

DEPARTMENT OF EMPLOYMENT AND LABOUR**LABOUR RELATIONS AMENDMENT BILL, 2025**

I, Nomakhosazana Meth, Minister of Employment and Labour, hereby publish the Labour Relations Amendment Bill, 2025, accompanied by the Memorandum of Objects on the Labour Relations Amendment Bill, 2025, for public comment. The Bill amends the Labour Relations Act of 1995. The full text of the Bill is attached hereto and available on the Department of Employment and Labour website at www.labour.gov.za.

Comments should be addressed to the email: Hlukani.Mabunda@labour.gov.za or Kopano.Kgatlhanye@labour.gov.za

- Comments should reach the Department of Employment and Labour not later than 30 days from the date of publication of this notice. Comments received after the closing date may not be considered.
- This publication is for public consultation purposes and precedes the formal introduction of the Bill to Parliament, where further public participation will occur.



**NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR**

DATE: 26 FEBRUARY 2026

REPUBLIC OF SOUTH AFRICA

LABOUR RELATIONS AMENDMENT BILL, 2025

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of 2025)
(The English text is the official text of the Bill)*

(MINISTER OF EMPLOYMENT AND LABOUR)

[B — 2025]

180725nb

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Labour Relations Act, 1995, so as to further regulate ballots for closed shop agreements; to limit the application of bargaining council agreements to certain new businesses; to regulate the extension of funding agreements for bargaining councils; to specify the financial reporting standards for trade unions, employers' organisations and bargaining councils; to amend the functioning of the essential services committee and the resolution of disputes in essential services; to specify the duration of notices concerning socio-economic protest action; to permit the Minister to regulate the retention of ballot records; to provide for guidelines for the registrar of labour relations in respect of cancelling the registration of trade unions or employers' organisations; to introduce reporting requirements for federations of trade unions and employers' organisation; to amend the functions and rule-making powers of the Commission for Conciliation, Mediation and Arbitration; to amend the powers and functions of the Labour Court and the Labour Appeal Court; to further specify the requirements of a fair procedure in case of dismissals for misconduct or incapacity; to amend the procedure for holding of inquiries by arbitrators; to amend the process of facilitation for large-scale operational

requirements dismissals; to permit the Commission for Conciliation, Mediation and Arbitration to arbitrate certain disputes about discrimination; to limit the remedies available to employees earning above an earning threshold in unfair dismissal and unfair labour practice claims and to empower the Minister to set a threshold; to prevent the duplication of claims; to provide for a limitation of liability of the Commission for Conciliation, Mediation and Arbitration and other entities performing statutory functions under employment laws; to insert and amend certain definitions in order to clarify expressions in the Act; to provide for the extension of provisions concerning freedom of association and collective bargaining to a broader category of employees; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

Amendment of section 26 of Act 66 of 1995

1. Section 26 of the Labour Relations Act, 1995 (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution for subsection (15) of the following subsection:

“(15) The representative *trade union* must conduct a secret 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.”; and

(b) by the insertion after subsection (15) of the following subsection:

“(15A) If the representative *trade union* fails to conduct the secret ballot by the date contemplated in subsection (15)(b), the closed shop lapses on that date.”.

Amendment of section 32 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998, Act 12 of 2002, Act 6 of 2014 and Act 8 of 2018

2. Section 32 of the principal Act is hereby amended by the insertion of the following subsections after subsection (11):

“(12) Despite the provisions of this section, a *collective agreement* concluded in a *bargaining council* regulating terms and conditions of employment does not bind–

(a) an employer of a new business that employs less than 50 employees; and

(b) that employer’s *employees*.

(13) For the purposes of this section, a new business is one that has been in operation for less than two years but excludes–

(a) a new employer contemplated in section 197(1)(b); and

(b) a business formed by the division or dissolution of any existing business.”.

Amendment of section 32A of Act 66 of 1995 as amended by Act 8 of 2018

3. Section 32A of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

- “(2) Subject to subsection (3), and where the *Minister* is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level, the *Minister* may renew a funding agreement for up to **[12]** 36 months at the request of any of the parties to a *bargaining council* if—”.

Amendment of section 53 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 12 of 2002

4. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every *council* must, **[to the standards of generally accepted accounting practice, principles and procedures]** in accordance with financial reporting standards determined by the Minister by notice in the *Gazette*—

- (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.”.

Amendment of section 65 of Act 66 of 1995 as amended by Act 6 of 2014

5. Section 65 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

- “(d) that person is engaged in—
- (i) an *essential service* unless notice of a strike has been given in compliance with section 72(5);
 - (iA) an agreed or determined minimum service in terms of section 72; or
 - (ii) a maintenance service.”.

Amendment of section 69 of Act 66 of 1995 as amended by Act 42 of 1996, Act 6 of 2014, Act 8 of 2018

6. Section 69 of the principal Act is hereby amended by the substitution for subsection (15) of the following subsection:

- “(15) For the purposes of this section, “commissioner conciliating the dispute” includes a person appointed by a *bargaining council* to conciliate the *dispute* and, in the case of a strike contemplated by section 189A (7), the facilitator appointed in terms of section 189A (3) or (4).”.

Amendment of section 70 of Act 66 of 1995 as amended by Act 127 of 1998 and Act 6 of 2024

7. Section 70 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Minister*, after consulting *NEDLAC*, must establish an essential services committee **[under the auspices of]** which is to be supported administratively by the *Commission* in accordance with the provisions of *this Act* and the essential services committee acts independently when exercising its powers and performing its functions.”

Amendment of section 71 of Act 66 of 1995 as amended by Act 6 of 2014

8. Section 71 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) A panel appointed by the essential services committee may vary or cancel the designation of the whole or part of a service as an *essential service* **[or any determination of a minimum service or ratification of a minimum service agreement]**, by following the provisions set out in sub-sections (1) to (8), read with the changes required by the context.”

Amendment of section 72 of Act 66 of 1995 as amended by Act 6 of 2014 and Act 8 of 2018

9. Section 72 of the principal Act is hereby amended:

(a) by the substitution for subsection (2) of the following subsection:

“(2) (a) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee

may determine the minimum services that are required to be maintained in an essential service.

(b) If there is no trade union representing the majority of employees covered by the determination, the panel may, after consulting any trade unions or employee representatives and the employer, determine the minimum services that are required to be maintained in an essential service.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the **[maintenance]** provision of minimum services in a service designated as an *essential service* or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service [-

(a)], the agreed or determined minimum services are to be regarded as an *essential service* in respect of the employer and its *employees* [; and

(b) the provisions of section 74 do not apply].”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) A minimum service determination—

(a) is valid until varied or **[revoked]** cancelled by the essential services committee; and

(b) may not be varied or **[revoked]** cancelled for a period of 12 months after it has been made.”;

(d) by the substitution for subsection (5) of the following subsection:

“(5) **[Despite subsections (3) and (4), section 74 applies]**
Section 74 does not apply to a designated essential service in respect of which the essential services committee has ratified a minimum services agreement or has made a determination of minimum services if one or more trade unions that represent the majority of employees employed in the designated essential services **[voted in a ballot in favour of this]** have given notice of the intention to strike in accordance with section 64(1):
Provided that the employees in the designated minimum service who are precluded from participating in the strike retain their right to have their dispute resolved in terms of section 74.”;

(e) by the deletion of subsection (6);

(f) by the substitution for subsection (8) of the following paragraph:

“(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable **[collective]** agreement, refer a dispute arising from those negotiations to the *Commission* or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.”; and

(g) by the insertion after subsection (9) of the following subsection:

“(10) A panel contemplated in subsection (3) may, subject to subsection 4(b), after consultation with the affected parties, vary, rescind or cancel a ratified or determined minimum service.”.

Amendment of section 74 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 6 of 2014

10. Section 74 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“(1) Subject to section **[73(1)]** 72(5), 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—”.

Amendment of section 77 of Act 66 of 1995

11. Section 77 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph after paragraph (d):

“(e) the notice in terms of paragraph (d) was served on NEDLAC within 24 months of the date on which the process of consideration in terms of paragraph (c) was concluded.”.

Amendment of section 98 of Act 66 of 1995

12. Section 98 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Every registered *trade union* and every registered *employers’ organisation* must, **[to the standards of generally accepted accounting practice, principles and procedures]** in accordance with financial reporting standards determined by the Minister by notice in the Gazette—
- (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) balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.”.

Amendment of section 99 of Act 66 of 1995 as amended by Act 8 of 2018

13. Section 99 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) the ballot papers or any documentary or electronic record of the ballot in such form as may be prescribed for a period of three years from the date of every ballot.”.

Amendment of section 106 of Act 66 of 1995 as amended by Act 12 of 2002

14. Section 106 of the principal Act is hereby amended by the addition of the following subsection after subsection (3):

“(4) The Minister, after consultation with NEDLAC, may by notice in the Gazette publish guidelines to be applied by the registrar when exercising the powers in terms of sub-section (2A) to cancel the registration of a trade union or employers’ organisation.”.

Amendment of section 107 of Act 66 of 1995

15. Section 107 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The registrar must maintain a register of federations of trade unions and federations of employers’ organisations that have complied with the provisions of subsection (1).”; and

(b) by the addition after subsection (3) of the following subsections:

“(4) The registrar must remove the name of a federation of trade unions or employers’ organisations from the appropriate register if the registrar has issued a written notice requiring the federation of trade union or employers’ organisation to comply with subsection (1) within a period of 90 days of the notice and the federation of trade unions or employers’ organisation has, despite the notice, not complied with that subsection.

(5) The registrar may not act in terms of subsection (4) unless the registrar has published a notice in the Gazette at least 60 days prior to such action—

(a) giving notice of the registrar’s intention to remove the name of the federation of trade unions or federation of employers’ organisations from the register; and

(b) inviting the federation of trade unions or federation of employers' organisations and any other interested parties to make written representations as to why its name should not be removed from the register.

(6) When a federation of trade unions or federation of employers' organisation's name is removed from the appropriate register, all the rights it enjoyed as a result of being listed in that register will end."

Amendment of section 115 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998, Act 12 of 2002 and Act 6 of 2014

16. Section 115 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) attempt to resolve, through conciliation, any *dispute* referred to it in terms of **[this Act]** any employment law;

(b) if a *dispute* that has been referred to it remains unresolved after conciliation, arbitrate the *dispute* if—

(i) **[this Act]** the employment law 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*.”;

(b) by the addition in subsection (2) after paragraph (bA) of the following paragraph:

“(bB) if requested, provide assistance to an employee earning less than the threshold prescribed by the Minister under section 6 (3) of the Basic Conditions of Employment Act to enforce any award in favour of that employee in respect of arbitration proceedings in terms of any employment law, including but not limited to instructing, and paying the fees of, a sheriff as contemplated in the Sheriffs Act, 1986 (Act No. 90 of 1986), provided that the employee remains responsible in law for the enforcement of the award.”;

(c) by the deletion in subsection (2A) of the expression “and” at the end of paragraph (I) and the insertion after paragraph (I) of the following paragraphs:

“(IA) the practice and procedure in connection with the facilitation of a dispute in terms of section 189A, including the initiation, form, content and use of facilitation to the extent that these matters are not included in the regulations contemplated in section 189A (5) and (6);

(IB) the referral, determination and enforcement of claims for violations of the National Minimum Wage Act, 2018 (Act No.9 of 2018) or any other employment law in terms of Chapter 10 of the Basic Conditions of Employment Act, including the payment by employers of security and fines;

(IC) any matter in connection with the enforcement of awards; and”;

(d) by the addition after subsection (2A) of the following subsection:

“(2B) The Commission may make rules regarding inquiries by an arbitrator in terms of section 188A”; and

(e) by the substitution for subsection (3) of the following subsection:

“(3) The Commission may provide employees, employers, registered trade unions, registered employers’ organisations, federations of trade unions, federations of employers’ organisations or councils with advice or training relating to the primary objects of *this Act* or any other *employment law*, including but not limited to—

(a) establishing and supporting 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*;

(dA) addressing conflict in the *workplace* and promoting positive workplace relations;

(e) disciplinary procedures;

(f) procedures in relation to *dismissals*;

(g) the process of restructuring the *workplace*;

(h) affirmative action and equal opportunity programmes;

[and]

- (i) the prevention and elimination of discrimination and sexual and other forms of harassment in the workplace;
- (j) the provision of collective bargaining support functions;
- (k) the promotion of job creation and employment security;
- (l) the promotion of decent work; and
- (m) the publication of training and guidance materials.”.

Amendment of section 117 of Act 66 of 1995

17. Section 117 of the principal Act is hereby amended by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

- “(7) The governing body may **[remove a commissioner from office]** terminate a commissioner’s contract for—”.

Amendment of section 125 of Act 66 of 1995

18. Section 125 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) appointing commissioners, or **[removing a commissioner from office]** terminating a commissioner’s contract;”.

Amendment of section 126 of Act 66 of 1995

19. Section 126 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(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 or appointed to **[do work for, or in association with whom it performs]** perform a function of [,] the Commission.”.

Amendment of section 127 of Act 66 of 1995 as amended by Act 42 of 1996, Act 12 of 2002 and Act 8 of 2018

20. Section 127 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any *council* or private agency may apply to the governing body in the *prescribed* form for accreditation and for accreditation of the persons to perform any of the following functions [-]:
- (a) **[resolving]** Resolving disputes through conciliation, if any employment law requires conciliation; and
 - (b) arbitrating *disputes* that remain unresolved after conciliation, if **[this Act]** any employment law requires arbitration.”.

Insertion of section 140A in Act 66 of 1995

21. The following section is hereby inserted after section 140 of the principal Act:

“Special provisions related to postponement of arbitrations

140A. If a commissioner finds that a request for the postponement of a hearing was frivolous or vexatious, or could reasonably have been avoided, the commissioner may charge the responsible party a postponement fee.”.

Amendment of section 143 of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

22. Section 143 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Despite subsection (1), a party enforcing or executing an arbitration award in terms of which another party is required to pay an amount of money may enforce or execute that award as if it were an order of either the Magistrate’s Court or the Labour Court.”.

Amendment of section 150C of Act 66 of 1995 as amended by Act 8 of 2018

23. Section 150C of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) An employers’ organisation or *trade union* party to a *dispute* must, in accordance with its constitution, **[consult]** hold a secret ballot with its members before rejecting an award in terms of subsection (5)(a).”.

Amendment of section 153 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 127 of 1998

24. Section 153 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) must be judges of the **[Supreme Court]** High Court or the Labour Court; and”.

Amendment of section 156 of Act 66 of 1995

25. Section 156 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Labour Court has jurisdiction **[in all the provinces of]** throughout the Republic.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The **[Minister of Justice, acting on the advice of NEDLAC, must determine the seat]** seats of the Labour Court are in Johannesburg, Cape Town, Durban and Gqeberha and such further areas as the Minister of Justice, on the advice of NEDLAC, may determine.”

Amendment of section 159 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998 and Act 6 of 2014

26. Section 159 of the principal Act is hereby amended by the insertion in subsection (3) after paragraph (a) of the following paragraph:

“(aA) after consultation with the Minister of Justice and Constitutional Development, the performance of dispute resolution functions by

judges taking into account the impartiality of judges, the interest of justice not limited to the likelihood of undue prejudice to a party, the objects of the Act, whether the dispute was subject to a dispute resolution process of a *council* or the *Commission* and the principles of labour justice;”.

Amendment of section 160 of Act 66 of 1995

27. Section 160 of the principal Act is hereby amended by the substitution for subsection (2) of the following section:

“(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]** High Court could have done so.”.

Amendment of section 162 of Act 66 of 1995

28. Section 162 of the principal Act is hereby amended by the substitution for subsection (2) (a) of the following subsection:

“(2) When deciding whether or not to order the payment of costs in any matter, the Labour Court may take into account, among other factors—
(a) whether the matter referred to the Court ought to have been referred to arbitration in terms of **[this Act]** an *employment law* and, if so, the extra costs incurred in referring the matter to the Court; and”.

Amendment of section 167 of Act 66 of 1995 as amended by Act 127 of 1998

29. Section 167 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Except for matters that may be decided by the Constitutional Court, 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].**”

Amendment of section 169 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 127 of 1998

30. Section 169 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the High Court or the Labour Court to serve as acting judges of the Labour Appeal Court.”

Amendment of section 170 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998 and Act 10 of 2013

31. Section 170 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) (a) The Judge President, Deputy Judge President and a judge of the Labour Appeal Court must respectively be accorded the same remuneration, allowances and other conditions of employment as applicable to the President, Deputy President and a judge of the

Supreme Court of Appeal in terms of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);

and

(b) An acting judge of the Labour Appeal Court must be accorded the same remuneration, allowances and other conditions of employment as a judge of the Labour Appeal Court, for the period of their appointment.”

Amendment of section 179 of Act 66 of 1995

32. Section 179 of the principal Act is hereby amended by the substitution for subsection (2) (a) of the following subsection:

“(2) When deciding whether or not to order the payment of costs in any matter, the Labour Appeal Court may take into account, amongst other factors—

(a) whether the matter referred to the Court should have been referred to arbitration in terms of **[this Act]** an employment law and, if so, the extra costs incurred in referring the matter to the Court; and”.

Amendment of section 188 of Act 66 of 1995

33. Section 188 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) **[Any]** Subject to subsection (3), any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure

must take into account any relevant *code of good practice* issued in terms of *this Act*.”; and

(b) by the addition after subsection (2) of the following subsections:

“(3) Subject to any applicable collective agreement, a fair procedure under subsection (2) in respect of a *dismissal* contemplated in subsection (1)(a)(i) is one in which the employee has been given an adequate and reasonable opportunity to respond to the reason for *dismissal*.”

(4) This section does not apply to a new employee—

(a) during the first three months of employment; or

(b) if it is a longer period, a period of probation that is specified in a contract of employment and is both reasonable and operationally justifiable.”

Amendment of section 188A of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

34. Section 188A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) An employer may, with the consent of the *employee*, which may be given in a contract of employment or in accordance with a collective agreement, request a *council*, an accredited agency or the *Commission* to appoint an arbitrator to conduct an inquiry into allegations about the conduct or capacity of that *employee*.”;

(b) by the substitution for subsection (2) of the following subsection:

- “(2) The request must comply with any applicable provision in a collective agreement or contract of employment and be in the [prescribed] form issued by the Commission in terms of section 115 (2B).”;
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) The *council*, accredited agency or the Commission must appoint an arbitrator on receipt of—
- (a) payment by the employer of the *prescribed* fee; and
- (b) where an employee did not consent in terms of subsection (1), the employee's written consent to the inquiry”;
- (d) by the deletion of subsection (4); and
- (e) by the addition after subsection (12) of the following subsection:
- “(13) The *council*, accredited agency or the *Commission* must appoint an arbitrator on receipt of a request by the *employee* or employer, as contemplated by subsection (11) and on receipt of payment by the employer of the *prescribed* fee which must be made within seven days of the request.”

Amendment of section 189A of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

35. Section 189A of the principal Act is hereby amended—

- (a) by the substitution for subsection (5) of the following sub-section:

“If a facilitator is appointed in terms of subsection (3) or (4) the facilitation must be conducted in terms of any **[regulations]** rules made by the

- Commission **[Minister]** under subsection (6) for the conduct of such facilitations.”
- (c) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
- “The **[Minister, after consulting NEDLAC and the]** Commission may make **[regulations]** rules relating to—”;
- (c) by the addition after subsection (6) of the following subsection:
- “(6A) A rule made in terms of subsection (6) must be published in accordance with section 115 (6).”;
- (d) by the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) refer a *dispute* concerning **[whether there is a fair reason for]** the fairness of the dismissal to the Labour Court in terms of section 191**[(11)]**, except that the trade union or employees are not required to refer the dismissal to conciliation in terms of section 191(1).”;
- (e) by the substitution in subsection (8)(b)(ii) for item (bb) of the following item:
- “(bb) refer a *dispute* concerning **[whether there is a fair reason for]** the fairness of the dismissal to conciliation by a council having jurisdiction or the Commission, and if it is not settled to the Labour Court, in terms of section 191**[(11)]**.”;
- (f) by the substitution for subsection (10) of the following subsection:
- “(10) (a) A consulting party may not—

- (i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning **[whether there is a fair reason for] the fairness** of that *dismissal* to the Labour Court;
 - (ii) refer a *dispute* about **[whether there is a fair reason for] the fairness of** a *dismissal* to the Labour Court, if it has given notice of a strike in terms of this section in respect of that *dismissal*.
- (b) If a *trade union* gives notice of a strike in terms of this section—
- (i) no member of that *trade union*, and no *employee* to whom a collective agreement concluded by that *trade union* dealing with consultation or facilitation in respect of *dismissals* by reason of the employers' *operational requirements* has been extended in terms of section 23 (1) (d), may refer a dispute concerning **[whether there is a fair reason for] the fairness of the** *dismissal* to the Labour Court;
 - (ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.”;
- (g) by the deletion of subsections (13) to (18); and
- (h) by the insertion in subsection 20 after the definition of ‘employer’ of the following definition:

“fairness of a dismissal’ means the fairness of a dismissal contemplated in section 188 and includes compliance with this section.”.

Amendment of section 191 of Act 66 of 1995 as amended by Act 127 of 1998, Act 12 of 2002 and Act 6 of 2014

36. Section 191 of the principal Act is hereby amended—

(a) by the deletion in subsection (5)(a) of the “or” at the end of subparagraph (iii) and the insertion after subparagraph (iv) of the following subparagraph:

“(v) the employee has referred a dispute to the Commission in terms of section 10(6)(aA) of the Employment Equity Act, 1998 (Act 55 of 1998) and the dismissal dispute, whether in terms of section 187 or section 188, can be determined jointly with that dispute; or”;

(b) by the substitution in subsection (5A) for paragraph (c) of the following paragraph:

“(c) any other dispute contemplated in subsection (5)(a) or specified in section 115(1)(a) and (b) in respect of which no party has objected to the matter being dealt with terms of the subsection.”;
and

(c) by the insertion of the following subsections after subsection (11):

“(11A) An employee who is dismissed for a reason contemplated in section 187(d), (e) or (f) may elect to refer the dispute either to arbitration or to the Labour Court.

(11B) If, in the course of an arbitration referred to the Commission in terms of subsection (5)(a), it becomes apparent that the dispute concerns a matter dealt with in section 187(d), (e) or (f), the Commission or a commissioner may proceed, despite there being no referral in terms of subsection (11A), to determine the dispute after taking into account—

(a) the complexity of the questions of law and fact raised in the matter;

(b) the public interest;

(c) speedy dispute resolution; and

(d) the submissions of the parties.

(11C) Subsections (11A) and (11B) do not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of *Basic Conditions of Employment Act*.”.

Amendment of section 193 of Act 66 of 1995 as amended by Act 12 of 2002

37. Section 193 of the principal Act is hereby amended by the insertion of the following subsection after subsection (2):

“(2A) Subsection (1) (a) and (b) and subsection (2) do not apply to an employee who earns more than an amount that may be prescribed by the Minister by notice in the Gazette, unless the dismissal was automatically unfair.”.

Amendment of section 194 of Act 66 of 1995 as amended by Act 12 of 2002

38. Section 194 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair either because the employer did not prove that the reason for *dismissal* was a fair reason relating to the employee's conduct or capacity or the employer's *operational requirements* or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' *remuneration* calculated at the *employee's* rate of *remuneration* on the date of *dismissal*, to a maximum of an amount that may be prescribed by the Minister by notice in the *Gazette*.”; and
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) The compensation awarded to an *employee* in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months *remuneration*, to a maximum of an amount that may be prescribed by the Minister by notice in the *Gazette*, provided that the prescribed amount is not applicable in the case of an unfair labour practice contemplated by section 186(2)(d).”.

Substitution of section 195 of Act 66 of 1995

39. Section 195 of the principal Act is hereby substituted for the following section:

“**[An]** Subject to section 196, 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.”.

Insertion of section 196 in Act 66 of 1995

40. The following section is hereby inserted after section 196 of the principal Act:

“Prevention of duplication of claims

196. (1) An employee who has referred a dispute about the fairness of a dismissal in terms of this Chapter may not also bring a claim, arising from the same facts, in respect of the unlawfulness of that dismissal.

(2) An employee who has brought a claim about the unlawfulness of a dismissal may not also refer a dispute, arising from the same facts, in respect of the fairness of that dismissal in terms of this Chapter.”.

Insertion of section 208B in Act 66 of 1995

41. The following section is hereby inserted after section 208A of the principal Act:

“Determination of amount for purposes of section 193 and 194

The Minister must adjust the amounts contemplated in sections 193 and 194, by annually publishing a notice in the Gazette increasing or decreasing those amounts in accordance with the Consumer Price Index published by Statistics South Africa in March of that year, which notice must take effect from 1 May of that year.”.

Insertion of section 209A in Act 66 of 1995

42. The following section is hereby inserted in the principal Act after section 209:

“Limitation of liability

209A (1) No person exercising a power or performing a function under an employment law that gives effect to this Act, is liable for any damage or loss caused by the exercise or performance of, or failure to exercise or perform, that power or function, unless such exercise or failure is unlawful, grossly negligent or in bad faith.

(2) This section applies to—

(a) any person appointed or employed to exercise a power or perform a function under any employment law that gives effect to this Act; and

(b) any person or entity required to exercise a power or perform a function under any employment law to give effect to this Act.”.

Amendment of section 213 of Act 66 of 1995

43. Section 213 of the principal Act is hereby amended—

(a) by the insertion of the following definition after the definition of “auditor”:

‘ballot’ includes any system of voting by members that is recorded;”;

(b) by the substitution for the definition of “dispute” of the following definition:

“dispute’ includes an alleged dispute in terms of any employment law;”;

(c) by the insertion after the definition of “dispute” of the following definition:

“dispute about or arising from the interpretation or application’ in respect of this Act, any other employment law, constitution of a trade

union, employer's organisation or federation, settlement or collective agreement or determination includes a dispute concerning whether there has been compliance with this Act, employment law, constitution of a trade union, employer's organisation or federation, settlement or collective agreement or determination and a claim arising from such non-compliance.”; and

- (d) by the substitution for the definition of “employment law” of the following definition:

“**employment law**’ includes this Act, any other Act the administration of which has been assigned to the *Minister*, and any of the following Acts:

- (a) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
- (b) the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) the Employment Equity Act, 1998 (Act No. 55 of 1998);
- (d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); **[and]**
- (f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);
- (g) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (h) the Employment Services Act, 2014 (Act No. 4 of 2014); and
- (i) the National Minimum Wage Act, 2018 (Act No.9 of 2018).”.

Amendment of Schedule 7 of Act 66 of 1995

44. Schedule 7 of the principal Act is hereby amended by the addition of the following part after item 32:

"Part I

Transitional provisions arising out of the application of the Labour Relations Amendment Act, 2025

Definitions

33. For the purposes of this part, "Amendment Act" means the Labour Relations Amendment Act, 2025.

Application of amendments to Commission proceedings

34. Any provision in the Amendment Act relating to the powers of the Commission applies to matters referred to the Commission after the commencement date.

Application of amendments to Labour Court proceedings

35. Any provision in the Amendment Act relating to the powers of the Labour Court applies to matters referred to the Labour Court after the commencement date.

Application of Facilitation Regulations

36. The Facilitation Regulations made by the Minister in terms of section 189 A (6) prior to the Amendment Act, remain in effect until such time as the rules made by the Commission in terms of that section come into effect.

Inquiry by an arbitrator

- 37.** The form prescribed by the Minister in terms of section 188A(2) remains in effect until the CCMA has issued a form in terms of section 115 (2B).

Income threshold for purposes of sections 193 and 194

- 38.** The Minister must issue a notice which takes effect on the same date as the applicable provisions in the Amendment Act, setting the amount applicable to sections 193 and 194 in terms of section 208A at R1,800,000 per annum, adjusted annually in terms of the Consumer Price Index for the period from 30 April 2025 until the date that the provision comes into effect.”.

Deletion of Schedule 8 to Act 66 of 1995

- 45.** Schedule 8 to the principal Act is hereby deleted.

Addition of Schedule 11 to Act 66 of 1995

- 46.** The following Schedule is hereby added to the principal Act after Schedule 10:

“SCHEDULE 11**EXTENSION OF FREEDOM OF ASSOCIATION, ORGANISATIONAL RIGHTS AND COLLECTIVE BARGAINING****Definition of employee**

- 1.** For the purposes of this Schedule—

'employee' means an individual, other than an *employee* as defined in section 213 of the Act, who works for a person that is not a client or customer of any profession, business or undertaking carried on by the individual; and
'employer' means any person or entity for whom an employee works.

Presumption

- 2.** For the purposes of this Schedule, an individual is an employee unless the employer demonstrates that the following factors are satisfied:
- (a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;
 - (b) the person is not part of the organisation of the employer; and
 - (c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

Freedom of Association

- 3.** Chapter II applies to employees and their employers.

Collective Bargaining

- 4.** (1) Subject to this item, Chapter III applies to employees and their employers.
- (2) If a *trade union* seeks to exercise the rights conferred by Part A of Chapter III in respect of employees, those employees must be taken into

account for determining representativeness for the purposes of that Part. For the sake of clarity, if a *trade union* elects not to exercise those rights in respect of those employees, those employees are not taken into account in determining representativeness.

(3) If a *collective agreement* contemplated in section 23, 25 or 26 is intended to bind employees contemplated in this Schedule, those employees must be taken into account for the purpose of determining a majority required by that section.

(4) For the purpose of determining the representativeness of the parties to a *bargaining* or a *statutory council* in terms of section 49(1), the *registrar* may only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees.

(5) For the purpose of determining the representativeness of the parties to a *collective agreement* in terms of 49(2), the *registrar* may only take into account employees contemplated in this Schedule, if the scope of the *collective agreement* includes those employees.

Strikes and lock-outs and extension of certain unfair dismissal protection

5. (1) Chapter IV applies to employees and employers.

(2) A termination of the services of an employee for the reasons contemplated in section 187(1)(a) to (c) constitutes a dismissal for the purposes of those provisions.

Trade unions and employers' organisations

6. (1) A constitution of a *trade union* may provide for employees to qualify for

membership in terms of section 95(5)(b).

(2) A constitution of an employers' organisation may provide for employers to qualify for membership in terms of section 95(5)(b).

Dispute resolution

7. For the purposes of a dispute arising from the application of this Schedule, any relevant provision in the Act relating to dispute resolution applies with the necessary changes required by context."

Short title and commencement

46. This Act is called the Labour Relations Amendment Act, 2025, and comes into effect on the date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS ON LABOUR RELATIONS AMENDMENT BILL, 2025

1. OBJECTS OF THE BILL

In preparation for the publication of the Labour Relations Amendment Bill (the Bill), the Department of Employment and Labour (the Department), and the representatives of Organised Business and Labour undertook a labour law review and have engaged in extensive consultations over a period of more than two years commencing in April 2022 and concluding in November 2024 in the National Economic Development and Labour Council (NEDLAC). The proposed amendments to the Labour Relations Act, 1995 (Act No. 66 of 1995) (the Act), can be grouped under the following themes:

- (a) Changes in the labour market and the nature of work;
- (b) Identified bottlenecks in existing dispute resolution and adjudication systems;
- (c) Broadening access to freedom of association and collective bargaining in response to an increasingly large group of unprotected workers;
- (d) Rights and protection appropriate to the changing nature of work and an increasingly large group of unprotected workers;
- (e) Reducing levels of disputes and simplifying dispute procedures; and
- (f) Enabling economic growth and sustainability for small and new businesses.

2. DISCUSSION OF THE BILL

2.1 Clause 1

Clause 1 of the Bill proposes to amend section 26(15) of the Act to provide that a ballot conducted by a trade union of employees to decide whether to terminate or extend a closed shop agreement must be conducted as a secret ballot. The requirement to conduct a secret ballot is meant to address the issue of greater transparency among the actors in the workplace and ensure the legitimacy of trade union representation. Clause 1 further inserts a new subsection (15A) which provides that a closed shop agreement will lapse if the representative trade union fails to conduct a secret ballot concerning its extension within three years of either the agreement coming into effect or a previous ballot authorising the closed shop. This amendment is designed to ascertain whether the trade union still represents the majority of employees by compelling a trade union to conduct a secret ballot within the specified timeframe. The shift is critical to ensure that trade unions that are party to closed shop agreements continue to enjoy and represent the interests of the majority of employees.

2.2. Clause 2

Clause 2 of the Bill proposes to amend section 32 by inserting subsections (12) and (13), which provide that newly established employers, employing less than 50 employees, and their employees are not covered by terms and conditions of employment set in bargaining

council collective agreements for the first two years of their operation. A new employer, for the purposes of this provision, does not include a business created by a transfer of a business as a going concern in terms of section 197 of the Act or any other business formed by the division or dissolution of any existing business. During this period, new employers will be obliged to comply with all other provisions in the Act, the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and the National Minimum Wage Act, 2018 (Act No.9 of 2018) as well as all other labour legislation.

2.3 Clause 3

Clause 3 of the Bill proposes to amend section 32A(2) of the Act to extend the period for which the Minister may renew bargaining council funding agreements from 12 months to 36 months. The Minister must consider the impact on collective bargaining at a sectoral level as a relevant factor when deciding whether to renew a funding agreement in terms of this provision.

The shift from 12 months to 36 months for extending agreements regulating social benefit funds, dispute levies and administrative levies was driven by practical challenges within the collective bargaining system. With a longer period of validity for agreements in place, these funds will have breathing space to continue to function in situations where parties fail to reach an agreement on terms and conditions of employment within the 12-month timeframe.

2.4 Clause 4

Clause 4 of the Bill proposes to amend section 53(1) of the Act to provide that bargaining councils and statutory councils may maintain their financial records in accordance with a financial reporting standard prescribed in terms of regulations issued under the Companies Act, 2008 (Act No. 71 of 2008). This will bring the accounting obligations on councils in line with contemporary best practice.

2.5 Clause 5

Clause 5 of the Bill proposes to amend section 65(1)(d) of the Act to clarify the circumstances in which employees within an essential service, in respect of which there is a minimum services or maintenance services agreement or determination, may embark upon strike action. This amendment must be read in conjunction with the proposed amendments to section 72(5) of the Act.

2.6 Clause 6

Clause 6 of the Bill proposes to amend section 69 of the Act by the substitution of subsection (15) in order to empower a facilitator appointed in terms of section 189A of the Act to determine picketing rules in the same manner as a Commissioner conducting a conciliation.

2.7 Clause 7

Clause 7 of the Bill proposes to amend section 70 of the Act to clarify–

- (a) that the Commission for Conciliation, Mediation and Arbitration (CCMA), must provide administrative support to the essential services committee; and
- (b) that the essential services committee acts independently when exercising its powers and performing its functions.

This amendment clarifies the legal status of the essential services committee when performing its functions and, in particular, its relationship with the CCMA.

2.8 Clause 8

Clause 7 of the Bill proposes to amend section 71 of the Act to provide that the powers and procedures applicable to the variation or cancellation of an essential service designation do not apply to determinations or ratifications of minimum service agreements, which are to be regulated in terms of proposed amendments to section 72.

2.9 Clause 9

Clause 9 of the Bill proposes to amend section 72 of the Act—

- (a) by amending subsection (2) to empower a panel of the essential services committee to ratify minimum service determinations in workplaces where there is no majority trade union;

- (b) by amending subsection (3) to clarify the language used in respect of the provision of minimum services and to provide that the provisions of section 74 relating to essential service disputes do not apply to services in which there is a minimum service agreement or determination;
- (c) by amending subsection (4) to change the terminology from “revoke” to “cancelled”;
- (d) amending subsection (5) to enable trade unions to call protected strikes in accordance with the Act’s procedures after the conclusion of the statutory conciliation process in essential services in respect of which there is a designated minimum service, provided that minimum service employees are not permitted to participate in the strike;
- (e) to amend subsection (8) to create consistency with the amendment to subsection (2);
- (f) to insert a new subsection (10) to empower a panel of the essential services committee to rescind or cancel minimum service agreements or determinations after due process.

2.10 Clause 10

Clause 10 of the Bill proposes to amend section 74 of the Act so as to clarify the procedure applicable to the referral of disputes in essential services to conciliation under the Act. This amendment must be read in

conjunction with the proposed amendments to sections 65(1)(d) and 72(5) of the Act.

2.11 Clause 11

Clause 11 of the Bill proposes to amend section 77 of the Act by inserting a new subsection (1)(e). This clarifies that a dispute referred to NEDLAC regarding a socio-economic rights issue remains valid for 24 months from the date the NEDLAC process considering the dispute is completed. There is presently no express time limit in the Act, which has given rise to uncertainty.

2.12 Clause 12

Clause 12 of the Bill proposes to amend section 98 of the Act to provide that registered trade unions and employers' organisations must maintain their financial records, in accordance with a financial reporting standard prescribed by the Minister.

2.13 Clause 13

Clause 13 of the Bill proposes to amend section 99(c) of the Act to empower the Minister to make regulations concerning the maintenance of records of ballots by trade unions and employers' organisations.

2.14 Clause 14

Clause 14 of the Bill proposes to amend section 106 of the Act by inserting a new subsection (4) empowering the Minister, after consultation with NEDLAC, to issue guidelines to be applied by the Registrar of Labour Relations (Registrar) when exercising powers in respect of the withdrawal of the registration of a trade union or employers' organisation.

2.15 Clause 15

Clause 15 of the Bill proposes to amend section 107 of the Act—

- (a) by inserting subsection (1A) requiring the Registrar to maintain a register of administratively compliant federations of trade unions and employers' organisations; and
- (b) by inserting subsections (4) – (6) which set out the procedure that the Registrar must follow if he or she is considering removing a federation of trade unions or employers' organisations from that register and the legal consequences of removal from the register.

2.16 Clause 16

Clause 16 of the Bill proposes to amend section 115 of the Act –

- (a) by amending subsection (1) to clarify that the CCMA has the power to resolve disputes through conciliation and arbitration, where it is authorised to do so by any employment law;
- (b) by inserting subsection (2)(bB) clarifying that the CCMA may assist low-paid workers to enforce arbitration awards, including instructing the Sheriffs of the Court and paying their fees;
- (c) by inserting subsections (2A)(n) – (q) to expand the powers of the governing body of the CCMA to make rules to include the following matters:
 - (i) the facilitation of consultations concerning potential large-scale operational requirements dismissals in terms of section 189A;
 - (ii) the enforcement of claims in terms of the National Minimum Wage Act, 2018 and the Basic Conditions of Employment Act, 1997 by the CCMA in terms of Chapter 10 of the BCEA; and
 - (iii) any matter concerning the enforcement of arbitration awards; and
- (d) by amending subsection (3) to expand the issues in respect of which the CCMA may provide advice or training to trade unions and employers' organisations to include promoting positive

workplace relations, the elimination of workplace discrimination and the promotion of job creation, employment security and decent work.

2.17 Clauses 17 and 18

Clauses 17 and 18 of the Bill respectively propose to amend sections 117(1) and 125(1) of the Act in order to clarify that the governing body of the CCMA has the power to terminate a Commissioner's contract and that this function may not be delegated. This amendment will enable the governing body to delegate functions in relation to the engagement of Commissioners other than their appointment or termination, such as the suspension of a Commissioner, to the Director or other officials of the CCMA, while decisions about appointment and termination remain the exclusive responsibility of the governing body.

2.18 Clause 19

Clause 19 of the Bill proposes to amend section 126 of the Act to clarify its meaning. Presently, it has the result that people who have contracted with or are working with the Commission have the same limitation of liability and disclosure of information as the Commission. The proposed amendment will restrict these limitations to the Commission and those performing official functions on its behalf.

2.19 Clause 20

Clause 20 of the Bill proposes to amend section 127(1) of the Act to enable bargaining councils, statutory councils and dispute resolution agencies to be accredited for conciliation and arbitration functions in terms of any employment law. Currently, accreditation is restricted to functions under the Act. This will enable, in particular, accreditation for disputes arising out of the Basic Conditions of Employment Act, 1997 and the Employment Equity Act, 1999 and will enable bargaining councils to assume functions currently performed by the CCMA.

2.20 Clause 21

Clause 21 of the Bill proposes to amend section 140A of the Act to empower a Commissioner to order a party who requests the postponement of an arbitration hearing to pay a prescribed fee if the request for postponement is frivolous, vexatious or could reasonably have been avoided by that party.

2.21 Clause 22

Clause 22 of the Bill proposes to amend section 143(5) to enable CCMA awards requiring the payment of a sum of money to be enforced as if they are orders of either the Magistrate's Court or the Labour Court. The effect of sections 143(1) and (3) is that arbitration awards that have been certified by the director of the CCMA may be enforced as if they are orders of the Labour Court in respect of which a writ has been issued.

Section 143 (5), however, provides that awards for payment of monies must be enforced or executed as if they were orders of the Magistrate's Court. The purpose of this amendment was to reduce the costs of enforcing awards by making the Magistrate's Court tariffs applicable, as CCMA awards are generally for relatively small sums of money for which the High Court tariff was considered to be inappropriate. This amendment has, however, been interpreted as requiring proceedings related to enforcement, such as interpleader processes, to be held in the Magistrate's Court even though the Magistrate's Court was not previously seized with the substantive dispute. The proposed amendment seeks to resolve this difficulty by allowing a party enforcing an award to recover a sum of money to elect to do so in either the Labour Court or the Magistrates' Court.

2.22. Clause 23

Clause 23 of the Bill proposes to amend section 150C to require trade unions and employers' organisations to hold a secret ballot before rejecting an advisory arbitration award in respect of a strike or lock-out that may be non-functional to collective bargaining or involve a violation of constitutional rights. The amendment is intended to replace the current requirement that trade unions must consult with their members over whether to accept an award or not. This amendment clarifies the required process and is consistent with other proposed amendments requiring secret ballots.

2.23 Clause 24

Clause 24 of the Bill proposes to amend section 153(2)(a) of the Act to provide that a judge of either the High Court or the Labour Court may be appointed to be the Judge President or Deputy Judge President of the Labour Court. Currently, this is restricted to High Court judges.

2.24 Clause 25

Clause 25 of the Bill proposes to amend section 156 of the Act–

- (a) by clarifying in subsection (1) that the Labour Court has nationwide jurisdiction; and
- (b) by specifying that the court has seats in Johannesburg, Cape Town, Durban and Gqeberha and in such other areas as the Minister of Justice, on the advice of NEDLAC, may determine.

2.25 Clause 26

Clause 26 of the Bill proposes to amend section 159(3) of the Act by empowering the Rules Board to make rules for the Labour Court dealing with the performance of dispute resolution functions by judges. This is intended to enable the performance of dispute resolution functions by judges in a manner that upholds the integrity and impartiality of the judiciary. This will require careful consideration of whether the dispute has already been subjected to existing dispute resolution mechanisms, such as those provided by a bargaining council or the CCMA, or it is a

matter that can be referred directly to the Labour Court without prior conciliation. By doing so, the provision seeks to promote conciliation of disputes while avoiding duplication of processes and preserving the role of specialised labour institutions.

2.26 Clause 27

Clause 27 of the Bill proposes to amend section 160 of the Act by replacing the reference to the “Supreme Court” with the “High Court”.

2.27 Clause 28

Clause 28 of the Bill proposes to amend section 162 of the Act by clarifying that the Labour Court may take any relevant factor into account when making an order of costs.

2.28 Clause 29

Clause 29 of the Bill proposes to amend section 167(2) of the Act to clarify that, subject to the jurisdiction of the Constitutional Court, the Labour Appeal Court is the final Court of Appeal in respect of all matters heard by it. Currently, this status is limited to matters within the exclusive jurisdiction of the Labour Court.

2.29 Clause 30

Clause 30 of the Bill proposes to amend section 169(2) of the Act to specify that judges of both the High Court and Labour Court may be

appointed as acting judges of the Labour Appeal Court. Currently, this is restricted to High Court judges. This has had the effect of restricting the career path of Labour Court judges as they are unable to act as Labour Appeal Court judges prior to applying for such a position.

2.30 Clause 31

Clause 31 of the Bill proposes to insert section 170(3A) of the Act to provide that the remuneration, allowances and other conditions of employment of the President, Deputy President and other judges, including acting judges, of the Labour Appeal Court are the same as those provided for the equivalent positions within the Supreme Court of Appeal.

2.31 Clause 32

Clause 32 of the Bill proposes to amend section 179(2) of the Act to clarify that the Labour Appeal Court may take any relevant factor into account when making an order of costs.

2.32 Clause 33

Clause 33 of the Bill proposes to amend section 188 of the Act by the addition of subsections (2) – (4), which provide as follows:

- (a) subsections (2) and (3) provide that a fair procedure concerning a dismissal for conduct or incapacity is one in which the

employee has had a reasonable opportunity to respond to the reason for dismissal; and

- (b) providing the protections in section 188 in respect of unfair dismissal do not apply to new employees during their first three months of employment or during a longer period of probation, provided for in a contract of employment which is reasonable and operationally justifiable.

2.33 Clause 34

Clause 34 of the Bill proposes to amend section 188A of the Act by—

- (a) the substitution of subsection (1) and deletion of subsection (4), to enable any employer and employee to agree in a contract of employment to the engagement of a CCMA, bargaining council or accredited agency arbitrator to conduct an enquiry into allegations relating to the employee's conduct or capacity should the need arise. This amendment seeks to reduce the number of disputes that are referred to the CCMA by increasing the use of inquiries by an arbitrator which have the same legal status as arbitrations; and
- (b) inserting subsection (13) in order to provide that where a request for an inquiry by an arbitrator is made by an employer or an employee in respect of an employee alleging an occupational

detriment in terms of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), the employer must pay the prescribed fee within seven days of the request.

2.34 Clause 35

Clause 35 of the Bill proposes to amend section 189A of the Act, which provides for facilitation in the case of large-scale retrenchments by—

- (a) amending section 189A(5) and (6) and inserting subsection (6A) to enable the CCMA to make rules relating to facilitations held in terms of the section, rather than for the Minister to make regulations, which is the current position;
- (b) amending subsection (7)(b)(ii) to clarify that unfair dismissal disputes concerning a retrenchment dismissal falling under section 189A may be referred to the Labour Court after the conclusion of a facilitation process, without a further referral for conciliation;
- (c) amending subsection (8)(b)(ii)(aa) to clarify that unfair dismissal disputes concerning operational requirements dismissals falling under section 189A in which a facilitator is not appointed may not be referred to the Labour Court without a referral for conciliation to a council or the Commission in terms of section 191; and

- (d) amending subsections (7) and (10), repealing subsections (13) to (18) and inserting a new definition for the term “unfair dismissal” in subsection (20). These amendments return the law to the position that prevailed before the introduction of section 189A in terms of which a challenge to all aspects of the fairness of retrenchment dismissal could be made after the dismissal. As a result, if a facilitation process in terms of section 189A is followed by dismissals, the relevant trade unions or employees will be able to refer a dispute about the procedural or substantive fairness of those dismissals to the Labour Court in terms of section 191. The procedure contained in subsections (13) to (18) which sets out a process for challenges to procedural fairness during the facilitation process has proved to be extremely complex in practice and gave rise to numerous interpretative difficulties, reflected in a number of Constitutional Court decisions.¹

2.35 Clause 36

Clause 36 of the Bill proposes to amend section 191 of the Act by –

- (a) the insertion of subsection (5)(a)(v) to enable the CCMA to hear a dismissal case jointly with an unfair discrimination referral under

¹ *Steenkamp and Others v Edcon Limited* (CCT29/18) [2019] ZACC 17; 2019 (7) BCLR 826 (CC); (2019) 40 ILJ 1731 (CC); [2019] 11 BLLR 1189 (CC); *Regenesys Management (Pty) Ltd t/a Regenesys v Ilunga and Others* (CCT 220/22) [2024] ZACC 8; 2024 (7) BCLR 901 (CC); [2024] 8 BLLR 777 (CC); (2024) 45 ILJ 1723 (CC).

the Employment Equity Act, 1998 (Act No. 55 of 1998) that is also within the jurisdiction of the CCMA;

- (b) by the insertion of subsection (11) which allows an individual employee who is dismissed in circumstances amounting to an automatically unfair dismissal concerning the exercise of a right conferred by the Act, the employee's pregnancy or unfair discrimination on election to refer the dispute to the CCMA for arbitration. It further enables the CCMA to hear such a matter, if it emerges in the course of an arbitration, that the dismissal occurred on such a ground. These provisions only apply to employees earning below the threshold set by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, 1997.

2.36 Clause 37

Clause 37 of the Bill proposes to amend section 193 of the Act by inserting subsection (2A) which has the effect that high-paid employees, earning above an amount prescribed by the Minister in terms of section 208A, will only be entitled to seek reinstatement as a remedy for dismissal if their dismissal constitutes an automatically unfair dismissal.

The restriction on remedies for high-paid employees is consistent with Article 12 of the International Labour Organisation Convention on Termination of Employment, 1982 (158 of 1982), which allows for the

differentiation in the treatment of higher-paid employees, recognising that such employees may not be entitled to the same remedies (such as reinstatement or reemployment) as other employees, particularly if they are in higher managerial or confidential roles.

2.37 Clause 38

Clause 38 of the Bill proposes to amend section 194 of the Act by the substitution of subsections (1) and (4), in order to limit the extent of the earnings that will be taken into account in respect of determining the compensation that may be paid to employees in certain unfair dismissal and unfair labour practice cases. This is a policy choice aimed at setting a threshold for compensation taking into account economic vulnerability.

2.38 Clauses 39 and 40

Clauses 39 and 40 of the Bill respectively propose to amend sections 195 and 196 of the Act by stipulating that an employee who is challenging a dismissal is required to exercise an election to make a claim based on the unfairness of the dismissal, as contemplated in the Act, or on the unlawfulness of the dismissal. This amendment seeks to prevent employees from bringing duplicate claims in respect of the same dismissal which is increasing the burden of disputes referred to the CCMA and the Labour Court.

2.39 Clause 41

Clause 41 of the Bill proposes to insert section 208B in the Act in order to establish the power for the Minister to prescribe a maximum level of earnings for the purposes of sections 193 and 194 of the Act. The Minister will be required to issue a notice annually taking effect on 1 May adjusting this amount in the light of the Consumer Price Index (CPI) published by Statistics South Africa. This section must be read in conjunction with a transitional provision in Schedule 7 which specifies that the threshold that is set when the Act commences and must take into account changes in the CPI on that date.

2.40 Clause 42

Clause 42 of the Bill proposes to insert section 209A in the Act to provide that a person who exercises a power or function under any employment law may only be held liable for any damage or loss caused by the exercise or failure to exercise such power or function if this was done in a manner that was unlawful, grossly negligent or in bad faith. This clause is consistent with limitations on liability for public officials contained in other legislation. The limitation applies to the CCMA, entities established under any employment law performing statutory functions such as inspectorates of the Department of Employment and Labour as well as persons appointed to perform statutory functions such as the sheriffs of the court, when exercising powers on behalf of the CCMA or the Labour Court.

2.41 Clause 43

Clause 43 of the Bill proposes to amend section 213 of the Act –

- (a) to include a definition of the term “disputes about the interpretation or application”. This amendment is introduced to prevent a situation in which disputes about the interpretation of legal rights and obligations may have to be dealt with separately from financial claims arising out of non-compliance, such as underpayments of remuneration or benefits. This definition applies to disputes about the Act or any other employment law, any trade union, employers’ organisation or bargaining council constitution, any collective agreement, settlement agreement or other determination. This will provide parties who are seeking to enforce such rights with certainty as to the forum in which they must institute their claims and allow these matters to be resolved in a single process thus avoiding a duplication of actions;
- (b) to revise the definition of “employment law” to reflect changes in legislation.

2.42 Clause 44

Clause 44 of the Bill proposes to amend Schedule 7 to the Act by the insertion of the following transitional provisions:

- (a) Any provision in the Amendment Act relating to the powers of the Commission only applies to matters referred to the Commission after the commencement date;
- (b) A provision in the Amendment Act relating to the powers of the Labour Court only applies to matters referred to the Labour Court after the commencement date;
- (c) The Facilitation Regulations made in terms of section 189A(6) remain in effect until the Commission publishes rules dealing with facilitation;
- (d) The form prescribed by the Minister in terms of section 188A(2) for the referral of a dispute to an inquiry by an arbitrator remains in effect until the CCMA has issued a form in terms of section 115 (2B);
- (e) The amount contemplated in section 208A of the Act applicable to the remuneration of employees for purposes of sections 193(2A) and 194 (1) and (4) will be set at R1,800,000 per annum adjusted in line with changes in the CPI in the period between 30 April 2025 and the commencement of the Act.

2.43 Clause 45

Clause 44 of the Bill proposes to repeal Schedule 8 as an updated Code of Good Practice: Unfair Dismissal has been promulgated.

2.44 Clause 46

2.44.1 Clause 45 of the Bill proposes to add Schedule 11 to the Act.

Schedule 11 specifies how workers who fall outside the current definition of “employee” in section 213 of the Act will be able to exercise the right of freedom of association by forming or joining trade unions, asserting the right to exercise organisational rights as provided for in the Act and engaging in collective bargaining and industrial action, in accordance with the relevant procedures in the Act.

2.44.2 The rationale for specifying an expanded definition of “employee” is that changes in the nature and organisation of work have resulted in an increasing proportion of the South African workforce falling outside the statutory definition of an employee with the result that they do not receive the protections of the Act or other labour legislation. The rise of a variety of forms of unprotected work has been recognised by the courts, and the Constitutional Court has described their position in the following terms:

“Fewer and fewer people are in formal employment; fewer of those in formal employment have union backing and protection. More and more people find themselves in the “twilight zone” of employment as supposed “independent contractors” in time-based employment

subject to faceless multinational companies who may operate from a web presence.”²

2.44.3 These categories of unprotected workers (who are now often referred to by the internationally used term of “dependent contractors”) fall outside of labour legislation and accordingly are not able to exercise the fundamental labour rights established by section 23 of the Constitution which apply to all workers. This exclusion is subject to one exception: the National Minimum Wage Act, 2018 applies to “workers”, a term which is significantly wider than the definition of “employee” which determines the ambit of the Act and other labour legislation. The Amendments introduced by Schedule 11 likewise provide appropriate access to rights for excluded workers, as described by the Constitutional Court in the above passage.

2.44.4 The continued exclusion of this broader category of workers from the provisions of the Act which regulate freedom of association and collective bargaining breaches the International Labour Organisation’s (ILO) Freedom of Association and Protection of the Right to Organise Convention 87 of 1948 (Convention 87). This core international standard which South Africa ratified in 1996 and is binding on all members of the ILO guarantees the right to form trade unions, participate in collective bargaining and exercise the right to strike in accordance with statutory

² *Pretorius and Another v Transport Pension Fund and Another* (2018) 39 ILJ 1937 (CC), para [48].

procedures to all workers, irrespective of the form of the contract in terms of which they are engaged. To the extent that certain categories of workers are unable to exercise the right to form and join trade unions in South Africa, the country is vulnerable to the charge that it is not in compliance with Convention 87 and is accordingly in breach of its obligations as a member of the ILO.

2.44.5 Schedule 11 regulates the rights of individuals, who are not employees as defined in section 213 of the Act, to exercise rights of freedom of association and collective bargaining. Any natural person who works for a person that is not a client or customer of a profession, business or undertaking carried on by the that natural person will be regarded as an employee. Any person for whom such an employee works will be regarded as their employer. A natural person who works for an employer will be regarded as an employee unless their employer demonstrates that that person:

- (a) is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;
- (b) is not part of the employer's organisation; and
- (c) does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

- 2.44.6 Natural persons who satisfy these criteria are entitled to exercise the rights contained in Chapter II (freedom of association), Chapter III (collective bargaining) and Chapter IV (the right to strike). For purposes of a dispute arising from the application of Schedule 11, any relevant provision in the Act relating to dispute resolution applies with the necessary changes required by context.
- 2.44.7 Existing trade unions will be entitled to alter their constitutions to enable them to recruit workers falling in this category. A constitution of a trade union may provide for employees contemplated in Schedule 11 to qualify for membership in terms of section 95(5)(b) of the Act. Likewise, a constitution of an employers' organisation may provide for employers contemplated in Schedule 11 to qualify for membership in terms of section 95(5)(b).
- 2.44.8 Where a trade union seeks to assert statutory rights on behalf of this category of employees, the unions' level of representation among effected employees becomes relevant. In particular, where a trade union seeks to acquire organisational rights on behalf of employees falling within the expanded definition, its level of representation among those employees must be taken into account for determining whether it meets the statutory thresholds to acquire the rights. Likewise, if a collective agreement contemplated in sections 23, 25 or 26 of the Act is

intended to bind employees contemplated in Schedule 11, the union's membership among those employees must be taken into account to determine the majority representation required by that section has been met.

2.44.9 For the purpose of determining the representativeness of the parties to a bargaining or statutory council in terms of section 49(1) of the Act, the Registrar may only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees. The same principle applies if the Registrar is seeking to determine the representativeness of the parties to a collective agreement in terms of section 49(2) of the Act.

2.44.10 Chapter IV, regulating strikes and lock-outs, applies to employees and employers contemplated in this Schedule. A termination of the services of an employee for the reasons contemplated in subsections 187(1)(a) to (c), which relate to participation in a protected strike, constitutes a dismissal for purposes of those provisions.

3. CONSULTATION

NEDLAC was consulted. The National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), provides for the objects, powers and

functions of NEDLAC. NEDLAC must consider all proposed labour legislation before it is introduced in Parliament and must also consider significant changes to the social and economic policy before it is implemented and introduced in Parliament. An extensive consultation process took place between April 2002 and November 2024, the details of which are recorded in the NEDLAC Report.

4. FINANCIAL IMPLICATIONS

There are no financial implications for the Department other than the changes to the remuneration of judges of the Labour Appeal Court that may impact the budget of the Department.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Department of Labour and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.