Book launch

Mission 2055: The Labour Relations Act 66 of 1995 30 years on and 30 years beyond

Mission 2055, it's hard to imagine where we will be by then, has its foundations in a colloquium held in November 2024 in Cape Town which tasked its participants with considering labour law at the 30 year anniversary of the LRA, asking important questions about its effectiveness and future relevance.

On the one hand this book is reflective: it looks at three decades of the LRA which came into operation in 1996 which has served, with the BCEA, EEA and others as one of the cornerstones of post-apartheid labour law in South Africa; and on the other it tries to identify the challenges that we may face in the world of work and employment in the next 30 years. This, in the context of rapid global transformations and the urgent need for labour law to confront and adapt to challenges posed by the 4IR, platform work, AI, climate change, and impact of various eco policies, while upholding foundational principles of s23 and fairness, equity, justice, and social protection to safeguard democratic institutions and human dignity.

Acta Juridica reviewed the LRA at 15 years but did not directly address 4IR, although anticipated it and anticipated its impact on labour relations. Since then we have faced what could not have been anticipated: mass retrenchments; the breakdown of powerful union federations; rise of platform work; stubborn levels of income inequality; challenges of AI, impact of COVID and work from home models, increasing questions around human rights, climate change and geopolitical/economic transformations and questions about the suitability of labour laws to serve as a social security buffer.

We now have New Code of Good Practice: Published on 4 September 9 2025, as Schedule 8 to the LRA; and on Friday 27 February 2026, cabinet approved the long awaited Labour Law Amendment Bill. The book 13 contributions from 19 authors. Rochelle le Roux and Evance Kalula edit a compilation of chapters which is a work of honest reflection and crystal-ball gazing: so needed in the area of work and employment, an area which impacts on the lives of most human beings. The issues it raises one hopes will spearheads debate, academic endeavour, all of which ultimately drive change.

The book starts by focusing on where labour law came from. Simon Deakin in a fascinating chapter looks back in time and considers the reasons for and history of labour law, considering continuity and change in a global context, the rise of neoliberal policies and their impact of the employment and labour law. He echoes what Abigail Osiki and Nicola Smit note, as to the purpose of labour law as a countervailing force to inequality in bargaining power, with its aim to protect solidarity and human dignity. But, as Deakin recognises labour law is also a product of industrialization, developed in socio-economic realities that no longer exist today.

The LRA arising out of the s23 constitutional right to fair labour practices has given meaning to substantive rights for workers and a fair process for resolving disputes — a framework designed to protect dignity, promote social justice, and balance the needs of employers and employees in a constitutional democracy. It is closely linked and arises out of our unique history of inequality. It came from a history of limited dispute resolution, within the context of powerful collective bargaining, in a highly politicised trade union movement, marked by large national union federations which exercised real political power in a manner which directly contribute to societal change, and shaped the law as we know it today, underlining how the law of work and politics are very often not far from each other.

Over 30 years, the LRA has shaped our workplaces, our collective bargaining landscape, and our understanding of workplace justice. BUT as my colleague Andre van Niekerk asks has the

LRA exceeded its shelf life? He notes that the assumptions of 30 years ago no longer pertain and suggests that the LRA was a product of its time devised by state, big unions, big business - between them a form of national collective bargaining – in a world which promoted sectoral bargaining, majoritarianism at sectoral and plant level. But the LRA did not have regard to intensified competition internationally and the impact of our move into competitive global markets, a changing landscape into which SA has not shown the flexibility and consensus required to meet such challenges. What is Nedlac's Proposed Labour Reform given that we have moved beyond the era when the LRA came into being at a time of strong corporatism in the 1990s, when there were strong unions and the emergence of democracy, into an era of globalization, a demand for competitiveness, and the now urgent need to overcome apartheid legacy? This when we have also seen mass job losses in key areas of SA economy (1M in mining sector over 20 yrs) and others, the breakdown of trade union federations and collective power, and new and different political forces at play in our country. We remain, as Clive Thomson puts it "chronically conflicted & uncompetitive".

Andre van Niekerk notes that the LRA sought to establish industrial democracy in line with promise of equality and dignity, promote economic efficiencies and social justice, but that this invitation has been spurned by parties unwilling to take up challenge of cooperation and innovation. He asks, since urgent renovation is required, whether it may not be best to demolish and rebuild the legislative structure. What is apparent is that we face slow responses to the need for change from the legislature, with labour statutes taking years to amend and developing in silos without thinking through issues labour market evolution (as Osiki and Smit note). Assumptions about the labour market which under the LRA are no longer valid. Economic globalisation & the increasingly changed nature of work, with increased outsourcing, subcontracting, teleworking, a reduction in manufacturing, a workforce increasingly fragmented, not homogenous, often marginal, and undertaking new forms of work pose real and significant challenges.

Most of us are acutely aware of some of the problems we now face, and which the book speaks to, a few of the themes of which I have identified:

1. Dispute Resolution

Andre van Niekerk notes that the institutions themselves are not deficient in principle but have shortcomings in implementation which needs urgent attention. Alan Rycroft and Chris Albertyn consider what effective dispute resolution should look like in future. They recognise the LRA's juridification of labour relations and the problem of over-reliance on litigation and adversarialism created in disc hearings, and in the courts, which can be and is deeply harmful. They suggest we need courts to set aside arbitration awards less regularly and note that delays of 6.09 years and 2 years in understaffed courts are serious and need urgent attention. Technology can improve things and the judiciary is looking at ways to better serve the public. Judges are slow to say that there is systemic dysfunctional, but it is. The court lack enough judges, they have limited support, few and, in some courts, no researchers. We need too to look at narrowing review grounds, or considering whether to allow the CCMA to undertake an appeal function. The Constitutional Court is taking on too many labour cases which it does not need to look at, in circumstances in which a specialist court has been established, and the Constitutional Court is faced with too many applications for leave to appeal.

Rochelle le Roux and Peter le Roux look at the direction of dismissal law and start by noting nothing wrong with fundamentals of our dismissal law although there are capacity problems. Common law contractual principles have been resilient and so, they suggest, we don't need to abandon the common law. However, pre-dismissal processes are too time-consuming, we need a cap on compensation rates which are too high and should be reduced from 12 to 6 months and 3 months for procedural fairness. Parties should be required to choose cause of

action, a structured early settlement process should be considered and they propose that costs be awarded in meritless cases. In addition, retrenchment should be permitted during a fixed term contract of employment, reinstatement should no longer be the primary remedy, that the same referral periods should apply in all matters, noting the convoluted and different procedures set out in EEA and LRA, with the two statutes not speaking to each other in discrimination matters. All of this leads us to ask whether we should increasingly be looking at one labour statute, which includes the EEA and even the BCEA.

The systemic delay in dispute resolution we know are the result of increasing caseloads and backlogs, with it having taken up to 13 years for a dispute to be resolved in the Constitutional Court. But we aren't alone: New Zealand, a country smaller than us, has faced similar problems and reforms in its employment dispute resolution — including strict timelines, early mediation, and funding for rapid hearings — have significantly reduced delay and improved satisfaction with outcomes. Their system emphasises that greater effort at early resolution limits protracted litigation. In Ontario, Canada, the Employment Standards Tribunal introduced digital case triage and time limits, showing how technology and stricter procedural rules to shorten resolution times. We know of course that lawyers abuse the system, whether in disciplinary hearings or the courts, often taking one technical point after another, and making lucrative practices from doing so.

As to the different causes of action: unfairness under LRA and unlawfulness under common law of contract, in additional plus a direct constitutional cause of action, Chris Todd and Dennis Davis consider whether the common law of employment is up to the task of regulating the world of work today and in future. They note that it is difficult to prescribe regulations in the multitude of working arrangements which are increasingly in existence. This may require either a restructure of the contract of employment to suit reality, or legislative intervention to provide equal rights to all work contract models. They suggest that in SA we establish an intermediate class of dependent worker, not an employee, with some measure of statutory protection appropriate to the nature of work performed or extend presumptions of employment, as we see in the Amendment Bill, although they suggest that this may raise other difficulties. They note that the common law has some flexibility and that if the legislature fails, judges can act. However, we need clear policy decisions as to categories of workers and protections. The development of the common law regulating working relationships and more expansive interpretation of employment statutes to prevent exacerbating pattern of social exclusion has been slow, despite section 39(2) of the Constitution, and must happen in appropriate cases.

2. **Slow change in transformation of workplace, its racial and gender face of workplace**:

It is difficult not to be acutely aware of the significant problems faced in SA in relation to the transformation of the workplace, racialised access to work, difficulties in the implementation of employment equity and affirmative action policies with enormous wage gaps ever present despite plans, targets and minimum wage legislation. What is apparent is that we have not seen the workplace transformation which we wanted.

Yet, labour law alone is not responsible. The starting point is the problematic education system that produces our country's workforce. In addition, there has been slow change in narrowing wage gap. Shamima Gaibie and Jeremy Philips consider the issues around affirmative action and transformation, noting the courts' evolution from a cautious, flexible approach (in cases such as Van Heerden) to adherence to a more restrictive framework (in matters such as Barnard) which prioritises employment equity plans. What is apparent is that these are often misapplied, with numerical targets acting as rigid quotas. They note that sectoral targets, while ambitious goals, often lack of available staff and targets and quotas alone can't transform the country or its workplaces. Affirmative action is also a consequence of political and economic

policy. They conclude by saying without appropriate economic and fiscal policies, targets will remain just targets, leaving behind a deep disregard for the depth of the issue and problems SA faces in this regard.

3. **Changing face of workplace organisation and collective bargaining**

Andre van Niekerk notes, in relation to collective bargaining, that the social partners have been unable to move away from deeply adversarial styles. Their leadership styles remain hierarchical and autocratic. Trade unions reflect a focus on power-driven strategies. This "barren style" of post-apartheid collective bargaining has led only to job shedding, investment downgrades, failing state owned entities, with the important question being whether standard majoritarianism is still relevant given current market fragmentation. This when both the notion of workplace bargaining through workplace forums and sectoral bargaining now in peril.

Mlungisi Tenza looks at strike law and where it may go in the future. Trade union density in South Africa has declined significantly over the last decade. This mirrors a global trend. In the United States, union density has shrunk from around 20 % in the 1980s to under 11 % today. In the United Kingdom, union membership has fallen from about 50 % in the 1980s to under 25% now. We know that this decline weakens the collective worker voice. Where unions are smaller, collective bargaining coverage shrinks — and wages and conditions stagnate. Revitalising worker organisation requires innovation, not merely nostalgia. The LRA once facilitated robust sectoral bargaining through bargaining councils. But in many sectors that coverage has contracted.

Internationally, similar concerns have arisen. In Germany, a decline in sectoral bargaining reach led the government to support minimum wage legislation and incentives for union-employer engagement to shore up coverage. In Scandinavia, high bargaining coverage is sustained through institutionalised social dialogue and, at times, legal extension of collective agreements to non-union firms. What we need is policy design — including incentives and legal mechanisms — can help maintain sectoral bargaining even where union membership is under pressure.

We continue to face the problems of violent and dysfunctional strikes and will perhaps, as we saw recently for the first time in the LAC, increasingly see arguments challenging the constitutionality of such strikes on the basis that it could not reasonably have been a deadly and violent strike that is contemplated for constitutional protection under section 23 of our Constitution. This experience of high-impact, violent or prolonged is costly for workers, employers, and the economy. We would benefit from thinking further about rights and risk-management in such industrial action, exploring possible further frameworks to encourage early mediation..

3. **Changing nature of work**

Abigail Osiki and Nicola Smit note that the world for which employment and labour law designed largely disappeared and LRA in danger of becoming obsolete for most working people as employment, work and workplaces shift. Andrew Breetzke notes similar, fascinating issues in relation to labour law and how it is used, and not used, by professional sports stars. What is clear is that there has been a slow response to this fast-changing world of increased digital access to work and concomitant under-regulation of vulnerable workers: platform work, and others.

Pamhidzai Bamu and Marlese von Broembsen look at the informal economy, particularly domestic workers and street vendors, and linked their issues to that of collective bargaining.

They suggest we look at a new form of work recognition, perhaps a "Personal Work Relation", to replace classic and now outdated models of the employment relationship. In relation to vendors they propose that we consider the public space to be a workplace, noting the challenges in coercing local authorities to bargain with such workers. They propose that a statutory council be established to allow collective bargaining rights for informal/self-employed workers. As Fenwick and Kalula note our labour law not fit for purpose given structure of labour market and our economic realities: what we need is the development of an appropriate indigenous paradigm.

More than 10 years ago, amendments were made to the LRA in relation to temporary employment services. However the question remains whether this has had the desired and needed impact. The world we face is one in which the nature and location of the workplace and the employer are often unclear or disputed. Platform workers and digital nomads work anywhere and at any time, with employers often outside of SA. This raises important and difficult questions around how to enforce employee rights in an increasingly opaque and difficult context. This rise in casual and platform work — app-based labour — exposes a gap in traditional labour law frameworks. In South Africa, too many platform workers lack basic rights like bargaining access, minimum income floors, and social protection. We must keep ahead and respond, something which is all the more important given that our law-making processes are often unduly long and extensively delayed. This leads Alan Rycroft and Chris Albertyn to suggest that we may need a government agency to be established for workers who fall outside of the jurisdiction of the CCMA.

The courts have faced some of these problems. A recent dispute around the registration of a casual workers union in Simunye Workers' Forum were considered by the Labour Court and then the Labour Appeal Court.

We can learn from the experience of other jurisdictions, with it often useful not to be the first out of the starting blocks. The EU has adopted the Platform Work Directive, which presumes worker status for algorithm-managed platform workers unless proven otherwise and requires transparency about algorithmic management. It grants rights to fair pay, access to dispute resolution, and training opportunities and we can learn from these.

The UK's 2017 Taylor Review recognised the need to extend protections to workers in non-traditional work arrangements, leading to reforms granting basic rights in terms of holiday leave and minimum wages to "workers" broadly defined, with stronger enforcement against misclassification. In the United States, California passed AB5 to classify many gig workers as employees, although this was partially rolled back by Proposition 22, which created a third category of "app workers" with limited protections. The result is contested and widely debated and shows how difficult this reform can be. These international approaches show a range of regulatory responses from presumptive employment status to hybrid categories with rights and protections, with which we must continue to engage while charting our own path, acting against a situation of increasing under-protection for vulnerable workers.

5. **Risks due to rise of AI, climate, social security and contracting out of employment law**

Letlhokwa Mpedi looks at AI, noting that it will be central to the nature of work, how it is allocated, evaluated, disciplined, and even terminated in the future. The obvious benefits of AI are notes, while it is stressed that we also recognise the problem of skills disruption, digital literacy and expense gaps, the potential for expanding inequality, job displacement and injustice and the risks of algorithmic management, automated scheduling, performance scoring, and discipline. It is noted that this may lead to opaque decisions:, with workers often unable to see how AI determines outcomes; increased bias and discrimination and the

perpetuation of unfair treatment. The important suggestion is made that where AI leads to retrenchments there must be more consultation, mandatory reskilling and stronger social protection.

Internationally, jurisdictions are beginning to regulate along these lines. The EU is advancing a comprehensive AI regulatory framework that restricts high-risk systems; demands transparency, accountability, and human oversight; focuses on fairness, safety, and rights. Ontario has started requiring employers to notify workers if algorithmic tools are used for hiring and performance evaluation — and to give them basic information about how these tools work. These examples show that labour law cannot be silent about AI — and that transparency, human oversight, and rights to explanation will be central to just workplaces.

Cecile de Villiers considers importance of climate regulation: heat. Noting that employers increasingly seek to contract out of BCEA standards and labour law. Chris Todd and Dennis Davis, note that we need to refine how and to what extent responsibility for social welfare is allocated to owners of capital/enterprises through tax/increased regulation. Marius Olivier considers social security and recommends (i) the inclusion of domestic workers and care workers, the reconceptualisation of 'work' to include the informal economy; (ii) expanding the concept of "employee" or "worker," "employer," and "workplace."; and (iii) addressing representational deficits, with trade union membership limited to employees defined under LRA.

The book moves to consider where to in the next 30 years

It notes that the future foreseen will demand that South Africa:

- Squarely examines the changing nature of work and considers how we will create jobs or consider whether increasingly it is social security grants that will keep people living, while they undertake activities on the outskirts of formal employment law.
- Reinvigorate dispute resolution with change where appropriate, and with speed, accessibility, and technology being prioritised;
- Look at mechanisms for increased worker organisation: take steps towards trade union renewal and broadening collective bargaining coverage, including non-traditional work
- Manage industrial conflict responsibly while protecting rights;
- Regulate platform and gig work to prevent systemic under-protection;
- Address AI and algorithmic management with transparency and safeguards.
- Further capacitate the court system and the labour courts as specialist courts within the judicial structure.

The challenges we face here are global, but the solutions must be local — tailored to our history, our economy, and our constitutional commitments.

This book arrives at a pivotal moment. The long awaited Labour Law amendment bill has finally been gazetted, proposing a number of changes to severance pay, makes proposals around increasing definition of employee with a presumption of employment, which will impact on those such as platform workers and seeks to expand unfair dismissal protection to gig workers, BCEA protections for on-call workers, double severance pay, simplify processes for challenging procedural fairness in mass retrenchments, with greater powers for facilitators, Following the *Van Wyk* decision in Constitutional Court, the BCEA amendments are proposed to allow 4 months gender-neutral family leave on the birth of a child, allowing shared benefits. In addition, a cap on compensation at R1.8 million, with no reinstatement for high earners is proposed and small businesses with fewer than 50 employees may be exempt from bargaining council agreements for their first 2 years of operation. The CCMA is granted more power to enforce orders, the type of harassment cases which may be lodged to CCMA has been altered

to include all forms of harassment, not only sexual harassment and Labour Court judges are finally to be permitted to act in LAC.

We need to continue highlighting the challenges that will define the next 30 years of labour law and labour relations in South Africa. Continued academic endeavour in doing so remains critical. Slow legislative processes, slow an under-resourced courts, problems in dispute resolution and collective bargaining all exist as key issues which will continue to need attention, while we remain one of the most unequal countries in the world, with an entrenched racialisation of low-paying work and stubbornly high wage gaps. Mission 2055 is an important recordal of all of these issues and ideas as to the steps we need to take to solve them as we move into an unknown and uncertain future.

Kate Savage

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