4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the <sup>High</sup> Supreme Court in terms of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Court.
- Am. 13/12/95
- (5) (a) The remuneration payable to a judge of the Labour Court appointed in terms of section 153(6) must be the same as that payable to a judge of the <sup>High</sup> Supreme Court.
- Subst. 13/12/95
- Am. 13/12/95 (b) The terms and conditions of appointment of a judge of the Labour Court referred to in paragraph (a) must be similar to those of a judge of the <sup>High</sup> Supreme Court.

- (6) A person who has been appointed a judge of the Labour Court and who is not a judge of the <sup>High</sup> Supreme 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.
- Am. 13/12/95
- (7) (a) A judge of the Labour Court who is also a judge of the <sup>High</sup> Supreme Court—
- (i) may be removed from the office of judge of the Labour Court only if that person has first been removed from the office of a judge of the <sup>High</sup> Supreme Court; and
  - (ii) upon having been removed as judge of the <sup>High</sup> Supreme Court must be removed from office as a judge of the Labour Court.
- (b) The President, acting on the advice of NEDLAC, and in consultation with the Minister of Justice and the Judge President of the Labour Court, may remove any other judge of the Labour Court from office for misbehaviour or incapacity.
- (8) (a) substituted 13/12/95

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.

**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.

**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 Supreme Court—

(a) in respect of any alleged violation or threatened violation, by the State in its capacity as employer of any fundamental right entrenched in Chapter 3 of the Constitution; and

(b) in respect of 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 employer.

Section 1+127/95

(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 in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved dispute if this Act requires the dispute to be resolved through arbitration.

**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*;
- (c) make any arbitration award or any settlement agreement, other than a collective agreement, an order of the Court;
- (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*, a registered *employers' organisation*, and one of its members about any alleged non-compliance with the constitution of that *trade union* or *employers' organisation*;
- (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) despite section 145, review the performance or purported performance of any function provided for in *this Act* or any act or omission of any person or body in terms of *this Act* on any grounds that are permissible in law;

(b) sub 30/12/2002

Sub 44/2/96

(g) sub 30/12/2002

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- (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.
- (A) 30/12/2002
- (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) with the consent of the parties and if it is expedient to do so, continue with the proceedings with the Court sitting as an arbitrator, in which case the Court may only make any order that a commissioner or arbitrator would have been entitled to make.
  - (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

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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.

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**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—

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(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;

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(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

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(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;

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(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

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(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).

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(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)-(10) Deleted 4/5/92; Amended 15/12/93

**160. Proceedings of Labour Court to be carried on in open court**

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(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**

Subst  
16/27/95  
37/12/2002

In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by a legal practitioner, a co-employee or by a member, an office-bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee.

**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 <sup>High</sup> Supreme Court.

Am. 17/127/98

**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.

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- (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 ~~Appellate Division of the~~ Supreme Court <sup>of Appeal</sup> has in relation to matters under its jurisdiction.
- (4) The Labour Appeal Court is a court of record.

Am. 18/127/99

**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) three other judges of the Supreme Court.
- (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.

Am. 16/127/99  
Am. 19/127/99

**169. Appointment of judges of Labour Appeal Court**

The President, acting on the advice of ~~NEDLAC~~ and the Judicial Service Commission as defined in section 105 of the Constitution, after consultation with the Minister of Justice and the Judge President of the Labour Appeal Court, must appoint the three judges of the Labour Appeal Court referred to in section 168(1)(c).

Am. 20/127/99  
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**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 by giving written notice to the President.
- (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;

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(iii) the judge is removed from office;

Am. 21/127/95

(iv) the judge ceases to be a judge of the <sup>Hd</sup> Supreme 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.

(4) Neither the tenure of office nor the <sup>Hd</sup> remuneration and terms and conditions of appointment applicable to a judge of the <sup>Hd</sup> Supreme Court in terms of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Appeal Court.

Am. 21/127/95

(5) A judge of the Labour Appeal Court—

(a) may be removed from the office of judge of the Labour Appeal Court only if that person has first been removed from the office of a judge of the <sup>Hd</sup> Supreme Court; and

Am. 21/127/95

(b) upon having been removed as judge of the <sup>Hd</sup> Supreme Court must be removed from office as a judge of the Labour Appeal Court.

(6)-(7) <sup>Hd</sup> 15/12/96

**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.

**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.

**173. Jurisdiction of 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) If, in any proceedings before the Labour Appeal Court, circumstances arise such as those contemplated in—

(a) section 102(1) or (2) of the Constitution, the Labour Appeal Court must act in the manner provided for in that section; or

Del. 22/12/98

(b) section 102(8) of the Constitution, the Labour Appeal Court may act in the manner provided for in that section.

(3) An appeal to the Labour Appeal Court must be noted and prosecuted as if it were an appeal to the ~~Appellate Division~~ <sup>of Appeal</sup> of the Supreme Court in civil proceedings, except that the appeal must be noted within 21 days after the date on which leave to appeal has been granted.

Am. 22/12/99

(3) deleted 30/12/2002

(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.

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**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.

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(3) The Board must publish in the Government Gazette any rules that it makes, alters or repeals.

**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 <sup>Hg. Court</sup> ~~court of a provincial division of the Supreme Court~~ could have done so.

Am. 23/12/98

**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.

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**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 <sup>High</sup> Supreme Court.

**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.

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Ann. 2-1/127/95

**PART F — GENERAL PROVISIONS APPLICABLE TO COURTS  
ESTABLISHED BY THIS ACT**

**184. General provisions applicable to courts established by this Act**

Sections 5,<sup>41</sup> 18,<sup>42</sup> 25,<sup>43</sup> 30,<sup>44</sup> 31,<sup>45</sup> 39,<sup>46</sup> 40<sup>47</sup> and 42<sup>48</sup> 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*.

- 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.

**CHAPTER VIII  
UNFAIR DISMISSAL**

Heading subst  
29/12/2002

5 **185. ~~Right not to be unfairly dismissed~~**

Every *employee* has the right not to be unfairly dismissed.

185 subst. 4/12/2002

**186. Meaning of dismissal**

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“Dismissal” means that—

- (a) an employer has terminated a contract of employment with or without notice;
- (b) an *employee* reasonably expected the employer 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;
- (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) was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child;
- (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 a contract of employment with or without notice because the employer made continued employment intolerable for the *employee*.

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§ added 4/12/2002  
184 amended 4/12/2002

187. Automatically unfair dismissals

(1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5<sup>49</sup> 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;<sup>50</sup>

(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) to compel the employee to accept a demand in respect of any matter of mutual interest between the employer and employee;

(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

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."

(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) + (h) added 12/12/1995

(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

- (5) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter on which they are consulting.
- (6) 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.
- (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.

189A inserted 45/12/2002

**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 reinstate or re-employ the *employee*, the date of *dismissal* is the date on which the employer first refused to reinstate or re-employ that *employee*.

**191. Disputes about unfair dismissals<sup>52</sup>**

- (1) If there is a *dispute* about the fairness of a *dismissal*, the dismissed *employee* may refer the *dispute* in writing within 30 days of the date of *dismissal* 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) If the *employee* shows good cause at any time, the *council* or the Commission may permit the *employee* to refer the *dispute* after the 30-day time limit has expired.
- (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 have expired since the *council* or the Commission received the referral and the *dispute* remains unresolved—

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<sup>52</sup>. See flow diagrams Nos. 10, 11, 12 and 13 in Schedule 4.

- (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
  - (iii) the *employee* does not know the reason for *dismissal*; or
- (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 *employee's* 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.
- (6) Despite subsection (5)(a), 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.

(i) added  
4/12/2002

(iv) added  
4/12/2002

(5A) ... inserted  
4/12/2002

(i) added  
4/12/2002

- (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.
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.

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(11) inserted 25/12/98  
(12) added 4/12/2002  
191 corrected by 4/12/2002

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- (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 reinstate or re-employ the *employee* unless—
- (a) the *employee* does not wish to be reinstated 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 reinstate 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.<sup>53</sup>

193 Amended + (4) inserted by 47/12/2002

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.

194. Limits on compensation

- (1) If a *dismissal* is unfair only because the employer did not follow a fair procedure, compensation must be equal to the *remuneration* that the *employee* would have been paid between the date of *dismissal* and the last day of the hearing of the arbitration or adjudication, as the case may be, calculated at the *employee's* rate of *remuneration* on the date of *dismissal*. Compensation may however not be awarded in respect of any unreasonable period of delay that was caused by the *employee* in initiating or prosecuting a claim.

(1) inserted 42/12/2002

- (2) The compensation awarded to an *employee* whose *dismissal* is found to be unfair because the employer did not prove that the reason for *dismissal* was a fair reason related to the *employee's* conduct, capacity or based on the employer's *operational requirements*, must be just and equitable in all the circumstances, but not less than the amount specified in subsection (1), and not more than the equivalent of 12 months' *remuneration* calculated at the *employee's* rate of *remuneration* on the date of *dismissal*.

(2) deleted 42/12/2002

- (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) ... deleted 42/12/2002

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. Severance pay

- 21.15/37
- (1) An employer must pay an *employee* who is dismissed for reasons based on the employer's *operational requirements* severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of this subsection.
  - (2) The *Minister*, after consulting *NEDLAC* and the Public Service Co-ordinating Bargaining Council, may vary the amount of severance pay in terms of subsection (1) by notice in the Government Gazette.
  - (3) An *employee* who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of subsection (1).
  - (4) The payment of severance pay in compliance with this section does not affect an *employee's* right to any other amount payable according to law.
  - (5) An employer or a category of employers may apply to the *Minister* for exemption from the provisions of subsection (1) as if the application is one in terms of the *Basic Conditions of Employment Act* and the *Minister* may grant an exemption as if it were an exemption granted in terms of that Act.
  - (6) If there is a *dispute* only about the entitlement to severance pay in terms of this section, the *employee* 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.

- (7) The *employee* who refers the *dispute* to the *council* or the Commission must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.
- (8) The *council* or the Commission must attempt to resolve the *dispute* through conciliation.
- (9) If the *dispute* remains unresolved, the *employee* may refer it to arbitration.
- (10) If the Labour Court is adjudicating a *dispute* about a *dismissal* based on the employer's *operational requirements*, the Court may inquire into and determine the amount of any severance pay to which the dismissed *employee* may be entitled and the Court may make an order directing the employer to pay that amount.

197. Transfer of contract of employment

- (1) A contract of employment may not be transferred from one employer (referred to as "the old employer") to another employer (referred to as "the new employer") without the *employee's* consent, unless—
  - (a) the whole or any part of a business, trade or undertaking is transferred by the old employer as a going concern; or
  - (b) the whole or a part of a business, trade or undertaking is transferred as a going concern—
    - (i) if the old employer is insolvent and being wound up or is being sequestrated; or
    - (ii) because a scheme of arrangement or compromise is being entered into to avoid winding-up or sequestration for reasons of insolvency.

- (2) (a) If a business, trade or undertaking is transferred in the circumstances referred to in subsection (1)(a), unless otherwise agreed, all the rights and obligations between the old employer and each *employee* at the time of the transfer continue in force as if they were rights and obligations between the new employer and each *employee* and, anything done before the transfer by or in relation to the old employer will be considered to have been done by or in relation to the new employer.
- (b) If a business is transferred in the circumstances envisaged by subsection (1)(b), unless otherwise agreed, the contracts of all *employees* that were in existence immediately before the old employer's winding-up or sequestration transfer automatically to the new employer, but 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*, and anything done before the transfer by the old employer in respect of each *employee* will be considered to have been done by the old employer.
- (3) An agreement contemplated in subsection (2) must be concluded with the appropriate person or body referred to in section 189(1).
- (4) A transfer referred to in subsection (1) does not interrupt the *employee's* continuity of employment. That employment continues with the new employer as if with the old employer.
- (5) The provisions of this section do not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of, and sentenced for, any offence.

197 subsec 49/12/2002

197 A + 197 B inserted 50/12/2002

## CHAPTER IX GENERAL PROVISIONS

### 198. Temporary Employment Services

- (1) In this section, "temporary employment service" means any person who, for reward, procures for or provides to a client other persons—
- (a) who render services to, or perform work for, the client; and
- (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 determination made in terms of the *Wage Act*.

- (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) 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.

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**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.

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**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.

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200 A - ... 5/12/2002

**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 person convicted of an offence in terms of this section may be sentenced to a fine to be determined by the court, or imprisonment.

Subs: 49/20/202

**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*.

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(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.

(3) Any person interpreting or applying *this Act* must take into account any relevant *code of good practice*.

(4) add sub s2/2/2002

**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 *Wage 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

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(ii) free of charge, on request, to an *employee* who is a *trade union representative* or a member of a *workplace forum*.

2014 amended by 53/2/2012

**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.

**207. Ministers empowered to add and change to Schedules**

(1) The *Minister*, after consulting *NEDLAC*, by notice in the Government Gazette, may add to, change or replace any Schedule to *this Act*, including a Schedule

Subst 26/27/15

Am. 52/42/96  
which at any time may have been added to *this Act* but excluding Schedules 1, and 7, 5 and 6.

Del. 26/27/98  
(2) The Minister for the Public Service and Administration, after consulting *NEDLAC* and the Public Service Co-ordinating Bargaining Council, by notice in the Government Gazette, may add to, change or replace Schedule 1.

(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.

Am. 50/2/96  
Del. 26/27/98  
(6) The Minister, in consultation with the Minister of Trade and Industry and after consulting *NEDLAC*, by notice in the Government Gazette, may add to *this Act* a further schedule listing institutions referred to in section 32(4).

**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*.

208A. L. 51/42/96

**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, 1983 (Act No. 3 of 1983);

“**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*;

“**council**” includes a *bargaining council* and a *statutory council*;

(d) “**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;

“**dismissal**” means dismissal as defined in section 186;

(e) “**dispute**” includes an alleged dispute;

(f) “**employee**”<sup>54</sup> 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**”;

“**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*;

“**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*;

54. “Employee” is given a different and specific meaning in section 78 in Chapter V.



“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 public service referred to in section 1(1) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding—

- (a) the members of the National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service.

*definition under s213(2)(c)*

“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) or by the President in terms of section 37(2) or (4);
- (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 registered post, telegram, telex, telefax or to deliver by hand;

“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 a *sector* in the *public service* in respect of which a *bargaining council* has been established in terms of section 37 has the meaning that the responsible Minister determines after having consulted the *bargaining council*;  
*(a) deleted by 54/12/2002*
- (b) in relation to the remainder of the *public service*, has the meaning that the Minister for the Public Service and Administration determines after having consulted the Public Service Co-ordinating Bargaining Council;  
*(b) deleted by 54/12/2002*
- (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* comes into operation on a date fixed by the President by proclamation in the Government Gazette.

Subst 53/42/96

In op. s. 700, 70(2)(a), 71, 108, 109, 112, 116, 121, 124, 125, 153-156, 159, 169-172, 176, 203, 206-209, Schedule 3, Schedule 7, para 23 - W.o.f. 1.1.96  
GG 16880 22.12.95 Proc. 111/95

In op. s. 120, 127, 128 and 132 - W.o.f. 13.9.96  
GG 17423 13.9.96 Proc. 53/96

In op. all the provisions not yet in operation - W.o.f. 11.11.96  
GG 17516 1.11.96 Proc. 66/96

SCHEDULE 1

ESTABLISHMENT OF BARGAINING COUNCILS FOR PUBLIC SERVICE

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 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 African 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 councils 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 the 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 unions* to be admitted, the Commission must decide which *trade unions* 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 forum* 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 as well as provisions for the removal of members 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 members 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* is 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)(i))**

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 or organisation, the constitution may provide for the establishment of a co-ordinating *workplace forum* with jurisdiction over those matters mentioned 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 forums* 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 reappoint 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 sub-item (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 the 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*.

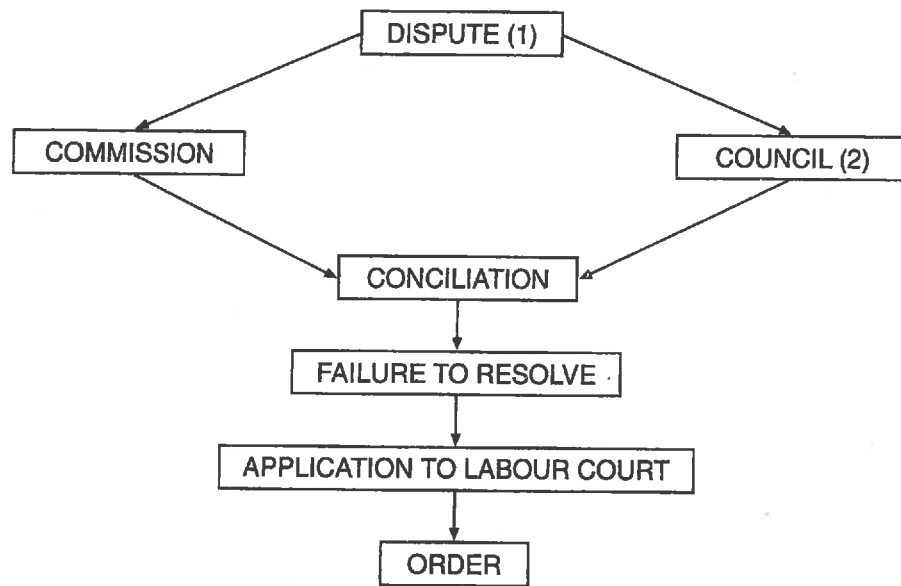
The flow diagrams do not indicate the rights that parties may have to seek urgent interim relief, nor do they indicate the right of review or appeal that parties have to the Labour Court or the Labour Appeal Court in certain cases. *This Act* sets out the circumstances in which these rights are available.

Awards and determinations by arbitrators are enforceable ultimately by the Labour Court.

**FLOW DIAGRAM 1**

**FREEDOM OF ASSOCIATION**

**CHAPTER II (Section 9)**



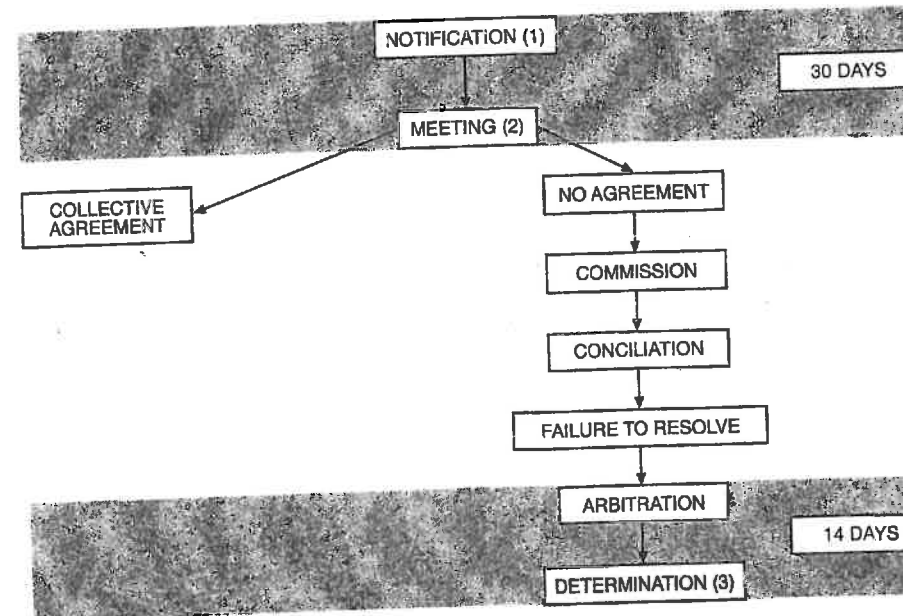
**FOOTNOTES:**

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)**



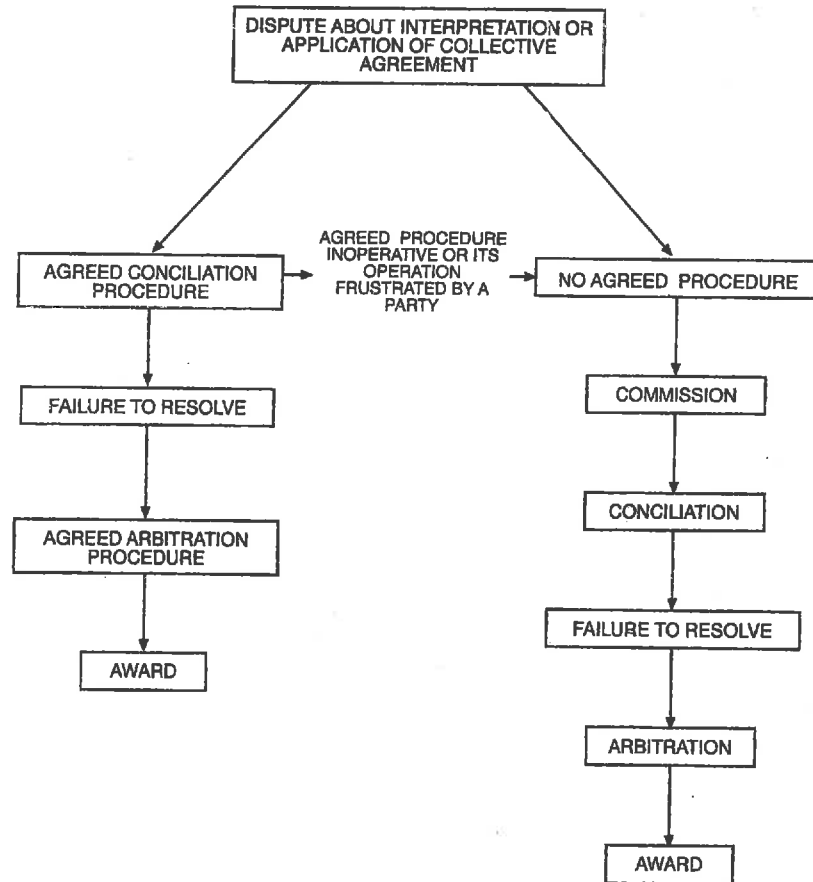
**FOOTNOTES:**

1. A registered trade union may notify an employer that it intends to exercise organisational rights. The content of the notice is described in s21(2). For example, if a registered trade union is sufficiently representative it may notify the employer that it seeks to exercise the right of access.
2. The object of the meeting is to conclude a collective agreement on the exercise of the organisational rights. 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 and the representativeness of the union and the manner in which organisational rights are exercised.

### FLOW DIAGRAM 3

## COLLECTIVE AGREEMENTS

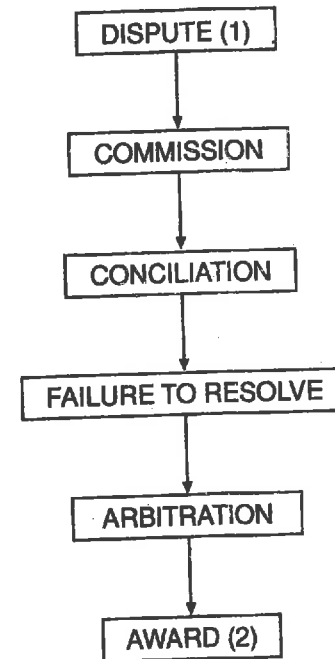
### CHAPTER III (Section 24)



### FLOW DIAGRAM 4

## COLLECTIVE AGREEMENTS (Agency Shop and Closed Shop Agreements)

### CHAPTER III (Section 24 (6) AND (7))



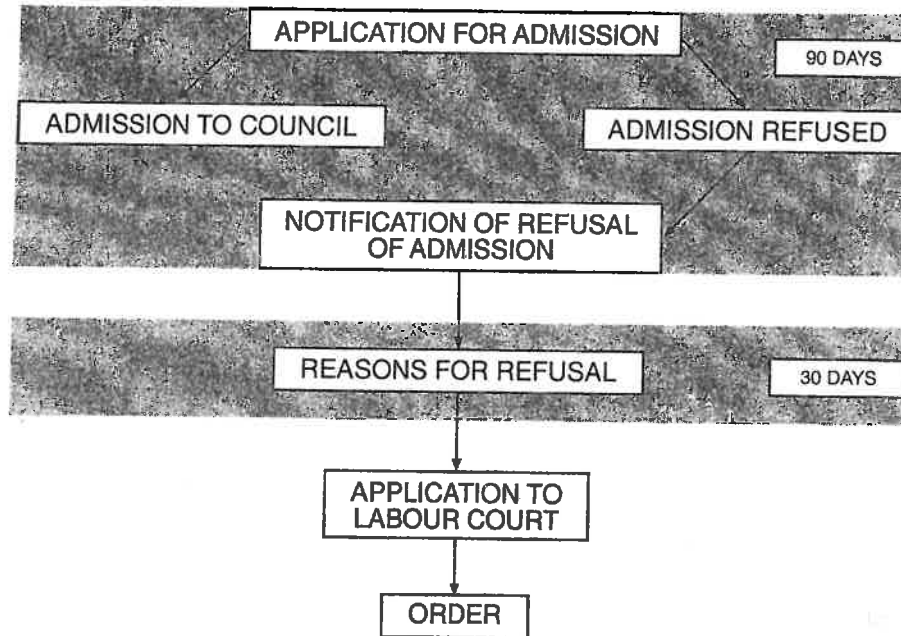
#### FOOTNOTES:

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 25(3)(d) or 26(3)(d), that dispute may be referred to 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 Court against some awards.

### FLOW DIAGRAM 5

#### COUNCILS (Admission of Parties)

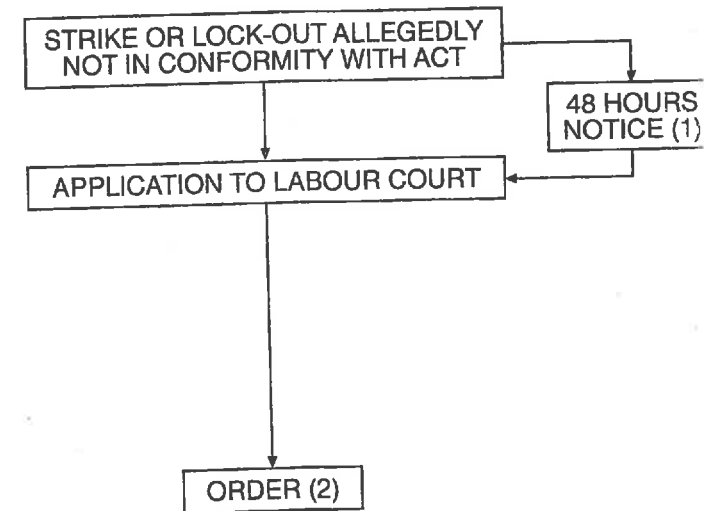
#### CHAPTER III (Section 56)



### FLOW DIAGRAM 6

#### STRIKES & LOCK-OUTS (Not in compliance with the Act)

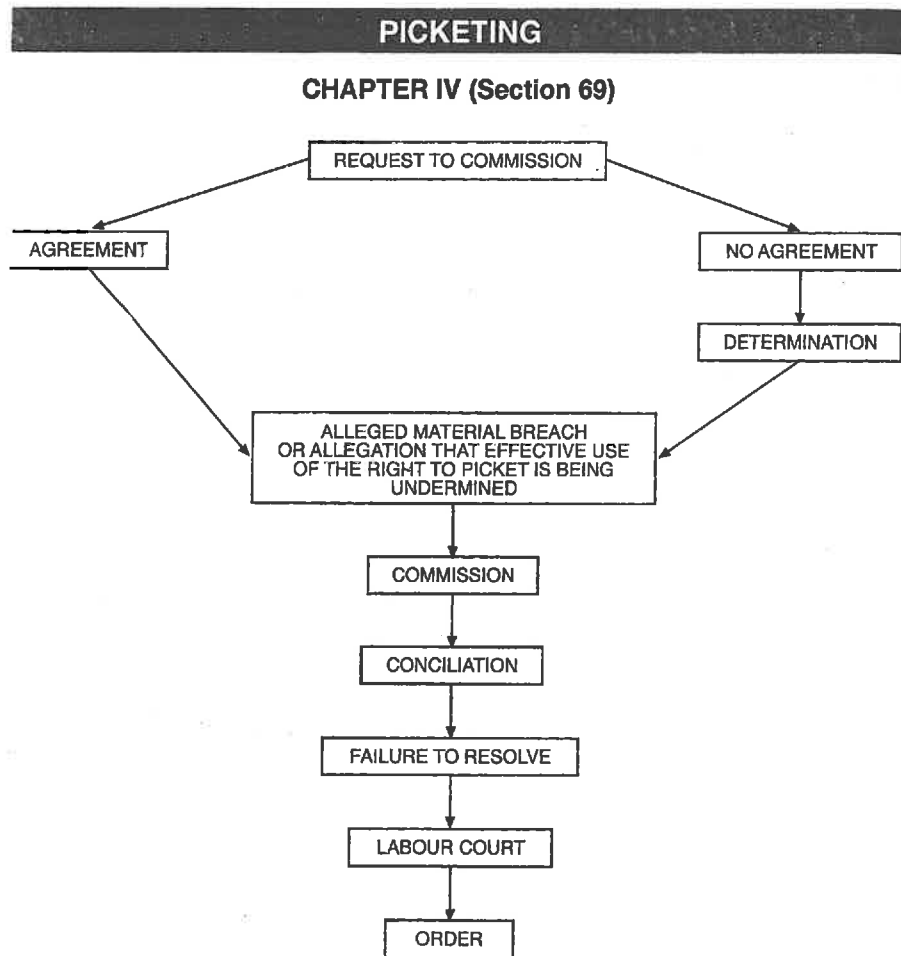
#### CHAPTER IV (Section 68)



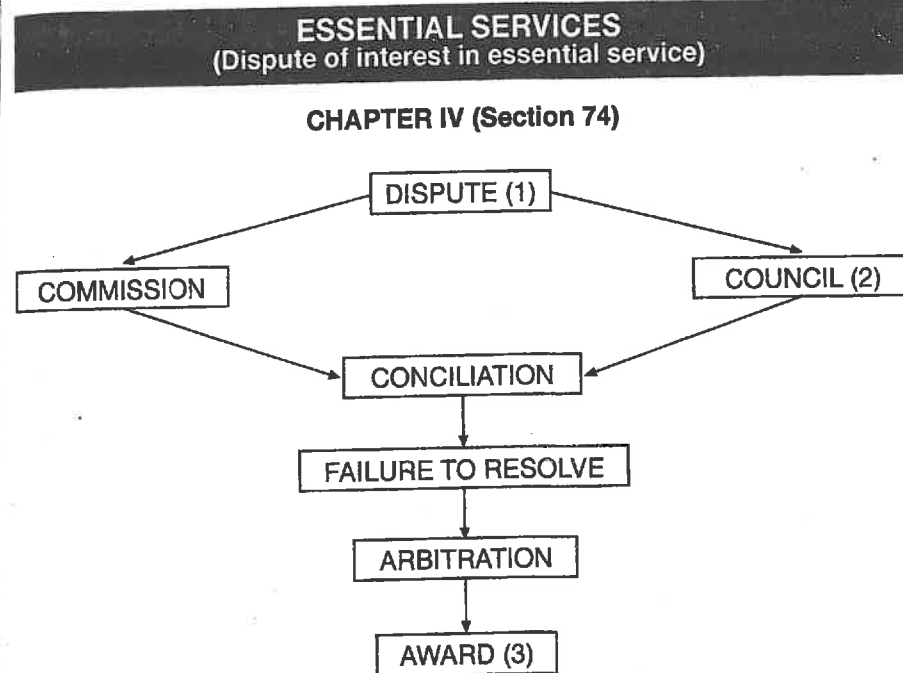
#### FOOTNOTES:

1. The notice requirement is dealt with in s68(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



### FLOW DIAGRAM 8



#### FOOTNOTES:

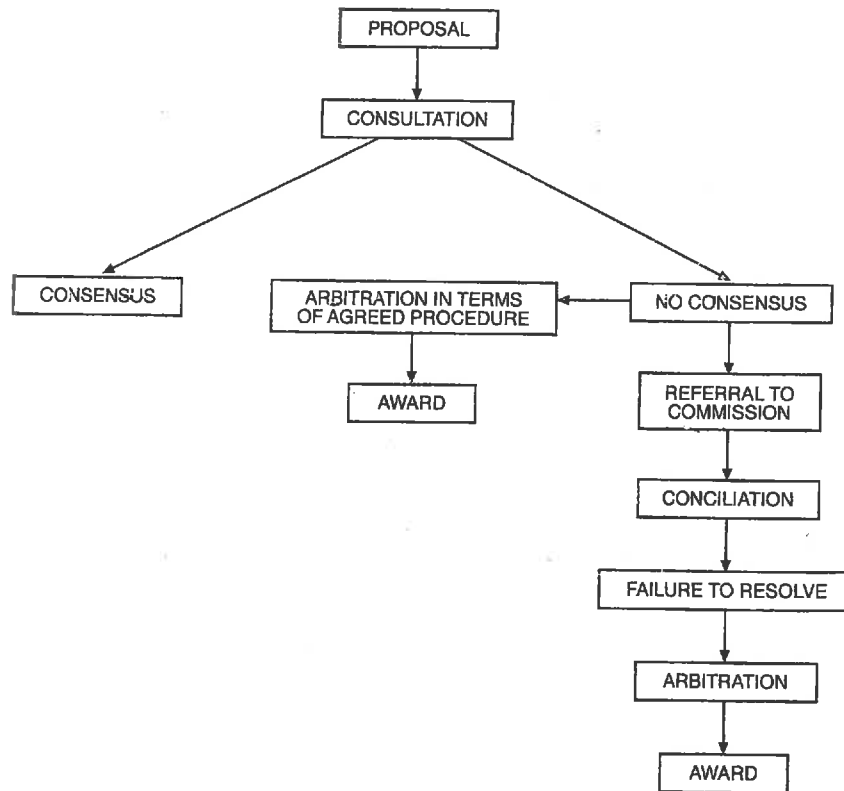
1. A dispute of interest in an essential service may, for example, include a dispute about wages. Because employees may not strike and employers may not lock out (see s65(1)(d)) any party may refer the dispute to a council or the commission.
2. The dispute must be referred to a council if the parties 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 s74(5) to (7)).



**FLOW DIAGRAM 9**

**WORKPLACE FORUM (1)**  
(Joint Decision Making)

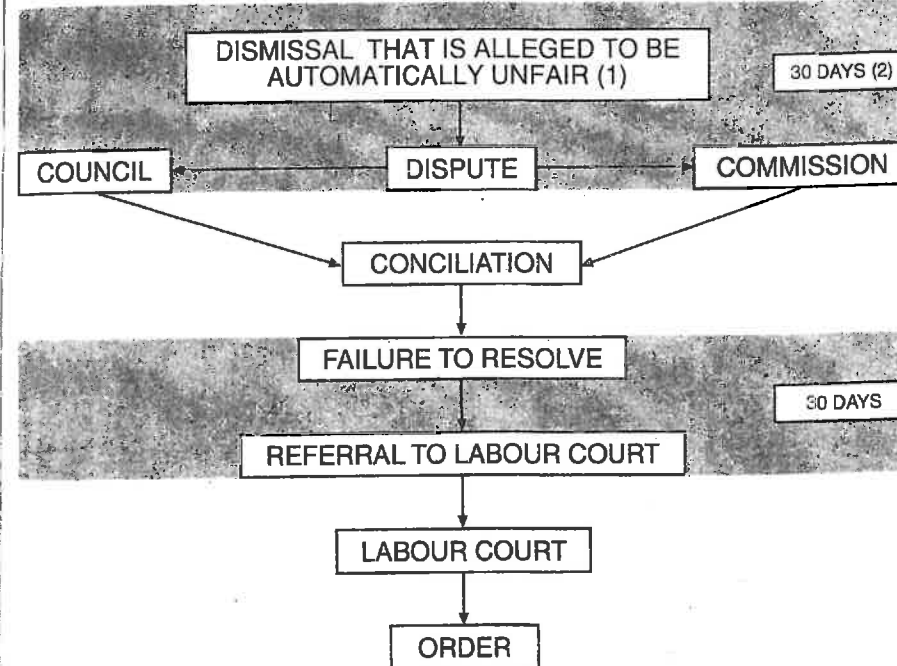
**CHAPTER V (Section 86)**



**FLOW DIAGRAM 10**

**UNFAIR DISMISSAL (1)**  
(Automatically Unfair Reasons)

**CHAPTER VIII (Section 191)**



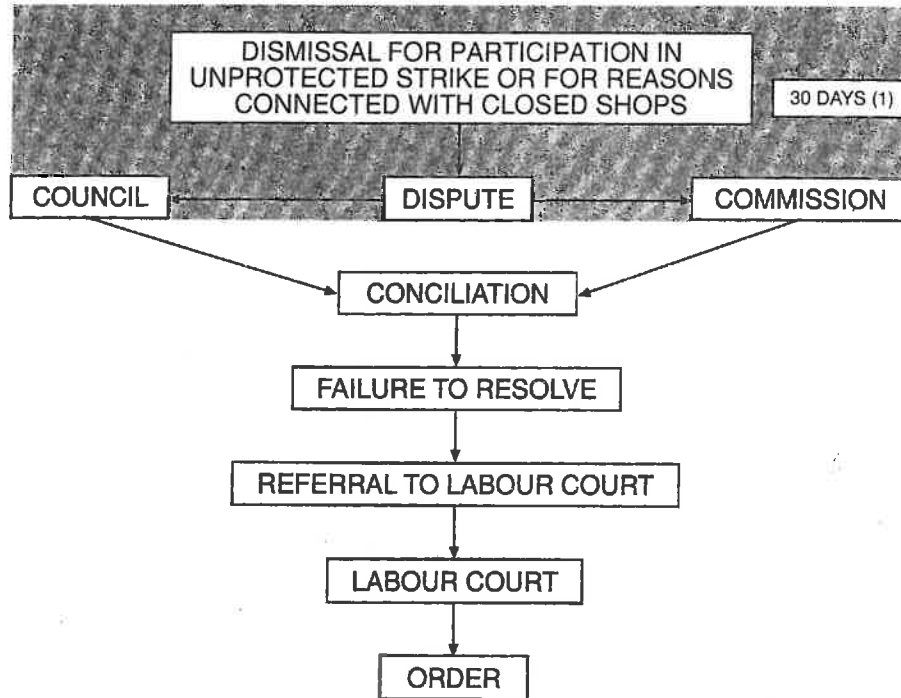
**FOOTNOTES:**

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 if there is good cause to do so.

### FLOW DIAGRAM 11

#### UNFAIR DISMISSAL (2) (Strikes and reasons related to closed shops)

#### CHAPTER VIII (Section 191)



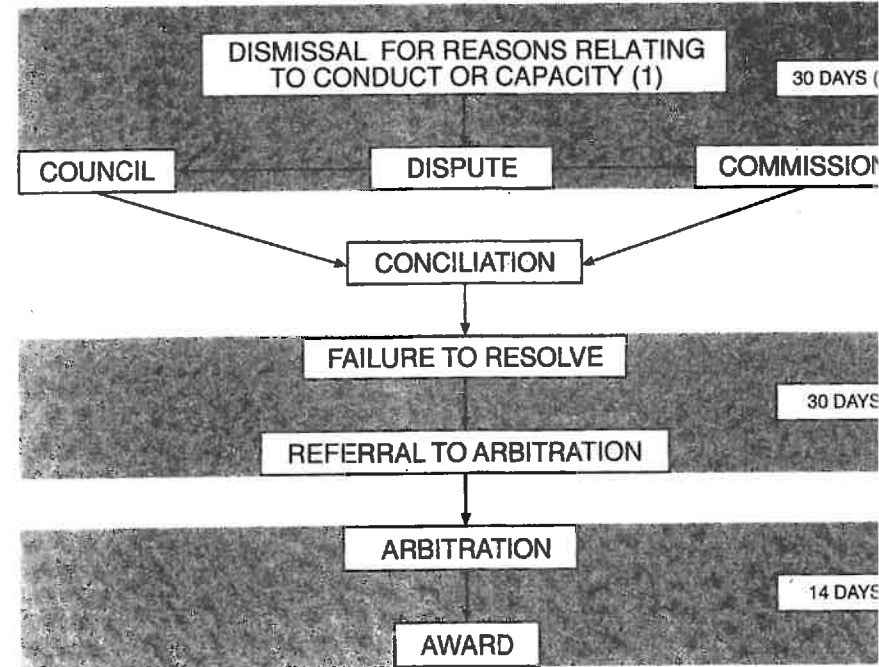
**FOOTNOTES:**

1. 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 12

#### UNFAIR DISMISSAL (3) (Misconduct / Incapacity)

#### CHAPTER VIII (Section 191)



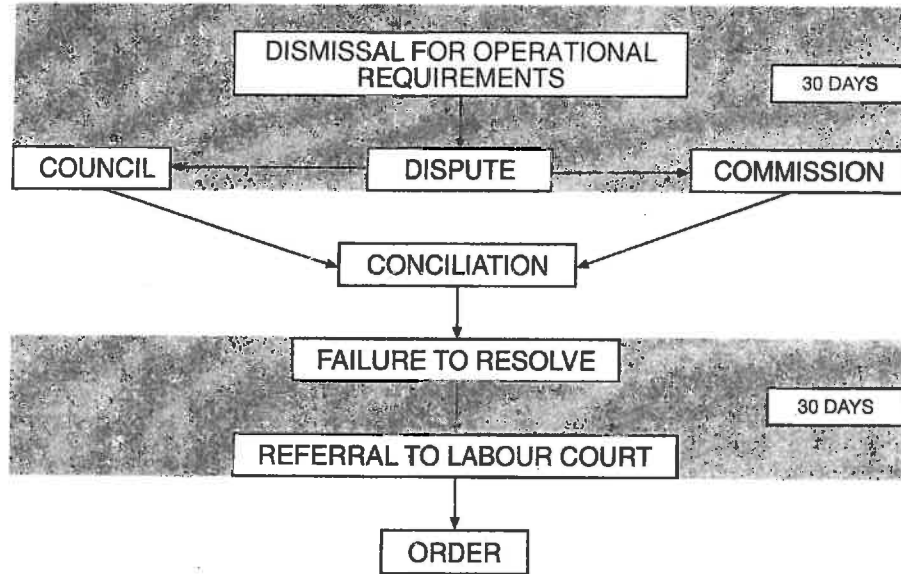
**FOOTNOTES:**

1. Dismissal for misconduct and incapacity is dealt with in the Code of Good Practice: Dismissal 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)

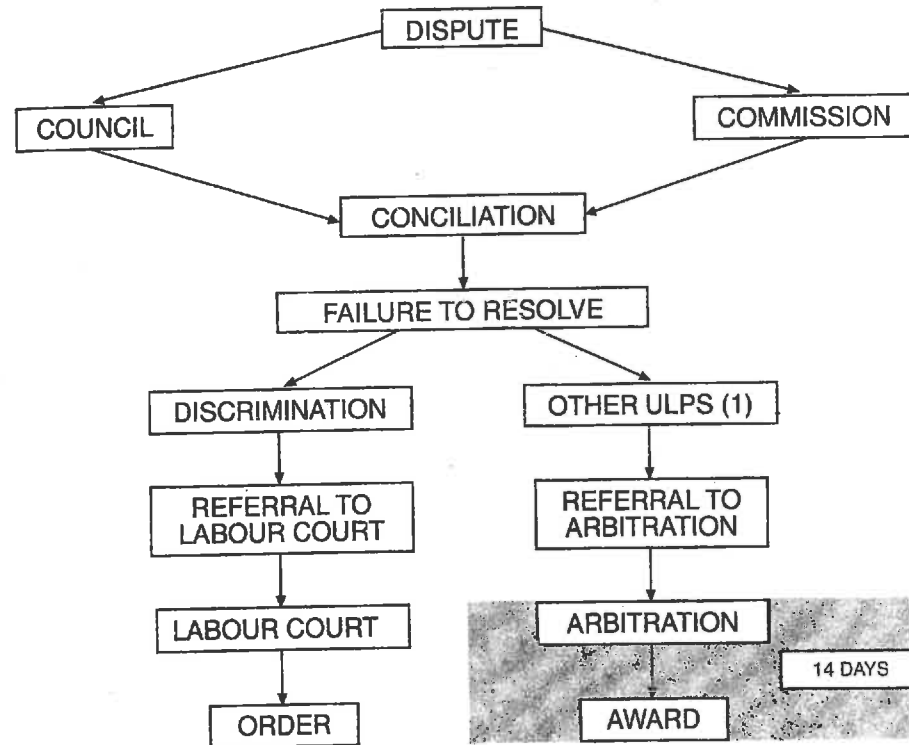
### CHAPTER VIII (Section 191)



### FLOW DIAGRAM 14

## UNFAIR LABOUR PRACTICE

### SCHEDULE 7 (Item 2)



#### FOOTNOTES:

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 reinstate or re-employ an employee in terms of any agreement (see Item 2, Schedule 7).

**SCHEDULE 5**  
**AMENDMENT OF LAWS**

**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, 1993**

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 for 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. Inserted 55/12/96, Subst 27/12/98  
4. Subst 27/12/98  
5. 7. Inserted 27/12/98

**SCHEDULE 6**  
**LAWS REPEALED BY SECTION 212**

Number and year of law	Short title	Extent of repeal
	Labour Relations Act, 1956	The whole
5	Act No. 28 of 1956	
	Industrial Conciliation Amendment Act, 1959	The whole
	Act No. 41 of 1959	
	Industrial Conciliation Amendment Act, 1961	The whole
	Act No. 18 of 1961	
	Industrial Conciliation Amendment Act, 1966	The whole
	Act No. 43 of 1966	
	Industrial Conciliation Further Amendment Act, 1966	The whole
	Act No. 61 of 1966	
	Industrial Conciliation Amendment Act, 1967	The whole
	Act No. 104 of 1967	
	Industrial Conciliation Amendment Act, 1970	The whole
	Act No. 21 of 1970	
10	Act No. 94 of 1979	The whole
	Industrial Conciliation Amendment Act, 1980	The whole
	Act No. 95 of 1980	
	Labour Relations Amendment Act, 1981	The whole
	Act No. 57 of 1981	
	Labour Relations Amendment Act, 1982	The whole
	Act No. 51 of 1982	
	Labour Relations Amendment Act, 1983	The whole
	Act No. 2 of 1983	
	Labour Relations Amendment Act, 1984	The whole
	Act No. 81 of 1984	
15	Act No. 83 of 1988	The whole
	Labour Relations Amendment Act, 1991	The whole
	Act No. 9 of 1991	
	General Law Third Amendment Act, 1993	Section 9 only
	Act No. 129 of 1993	
	Education Labour Relations Act, 1993	The whole
	Act No. 146 of 1993	
	Agricultural Labour Act, 1993	Chapter 1 only
	Act No. 147 of 1993	
	Agricultural Labour Amendment Act, 1994	Section 1 only
	Act No. 50 of 1994	
	Public Service Labour Relations Act, 1994	The whole
20	Proclamation No. 105 of 1994	
	Education Labour Relations Act, Amendment Proclamation, 1994	The whole except section 6
	Proclamation No. 128 of 1994	
	Proclamation No. 134 of 1994	Sections 1 and 2 only
	South African Police Service Labour Relations Regulations, 1995	The whole

*Schedule 7 amended  
by 55/12/2002*

**SCHEDULE 7  
TRANSITIONAL ARRANGEMENTS**

**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 council established by 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 Education Labour Relations Act, Chapter 1 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);

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“**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. Residual unfair labour practices**

(1) For the purposes of this item, an unfair labour practice means any unfair act or omission that arises between an employer and an *employee*, involving—

(a) the unfair discrimination, either directly or indirectly, against an *employee* 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;

(b) the unfair conduct of the employer relating to the promotion, demotion or training of an *employee* or relating to the provision of benefits to an *employee*;

(c) the unfair suspension of an *employee* or any other disciplinary action short of *dismissal* in respect of an *employee*;

(d) the failure or refusal of an employer to reinstate or re-employ a former *employee* in terms of any agreement.

(2) For the purposes of sub-item (1)(a)—

(a) “*employee*” includes an applicant for employment;

(b) an employer is not prevented from adopting or implementing employment policies and practices that are designed to achieve the adequate protection and advancement of persons or groups or categories of persons

disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms; and

- (c) any discrimination based on an inherent requirement of the particular job does not constitute unfair discrimination.

**3. Disputes about unfair labour practices<sup>55</sup>**

- (1) Any party may refer a *dispute* about an alleged unfair labour practice 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—
  - (a) any party to the *dispute*, if the *dispute* is about an act or omission referred to in item 2(1)(a), may refer the *dispute* to the Labour Court for adjudication;
  - (b) any party to the *dispute*, if the *dispute* is about an act or omission referred

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55. See flow diagram No. 14 in Schedule 4.

to in item 2(1)(b), (c) or (d), may request that the *dispute* be resolved through arbitration.

**4. Powers of Labour Court and Commission**

- (1) The Labour Court has the power to determine any *dispute* that has been referred to it in terms of item 3 on terms it deems reasonable, including, but not limited to, the ordering of reinstatement or compensation.
- (2) The arbitrator has the power to determine any *dispute* that has been referred to it in terms of item 3 on reasonable terms.

**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 in terms of the labour relations laws immediately before the commencement of *this Act* is deemed to be a registered *trade union* or registered *employers' organisation* under *this Act* and continues to be a body corporate. S. 175  
Subst
- (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 sub-item (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 sub-item (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 sub-item (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 sub-item (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 in terms of the Labour Relations Act immediately before the commencement of *this Act* is 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 provision 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 sub-item (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*.

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- (7) The registrar must notify the *bargaining council* whether the registration of the *bargaining council* has been cancelled.
- (8) Cancellation in terms of sub-item (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 <sup>of an industrial council</sup> an industrial council, the Minister or the registrar of the Supreme Court <sup>on the side of</sup> 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 sub-item (1) or (2), the registrar may—
  - (a) require the applicant to amend its application within 60 days in order to comply with the provisions of *this Act*; and
  - (b) condone technical non-compliance with the provisions of *this Act*.

SA. in the R1737/96 CG 17516 1.11.96; subst 28/12/98



9. Pending applications by industrial councils for alteration 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 applications 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) Any agreement promulgated in terms of section 48, and any award made in terms of section 50, of the Labour Relations Act and in force immediately before the commencement of *this Act* remains in force for a period of 18 months after the

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commencement of *this Act* or until the expiry of that agreement, whichever is the shorter period, as if that Act had not been repealed.

(1A) Submit R1737/96 GC-17516 1.11.96; Lated 28/12/95

- (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 sub-item (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-B) Submit R1737/96 GC-17516 1.11.96; Amended R1737/97 GC17516 Lated 28/12/95

- (6) Any pending application for an exemption from an agreement promulgated in terms of section 48 of the Labour Relations Act must be dealt with as if the Labour Relations Act had not been repealed.

(7) Submit 56/12/96  
(8) Submit R1737/96 GC17516 1.11.96; Lated 28/12/95  
12A. Lated R1737/96 GC17516 1.11.96; Lated 28/12/95

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 or section 12 of the Education 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 sub-items (1) and (2) in terms of which that *trade union* was recognised for the purposes of collective bargaining is entitled to the organisational rights conferred by sections 11 to 16 of Chapter III 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

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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 sections 25 or 26 of *this Act* respectively. This provision becomes effective 180 days after the commencement of *this Act*.

PART D—MATTERS CONCERNING PUBLIC SERVICE

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 of the Public Service Bargaining Council 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 sub-item (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.

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- (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 is 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 sub-item (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 *registrar* 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 agreement in South African Police Service**

The provisions of the South African Police Service <sup>Labour Relations</sup> Employment 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 for 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 sub-item (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. Luted 28/12/98  
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-B) Luted 28/12/98  
R1734/96 GC 17516 1.11.96 Luted 28/12/98
- (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 sub-item (1) or (2), must be made to the Labour Court established by section 15(1) of this Act, and that Labour Court must deal with the appeal as if the labour relations laws had not been repealed.

22A. Luted 28/12/98  
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 sub-item (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 sub-item (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 sub-item (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 sub-item (1)(a), has become a dormant member and thereafter requests

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PARR G. Limited 25/12/98  
24-25. Limited 29/12/98

Schedule 8 - So Africans  
announced by 30/12/2002  
Schedule 9 + 10 inserted?  
announced by 31/12/2002