South African Law Reform Commission

DISCUSSION PAPER 117

STATUTORY LAW REVISION
(LEGISLATION ADMINISTERED BY THE DEPARTMENT OF LABOUR)

PROJECT 25

AUGUST 2010

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Introduction

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act, 1973 (Act 19 of 1973).

The members of the Commission are –

The Honourable Madam Justice Y Mokgoro (Chairperson)
The Honourable Mr Justice WL Seriti (Vice Chairperson)
Professor C Albertyn
The Honourable Mr Justice DM Davis
Mr T Ngcukaitobi
Advocate DB Ntsebeza SC
Professor PJ Scwhikkard
Advocate M Sello

The Secretary of the SALRC is Mr Michael Palumbo. The project leader responsible for this investigation is the Honourable Mr Justice Dennis Davis. The researcher assigned to this investigation is Mr Linda Mngoma. The Commission's offices are on the 12th Floor, Sanlam Centre, corner of Andries and Schoeman Streets, Pretoria.

On 30 July 2008, Ms MS Mabandla, the Minister of Justice and Constitutional Development, appointed the following advisory committee members who assisted the SALRC to, firstly, develop the Consultation Paper and, secondly, the Discussion Paper, namely:

Professor Evance Kalula, University of Cape Town
Professor Omphemetse Sibanda, University of South Africa
Advocate Reuben Letseku, University of Limpopo
Ms Nombulelo Lubisi-Nkoane, University of Fort Hare
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Preface

This paper has been prepared to elicit responses and to serve as basis for the SALRC's further deliberations. It contains the SALRC's **preliminary** recommendations. The views, conclusions and recommendations which follow should not be regarded as the SALRC's final views.

The paper (which includes a draft Bill entitled Employment Laws General Amendment and Repeal Bill which, if enacted, will repeal redundant, obsolete and unconstitutional legislation or provisions in legislation) is published in full so as to provide persons and bodies wishing to comment with sufficient background information to enable them to place focused submissions before the SALRC. A summary of the preliminary recommendations and questions for comment appear on page (v). The proposed Employment Laws General Amendment and Repeal Bill is contained in Annexure A. Schedule 1 of the Bill consists of Act that may be repealed as a whole. Schedule 2 of the Bill identifies specific provisions in the legislation that may be repealed. Schedule 3 of the Bill consists of Acts that may be amended to the extent set out in the forth column of the Schedule. Annexure B contains list of statutes (including those recommended for repeal in this document) currently administered by the Department of Labour enacted between 1910 and 2003.

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments of and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the SALRC may in any event be required to release information contained in representations under the Promotion of Access to Information Act 2 of 2002.

Respondents are requested to submit written comment and representations to the SALRC by 30 November 2010 at the address appearing on the previous page. Comments can be sent by post or fax, but comments sent by e-mail in electronic format are preferable.

This Discussion Paper is available on the internet at www.doj.gov.za/salrc/index.html

Any inquiries should be addressed to the Secretary of the SALRC or the researcher allocated to the project, Mr Linda Mngoma. Contact particulars also appear on the previous page.

Preliminary recommendations and questions for comments

1. The SALRC has been mandated with the task of revising the South African statute book with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the Constitution, particularly the equality clause thereof, and those that are redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are 2800 Acts in the statute book. Furthermore, the SALRC has identified 48 Acts as being statutes that are administered by the Department of Labour (DoL) (see Annexure B). After careful and thorough analysis of the Acts administered by the DoL, the SALRC proposes that:

(i) The Acts set out in Schedule 1 of the proposed Employment Laws General Amendment and Repeal Bill contained in Annexure "A", be repealed as a whole for the reasons set out in Chapter 2 of this Discussion Paper;

(ii) The provisions of Act set out in Schedule 2 of the proposed Bill, found in Annexure "A" referred to above, be repealed to the extent set out in that Schedule, for the reasons set out in Chapter 2 of this Discussion Paper; and

(iii) The provisions of Acts set out in Schedule 3 of the proposed Bill, contained in Annexure "A" referred to above, be amended for the reasons set out in Chapter 2 of this Discussion Paper; and

(iv) That the DoL consider the discrepancies and anomalies identified in the legislation discussed in Chapter 2 of this Discussion Paper for further review.

2. Furthermore, it is possible that some of the statutes provisionally proposed for repeal are still useful, and thus should not be repealed. Moreover, it is also possible that there are pieces of legislation not identified for repeal in this Discussion Paper which are of no practical utility anymore and which could be repealed. These should be identified and brought to the attention of the SALRC.

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DISCUSSION PAPER

Chapter 1
Project 25: Statutory Law Revisions

A INTRODUCTION

(a) The objects of the South African Law Reform Commission

1.1 The objects of the SA Law Reform Commission (the SALRC) are set out as follows in the South African Law Reform Commission Act 19 of 1973: to do research with reference to all branches of the law of the Republic and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernisation or reform thereof, including –

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic; and
- the consolidation or codification of any branch of the law.

1.2 In short, the SALRC is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

(b) History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC undertook a revision of all pre-Union legislation as part of its project 7 that dealt with the review of pre-Union legislation. This resulted in the repeal of approximately 1 200 ordinances and proclamations of the former Colonies and Republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as part of its project 25 on statute law: the establishment of a permanently simplified, coherent and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act No 94 of 1981) which repealed approximately 790 post-Union statutes.

1.4. In 2003 Cabinet approved that the Minister of Justice and Constitutional Development co-ordinates and mandates the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. This section prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1.5 In 2004 the SALRC included in its law reform programme an investigation into statutory law revision, which entails a revision of all statutes from 1910 to date. While the emphasis in the previous investigations was to identify obsolete and redundant provisions for repeal, the emphasis in the current investigation will be on compliance with the Constitution. However, all redundant and obsolete provisions identified in the course of the current investigation will also be recommended for repeal. Furthermore, it should be stated right from the outset that the constitutional inquiry is limited to statutory provisions that blatantly violate the provisions of section 9 (the equality clause) of the Constitution.

1.6 With the advent of constitutional democracy in 1994, the legislation enacted prior to that year remained in force. This has led to a situation where numerous pre1994 provisions are constitutionally non-compliant. The matter is compounded by the fact that some of these provisions were enacted to promote and sustain the policy of apartheid. A recent provisional audit, by the SALRC, of national legislation remaining on the statute book since 1910, established that there are in the region of 2 800 individual statutes, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts and partially repealed Acts. A substantial number of these Acts serve no useful purpose anymore, while many others still contain unconstitutional provisions that have already given rise to expensive and sometimes protracted litigation.

B. WHAT IS STATUTORY LAW REVISION?

1.7 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and

other people who use it.[1] Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or "live". If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.8 As is the case in other jurisdictions (and will be evident in this review), once legislation is deemed no longer to apply, the question arises whether it should remain in the statute book or be repealed.[2] Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or are presently remedied by another measure or provision.

1.9 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.10 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:[3]

(a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
(b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
(c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
(d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
(e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
(f) commencement provisions once the whole of an Act is in force;
(g) transitional or savings provisions that are spent;
(h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
(i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

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1 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

2 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 6 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

3 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 7 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

1.11 The Law Commission of India notes that in England the terms "expired", "spent", "repealed in general terms", "virtually repealed", "superseded", and "obsolete" were defined in memoranda to Statute Law Revision Bills as follows: [4]

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate
- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.12 Statutory provisions usually become redundant as time passes.[5] Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of legislation and its implementation (in some jurisdictions known as "pump-priming" provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.13 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act, 1957 (Act 33 of 1957) mirrors section 16(1) of the Interpretation Act of

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[4] Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from http://lawcommissionofindia.nic.in/51-100/Report96.pdf on 29 August 2007.

[5] *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 9 and 10 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

1978 of England and Wales.[6] Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
> (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,
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> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.14 The methodology adopted in this investigation is to review the statute book by Department – the SALRC identifies a Department, reviews the national legislation administered by that Department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper and consults with that Department to verify the SALRC's preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each Department, and upon its approval by the SALRC, it is published for general information and comment. Finally, the SALRC develops a report in respect of each Department that reflects the comment on the discussion paper and contains a draft Bill proposing amending legislation.

C. THE INITIAL INVESTIGATION

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and

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6 *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 8 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

obsoleteness. CALS pursued four main avenues of research in their study conducted in 2001:[7]

First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.

Second, an analysis of all Constitutional Court judgments until 2001 was undertaken. Schedules reflecting the nature and outcome of the cases, and the statutes impugned were compiled. The three most problematic categories of legislative provision were identified, and an analysis made of the Constitutional Court's jurisdiction in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe the principle of the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled in respect of each category.

Third, sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.

Fourth, a survey of five countries (United Kingdom, Germany, Norway, Switzerland and France) was conducted. With the exception of France, all the countries have conducted or are conducting statutory revision exercises, although the motivation for and the outcomes of these exercises differ.

1.16 The SALRC finalised the following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions –

- the Recognition of Customary Marriages (August 1998);
- the Review of the Marriage Act 25 of 1961(May 2001);
- the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- Traditional Courts (January 2003);
- the Recognition of Muslim marriages (July 2003);

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7 "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law & Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand.

- the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- Customary Law of Succession (March 2004); and
- Domestic Partnerships (in March 2006).

D. SCOPE OF THE PROJECT

1.17 This investigation focuses not only on obsolescence or redundancy of provisions but also on the question of the constitutionality of provisions in statutes. In 2004 Cabinet endorsed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1.18 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms this means that this leg of the investigation will be limited to those statutes or provisions in statutes that:

- differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
- unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- unfairly discriminate on grounds which impair or have the potential to impair a person's fundamental human dignity as a human being.

1.19 Consequently, a law or a provision in a law which appears, on the face of it, to be neutral and non-discriminatory but which has or could have discriminatory effect or consequences will be left to the judicial process.

1.20 The SALRC decided that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.[8] However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This is necessitated by, among other considerations, time and capacity.

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[8] Cathi Albertyn prepared a 'Summary of Equality Jurisprudence and Guidelines for Assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution', specifically for the SALRC in February 2006.

It is not foreseen that the SALRC and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

E. ASSISTANCE BY GOVERNMENT DEPARTMENTS AND STAKEHOLDERS

1.21 In 2004, Cabinet endorsed the proposal that government departments should be requested to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered “inside” knowledge – of the type usually accessible within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and legislative amendment or repeal proposals. Any assistance that can be given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified and dealt with responsively and without creating unintended negative consequences.

Chapter 2
Repeal and amendment of legislation administered by the Department of Labour

A. Introductory summary

2.1 In this chapter, the statutes that are provisionally proposed for repeal include the following:

1. Second Wage Amendment Act 58 of 1981;
2. Black Labour (Transfer of Functions) Act 88 of 1980;
3. Agricultural Labour Act 147 of 1993;
4. Agricultural Labour Amendment Act 50 of 1994;
5. Unemployment Insurance Amendment Act 27 of 1967;
6. Unemployment Insurance Amendment Act 87 of 1968;
7. Unemployment Insurance Amendment Act 61 of 1971;
8. Unemployment Insurance Amendment Act 12 of 1974;
9. Unemployment Insurance Amendment Act 51 of 1975;
10. Unemployment Insurance Amendment Act 29 of 1977;
11. Unemployment Insurance Amendment Act 6 of 1978;
12. Second Unemployment Insurance Amendment Act 108 of 1976;
13. Second Unemployment Insurance Amendment Act 118 of 1977;
14. Second Unemployment Insurance Amendment Act 97 of 1979;
15. Second Unemployment Insurance Amendment Act 113 of 1981;
16. Unemployment Insurance Amendment Act 9 of 1979;
17. Unemployment Insurance Amendment Act 1 of 1981;
18. Unemployment Insurance Amendment Act 1 of 1982;
19. Second Unemployment Insurance Amendment Act 89 of 1982;
20. Unemployment Insurance Amendment Act 27 of 1986;
21. Unemployment Insurance Second Amendment Act 30 of 1986;
22. Unemployment Insurance Amendment Act 36 of 1987;
23. Unemployment Insurance Second Amendment Act 102 of 1987;
24. Unemployment Insurance Amendment Act 29 of 1988; and
25. Unemployment Insurance Amendment Act 130 of 1992.

2.2 The statutes provisionally proposed for partial repeal include the following:

1. Basic Conditions of Employment Act 75 of 1997.

2.3 The statutes provisionally proposed for amendment include the following:

1. Unemployment Insurance Act 63 of 2001;
2. Basic Conditions of Employment Act 75 of 1997;
3. Employment Equity Act 55 of 1998; and
4. National Economic, Development and Labour Council Act 35 of 1994.

2.4 All of the above provisional proposals have been summarised in a Draft Employment Laws General Amendment and Repeal Bill contained in Annexure A to this Discussion Paper.

2.5 Also included in this Discussion Paper for the sake of comprehensiveness and historical memory is an evaluation of statutes provisionally proposed to be retained. This section also includes certain anomalies that need to be taken into consideration when future amendments to the Labour Relations Act, Unemployment Insurance Act; Unemployment Insurance Contributions Act, Compensation for Occupational Injuries and Diseases Act and the Occupational Health and Safety Act are being considered. Statutes reviewed and recommended to be retained, among others, include the following:

1. Integration of Labour Laws Act 49 of 1994;
2. Integration Measures in respect of Labour Laws, Amendment and Adjustments Act 68 of 1996;
3. Skills Development Act 97 of 1998;
4. Skills Development Levies Act 9 of 1999;
5. Labour Relations Act 66 of 1995;
6. Unemployment Insurance Contributions Act 4 of 2002;
7. Compensation for Occupational Injuries and Diseases Act 130 of 1993; and
8. Occupational Health and Safety Act 85 of 1993.

2.6 Towards the end of this chapter is an evaluation of selected subordinate legislation provisionally proposed to be amended. Subordinate legislation and codes of good practice reviewed and recommended for amendment are the following:

1. Code of Good Practice on the Handling of Sexual Harassment Cases;
2. Code of Good Practice on the Employment of People with Disabilities; and

3. Code of Good Practice in the Integration of Employment Equity into Human Resource Policies and Practices (HR Code).

B. Statutes administered by the Department of Labour

2.7 The Commission has identified for purposes of the current review, 48 pieces of legislation as being statutes that are administered by the DOL (see Annexure B of this Discussion Paper). The Commission, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed as a result of redundancy, obsoleteness or unconstitutionality in terms of section 9 of the Constitution, has identified a number of Acts that may be repealed fully or in part and some Acts that may be otherwise amended. These Acts are contained in the proposed Employment Laws General Amendment and Repeal Bill (see Annexure A).

C. General observations

2.8 A list of the statutes reviewed is set out in **Annexure "B"** of this Discussion Paper. In addition, the advisory committee[9] reviewed certain regulations and codes of good practice made under powers conferred by the statutes reviewed. The statutes administered by the DOL were reviewed for the purpose of making recommendations for their development, improvement, modernisation or reform, including –

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic; and
- the consolidation or codification of any branch of the law.

D Recommendations for the repeal and amendment of legislation currently administered by the Department of Labour

2.9 For ease of reference, the analysis of legislation administered by the DOL has indicated the need to make a distinction between the following four categories as follows:

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9 The Advisory Committee appointed by the Minister of Justice and Constitutional Development to assist the SALRC in statutory law revision: legislation administered by the Department of Labour.

i. Statutes redundant, expired, spent, obsolete or unconstitutional and recommended to be repealed in its entirety;
ii. Specific provisions outdated, redundant, spent, obsolete or unconstitutional and recommended for repeal and amendment;
iii. Statutes reviewed and recommended to be retained; and
iv. Subordinate legislation recommended for amendment.

2.10 Some related observations follow in the discussion below.

1. Statutes redundant, expired, spent, obsolete or unconstitutional and recommended to be repealed in its entirety

(a) Second Wage Amendment Act 58 of 1981

(i) Provisional proposal

2.11 It is recommended that this Act be repealed in its entirety as it refers to a piece of legislation that no longer exists on the statute books.

(ii) Evaluation of Second Wage Amendment Act

2.12 The purpose of this Act was to amend the provisions of the Wage Act 1957, so as to define certain expressions and to make various similar technical amendments to that Act. However, the Wage Act, 1957 and the Wage Amendment Act, 1981 were repealed by the Basic Conditions of Employment Act, 1997 (Schedule 4 and section 95(5)). Accordingly the Act is redundant and therefore may be repealed.

(b) Black Labour (Transfer of Functions) Act 88 of 1980

(i) Provisional proposal

2.13 The Black Labour (Transfer of functions) Act 88 of 1980 is recommended for repeal because the principal Act (i.e. the Black Labour Act 67 of 1964) to which it refers and the distinction it makes for the employment of persons based on race no longer exists in the statute books.

(ii) Evaluation of Black Labour (Transfer of Functions) Act 88 of 1980

2.14 The Black Labour (Transfer of functions) Act 88 of 1980 came into force on 1 August 1980 with the purpose to provide for the devolution of certain functions upon officers of the Department of Manpower Utilization, and certain other persons in terms of the Black Labour Act 67 of 1964, and certain regulations. However, the Black Labour Act 67 of 1964 was repealed by the Black Communities Development Act 4 of 1984, which, in turn, was also repealed by the Abolition of Racially Based Land Measures Act 108 of 1991.

(c) Agricultural Labour Act 147 of 1993

(i) Provisional proposal

2.15 The Agricultural Labour Act 147 of 1993 is recommended for repeal because the principal Acts to which it refers were repealed. Accordingly, its provisions are obsolete.

(ii) Evaluation of Agricultural Labour Act 147 of 1993

2.16 The Agricultural Labour Act 147 of 1993 was passed with the purpose to provide for the application of the Labour Relations Act 28 of 1956 and the further application of the Basic Conditions of Employment Act 3 of 1983 to farming activities and employers and employees engaged therein; and to provide for matters connected therewith. Chapter 1 of the Agricultural Labour Act 147 of 1993 was repealed by section 211 of the Labour Relations Act 66 of 1995. Chapter 2 of the Agricultural Labour Act 147 of 1993 was repealed by section 95(5) of the Basic Conditions of Employment Act 75 of 1997.

(d) Agricultural Labour Amendment Act 50 of 1994

(i) Provisional proposal

2.17 The Agricultural Labour Amendment Act 50 of 1994 is recommended for repeal because the principal Act (i.e. the Agricultural Labour Act 147 of 1993) has been repealed by the Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act 75 of 1997 respectively.

(ii) Evaluation of Agricultural Labour Amendment Act 50 of 1994

2.18 The purpose of the Agricultural Labour Amendment Act 50 of 1994 was to amend the Agricultural Labour Act 147 of 1993, so as to substitute the provision relating to the construction of certain provisions of the Labour Relations Act 28 of 1956 and to amend the provision amending certain provisions of the Basic Conditions of Employment Act 3 of 1983 and to provide for matters connected therewith.

2.19 Accordingly it is recommended that the whole of Act 50 of 1994 be repealed due to the fact that the Act no longer serves any purpose.

(e) i. Unemployment Insurance Amendment Act 27 of 1967;
ii. Unemployment Insurance Amendment Act 87 of 1968;
iii. Unemployment Insurance Amendment Act 61 of 1971;
iv. Unemployment Insurance Amendment Act 12 of 1974;
v. Unemployment Insurance Amendment Act 51 of 1975;
vi. Unemployment Insurance Amendment Act 29 of 1977; and
vii. Unemployment Insurance Amendment Act 6 of 1978

(i) Provisional proposal

2.20 The following Unemployment Insurance Amendment Acts providing for an increase in maximum earnings in respect of which contributions are payable to the Unemployment Insurance Fund are recommended for repeal, namely:

i Unemployment Insurance Amendment Act 27 of 1967;
ii Unemployment Insurance Amendment Act 87 of 1968;
iii Unemployment Insurance Amendment Act 61 of 1971;
iv Unemployment Insurance Amendment Act 12 of 1974;
v Unemployment Insurance Amendment Act 51 of 1975;
vi Unemployment Insurance Amendment Act 29 of 1977; and
vii Unemployment Insurance Amendment Act 6 of 1978.

(ii) Evaluation of Unemployment Insurance Amendment Act 27 of 1967; Unemployment Insurance Amendment Act 87 of 1968; Unemployment Insurance Amendment Act 61 of 1971; Unemployment Insurance Amendment Act 12 of 1974; Unemployment Insurance Amendment Act 51 of 1975; Unemployment Insurance Amendment Act 29 of 1977 and Unemployment Insurance Amendment Act 6 of 1978

2.21 These statutes made provision for the increase of the maximum earnings in respect of which contributions are payable to the Fund. They specified in their long titles[10], sections[11] or schedules the maximum earnings to be paid to the Unemployment Insurance Fund. The Acts were enacted for a specific purpose and if the purpose has been achieved by fulfilment of the transitional arrangements in Schedule 1 of the Unemployment Insurance Act 63 of 2001, they are spent, and may therefore be repealed. Furthermore, taking into account the provisions of Schedules 2 and 3 of Act 63 of 2001, these Acts have no further practical effect and are recommended for repeal.

(f) i Second Unemployment Insurance Amendment Act 108 of 1976;
ii. Second Unemployment Insurance Amendment Act 118 of 1977;
iii. Second Unemployment Insurance Amendment Act 97 of 1979; and
iv. Second Unemployment Insurance Amendment Act 113 of 1981.

(i) Provisional proposal

2.22 Statutes recommended for repeal under this heading are the-

i. Second Unemployment Insurance Amendment Act 108 of 1976;
ii. Second Unemployment Insurance Amendment Act 118 of 1977;
iii. Second Unemployment Insurance Amendment Act 97 of 1979; and
iv. Second Unemployment Insurance Amendment Act 113 of 1981.

(ii) Evaluation of Second Unemployment Insurance Amendment Act 108 of 1976; Second Unemployment Insurance Amendment Act 118 of 1977; Second Unemployment Insurance Amendment Act 97 of 1979 and Second Unemployment Insurance Amendment Act 113 of 1981

2.23 These statutes made provision for the preservation of benefits and allowances of certain persons who were contributors in the former homelands of Transkei,

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[10] The long title to the Unemployment Insurance Amendment Act 27 of 1967 provided that the purpose of the Act is "To amend section 2 of the Unemployment Insurance Act, 1966, in order to increase the maximum earnings in respect of which contributions are payable".

[11] The purpose of section 2 of the Unemployment Insurance Amendment Act 87 of 1968 is "to amend Schedule 1 of the Unemployment Insurance Act 30 of 1966 by substituting the expression 'R3, 536' for the expression 'R3, 120' in Group XII".

Bophuthatswana, Venda and Ciskei[12]. South Africa became a democratic State in 1994 and the homeland system has been dissolved. Taking into account the new constitutional dispensation and the fact that the Acts are spent and no longer have any practical effect, they are recommended for repeal if all claims pending under the Unemployment Insurance Act 30 of 1966 have been finalised in respect of the former homelands in terms of the transitional provisions provided for in section 70 of Act 63 of 2001.

(g) Unemployment Insurance Amendment Act 9 of 1979

(i) Provisional proposal

2.24 This Act has been recommended for repeal, subject to certain conditions in the evaluation section.

(ii) Evaluation of Unemployment Insurance Amendment Act 9 of 1979

2.25 The Act was promulgated to amend or substitute various definitions in the 1966 Act (Act 30 of 1966), to provide for matters relating to moneys that cannot be refunded and are required to be retained by the fund and moneys appropriated by Parliament for payment to dependants of deceased contributors. It also regulated the alteration of the jurisdiction of the unemployment benefits committees; the method of appointment and extension of the duties and powers of claims officers; the extension of the period of lodging appeals from the committees to the board and from claims officers to the committees. It provided further for the substitution and extension of the provisions relating to the payment of benefits, regulation of the acquisition and disposal of movable and immovable property, for recovery of losses or damages caused to the Fund and the inclusion of additional information in the annual report of the Secretary[13].

2.26 Definitions that were substituted in section 1 of the 1966 Act (Act 30 of 1966) are “actuary”, “benefits” and “officer”. The definitions for “rural area” and “Bantu” were deleted and a definition for “Black” was inserted in section 1 of the 1966 Act (Act 30 of 1966). Matters that are dealt with by the 1979 Amendment Act are included in Act 63 of 2001[14], unless the definition in question is no longer appropriate. There is no definition of “Black” in

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12 See long titles.

13 See the long title of the Unemployment Insurance Amendment Act 9 of 1979.

14 See sections 4, 9, 10, 11, 36A, 37, 46, 58 and 60-61 of Act 63 of 2001.

the 2001 Act[15] but definitions for “actuary”, “benefits” and “officer” are found in section 1 of Act 63 of 2001. If all the transitional arrangements provided for in Schedule 1 of Act 63 of 2001 have been fulfilled, then the Unemployment Insurance Amendment Act 9 of 1979 may be repealed since its provisions would have been superseded by Act 63 of 2001.

(h) Unemployment Insurance Amendment Act 1 of 1981

(i) Provisional proposal

2.27 This Act is recommended for repeal because the principal Act has been repealed by section 70 of Act of 2001 (Act 63 of 2001).

(ii) Evaluation of Unemployment Insurance Amendment Act 1 of 1981

2.28 The purpose of Act 1 of 1981 is to amend the Unemployment Insurance Act, 1966, with respect to certain definitions; to provide for any employment to be recognised for the purposes of the payment of illness and maternity benefits to contributors and certain other amounts to dependants of deceased contributors; and to provide for incidental matters.

2.29 The Act amends, amongst others, section 1 of the Unemployment Insurance Act 30 of 1966 by deleting the definition of 'Black'. The Act is redundant and therefore recommended for repeal because the principal Act which it is amending was repealed by section 70 of the Act of 2001 (Act 63 of 2001) subject to transitional arrangements provided for in Schedule 1 of the Act.

(i) Unemployment Insurance Amendment Act 1 of 1982

(i) Provisional proposal

2.30 This Act should be repealed because the principal Act has been repealed in terms of section 70 of the 2001 Act (Act 63 of 2001).

(ii) Evaluation of Unemployment Insurance Amendment Act 1 of 1982

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[15] The definition of “Black” in the 1966 Act (Act 30 of 1966) was deleted by the Unemployment Insurance Amendment Act 1 of 1981.

2.31 This Act amends the Unemployment Insurance Act 30 of 1966 in order to provide for the discontinuation of the furnishing of annual reports by unemployment benefit committees for the purposes of the payment of unemployment, illness and maternity benefits to contributors and certain amounts to dependants of deceased contributors. Section 1 of this Act amends section 1 of the 1966 Act in order to delete the definition of ”Commission” and “Secretary” and inserts the definition of “Director-General” and “Minister”. The 1982 Amendment Act substitutes the words “State Revenue Fund” and “Department of Manpower” for the words “Consolidated Revenue Fund” and “Department of Labour” respectively.

2.32 The Act is redundant and therefore recommended for repeal since the principal Act which it is amending was repealed by section 70 of Act 63 of 2001 subject to transitional arrangements provided for in Schedule 1 of the Act.

(j) Second Unemployment Insurance Amendment Act 89 of 1982

(i) Provisional proposal

2.33 The Act is recommended for repeal as the principal Act has been repealed in terms of section 70 of the 2001 Act (Act 63 of 2001).

(ii) Evaluation of Unemployment Insurance Amendment Act 89 of 1982

2.34 This Act makes provision that persons who enter the Republic from other States be regarded as contributors within the meaning of the 1966 Act (Act 30 of 1966) and for payment of contributions by such persons and their employers to the other State.

2.35 The Act is redundant and therefore recommended for repeal since the principal Act which it is amending was repealed by section 70 of Act 63 of 2001 subject to transitional arrangements provided for in Schedule 1 of the Act.

(k) Unemployment Insurance Amendment Act 27 of 1986

(i) Provisional proposal

2.36 The Act is recommended for repeal since the principal Act has been repealed and

South Africa became a democratic state in 1994.[16]

(ii) Evaluation of Unemployment Insurance Amendment Act 27 of 1986

2.37 The purpose of Act 27 of 1986 is to provide for the definition of 'labour brokers' and 'labour broker's office' and 'employer'. It also made provision for the determination of the value of services rendered to the Fund by the Department of Manpower and repayment of expenditure by the fund. It made provision to regulate the constitution of the unemployment insurance board, to extend the periods of appeals against a decision of a claims officer, and the further regulation of the appointment of inspectors, increase of fines and the delegation of powers by the board after KwaNdebele became independent, and the payment of certain moneys to enable KwaNdebele to establish its own unemployment insurance fund.[17]

2.38 The matters dealt with by Act 27 of 1986 are now included under Act 63 of 2001[18]. The Act is redundant and therefore recommended for repeal since the principal Act which it is amending was repealed by section 70 of Act 63 of 2001 and South Africa became a democratic state in 1994.[19]

(l) Unemployment Insurance Second Amendment Act 30 of 1986

(i) Provisional proposal

2.39 This Act is recommended for repeal as the principal Act (Act 30 of 1966) has been repealed.

(ii) Evaluation of Unemployment Insurance Amendment Act 30 of 1986

2.40 This Act empowers the Director General of Manpower to raise loans for the unemployment insurance fund from private institutions in certain circumstances and other related matters. This Act is recommended for repeal as the principal Act (Act 30 of 1966) which it is amending was repealed by section 70 of Act 63 of 2001.

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16 See also Act 9 of 1979, Act 108 of 1976, Act 118 of 1977 and Act 97 of 1979.

17 See the long title of Act 27 of 1986.

18 See sections 1, 5, 36A, 37, 43- 45, 47-51, and 58 of Act 63 of 2001.

19 See also Act 9 of 1979, Act 108 of 1976, Act 118 of 1977 and Act 97 of 1979.

(m) Unemployment Insurance Amendment Act 36 of 1987

(i) Provisional proposal

2.41 The 1987 Amendment Act (Act 36 of 1987) has, as appears from its evaluation hereunder, become irrelevant since its provisions are unfairly discriminatory on the basis of gender. It is therefore recommended for repeal.

(ii) Evaluation of Unemployment Insurance Amendment Act 36 of 1987

2.42 This Act provides that a contributor undergoing training be regarded as employed during the training period. It also makes provision for matters relating to payment of maternity benefits and adoption benefits to female contributors who adopt children. The Act further abolishes the limitation which applies in respect of certain payments to widowers of deceased contributors[20].

2.43 Taking into account the new constitutional dispensation, specifically section 9 of the Constitution of the Republic of South Africa Act 108 of 1996, the payment of adoption benefits to females only is discriminatory. Act 63 of 2001 provides in section 27 that 'only one contributor of the adopting parties is entitled to the adoption benefits'. The 1987 Amendment Act (Act 36 of 1987) is therefore unconstitutional since its provisions unfairly discriminates against persons on the basis of gender. It is therefore recommended that the Act be repealed.

(n) Unemployment Insurance Second Amendment Act 102 of 1987

(i) Provisional proposal

2.44 It is provisionally recommended that the Unemployment Insurance Second Amendment Act 102 of 1987 be repealed since the principal Act which it is amending has now been repealed by section 70 of the Unemployment Insurance Act 63 of 2001.

(ii) Evaluation of Unemployment Insurance Second Amendment Act 102 of 1987

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[20] See the long title of Act 36 of 1987.

2.45 The purpose of this Act is to provide for unemployment benefits under certain circumstances and the lapse of applications in respect of such benefits if the contributor failed to report and attend at certain places and times[21].

2.46 The Unemployment Insurance Act 63 of 2001 now covers unemployment benefits and the procedure for their application[22]. If the claims referred to in Schedule 1 of Act 63 of 2001 are satisfied, the purpose of the Act has been achieved and the Act may be repealed subject to the transitional provisions provided for in Schedule 1 of Act 63 of 2001.

(o) Unemployment Insurance Amendment Act 29 of 1988

(i) Provisional proposal

2.47 It is provisionally recommended that the Unemployment Insurance Amendment Act 29 of 1988 be repealed since the principal Act which it is amending has now been repealed by section 70 of the Unemployment Insurance Act 63 of 2001.

(ii) Evaluation of Unemployment Insurance Amendment Act 29 of 1988

2.48 The 1988 Amendment Act (Act 29 of 1988) provides for the delegation of powers by the Minister of Manpower to assign an officer of his Department as secretary to the Unemployment Insurance Board or to compel an unemployed contributor to register as unemployed before applying for unemployment benefits. The Act also empowers the Minister to delegate the power to extend the period within which the said contributor may submit his application if he decides to move to the jurisdiction of another claims officer. The Minister could delegate the power to delete the requirement that a contributor will not be entitled to unemployment benefits under certain circumstances, and that the application for illness benefits forms may be signed by alternative medical practitioners such as chiropractors and homeopaths.

2.49 The Act also provides for delegation of power to alter the qualifying period that applies to maternity benefits in order to bring about uniformity with other benefits.[23] The

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21 See the long title of Act 102 of 1987.

22 See chapter 3 of Act 63 of 2001.

23 See the long title.

above matters are now included under the Unemployment Insurance Act 63 of 2001[24], and save for any matter that may relate to pending claims as provided for in Schedule 1 of Act 63 of 2001, the Unemployment Insurance Amendment Act 29 of 1988 may be repealed.

(p) Unemployment Insurance Amendment Act 130 of 1992

(i) Provisional proposal

2.50 It is provisionally proposed that the Unemployment Insurance Amendment Act 130 of 1992 be repealed since the principal Act which it is amending has now been repealed by section 70 of the Unemployment Insurance Act 63 of 2001.

(ii) Evaluation of Unemployment Insurance Amendment Act 130 of 1992

2.51 Act 130 of 1992 provides for the application of the 1966 Act (Act 30 of 1966) to certain persons employed in agriculture and makes certain provisions regarding seasonal workers in agriculture. It also provides for the raising of loans from financial institutions by the Director General, the payment of contributions by employers, increase of penalty and conditions relating to the payment of adoption benefits. The Act further provides that the Minister may pay certain moneys from the fund and empowers the Director General to acquire and alienate immovable property in consultation with the board without the approval of the Minster of Finance[25].

2.52 The Unemployment Insurance Act 63 of 2001 now provides for the matters dealt with by Act 130 of 1992. The acquisition and alienation of the fund's assets under the Act has been transferred to the Board established under section 4 of Act 63 of 2001. Act 130 of 1992 has therefore become redundant and may be repealed save to the extent mentioned in Schedule 1 of Act 63 of 2001.

2. Specific provisions outdated, redundant, spent, obsolete or unconstitutional and recommended for repeal and amendment

(a) Unemployment Insurance Act 63 of 2001

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24 Note 11 above and section 68 of Act 63 of 2001.

25 See the long title of Act 130 of 1992.

(i) Provisional proposal

2.53 It is recommended that sections 27(1)(a) and (2) of the Unemployment Insurance Act 63 of 2001 be amended in order to replace all references to the old Child Care Act 74 of 1983 with the references to the new Children's Act 38 of 2005.

(ii) Evaluation of the Unemployment Insurance Act 63 of 2001

2.54 The purpose of Act 63 of 2001 is, among others, to provide for the payment from the Fund of unemployment benefits to certain employees, and for the payment of illness, maternity, adoption and dependant's benefits related to the unemployment of such employees.

2.55 Section 27(1)(a) and (2) of Act 63 of 2001 provides that:

(1) Subject to section 14, only one contributor of the adopting parties is entitled to the adoption benefits contemplated in this Part in respect of each adopted child and only if-

(a) the child has been adopted in terms of the Child Care Act, 1983 (Act 74 of 1983);

(b) …

(c) …

(d) …

(2) The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the Child Care Act, 1983 (Act 74 of 1983).

2.56 Accordingly, it is recommended that the Act be amended in order to update all references to the old Child Care Act 74 of 1983 with references to the new Children's Act 38 of 2005. The Child Care Act 74 of 1983 was repealed as a whole by the Children's Act 38 of 2005.

(b) <u>Basic Conditions of Employment Act 75 of 1997</u>

(i) Provisional proposal

2.57 The following amendments are provisionally proposed:

i. Reference to Act 30 of 1966 in the definition of 'employment law' should be amended to read: Act 63 of 2001.

ii. Definition of medical practitioner should include traditional healers.

iii. Subsection 34(1)(a) should be amended so as to accommodate illiterate employees.

iv. Sections 50(6) and 59(2)(f) must be amended to refer to the Minister of Social Development.

v. Section 65(1)(b) and (c) should be amended to refer to the Skills Development Act, 1998.

v. Schedule Three should be repealed.

(ii) Evaluation of Basic Conditions of Employment Act 75 of 1997

2.58 The purpose of this Act is to give effect to the right to fair labour practices referred to in section 23(1) of the Constitution. The recommendations made below deal mainly with technical amendments.

i. Definition of 'Employment Law"

2.59 It is recommended that reference to the Unemployment Insurance Act, 1966 be substituted by reference to the Unemployment Insurance Act, 2001.

ii. Section 1: Definition of medical practitioner

2.60 Although legislation on traditional healers has not been promulgated yet, attention is drawn to the future possibility of this definition discriminating against traditional healers by omitting to include them in the definition, and, more specifically, of discriminating against employees wishing to consult such healers.

iii. Section 34: Deduction of wages

2.61 Subsection (1)(a) should be amended to make provision for illiterate employees to indicate their acceptance of a deduction by way of a mark, with the proviso that the nature of the agreement be explained to the employee.

iv. Section 50: Variation by the Minister

2.62 It is recommended that subsection (6) be amended to update the designation of the Minister to 'Minister of Social Development'.[26]

v. Section 59: Employment Conditions Commission

2.63 It is recommended that subsection (2)(f) be amended to update the designation of the Minister to 'Minister of Social Development'.

vi. Section 65: Powers of entry [of labour inspectors]

2.64 It is recommended that subsection (1)(b) be amended by the substitution of Skills Development Act, 1998 (Act No. 97 of 1998)' for the Manpower Training Act, 1981 (Act No. 56 of 1981).

2.65 It is recommended that subsection 1(c) be amended by the substituting of the Skills Development Act, 1998 (Act 97 of 1998) for "section 15 of the Guidance and Placement Act, 1981 (Act 62 of 1981).

(c) Employment Equity Act 55 of 1998

(i) Provisional proposal

2.66 The following amendments are provisionally proposed:

i Reference to Acts 30 of 1966, 62 of 1981 and 56 of 1981 in the definition of 'employment law' should be amended to refer to Acts 63 of 2001 and 97 of 1998.

ii. It is recommended that sections 4 and 12 be amended so as to be consistent

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[26] http://www.info.gov.za/events/2009/new_cabinet.htm

with each other.

iii. Section 4 is too narrow and should be amended to make provision for section 50(2)(d) of the Act.

(ii) Evaluation of Employment Equity Act 55 of 1998

i. Section 1: Definitions

2.67 Under the definition of 'employment law', subsection (a) refers to the Unemployment Insurance Act 30 of 1966; subsection (b) to the Guidance and Placement Act 62 of 1981 and (c) to the Manpower Training Act 56 of 1981.

2.68 It is recommended that the obsolete names of the Acts mentioned above should be deleted and be substituted by: the Unemployment Insurance Act 2001; and the Skills Development Act 1998 (Act No 97 of 1998) for (b) and (c).

ii. Sections 4 and 12: Application of the Act

2.69 Sections 4 and 12 which relate to the application of Chapter III differ in their wording. Section 4(2) states: 'Except where Chapter III provides otherwise, Chapter III of this Act applies only to designated employers and people from designated groups.' Section 12 of Chapter III states: 'Except where otherwise provided, this Chapter applies only to designated employers.'

2.70 There are two main differences between the sections. The first difference relates to the inclusion of 'people from designated groups' under section 4 while this category is omitted from section 12 which applies (caveat aside) only to designated employers.

2.71 In terms of the purpose of the Act (section 2), the purpose of affirmative action measures (section 2(b)) is to 'redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels of the workforce'. The recipients of affirmative action, therefore, are those from designated groups as is reflected in section 4.

2.72 It is recommended that the wording of section 12 be amended to reflect this, thus achieving consistency between sections 4 and 12.

2.73 Secondly, the caveats in the sections are not consistent. Section 4 states 'Except where Chapter III provides otherwise, Chapter III of this Act applies…' It clearly envisages that it is only where the Chapter itself states otherwise that the categories to which it applies may be extended. Section 12, on the other hand, states: 'Except where otherwise provided, this Chapter applies…' This wording may mean that unless stated otherwise in the Act as a whole (and not merely Chapter III), the Chapter applies to the specified categories. There is a section outside of Chapter III where the Act extends the categories to which Chapter III applies.

2.74 Section 50(2)(d) dealing with the powers of the Labour Court states that the Labour Court , if it decides that an employee has been unfairly discriminated against, may make an order 'directing an employer, other than a designated employer, to comply with Chapter III as if it were a designated employer'. In other words the section extends the applicability of Chapter III to a non-designated employer. The wording of section 4 is therefore too narrow and would be in conflict with section 50(2)(d).

2.75 There is no reason why sections 4 and 12 should be differently worded as they both deal directly with the applicability of Chapter III. It would therefore make sense to amend the wording in the sections to make them consistent.

2.76 It is suggested that in order to resolve the differences in the sections, the following wording be adopted for both: 'Except where otherwise provided, Chapter III [this could read 'this chapter' where section 12 is concerned] applies only to designated employers and people from designated groups.'

(d) The National Economic, Development and Labour Council Act 35 of 1994

(i) Provisional proposal

2.77 References to the "Minister without Portfolio in the Office of the President" in the definition of "organisations of community and development interests" in section 1 should be amended to read "Minister in The Presidency Performance Monitoring and Evaluation as well as Administration".

(ii) Evaluation of The National Economic, Development and Labour Council Act

35 of 1994

2.78 The National Economic, Development and Labour Council Act 35 of 1994 was passed with the purpose to provide for the establishment of a national economic, development and labour council; to repeal certain provisions of the Labour Relations Act 28 of 1956; and to provide for matters connected therewith.

2.79 Although the National Economic, Development and Labour Council Act 35 of 1994 is generally not in conflict with the equality provisions in the Constitution, the following sections are recommended for amendment:

i. References to the "Minister without Portfolio in the Office of the President" in the definition of "organisations of community and development interests" in section 1 and in section 3(4) & (5) of the Act. The Minister without Portfolio in the office of the President no longer exists and it is currently the Minister in The Presidency Performance Monitoring and Evaluation as well as Administration.

3. Statutes reviewed and recommended to be retained

(a) Integration of Labour Laws Act 49 of 1994

2.80 The Integration of Labour Laws Act 49 of 1994 was passed for two primary purposes, namely to provide (a) for the repeal of the labour laws mentioned in Schedule 1 to the Act, and (b) the extension of the labour laws mentioned in Schedule 2 of the Act to the whole of the national territory of the Republic referred to in section 1 of the Constitution of the Republic of South Africa Act 200 of 1993.

2.81 Schedule 1 of the Integration of Labour Laws Act 49 of 1994 mainly repealed labour laws that were only applicable in the former homelands or "states" (namely, Transkei, Bophuthatswana, Venda, Ciskei, Kwazulu, Qwaqwa, Lebowa, Gazankulu, KaNgwane, and KwaNdebele).

2.82 Most of the labour laws that were extended for application to the whole territory of the Republic by schedule 2 of the Integration of Labour Laws Act 49 of 1994 have been repealed, save for the Agricultural Labour Act 147 of 1993; the Occupational Health and

Safety Act 85 of 1993; and the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

2.83 Repeal Acts are not to be considered for repeal, as their repeal might result in the implied resuscitation of the original legislation. As a result, they must consequently be retained.

(b) Integration Measures in respect of Labour Laws, Amendment and Adjustments Act 68 of 1996

2.84 The purpose of the Integration Measures in respect of Labour Laws, Amendment and Adjustments Act 68 of 1996 is:

- "to provide for the cessation of the application of the Sefalana Employee Benefits Organisation Act, 1989, of the former Bophuthatswana, in relation to the operation, control, management and administration of the workmen's compensation funds and unemployment insurance fund of the former Bophuthatswana and to other matters relevant to those funds;

- to amend Schedule 1 to the Integration of Labour laws Act, 1994, in order to provide for the repeal of the Gazankulu Apprenticeship Act, 1974, the KwaNdebele Apprenticeship Act, 1986, and the Manpower Development Authority of Bophutha-tswana Act, 1988;

- to validate, with effect from 1 March 1995, Proclamation No. 13 of 1995 and the regulations promulgated under Government Notice No. 366 of 1995, certain putative functions and acts purporting to have been performed in terms of workmen's compensation laws of the former Transkei, Bophuthatswana, Venda and Ciskei after those laws had been repealed;

- to validate certain putative functions and acts in relation to the workmen's compensation funds and unemployment insurance fund of the former Bophuthatswana and other related workmen's compensation or unemployment insurance matters purporting to have been performed in terms of the said Sefalana Employee Benefits Organisation Act, 1989, after that Act ceased to apply to such funds and matters; and to provide for incidental matters

connected thereto".

2.85 Since the Act makes provision for the repeal of the laws mentioned in Schedule one of the Integration of Labour Laws Act 49 of 1994, including the cessation of the application of the Sefalana Employee Benefits Organisation Act, 1989, of the former Bophuthatswana, it is recommended that the Act be retained for the same reasons as stated in paragraph 2.83 above.

(c) Skills Development Act[27]

(i) Provisional Proposal

2.86 The purpose of the Skills Development Act is to provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-financing scheme and a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

2.87 Extensive amendments to the Skills Development Act (SDA) have been effected by the Skills Development Amendment Act No 37 of 2008 (hereinafter "SDAA") which was assented to by the State President on 1 December 2008. The SDAA came into operation on 6 April 2009.

2.88 The SDAA is developed to "amend the Skills Development Act, 1998, so as to define certain expressions; to broaden the purpose of the Act; to provide anew for the functions of the National Skills Authority; to provide anew for the composition of the National Skills Authority; to provide anew for the functions of the SETAs, to provide for apprenticeships; to make further provision in respect of the implementation of employment services; to increase

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[27] On 31 July 2009, Business Day reported that "the co-ordination of Setas would be officially the responsibility of the Department of Higher Education and Training from November 2009 and the President would sign the new Act that would be re- enacted in March next year."

the quality and quantity of artisans; to repeal remaining sections of the current Manpower Training Act, 1981; to provide for Skills Development Institutes; to provide for the Quality Council for Trades and Occupations; to clarify the legal status of Productivity South Africa; to clarify the legal and governance status of the National Skills Fund; and to provide for matters connected therewith".

2.89 The SDAA introduces substantial amendments to the SDA, which include the rearrangement of the sections of the SDA. This submission will not deal with the changes to the chapters; it will merely point to consequential amendments and amendments which were overlooked by the SDAA and need to be made.

2.90 Section 17 of the SDAA amends section 65 of the Basic Conditions of Employment Act of 1997. The preamble of the SDA needs to be reconsidered in light of that in the SDAA.

2.91 For purposes of the current review, it is provisionally proposed that the Act be retained as it does not conflict with section 9 of the Constitution.

(d) Skills Development Levies Act 9 of 1999[28]

2.92 The purpose of the Act is to provide for the imposition of the skills development levy in order to fund training and skills development as provided for in the Skills Development Act above. For purposes of the current review, it is provisionally proposed that the Act be retained as it does not conflict with section 9 of the Constitution.

(e) Labour Relations Act 66 of 1995 (the "LRA")[29]

2.93 The purpose of the Act is to advance economic development, social justice, labour peace and the democratization of the workplace by fulfilling the primary objects of this Act, which are-

(a) to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution;

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

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28 See 38 ibid

29 As amended by the Labour Relations Amendment Act 42 of 1996, Act 127 of 1998, and Act 12 of 2002.

(c) to provide a framework within which employees and their trade unions, employers and employers' organizations can-

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

(ii) formulate industrial policy; and

(d) to promote-

(i) orderly collective bargaining;

(ii) collective bargaining at sectoral level;

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

(iv) the effective resolution of labour disputes.

i. Section 2: Exclusion from application of the LRA

2.94 The committee considered whether or not the exclusion of the application of the provisions of the LRA to members of certain state agencies[30] was constitutional. Committee members felt that these exclusions are consistent with International Labour Organisation ("ILO") standards and constitutional norms internationally.[31]

2.95 The committee noted that the relevant agencies are regulated by separate tailor made legislation, and that no contention had been raised in the *SANDU* cases[32] that the exclusion from the LRA might be unconstitutional.

ii. Section 26: Closed shops

2.96 The committee considered whether the trade union security arrangements provided for in section 26 of the LRA should be reviewed, but considered that any violation of the right

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30 The National Defence Force, the National Intelligence Agency, the South African Secret Service, the South African National Academy of Intelligence and Comsec.

31 The issue was also not considered in *Murray v Minister of Defence* [2008] 6 BLLR 513 (SCA) where it was held that despite the fact that members of the SANDF are excluded from the scope of application of the LRA, such members are still entitled to the constitutional right to fair labour practices, which includes the right not to be constructively dismissed.

32 In *SA National Defence Union v Minister of Defence & another* (1999) 20 *ILJ* 2265 (CC) the Constitutional Court held that members of the SANDF were engaged in a relationship akin to an employment relationship and were entitled to protection under section 23 of the Constitution. Section 2 of the LRA, which excludes members of the SANDF from the scope of application of the LRA, was not questioned on constitutional grounds in *Minister of Defence & others v SA National Defence Union* (2006) 27 *ILJ* 2276 (SCA) or *SA National Defence Union v Minister of Defence and others* [2007] 9 785 (CC).

to freedom of association is tempered by the restrictions in section 26 of the LRA which are applicable to closed shop agreements[33] and that this section is thus not inconsistent with the Constitution.

iii. Section 95(6): The constitution of a trade union or employers' organisation may not discriminate on grounds of race or sex

2.97 The committee considered the implication of the express prohibition of discrimination on the grounds of race or sex, and the absence of any express prohibition of discrimination on other grounds. It appears anomalous that the provisions of the LRA should expressly proscribe trade union or employer organisation discrimination on the grounds of race and sex only, and not on any of the other grounds specifically set out in section 6 of the Employment Equity Act 55 of 1998, or section 9 of the Constitution.

2.98 The committee acknowledged that the absence of a specific prohibition did not have the consequence of permitting discrimination that would otherwise fall foul of the equality provisions in section 9 of the Constitution. The provisions of section 95(6) of the LRA in fact appear to have the effect, at least insofar as trade unions and employers' organisations are concerned, that discrimination on the grounds of race and sex is not permitted even where this might otherwise be defensible under the "affirmative action" proviso contained in section 9(2) of the Constitution.

2.99 The committee was conscious of the fact that a trade union constitution may legitimately discriminate by, for example, restricting membership to persons who express or hold particular beliefs (for example in relation to economic policies, or concerning communism or socialism). Some members of the committee believed that it may also be permissible to establish a trade union for workers who hold particular religious beliefs.

2.100 The committee considered whether or not it may be appropriate to draw a distinction between grounds of differentiation that relate to religion, conscience, or belief (on which a trade union, club or other social group may arguably choose to discriminate) and grounds of differentiation that concern the immutable identity of individuals (on which no discrimination of this kind would be permissible because this would offend the dignity of workers or employers). But even if this distinction were to be accepted, committee members felt that it would not be clear into which category certain potential grounds of discrimination (for

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[33] Iain Currie & Johan de Waal *The Bill of Rights handbook* 5th ed 2005 512.

example, language) would fall.

2.101 As things stand, the express prohibition on discrimination only on the grounds of race or sex leaves it to the Registrar to determine whether any other discriminatory provisions in the constitution of a trade union or employers' organisation fall foul of the equality provisions in the Constitution and militate against registration of the organisation.[34]

2.102 In order to prevent the prohibition on grounds of race and sex from being interpreted as permitting discrimination on other grounds, the committee's primary recommendation is that this formulation is discriminatory and that the provision should be amended as follows: "*the constitution of any trade union or employers' organisation which intends to register may not include any provision that [unfairly] discriminates directly or indirectly against any person on any grounds, including but not limited to those grounds set out in section 6(1) of the Employment Equity Act*".

2.103 Alternatively, the section could be amended to read as follows: "*the constitution of any trade union or employers' organisation which intends to register may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex, or any other ground which in the opinion of the Registrar may unfairly affect the rights or dignity of workers or employers*".

iv. Section 167(2): Status of Labour Appeal Court

2.104 The provisions of section 167(2), which provides that the "Labour Appeal Court is the final court of appeal in respect of all judgements and orders made by the Labour Court in respect of the matters within its exclusive jurisdiction" are in conflict with the provisions of section 168(3) of the Constitution.[35]

2.105 This issue is very likely to be dealt with, and necessary amendments made to the

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[34] Whilst one member of the committee felt that this list should at least be extended to prohibit discrimination on grounds including "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, [language] and birth" (thus all the grounds listed in the EEA) and that the onus should be on the trade union to justify the discriminatory provision/s), other members of the committee thought that the statute should not preclude the possibility of workers establishing (for example) a "single parent workers' union", a "Zimbabwean immigrants workers' union", a "union for gay workers' rights", or a "retired workers' union".

[35] *National Education Health and Allied Workers Union v University of Cape Town & Others* (2003) 24 *ILJ* 95 (CC); *Chevron Engineering (Pty) Ltd v Nkambule & Others* [2003] 7 BLLR 631 (SCA); *NUMSA and Others v Fry's Metals (Pty) Ltd* [2005] 5 BLLR 430 (SCA).

applicable provision of the LRA, by the enactment of the Superior Courts' Bill. Nevertheless, the committee thought it appropriate to mention the issue in this report.

2.106 In general, the committee considered that the number of possible levels of decision making and appeal that currently exist in labour matters may undermine one of the primary purposes of the LRA, namely the promotion of the effective resolution of labour disputes.[36]

2.107 The issue of unconstitutionality of section 167(2) could be resolved simply by deleting the words "the final" in 167(2), and replacing them with "a". This would not, however, reduce the number of levels of appeal in labour matters. This purpose could best be achieved by providing for the incorporation of the Labour Appeal Court into the Supreme Court of Appeal (as the committee understands to be contemplated in the most recent drafts of the Superior Courts Bill). An alternative would be to provide that the Labour Appeal Court is the court to which all appeals from the Labour Court must be directed unless the Supreme Court of Appeal grants direct access on appeal.

2.108 Since this issue is likely to be dealt with by the enactment of the Superior Courts Bill, no amendment is proposed here.

4. Anomalies in certain legislation administered by the DOL

2.109 The advisory committee identified a number of anomalies in the following statutes administered by the DOL, namely:

- Labour Relations Act;
- Unemployment Insurance Contributions Act 4 of 2002;
- Unemployment Insurance Act 63 of 2001;and
- Compensation for Occupational Injuries and Diseases Act 130 of 1993;

2.110 The anomalies are discussed below:

(a) Labour Relations Act

(i) Section 23(1)(d) and Section 32: Binding effect of collective agreement on non-parties

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[36] Section 1(d)(iv)

2.111 The committee considered whether or not these provisions give rise to any conflict with constitutional rights, including the right to freedom of association,[37] the right to freedom of trade, occupation and profession,[38] the right to fair labour practices[39] and the right to property,[40] but was satisfied that these provisions were not unconstitutional.

(ii) Section 31: Binding nature of collective agreement concluded in bargaining council

2.112 The scope of Project 25 focuses on "discriminatory and unconstitutional legislation" and "anomalies between statutes". While it is not clear that this is a matter that falls within the scope of Project 25, the committee suggests that consideration be given to an anomaly that exists within the LRA. It concerns section 31 when considered in the context of section 23.

2.113 First, there is no apparent explanation for the difference in wording used in section 23(1)(b) ("insofar as the provisions are applicable between them") and the provisions of section 31(b) ("insofar as the provisions thereof apply to the relationship between such a party and the members of such other party").

2.114 Similarly, differences in the precise wording used in section 23(1)(c) and section 31(c) appear to be unnecessary and anomalous, and may give rise to the suggestion that a different meaning is intended where this is not in fact the case. For this reason it is recommended that common wording be adopted in each paragraph.

2.115 One member of the committee considered it to be unclear at present whether or not the provisions of section 23 of the LRA as a whole, and the provisions of 23(1)(d) in particular, are applicable to collective agreements concluded in a bargaining council. If not, this would (on this view) give rise to an anomaly that is apparently not intended, particularly (but not solely) in the case of a single employer bargaining council.[41]

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37 Section 18 of the Constitution.

38 Section 22 of the Constitution.

39 Section 23 of the Constitution.

40 Section 25 of the Constitution.

41 There are presently at least [two] such bargaining councils: the Transnet Bargaining Council and the Public Sector Coordinating Bargaining Council (together with its various sectoral councils)

2.116 The anomaly that arises is that where a single employer concludes a collective agreement in a bargaining council with trade unions representing the majority of employees, the collective agreement may not be binding on the remaining employees (since the provisions of section 23(1)(d) appear not to apply) unless the collective agreement is extended by the Minister in terms of the provisions of section 32 of the LRA.

2.117 This is anomalous because it would mean that the minority of workers not party to the agreement would be bound if the collective agreement were to be concluded outside the bargaining council (whether in the passage outside or in the chamber of the bargaining council while the council is not formally "in session") provided that the remaining conditions of section 23(1)(d) were met; but would not be bound if the same collective agreement were to be concluded in the bargaining council itself unless formally extended in terms of the section 32 process. This could have the effect of undermining proceedings of the bargaining council. The same anomaly would apply in a multi-employer bargaining council where a collective agreement has binding effect on the majority of employees in a particular employer's workplace by reason of the application of the provisions of section 31(c), but has not been extended on application of the provisions of section 32.

2.118 Some members of the committee did not agree with the above view on the grounds that there are strong policy reasons for dealing differently with collective agreements concluded in bargaining councils. On this view, the provisions of section 23 should not apply to collective agreements concluded in a bargaining council save to the extent expressly stated in section 31. On this view, an amendment could be introduced by the insertion of a new section 31(d) which would set out the precise respects in which the provisions of section 23 are applicable to collective agreements concluded in a bargaining council.

2.119 In the alternative, it was suggested that consideration be given to making the following amendments to the LRA:

a. Substituting the provisions of section 31 with the following: "Unless otherwise provided in the constitution of the bargaining council, the provisions of section 23 apply to a collective agreement concluded in a bargaining council."

b. Amending the provisions of section 32(1) to read as follows: "a bargaining council may ask the Minister in writing to extend one or more provisions of a collective agreement concluded in the bargaining council to any person that is

not bound by the relevant provisions by reason of section 23(1), that are within the registered scope of the bargaining council and that are identified in the request, …"

iii. Chapter VIII (unfair dismissal and unfair labour practices)

2.120 This Chapter of the LRA reveals one potential anomaly and one instance of formal discrimination. The former relates to the definition of employee (s 186(1)) and the latter to one of the defences in respect of automatically unfair dismissal (s187(2)(*b*)). These are dealt with in turn below.

A. Section 186(1) defines a dismissal as follows:

'**186 Meaning of dismissal and unfair labour practice**

(1) *'Dismissal' means that-*

(a) an employer has terminated a contract of employment with or without notice;

(b) an employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it;

(c) an employer refused to allow an employee to resume work after she-

(i) took maternity leave in terms of any law, collective agreement or her contract of employment; or

(ii) .....

(d) an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another; or

(e) an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee;

> *(f) an employee terminated a contract of employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer*.'

2.121 The anomaly is the result of recent jurisprudence on the meaning of the definition of employee and which suggests that the definition of employee is not dependent on the existence of a contract of employment; in any event not in the formal sense.[42] However, the definition of dismissal is couched in contractual terms and this may have the result that a person who is regarded as an employee, is unable to rely on the dismissal provisions of the LRA. This was expressed as follows by Cheadle AJ in "*Kylie" v CCMA and Others:*

> *The wording of the definition of employee in the LRA is certainly wide enough to encompass those without a valid contract of employment. But that does not mean that the right not to be unfairly dismissed applies to those without a valid contract of employment. It is clear from the definition of dismissal in section 186(1) of the LRA that the existence or prior existence of a valid contract of employment is the necessary condition to found the statutory right to fair dismissal'*.[43]

2.122 Some members of the committee believed this to be an anomaly that should be corrected by replacing the phrase 'contract of employment' in the definition of dismissal with the word 'employment'. Other members of the committee did not agree that this was necessarily anomalous or discriminatory, and believed this to be a matter of social policy that should be left to the social partners to determine in the course of future engagements on the extent of dismissal protection provided by the LRA. Still others considered that the issue of whether a dismissal as defined presupposes the existence of a valid contract of employment is one that has yet to be finally settled by the courts. On this view, it would be premature to recommend a change at this stage.

B. Section 187(1)(*f*) defines an automatically unfair dismissal to include a dismissal where the reason for dismissal is:

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42 *Denel v (Pty) Ltd v Gerber* (2005) 26 *ILJ* 1256 (LAC); *White v Pan Palladium SA (Pty) Ltd* (2006) 27 *ILJ* 2721 (LC); *Discovery Health Ltd v CCMA and Others* (2008) 29 *ILJ* 1480 (LC); *SITA (Pty) Ltd v CCMA and Others* [2008] ZALC 31 (20 March 2008) and "*Kylie" v CCMA and Others* Case No C52/07 (31 July 2008).

43 Pars 89-90 see http://www.saflii.org/za/cases/ZALC/2008/86.html.

'that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility'.

2.123 Section 187(2), however, provides that:

"Despite subsection (1) (*f*)-

(a) a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job;

(b) a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for persons employed in that capacity".

2.124 Section 187(2)(b) justifies dismissal because of age provided that certain conditions are met. This is a form of discrimination and the question is whether, as a matter of policy, this defence can be tolerated. Internationally, the setting of a normal retirement age is acceptable provided it is fair.

(b) Unemployment Insurance Contributions Act 4 of 2002

2.125 These two Acts are dependent and interrelated. Act 63 of 2001 provides for the establishment of the fund and the benefits to which contributors are entitled.[44] On the other hand, Act 4 of 2002 provides for the imposition and collection of contributions for the benefit of the Unemployment Insurance Fund and related matters.[45]

2.126 The Acts are administered by both the Ministry of Labour and Finance. Although each ministry has its powers and duties, there are instances where they both perform similar functions.[46] The sharing of functions may cause confusion in cases of disputes. It is recommended that the above issues be considered by the both the Department of Labour and Finance.

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44 See the long title of Act 63 of 2001.

45 See the long title of Act 4 of 2002.

46 See sections 8-10 of Act 4 of 2002.

(c) Unemployment Insurance Act 63 of 2001

2.127 Some sections of the Unemployment Insurance Act 63 of 2001, taking into consideration the new constitutional dispensation and the social changes that have taken place since its promulgation may be in conflict with other statutes or may be discriminatory and unconstitutional. The following sections and provisions are examined in this regard and appropriate recommendations made:

i Section 1 of Act 63 of 2001: Definition of a "child"

2.128 In section 1 of the Act, a "child" is defined as a person as contemplated in section 30(2) who is under the age of 21 years and includes any person under the age of 25 years who is a learner and who is wholly dependent or mainly dependent on the deceased.

2.129 In terms of section 1 of the Children's Act 38 of 2005 a "child" is defined as a person under the age of 18 years and this is also the definition in the Constitution[47]. It has been suggested that there is an apparent conflict between the two definitions. It is important, however, to scrutinise the purposes of the two Acts when examining a possible conflict. In the definition in section 1 of the 2001 Act (Act 63 of 2001) the purpose is to allow a "child" as defined in that Act, and who is still "dependent", to claim the unemployment insurance benefits of a deceased parent, in circumstances where there is no surviving spouse or life partner or where there is such a spouse or partner but no claim has been made within six months of the death of the contributor.[48]

2.130 It is submitted that the definition in Section 1 of the 2001 Act (Act 63 of 2001) is neither discriminatory in terms of section 9 of the Constitution, nor does it impair the dignity of any child. Rather, the purpose is to benefit a person over 18 years of age, but under 25 years, who may still be dependent on a parent or another person for the payment of secondary and tertiary education and living expenses and who would benefit from being able to claim unclaimed unemployment insurance benefits of a deceased parent.

ii. Definition of "dependant", "spouse" and "life partner"

2.131 The Act does not contain a definition of "dependant", "spouse" and "life partner".

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47 See also section 28(3) of the Constitution.

48 Section 30(2) of Act 63 of 2001.

Section 30, however, refers to dependant's benefits. Section 30(1) provides that the surviving spouse or life partner of a deceased contributor is entitled to the dependant's benefits. Section 30(2) provides that a dependant child is entitled to this benefit if it has not been claimed by a surviving spouse or life partner.

2.132 The Act was promulgated before the coming into operation of the Civil Unions Act 17 of 2006 and it is common cause that Act 17 of 2006 gives same-sex couples the same status as opposite–sex couples[49]. It is fair to assume that section 30 includes same-sex couples as "surviving spouse and life partner". However, assumptions are not proper in legislation as they may cause uncertainty.

2.133 It is recommended that the Act be reviewed and the definitions of "dependant", "spouse" and life partner" be considered for inclusion in the Act. The definitions should reflect the changes made by Act 17 of 2006.

iii. Section 3 of Act 63 of 2001

2.134 This section excludes certain persons from benefiting under the Act. The categories of employees and employers listed in this section are excluded from the coverage of the Act. The categories of persons excluded include learners under learnership contracts, some public servants and migrant workers and persons specifically mentioned in section 3[50]. This section may not pass constitutional muster in terms of section 9 of the Constitution and in terms of the right of access to social security entrenched in section 27 of the Constitution, as recognised in international law[51]. Section 3(1)(d), in particular, of the 2001 Act (Act 63 of 2001) states that the Act applies to all employers and employees, other than:

> *"persons who enter the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon the termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership, as the case may be, or by any other agreement or undertaking, to*

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49 See long title, Preamble and definition of civil union and civil union partner of Act 17 of 2006.

50 Note that section 3(1)(e) was deleted by section 93 of Act 20 of 2006

51 Section 11 of the International Covenant on Economic, Social and Cultural Rights (1966), section 25 of the Universal Declaration on Human Rights (1948).

repatriate that person, or that person is so required to leave the Republic, and their employers"[52].

2.135 The 2001 Act therefore clearly excludes from the ambit of the Act migrant workers who are required to return to their country of origin in the circumstances set out in section 3(1)(d)[53].

2.136 All migrants in South Africa are entitled to certain basic human rights such as dignity and protection against unfair discrimination in employment and they are entitled to protection and compensation in terms of occupational health and safety legislation[54]. However, temporary residents[55] are generally excluded from social security benefits but may receive pension or provident entitlements or any other benefits granted as part of their contract of employment.

2.137 It may be that section 3(1)(d) of the 2001 Act (Act 63 of 2001) should be revisited in terms of section 27 of the Constitution but the fact that it applies only to temporary residents in respect of unemployment insurance is significant. The *Larbi-Odam* case[56]distinguished between permanent and temporary residents and the *Khosa* case[57]held that permanent residents were entitled to child support grants, care dependency grants and old-age grants in line with international norms and standards.

2.138 Unemployment insurance, as the name suggests, is not welfare per se but rather an insurance scheme that protects those who have made contributions to the Fund. As section 3(1)(d) of the 2001 Act (Act 63 of 2001) only excludes temporary residents from benefits in

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52 Section 3(1)(d) of Act 63 of 2001.

53 South Africa is one of the only countries in the region that has provision for unemployment insurance.

54 Vic Esselaar and Christoph Garbers 'Migrant Workers' in Strydom et al *Essential Social Security Law* (Juta) 2ed (2006) at 300-301.

55 Ibid. A temporary resident is a foreign worker, who is not a permanent resident, and who must be in possession of a temporary residence permit. See further the judgments in *Larbi-Odam & others v MEC for Education (North West Province & another* 1998 (1) SA 745 (CC) and *Khosa & others v Minister of Social Development & others; Mahlaule & another v Minister of Social Development & others* 2004 (6) SA 505 (CC). In the *Khosa* case it was held by the majority that the exclusion of permanent residents from the welfare scheme, particularly with respect of child grants, was not a reasonable means to achieve the realization of the right to social security in Section 27 of the Constitution and that the exclusion of permanent residents was discriminatory and unfair. The *Larbi-Odam* case acknowledged that citizenship was analogous to a listed ground in section 9 of the Constitution but distinguished between permanent and temporary residents.

56 See footnote 55 above.

57 Ibid.

terms of the Unemployment Insurance Act 63 of 2001, it is unlikely that this provision will be deemed to be unconstitutional. However, a review of this section may be necessary in terms of the *Khosa* case[58]. This section is therefore recommended for partial review to the extent that it may be inconsistent with the Constitution and international law.

iv. Section 27 of Act 63 of 2001

2.139 This section, particularly in sub-sections 27(1)(a) and 27(2), still reflects the adoption process as contemplated in the Child Care Act 74 of 1983. The 1983 Act (Act 74 of 1983) was wholly repealed by the Children's Act 38 of 2005[59]. It is therefore necessary to amend in particular these sub-sections of section 27 to reflect the fact that the Children's Act 38 of 2005 is now the principal Act and Act 74 of 1983 has been repealed.

2.140 It is also noteworthy that Section 27(1) provides that only one contributor of the adopting parties is entitled to adoption benefits.[60] This reference to 'only one contributor' was inserted to correct the discriminatory reference to 'the payment of adoption benefits to female contributors' as found in the Unemployment Insurance Amendment Act 36 of 1987[61]. It is not clear whether the term "adopting parties" in section 27(1) includes same-sex couples.

2.141 It is recommended that this section be reviewed to the extent that it does not reflect the changes brought by Act 38 of 2005 and Act 17 of 2006.[62]

v. Schedule 1 of Act 63 of 2001

2.142 The purpose of schedule 1 was to ensure smooth transition from the Unemployment Insurance Act 30 of 1966 as amended to the Unemployment Insurance Act 63 of 2001. The provision was therefore enacted for a specific purpose. The 1966 Act was to be operative until a new board was established and all pending claims, appeals, investigations and prosecutions were completed.

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58 Ibid.

59 See schedule 4 of Act 38 of 2005.

60 See Act 36 of 1987 at para 1.9.

61 Ibid.

62 Section 231 of Act 38 of 2005 lists persons who may adopt a child and this includes same-sex couples.

2.143 If the purpose has been achieved then the provision is spent and, it has become redundant and may be repealed.

(d) Compensation for Occupational Injuries and Diseases Act 130 of 1993

2.144 The Compensation for Occupational Injuries and Diseases Amendment Act 61 of 1997 amends the Compensation for Occupational Injuries and Diseases Act 130 of 1993 to allow the Director-General to delegate his or her powers and to alter the commissioner's functions. The Act provides for the payment of compensation to assessor's dependants.

2.145 The assessment of employers is further regulated by this amending Act. The Compensation for Occupational Injuries and Disease Amendment Act, 1997 also provides for the payment of interest on overdue assessments and regulates objections and appeals against decisions of the Director-General. The Act requires that the Minister consult with the Compensation Board before he or she makes regulations.

2.146 Section 1 of the 1993 Act (Act 130 of 1993) as amended by section 1 of the Compensation for Occupational Injuries and Diseases Act 61 of 1997 in its definition of a "dependant of an employee" may discriminate between civil marriages and indigenous marriages particularly in respect of polygamy. The section refers to a dependant as 'a widow or widower who at the time of employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage'.

2.147 In terms of the Recognition of Customary Marriages Act 120 of 1998 it is possible to have more than one spouse but this is not permitted in respect of a civil marriage. This may raise a constitutional challenge as polygamy is clearly recognised in terms of indigenous law and the Recognition of Customary Marriages Act 120 of 1998. A review of the definition of "dependant of an employee" in section 1 of the 1993 Act may be appropriate although it is generally accepted that if either the husband or the wife was a party to a subsisting civil marriage polygamy is not permitted.

2.148 Section 1 further defines a 'dependant of an employee' in parts (d)[63] and (e)[64] of the

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63 The definition of a child in part (d) of the definition is 'a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, step-child, or adopted child and a child born out of wedlock'.

definition and requires that such a person must be, in the opinion of the Director-General, wholly or partially dependant on the employee at the time of the employee's death. This definition should be read together with section 54 of the 1993 Act.

2.149 Section 54 refers to the amount of compensation due to a dependant in the event of the death of the employee. In section 54(1)(c)(iv) it is clear that the age of the "child" is not capped at 18 years where the "child" is unable to earn an income owing to a mental or physical disability or where the "child" is still undergoing secondary or tertiary education and where it could be reasonably expected that the employee would have contributed to the maintenance of the "child".

2.150 It is submitted that the fact that the age of the "child" in these definitions is not in line with other statutes is not necessarily material and nor does it mean that the legislation is discriminatory and unconstitutional. There is evidence in other areas of our law that the age of a "child" may vary depending on the purpose of a particular statute.[65]

2.151 Section 1 (definition of 'employee') excludes at (v) "a domestic employee employed as such in a private household".[66] It is submitted that although domestic workers are regarded as employees in the Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act 75 of 1997 there are public policy reasons for the exclusion from the Compensation for Occupational Injuries and Diseases Act 130 of 1993. This exclusion is therefore not necessarily discriminatory or unfair but a review of the exclusion may be warranted.

2.152 Other definitions that were amended or substituted by the Amendment Act 61 of 1997 include the definitions of "accident"; "commissioner"; "compensation"; "disablement"; "earnings"; "Minister"; National Revenue Fund"; "occupational disease"; "permanent disablement"; "presiding officer"; "temporary partial disablement"; and "temporary total disablement".

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64 The definition in part (e) states 'a child over the age of 18 years of the employee and his or her spouse, and a parent or any person who in the opinion of the Director-General was acting in the place of a parent, a brother, a sister, a half brother or half-sister, a grandparent or a grandchild of the employee'.

65 In family law, criminal law and labour law the age of a "child" may vary depending on the circumstances.

66 Note that in section 84 of the 1993 Act (Act 130 of 1993) there is no provision for employers of domestic workers in private households to be exempt from assessment in favour of the Compensation Fund.

(e) Occupational Health and Safety Act 85 of 1993

2.153 The Occupational Health and Safety Amendment Act 181 of 1993 amended the Occupational Health and Safety Act 85 of 1993, by substituting s 4 (1) (f) and (g) and s15, in order to regulate the constitution of the Advisory Council for Occupational Health and Safety and to regulate the duty not to interfere with or misuse things respectively. Sections 4 and 5 amended s17 and s18 to regulate the duty not to interfere with or damage things as well as regulating the appointment and functions of health and safety representatives.

2.154 This Act also amends the Occupational Health and Safety Act, 1993 by substituting s23 and s26 to further regulate the prohibition on victimization. This Act provides that an employee must be informed of an occupational disease which he has contracted. In section 26 of the 1993 Act (Act 85 of 1993) victimization is forbidden and 'no employer may dismiss an employee, or reduce his rate of remuneration, or alter the terms or conditions of employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee has given information to the Minister or to any other person charged with the administration of a provision of this Act' etc[67] or 'by reason of the information that the employer has obtained regarding the results contemplated in section 12(2) or by reason of a report made to the employer in terms of section 25'.[68]

2.155 There is no reference in this section to the Protected Disclosures Act 26 of 2000 which protects employees against unfair dismissal or an occupational detriment other than dismissal for a disclosure of information permitted in terms of Act 26 of 2000. The Labour Relations Act 66 of 1995 provides for protection to so called whistle blowers against unfair labour practices and unfair dismissal in terms of the Protected Disclosures Act 26 of 2000. It may be that the Protected Disclosures Act 26 of 2000 together with the protection afforded to employees in sections 186(2)(d) and 187(1)(h) of the Labour Relations Act 66 of 1995 could be used in conjunction with section 26 of the Occupational Health and Safety Act 85 of 1993.

5. Subordinate legislation recommended for amendment

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67 Section 26(1) of the 1993 Act (Act 85 of 1993).

68 Section 26(2) of the 1993 Act (Act 85 of 1993).

(a) Code of Good Practice on the Handling of Sexual Harassment Cases

2.156 This code was originally issued under General Notice 1367 (Government Gazette 19049) of 17 July 1998, in terms of section 203(2) of the Labour Relations Act 66 of 1995. The code has since been redrafted and was subsequently issued in terms of section 54(1)(b) of the Employment Equity Act 55 of 1998 by General Notice 1357 of 2005, Government Gazette 27865 of 4 August 2005. The title of the redrafted code is given as 'Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace'. This is not an entirely accurate description as it was redrafted rather than simply amended.

2.157 Nowhere, however, is there a notice repealing the previous code issued under the LRA. It was not the intention that there should be two codes on sexual harassment. In terms of the new code, sexual harassment is stated as being a form of unfair discrimination. While the EEA is the main Act dealing with unfair discrimination, nevertheless section 187(1)(f) of the LRA deals with unfair discrimination on the basis of sex within the context of a dismissal. Thus the code should be issued in terms of both statutes.

2.158 It is therefore recommended that a notice should be issued repealing the former code issued in terms of the LRA and stating that the redrafted code issued under the EEA is also issued in terms of section 203(2) of the LRA[69].

(b) Code of Good Practice on the Employment of People with Disabilities (published in Government Gazette No. 23702 dated 19 August 2005)

2.159 Item 7.5.2 of the Code prohibits harassment on the ground of disability. The item states that any alleged harassment should be handled by the employer in terms of the guidelines contained in the Code on the Handling of Sexual Harassment Cases published in terms of the Labour Relations Act of 1995. As stated above, that code is no longer effective and has been replaced by the redrafted code issued in 2005. *This item needs to be updated to reflect the change.*

(c) Code of Good Practice in the Integration of Employment Equity into Human Resource Policies and Practices (HR Code) (published in Government Gazette No. 27866

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[69] NEDLAC issues a code under section 203(2) of the LRA, while the Minister issues a code under section 54 of the EEA.

dated 4 August 2005)

2.160 Item 9.3.3 of the HR Code provides in respect of *Induction* that:

> *'Where an employee from a designated group requests reasonable accommodation during the probationary period, the employer should, as much as possible, provide it. Failure to provide reasonable accommodation may be construed as unfair discrimination.'*

2.161 'Reasonable accommodation' is not defined in the Code, but Item 8(1)(*d*) of Schedule 8 (Code of Good Practice Dismissal)(LRA) provides that:

> *'During the probationary period, the employee's performance should be assessed. An employer should give an employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render a satisfactory service.'*

2.162 Item 9.3.3 creates the impression that only employees from a designated group may ask for reasonable accommodation. This is inconsistent with Schedule 8 (LRA) which is not reserved for designated employees.

2.163 Similarly Item 9.4.3 of the HR Code provides that:

> ***'**Mentoring and Development - An employer may consider mentoring, coaching and training interventions to support employees from designated groups during the probationary period.'*

2.164 This once again creates the impression that the mentoring and development is exclusive. It is suggested that these items should read as follows:

> *9.3.3 Where an employee, <u>including an employee from a designated group</u>, requests reasonable accommodation during the probationary period, the employer should, as much as possible, provide it. Failure to provide reasonable accommodation may be construed as unfair discrimination.*

9.4.3 Mentoring and Development - An employer may consider mentoring, coaching and training interventions to support employees, including those from designated groups, during the probationary period.

2.165 This will ensure that reasonable accommodation is not seen as exclusive to employees from designated groups, but will create an awareness for the needs of employees from designated employees.

2.166 Item 17.3.6 of the HR Code provides that:

'An employer may not collect personal data regarding an employee's sex life, political, religious or other beliefs, or criminal convictions, except in exceptional circumstances where such information may be directly relevant to an employment decision.'

2.167 The purpose of s 6 of the EEA is to avoid sex, sexual orientation, belief, and political opinion etc playing a role in an employment decision and it is not clear under which 'exceptional circumstances' such information would be 'directly relevant to an employment decision'. Sections 6(2)(*a*) and (*b*) provide under which circumstances apparent unfair discrimination will not be regarded as unfair discrimination namely, when taking affirmative action measures or when it relates to the inherent requirements of the job. It is suggested that these ought to be the 'exceptional circumstances' justifying the collection of this data.

2.168 On the other hand, the reference to the collection of data concerning criminal convictions is in order in circumstances where the employer is under a legislative duty to collect such information. An example is s 45 of the Sexual Offences Act of 2007 which imposes a duty on an employer to check whether a person it intends to employ is listed on the Sexual Offences Register.

2.169 It is suggested that this item should read as follows:

An employer may only collect personal data regarding an employee in as far as the data is necessary for the purpose of affirmative action measures or relates to the inherent requirements of the job. Personal data regarding criminal convictions may only be collected in exceptional circumstances where such information may be directly relevant to an employment decision.

Annexure A

EMPLOYMENT LAWS GENERAL AMENDMENT AND REPEAL BILL

GENERAL EXPLANATORY NOTE:

[ ] Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

_____ Unless otherwise indicted words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and repeal certain laws of the Republic pertaining to employment legislation containing discriminatory or obsolete provisions

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

Repeal of laws

1. The laws specified in Schedule 1 are hereby repealed.

Amendment of laws

2. The laws specified in Schedule 2 are hereby amended to the extent set out in the fourth column of the Schedule.

Short title and commencement

3. This Act is called Employment Laws Amendment and Repeal Act, and comes into operation on a date determined by the President by proclamation in the Gazette.

SCHEDULE 1

Item No.	No. and year of law	Title and subject
1.	58 of 1981	Second Wage Amendment Act 58 of 1981
2.	88 of 1980	Black Labour (Transfer of Functions) Act 88 of 1980
3.	147 of 1993	Agricultural Labour Act 147 of 1993
4.	50 of 1994	Agricultural Labour Amendment Act 50 of 1994
5.	27 of 1967	Unemployment Insurance Amendment Act 27 of 1967
6.	87 of 1968	Unemployment Insurance Amendment Act 87 of 1968
7.	61 of 1971	Unemployment Insurance Amendment Act 61 of 1971
8.	12 of 1974	Unemployment Insurance Amendment Act 12 of 1974
9.	51 of 1975	Unemployment Insurance Amendment Act 51 of 1975
10.	108 of 1976	Second Unemployment Insurance Amendment Act 108 of 1976
11.	29 of 1977	Unemployment Insurance Amendment Act 29 of 1977
12.	118 of 1977	Second Unemployment Insurance Amendment Act 118 of 1977
13.	6 of 1978	Unemployment Insurance Amendment Act 6 of 1978
14.	97 of 1979	Second Unemployment Insurance Amendment Act 97 of 1979
15.	113 of 1981	Second Unemployment Insurance Amendment Act 113 of 1981
16.	9 of 1979	Unemployment Insurance Amendment Act 9 of 1979
17.	1 of 1981	Unemployment Insurance Amendment Act 1 of 1981
18.	1 of 1982	Unemployment Insurance Amendment Act 1 of 1982
19.	89 of 1982	Unemployment Insurance Amendment Act 89 of 1982
20.	27 of 1986	Unemployment Insurance Amendment Act 27 of 1986
21.	30 of 1986	Unemployment Insurance Amendment Act 30 of 1986
22.	36 of 1987	Unemployment Insurance Amendment Act 36 of 1987
23.	102 of 1987	Unemployment Insurance Second Amendment Act 102 of 1987
24.	29 of 1988	Unemployment Insurance Amendment Act 29 of 1988
25.	130 of 1992	Unemployment Insurance Amendment Act 130 of 1992

SCHEDULE 2

Item No.	No. and year of law	Title and subject	Extent of amendment
1.	63 of 2001	Unemployment Insurance Act 63 of 2001	1. Section 27 of the Act is hereby amended- (a) by the substitution for subsection (1)(a) of the following subsection: "(1)(a) the child has been adopted in terms of the Children's Act, 2005 (Act 38 of 2005);" (b) by the substitution in the same section for subsection (2) of the following subsection : "(2) The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the Children's Act, 2005 (Act 38 of 2005)."
2.	75 of 1997	Basic Conditions of Employment Act 75 of 1997	1. Section 1 of the Act is hereby amended by the substitution for subparagraph (a) of the definition of 'employment law' of the following subparagraph: "(a) The Unemployment Insurance Act, 2001 (Act 63 of 2001);". 2. Section 50 is hereby amended by the substitution for subsection 6 of the following subsection: "(6) If a determination in terms of subsection (1) concerns the employment of children, the Minister must consult with the Minister for Social Development before making the determination." 3. Section 59 is hereby amended by the substitution for subsection (2)(f) of the following subsection:

			"(f) and the Minister for Social Development, on any matter concerning the employment of children, including the review of section 43;". 4. Section 65(1) is hereby amended by the substitution for subsection (b) of the following subsection: "(b) any premises used for training in terms of the Skills Development Act, 1998 (Act 97 of 1998); or". 4. Section 65(1) is hereby amended by the substitution for subsection (c) of the following subsection: "(c) any private employment office registered under the Skills Development Act, 1998 (Act 97 of 1998); or".
3.	55 of 1998	Employment Equity Act 55 of 1998	1. Section 1 of the Act is hereby amended- (a) by the substitution for subparagraphs (a) and (c) respectively of the definition of 'employment law' of the following subparagraphs: "(a) The Unemployment Insurance Act, 2001 (Act 63 of 2001); (c) Skills Development Act, 1998 (Act 97 of 1998);" (b) by the deletion in the same section of subparagraph (b) of the definition of 'employment law'. 2. The Act is hereby amended by the substitution for section 12 of the following section 12: "12 Except where otherwise provided, this Chapter applies only to designated employers <u>and people from designated groups</u>."

4.	35 of 1994	National Economic, Development and Labour Council Act 35 of 1994	1. Section 1 of the Act is hereby amended by the substitution for the definition of 'organisations of community and development interests' of the following definition: "'organisations of community and development interests' means those non-governmental organisations identified by the Minister in The Presidency Performance Monitoring and Evaluation as well as Administration in terms of section 3 (5) as representing community interests relating to reconstruction and development;".

Annexure B

STATUTES ADMINISTERED BY THE DEPARTMENT OF LABOUR

No.	Name of Act, number and year
1.	Unemployment Insurance Amendment Act 27 of 1967
2.	Unemployment Insurance Amendment Act 87 of 1968
3.	Unemployment Insurance Amendment Act 61 of 1971
4.	Unemployment Insurance Amendment Act 12 of 1974
5.	Unemployment Insurance Amendment Act 51 of 1975
6.	Second Unemployment Insurance Amendment Act 108 of 1976
7.	Unemployment Insurance Amendment Act 29 of 1977
8.	Second Unemployment Insurance Amendment Act 118 of 1977
9.	Unemployment Insurance Amendment Act 6 of 1978
10.	Unemployment Insurance Amendment Act 9 of 1979
11.	Second Unemployment Insurance Amendment Act 97 of 1979
12.	Black Labour (Transfer of Functions) Act 88 of 1980
13.	Unemployment Insurance Amendment Act 1 of 1981
14.	Second Wage Amendment Act 58 of 1981
15.	Second Unemployment Insurance Amendment Act 113 of 1981
16.	Unemployment Insurance Amendment Act 1 of 1982
17.	Manpower Training Amendment Act 88 of 1982
18.	Second Unemployment Insurance Amendment Act 89 of 1982
19.	Manpower Training Amendment Act 1 of 1983
20.	Unemployment Insurance Amendment Act 27 of 1986
21.	Unemployment Insurance Second Amendment Act 30 of 1986
22.	Unemployment Insurance Amendment Act 36 of 1987
23.	Unemployment Insurance Second Amendment Act 102 of 1987
24.	Unemployment Insurance Amendment Act 29 of 1988
25.	Manpower Training Amendment Act 39 of 1990
26.	Unemployment Insurance Amendment Act 130 of 1992
27.	Occupational Health and Safety Act 85 of 1993
28.	Compensation for Occupational Injuries and Diseases Act 130 of 1993

No.	Name of Act, number and year
29.	Agricultural Labour Act 147 of 1993
30.	Occupational Health and Safety Amendment Act 181 of 1993
31.	National Economic, Development and Labour Council Act 35 of 1994
32.	Integration of Labour Laws Act 49 of 1994
33.	Agricultural Labour Amendment Act 50 of 1994
34.	Labour Relations Act 66 of 1995
35.	Labour Relations Amendment Act 42 of 1996
36.	Integration Measures in respect of Labour Laws, Amendment and Adjustments Act 68 of 1996
37.	Compensation for Occupational Injuries and Diseases Amendment Act 61 of 1997
38.	Basic Conditions of Employment Act 75 of 1997
39.	Employment Equity Act 55 of 1998
40.	Skills Development Act 97 of 1998
41.	Labour Relations Amendment Act 127 of 1998
42.	Unemployment Insurance Act 63 of 2001
43.	Basic Conditions of Employment Amendment Act 11 of 2002
44.	Labour Relations Amendment Act 12 of 2002
45.	Skills Development Amendment Act 31 of 2003
46.	Unemployment Insurance Amendment Act 32 of 2003
47.	Skills Development Levy Act
48.	Unemployment Contributions Act