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- (b) to promote and establish training and education schemes;
- (c) to establish and administer pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the council or their members; and
- (d) to conclude collective agreements to give effect to the matters mentioned in paragraphs (a) , (b) and (c) .

(2) \*The council may agree to the inclusion of any of the functions of a bargaining council referred to in section 28 (1) (a) , (b) , (c) , (e) , (h) , (i) and (j) of the Act as functions of the council.

(3) The council is only able to exercise these powers and perform these functions within its registered scope.

**4 Parties**

(1) The founding parties to the council are-

(a) the following employers' organisation(s)-

- (i) .....
- (ii) .....; and
- (iii) .....; and

(names)

(b) the following trade union(s)-

- (i) .....
- (ii) .....; and
- (iii) .....

(names)

(2) Any registered trade union or registered employers' organisation that has members that fall within the registered scope of the council may apply in writing to the council for admission as a party.

(3) The application must be accompanied by-

- (a) a certified copy of the applicant's registered constitution;
- (b) a certified copy of the applicant's certificate of registration;
- (c) details of the applicant's membership within the registered scope of the council, including, in the case of an employers' organisation, the number of employees that its members employ within the council's registered scope;
- (d) a statement of the reasons why the applicant ought to be admitted as a party to the council; and
- (e) any other information on which the applicant relies in support of the application.

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

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

**5 Appointment of representatives**

(1) \*The council consists of-

- (a) ..... representatives of the employers' organisations that are parties to the council, ... of whom represent(s) small and medium enterprises; and
- (b) ..... representatives of the trade unions that are parties to the council.

(2) **\*\*** The representatives will be allocated among the parties to the council as follows-

(a) employers' organisation(s)- number of representatives-

.....  
 .....  
 .....

(names)

(b) trade union(s)- number of representatives-

.....  
 .....  
 .....

(names)

(3) Subject to sub-clause (2) and to its own constitution, each party to the council may appoint-

- (a) its representatives to the council; and
- (b) an alternate for each of its representatives.

(4) (a) A representative or an alternate will hold office for 12 months and will be eligible for re-appointment at the end of that term.

(b) A representative or an alternate whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a representative until that representative's successor assumes office.

(5) Despite sub-clause (4)-

- (a) a party may withdraw any of its representatives or alternates after having given at least 21 days' notice in writing to the secretary;
- (b) a representative who, without good cause, is absent from three consecutive meetings of the council, is disqualified from continuing in that office.

(6) If the office of any representative or alternate becomes vacant, the party that appointed the representative or alternate may appoint another representative or alternate for the unexpired portion of the predecessor's term of office.

**6 Council meetings**

(1) The council must hold-

- (a) an annual general meeting in the month of ..... each year; and
- (b) an ordinary meeting at least once every ..... month (s).

(2) A special meeting of the council-

- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
- (b) must be called by the chairperson within 14 days of-
  - (i) receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... representatives; or

(ii) the adoption of a resolution by the council calling for a special meeting.

(3) At the annual general meeting the council must-

- (a) elect the additional members of the executive committee;
- (b) elect the chairperson and the deputy chairperson of the council;
- (c) appoint the members of the panel of conciliators referred to in clause 11 (1)  
(a) ;
- (d) appoint the members of the panel of arbitrators referred to in clause 11 (1)  
(b) ;
- (e) appoint the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the council;
- (f) consider the annual financial statements of the council and the auditor's report on those statements; and
- (g) consider and approve, with or without any amendments, the budget of the council for the next financial year as prepared in terms of clause 15 (10).

(4) \*The secretary must prepare a written notice of every council meeting stating the date, time and venue of the meeting and the business to be transacted, and must send the notice to each representative by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.

(5) At least half of the total number of employer representatives and half of the total number of employee representatives form a quorum and must be present before a meeting may begin or continue.

(6) If, at the time fixed for a meeting to begin or continue, and for 30 minutes after that time, there is no quorum present, the meeting must be adjourned to the same place at the same time on the corresponding day in the following week unless that day is a public holiday, in which case the meeting must be adjourned to the day immediately after that public holiday.

(7) A meeting that has been adjourned in terms of sub-clause (6) may proceed on the date to which it was adjourned with the representatives present at the time called for the meeting, regardless of whether or not notice has been given in terms of sub-clause (4) and whether or not a quorum is present.

(8) The secretary must cause minutes to be kept of the proceedings at council meetings.

(9) At every meeting of the council-

- (a) the secretary must read the minutes of the previous meeting, unless they were previously circulated; and
- (b) after the minutes have been confirmed, with or without any amendments, the chairperson must sign the minutes.

(10) A motion proposed at a meeting may not be considered unless it has been seconded. The chairperson may require a motion to be submitted in writing, in which case the chairperson must read the motion to the meeting.

(11) \*Unless this constitution provides otherwise, all motions must be decided by a majority of votes of those present and entitled to vote and voting must be by show of hands.

(12) Each representative has one vote on any matter before the council for its decision. However, if at the meeting the employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.

(13) If any question which the executive committee considers to be extremely urgent arises between meetings of the council, and it is possible to answer that question by a simple 'yes' or 'no',



the executive committee may direct the secretary to cause a vote of the representatives on the council to be taken by post. A proposal subjected to a postal vote may be adopted only if it is supported by at least two-thirds of the total number of representatives who are entitled to vote.

(14) The executive committee may adopt general rules of procedure for its meetings and for the meetings of the council and its other committees. However, in the event of any conflict between those rules and the provisions of this constitution, the provisions of this constitution will prevail.

## 7 Executive committee

(1) The council will have an executive committee that consists of the chairperson and the deputy chairperson of the council, who are members by virtue of their respective offices, and ..... additional members elected in accordance with sub-clause (3).

(2) \* Subject to the directions and control of the council, the executive committee may exercise and perform the powers, functions and duties of the council relating to the supervision and control of the everyday management and administration of the council. In addition, the executive committee may-

- (a) investigate and report to the council on any matter connected with the sector in respect of which the council is registered;
- (b) do anything necessary to give effect to decisions of the council;
- (c) monitor and enforce collective agreements concluded in the council; and
- (d) exercise and perform any power, function and duty that is conferred or imposed on the executive committee by or in terms of this constitution or that is delegated by the council to the executive committee. However, the council may not delegate to the executive committee the powers, functions and duties contemplated in clauses 4 (4) and (5), 6 (3), 16 and 17 and sub-clauses (3) and (6) of this clause, and the power of the council to delegate.

(3) \*\* At the annual general meeting, the council must elect the additional members of the executive committee and an alternate for each of them. The additional members and their alternates must be representatives in the council, and half of the additional members, as well as their alternates, must be nominated by the employer representatives in the council, whilst the other half of the additional members, as well as their alternates, must be nominated by the employee representatives in the council.

(4) (a) An additional member of the executive committee will hold office for 12 months and will be eligible for re-election at the end of that term.

(b) An additional member of the executive committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the executive committee until that member's successor assumes office.

(5) An additional member of the executive committee-

- (a) may resign from the committee at any time after having given at least 21 days' notice in writing to the secretary;
- (b) must vacate office immediately-
  - (i) in the case of resignation, when the resignation takes effect; or
  - (ii) upon ceasing to be a representative in the council.

(6) (a) If the seat of an additional member of the executive committee becomes vacant, the council must fill the vacancy from the number of the candidates nominated for that purpose by-

- (i) the employer representatives in the council, if that seat had been held by an additional member representing the employers; or
- (ii) the employee representatives in the council, if that seat had been held by an additional member representing employees.

(b) A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.

(7) The executive committee must hold an ordinary meeting at least once every.....

(8) A special meeting of the executive committee-

- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
- (b) must be called by the chairperson within ..... days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... members of the executive committee.

(9) \*\*\* The secretary must prepare a written notice of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the committee by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.

(10) At least half of the members of the executive committee representing employers and half of the members of that committee representing employees form a quorum and must be present before a meeting may begin or continue.

(11) Each member of the executive committee has one vote on any matter before the committee for its decision. However, if at the meeting the members representing employers and those representing employees are not equal in number, the side that is in the majority must withdraw so many of its members from voting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.

(12) In relation to any matter before the executive committee for its decision, the decision of a majority of those members of the executive committee who are present at the meeting and entitled to vote, will be the decision of the committee.

## 8 Other committees

(1) \* The council may appoint other committees to perform any of its functions, including investigating and reporting to the council on any matter, but excluding the non-delegateable functions referred to in clause 7 (2) (d) .

(2) (a) Half of the members of any committee so appointed must be nominated by the employer representatives, and the other half by the employee representatives.

(b) Subject to paragraph (a) , committee members must be-

- (i) employers or employees within the registered scope of the council;
- (ii) office-bearers or officials of the parties to the council.

(3) A majority of the total number of the members of a committee forms a quorum and must be present before the meeting may begin or continue.

(4) The provisions of clause 7 relating to the calling and conduct of meetings, read with the changes required by the context, apply to meetings of any committee contemplated in this clause.

## 9 Chairperson and deputy chairperson

(1) (a) At the annual general meeting, the council must elect a chairperson and deputy chairperson.

(b) Subject to sub-clauses (3) and (6) (a) , the serving chairperson of the council at the time of the annual general meeting will be the chairperson of the meeting and preside over the election of the next chairperson.

(2) The chairperson of the meeting must call for nominations for the office of chairperson. A person will have been nominated if proposed by one and seconded by another representative in the council.

(3) If the serving chairperson is nominated for another term, the council, by a show of hands, must elect a representative in the council to act as chairperson of the meeting during the election

of the next chairperson.

(4) (a) If only one candidate is nominated, the candidate will be deemed to have been elected the new chairperson unopposed, and must be declared by the chairperson of the meeting to have been so elected.

(b) If two or more candidates are nominated, the chairperson of the meeting must conduct a vote by ballot, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected the new chairperson.

(5) If an equal number of votes are cast for two or more candidates, and no other candidate has drawn a higher number of votes than those candidates, the chairperson of the meeting will cause to be determined by lot which one of those candidates is to become the new chairperson.

(6) (a) Upon having been declared elected, the new chairperson must preside over the meeting and must call for nominations for the office of deputy chairperson.

(b) If the newly-elected chairperson is an employer representative, only employee representatives may be nominated for deputy chairperson, and *vice versa* .

(c) The provisions of sub-clauses (2), (4) and (5), read with the changes required by the context, apply to the election of the deputy chairperson.

(7) (a) The chairperson and deputy chairperson hold their respective offices until the next election of the chairperson or deputy chairperson (as the case may be) takes place, or, if the chairperson or deputy chairperson ceases to be a representative in the council on any date before that election, until that date. Each of them will be eligible for re-election if still a representative when their respective terms as chairperson and deputy chairperson expire.

(b) If the office of chairperson or deputy chairperson becomes vacant before the next election of the chairperson or deputy chairperson (as the case may be) the executive committee must elect a person as chairperson or deputy chairperson (as the case may be) to hold office until that next election.

(c) An election contemplated in paragraph (b) must be held in accordance with sub-clauses (2), (4), (5) and (6), read with the changes required by the context.

(8) The chairperson must preside over the meetings of the council, and must-

- (a) sign the minutes of council meetings after those minutes have been confirmed;
- (b) sign cheques drawn on the council's bank account; and
- (c) perform any other functions and duties entrusted to the chairperson by this constitution as well as those that are generally associated with the office of a chairperson.

(9) The deputy-chairperson must preside over meetings of the council and perform the functions and duties of the chairperson whenever the chairperson is absent or for any reason unable to act or to perform those functions and duties.

(10) If both the chairperson and deputy chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the council, by a show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties.

(11) A chairperson or a deputy chairperson who has not been elected from amongst the representatives in the council is not entitled to vote on any matter before the council or the executive committee.

(12) A chairperson or a deputy chairperson may be removed from office by the council for serious neglect of duty, serious misconduct or due to incapacity.

## 10 Officials and employees

(1) The council must appoint a secretary who will be responsible for the administrative and secretarial work arising from the functioning of the council and for performing the functions and duties imposed on the secretary by or in terms of the Act and this constitution. That work and

those duties and functions include-

- (a) to keep and maintain the books and records of account that the council may direct in order fully to reflect the financial transactions and state of affairs of the council;
- (b) to attend all meetings of the council and its executive committee and record the minutes of the proceedings at those meetings;
- (c) to conduct the correspondence of the council, keeping originals of letters received and copies of letters sent;
- (d) at each meeting of the council, to read significant correspondence that has taken place since the previous meeting;
- (e) to bank all moneys received on behalf of the council within three days of receipt;
- (f) whenever required by the council, but at least once in every quarter of the financial year, to submit to the council statements of its financial affairs and position;
- (g) to prepare, for submission at the annual general meeting of the council, a budget for the next financial year and an annual report summarising the key activities of the council; and
- (h) to countersign cheques drawn on the council's bank account.

(2) The secretary must-

- (a) retain a copy of the confirmed and signed minutes of every meeting of the council, the executive committee and any other committee of the council in safe custody at the office of the council for a period of at least three years from the date those minutes were confirmed;
- (b) retain every financial statement referred to in sub-clause (1) (f) , and all vouchers and records relating to statements of that nature, for at least three years from the date of the statement; and
- (c) sign the certificates of appointment to be issued to the persons appointed by the Minister as designated agents of the council.

(3) The council may appoint any additional officials and any number of employees that may be necessary to assist the secretary in performing the functions and duties of that office.

(4) The council may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the council.

(5) Where there are two or more suitable candidates for appointment to the position of secretary or a designated agent, the council must elect the secretary or designated agent by conducting a ballot of the representatives present at the meeting at which the appointment is to be made, with the candidate receiving the highest number of votes being appointed.

(6) The secretary, designated agents and other officials and employees of the council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

## 11 Panels of conciliators and arbitrators

(1) At its annual general meeting, the council must appoint-

- (a) a panel of conciliators, consisting of ..... members, for the purpose of conciliating disputes; and
- (b) a panel of arbitrators, consisting of ..... members, for the purpose of determining disputes.

(2) The council may remove a member of the panel of conciliators or arbitrators from office-

- (a) for serious misconduct;

- (b) due to incapacity; or
- (c) if at least one half of the employer representatives in the council and at least one half of the employee representatives in the council have voted in favour of the removal of that member from office.

(3) If for any reason there is a vacancy in the panel of conciliators or the panel of arbitrators, the council may appoint a new member to the relevant panel for the unexpired portion of the predecessor's term of office.

(4) Unless the parties to a dispute have agreed on a member of the panel of conciliators or the panel of arbitrators to conciliate or arbitrate their dispute, the secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute.

(5) (a) A person may be appointed to both the panel of conciliators and the panel of arbitrators.

(b) A member of the panel of conciliators or the panel of arbitrators whose term of office expires, will be eligible for re-appointment to the relevant panel at the end of that term.

## 12 Disputes referred to council for conciliation

(1) \*In this clause, a dispute means any dispute between any of the parties to the council that may be referred to a council in terms of the Act except a dispute contemplated in clause 14.

(2) For the purposes of sub-clause (1), a party to the council includes the members of any party to the council.

(3) Any party to a dispute may refer the dispute in writing to the council.

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

(5) If satisfied that the referral has been served in compliance with sub-clause (4), the secretary-

- (a) may, if there is a collective agreement binding on the parties to the dispute that provides for an alternative procedure for resolving disputes, refer the dispute for resolution in terms of that procedure; or
- (b) must appoint a member of the panel of conciliators to attempt to resolve the dispute through conciliation.

(6) Nothing in this clause prevents an officer or an employee of the council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of sub-clause (5) (b) .

## 13 Disputes referred to council for arbitration

(1) For the purpose of this clause, a dispute means any dispute between any of the parties to the council that-

- (a) has been referred to a conciliator in terms of clause 12, but remains unresolved, and-
  - (i) \* the Act requires that the dispute be arbitrated and any party to the dispute has requested that the dispute be resolved through arbitration; or
  - (ii) all the parties to the dispute consent to arbitration; or
- (b) it is a dispute about the interpretation or application of the provisions of this constitution.

(2) Any party to a dispute may request that the dispute be resolved through arbitration.

(3) The secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

(4) The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial

merits of the dispute with the minimum of legal formalities.

(5) The arbitration proceedings must be conducted in accordance with the provisions of sections 138 and 142 and, if applicable, sections 139, 140 and 141, of the Act, read with the changes required by the context.

#### **14 Procedure for negotiation of collective agreements**

(1) Any party to the council may introduce proposals for the conclusion of a collective agreement in the council.

(2) The proposals must be submitted to the secretary in writing and must identify the other parties to the proposed agreement.

(3) Within seven days of submission of the proposals, the secretary must serve copies of the proposals on the other parties to the council.

(4) Within 21 days of submission of the proposals, the chairperson must call a special meeting of the executive committee to consider the proposals and decide on a process for negotiating the proposals, including-

- (a) the introduction of counter-proposals;
- (b) whether the negotiations should be conducted by the council, the executive committee or any other committee of the council;
- (c) the appointment of a conciliator from the panel of conciliators to facilitate the negotiations; and
- (d) the timetable for the negotiations.

(5) If no negotiation process is agreed-

- (a) the secretary must appoint a conciliator from the panel of conciliators to facilitate negotiations and the conclusion of a collective agreement;
- (b) the council must meet at least twice within 30 days of the meeting of the executive committee to negotiate on the proposals and any counter-proposals, unless a collective agreement has been concluded;
- (c) the conciliator must facilitate the negotiations at those meetings and the conclusion of a collective agreement.

(6) If no collective agreement is concluded in the course of a process or procedure contemplated in this clause,-

- (a) the parties to the council may-
  - (i) agree to refer the dispute to arbitration; or
  - (ii) resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or
- (b) Any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the employers and employees engaged in that service be resolved through arbitration.

(7) In the circumstances contemplated in sub-clause (6) (a) (i) or (b) , the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

(8) The provisions of clause 13 (4) and (5) will apply to arbitration proceedings conducted in terms of this clause.

(9) (a) During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.

(b) If any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party-

- (i) if they participate in a strike, will forfeit the protection they would have enjoyed

in terms of section 67 of the Act;

- (ii) if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of section 67 of the Act.

## 15 Finances

(1) The council may raise funds by charging a levy on employees and employers within the registered scope of the council.

(2) The council must open and maintain an account in its name with a bank of its choice that is registered in the Republic, and-

- (a) deposit all moneys it receives in that account within three days of receipt; and
- (b) pay the expenses of and make all payments on behalf of the council by cheques drawn on that account.

(3) The council may invest any surplus funds not immediately required for current expenditure or contingencies, in-

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
- (b) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 ( Act 66 of 1975 );
- (c) a registered unit trust;
- (d) any other manner approved by the registrar.

(4) All payments from the council's funds must be-

- (a) approved by the council; and
- (b) made by cheques drawn on the council's bank account and signed by the chairperson or deputy-chairperson and counter-signed by the secretary. However, the council, by special resolution, may authorise any representative in the council, official or employee of the council to sign or counter-sign cheques drawn on the council's bank account in the event of both the chairperson and the deputy chairperson or the secretary not being readily available for that purpose.

(5) (a) Despite sub-clause (4), the council may maintain a petty cash account, out of which the secretary may make cash payments not exceeding R..... at any one occasion.

(b) Funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by subclause (4).

(c) Except with the approval of the council, cheques drawn to transfer funds to petty cash may not exceed R..... per month in aggregate.

(d) The council may determine the form of the records to be kept for the petty cash account.

(6) At the end of each quarter of the financial year, the secretary must prepare a statement showing the income and expenditure of the council for that quarter, and another reflecting its assets, liabilities and financial position as at the end of that period.

(7) The financial year of the council begins on 1 ..... in each year and ends on ..... of the following year, except the first financial year, which begins on the day that the council is registered and ends on ..... .

(8) Not later than ..... after the end of the financial year, the secretary must prepare a statement of the council's financial activity in respect of that financial year, showing-

- (a) all moneys received for the council-
  - (i) in terms of any collective agreement published in terms of the Act; and
  - (ii) from any other sources;



- (b) expenditure incurred on behalf of the council, under the following heads-
  - (i) remuneration and allowances of officials and employees;
  - (ii) amounts paid to representatives and alternates in respect of their attendance at meetings, the travelling and subsistence expenses incurred by them, and the salary or wage deducted or not received by them due to their absence from work by reason of their involvement with the council;
  - (iii) remuneration and allowances of members of the panel of conciliators and arbitrators;
  - (iv) office accommodation;
  - (v) printing and stationery requirements; and
  - (vi) miscellaneous operating expenditure; and
- (c) the council's assets, liabilities and financial position as at the end of that financial year.

(9) (a) The annual financial statements must be signed by the secretary and counter-signed by the chairperson, and submitted to an auditor for auditing and preparing a report to the council.

(b) Certified copies of the audited statements and the auditor's report must be made available for inspection at the office of the council to members and representatives of the parties, who are entitled to make copies of those statements and the auditor's report.

(c) The secretary must send certified copies of the audited financial statements and the auditor's report to the registrar within 30 days of receipt thereof.

(10) Every year the secretary must prepare, for submission at the annual general meeting of the council, a budget for the council for the next financial year.

(11) At the annual general meeting the council must appoint an auditor to perform the audit of the council for the next financial year.

## 16 Winding-up

(1) At a special meeting called for that purpose, the council, by resolution adopted by a majority of the total number of representatives in the council, may decide to be wound up.

(2) Upon adoption of a resolution to wind-up, the secretary must take the necessary steps to ensure that-

- (a) application is immediately made to the Labour Court for an order giving effect to that resolution; and
- (b) the council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the council at the disposal and under the control of that liquidator.

(3) Each party to the council remains liable for any of its unpaid liabilities to the council as at the adoption of a resolution to wind-up the council.

(4) If all the liabilities of the council have been discharged, the council must transfer any remaining assets to-

- (a) a bargaining council within the same or a similar sector, that has been agreed upon at the special meeting referred to in sub-clause (1);
- (b) the Commission, if-
  - (i) there is no bargaining council within the same or a similar sector; or
  - (ii) the parties to the council fail to agree on a bargaining council that is to receive the remaining assets.



**17 Changing constitution**

- (1) The council may change this constitution at any time-
  - (a) by a resolution adopted by unanimous vote of all the representatives in the council on a motion to amend tabled without prior notice; or
  - (b) by a resolution adopted by at least two-thirds of all the representatives in the council after at least-
    - (i) one month's notice of that motion to amend had been given to the secretary; and
    - (ii) two weeks' notice of that motion had been given to all the other representatives.

(2) Any amendment to this constitution becomes effective after the resolution effecting that amendment has been certified by the registrar in terms of section 57 (3) of the Act.

**18 Necessary first steps**

(1) With a view to making the council operative and functional without delay, the provisions contained in the Annexure to this constitution will apply and must be read as one with this constitution until the requirements and procedures contemplated in those provisions have been complied with.

(2) Any act performed in compliance with the provisions contained in the Annexure will be deemed to have been performed in terms of and in accordance with this constitution.

**19 Definitions**

In this constitution, any expression that is defined in the Act has that meaning and unless the context otherwise indicates-

'**chairperson**' means the chairperson of the council who, by virtue of that office, is also the chairperson of the executive committee

'**deputy chairperson**' means the deputy chairperson of the council who, by virtue of that office, is also the deputy chairperson of the executive committee;

'**executive committee**' means the executive committee of the council; contemplated in clause 7;

'**Minister**' means the Minister of Labour;

'**secretary**' means the secretary of the council; and

'**the Act**' means the Labour Relations Act, 1995 ( Act 66 of 1995 ).

**Annexure**

**Necessary first steps to be followed by council**

1. \* At the first meeting of the council, which will be held
  - .....
  - .....
  - .....
  - (a) the council, by a show of hands, must select a suitable person to act as chairperson of that meeting, subject to paragraph (c) , as well as another to keep the minutes of the meeting;
  - (b) the council must elect the chairperson and the deputy chairperson and the additional members of the executive committee in the manner set out in clauses 9 and 7 respectively, read with the changes required by the context;
  - (c) the newly-elected chairperson of the council must take over the chair at that meeting;
  - (d) the council must appoint the officials contemplated in clause 6 (3) (c) , (d) and (e) ; and

- (e) the council must appoint an auditor to perform the audit of the council in respect of its first financial year.
2. The secretary, in the manner contemplated in clause 10 (1) (g) , must as soon as possible prepare, for submission at the next ordinary meeting of the council, a budget for the council for its first financial year.

**[NOTE: According to the above model constitution, the council's certificate of registration is, upon receipt, to be attached to its constitution (see clause 2). If not so attached, the constitution of a council following the model will be incomplete.]**

### Schedule 10 POWERS OF DESIGNATED AGENT OF BARGAINING COUNCIL (Section 33)

[Schedule 10 added by GN R1865 of 15 November 1996 and substituted by s. 57 of Act 12 of 2002.]

(1) A designated agent may, without warrant or notice at any reasonable time, enter any *workplace* or any other place where an employer carries on business or keeps employment records, that is not a home, in order to monitor or enforce compliance with a *collective agreement* concluded in the *bargaining council* .

(2) A designated agent may only enter a home or any place other than a place referred to in subitem (1)-

- (a) with the consent of the owner or occupier; or
- (b) if authorised to do so by the Labour Court in terms of subitem (3);

(3) The Labour Court may issue an authorisation contemplated in subitem (2) (b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place, in order to monitor or enforce compliance with a *collective agreement* concluded in the *bargaining council* .

(4) If it is practicable to do so, the employer and a *trade union* representative must be notified that the designated agent is present at a *workplace* and of the reason for the designated agent's presence.

(5) In order to monitor or enforce compliance with a *collective agreement* a designated agent may-

- (a) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a *collective agreement* relates, and require that disclosure to be under oath or affirmation;
- (b) inspect and question a person about any record or document to which a *collective agreement* relates;
- (c) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
- (d) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
- (e) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in subitems (1) and (2);
- (f) question a person about any work performed; and
- (g) perform any other prescribed function necessary for monitoring or enforcing compliance with a *collective agreement* .

(6) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.

(7) A designated agent must-

- (a) produce on request a copy of the authorisation referred to in subitem (3);

- (b) provide a receipt for any record or document removed in terms of subitem (5) (e) ; and
- (c) return any removed record, document or item within a reasonable time.

(8) Any person who is questioned by a designated agent in terms of subitem (5) must answer all questions lawfully put to that person truthfully and to the best of that person's ability.

(9) An answer by any person to a question by a designated agent in terms of this item may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.

(10) Every employer and each *employee* must provide any facility and assistance at a *workplace* that is reasonably required by a designated agent to effectively perform the designated agent's functions.

(11) The *bargaining council* may apply to the Labour Court for an appropriate order against any person who-

- (a) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
- (b) refuses or fails to comply with any requirement of the designated agent in terms of this item; or
- (c) hinders the designated agent in the performance of the agent's functions in terms of this item.

(12) For the purposes of this Schedule, a *collective agreement* is deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of section 49 (1) of the *Basic Conditions of Employment Act* .

### LABOUR RELATIONS AMENDMENT ACT 42 OF 1996

[ASSENTED TO 4 SEPTEMBER 1996] [DATE OF COMMENCEMENT: 11 NOVEMBER 1996]

*(English text signed by the President)*

#### ACT

**To amend the Labour Relations Act, 1995, so as to limit the deduction of agency fees from the wages of employees who are not members of the representative trade union, to those of them who, nevertheless, qualify for membership thereof; to regulate the extension of any collective agreement that has been concluded in a bargaining council and that does not apply to all employees under the jurisdiction of that council; to empower the dispute resolution committee as regards the resolution of disputes between different bargaining councils in the public service; to provide for a council to enter into an agreement with the Commission for Conciliation, Mediation and Arbitration, or any accredited agency, to resolve disputes on the council's behalf; to provide for the referral to that Commission of demarcation disputes arising during arbitration proceedings; to allow of disputes between employees engaged in maintenance services and their employer, to be referred to arbitration in certain circumstances; to adjust the provisions relating to the constitution of a workplace forum and certain other provisions relating to a workplace forum; to provide for the abovementioned Commission to contract with an accredited agency to perform certain functions on the Commission's behalf; to empower the Commission to perform the dispute resolution functions of any council that has failed to do so; to allow, in certain limited circumstances, of a person to continue functioning as a judge of the Labour Court or the Labour Appeal Court after the expiry of his or her appointment as a judge of such a Court; to make certain adjustments to the provisions relating to the Rules Board for Labour Courts and the appointment of acting judges of the Labour Court; to provide for the appointment of acting judges of the Labour Appeal Court; to prescribe the maximum fine payable by a person convicted of the offence contemplated in section 201; to provide that exclusions (from the operation of certain agreements, notices, awards and orders) in force under section 51 (12) of the Labour Relations Act, 1956, will continue in force until withdrawn by the Minister of Labour, and that orders (concerning wages or other conditions of employment) in force under section 51A of the latter Act, will continue in force for a certain period; in item 13 of Schedule 7 to defer the date upon which the provisions of sections 25 and 26 relating**

**to agency shop agreements and closed shop agreements, respectively, will become effective; to effect certain technical amendments to the text; and to provide for incidental matters.**

- 1** Amends section 25 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* substitutes in paragraph (3) *(d)* the words preceding subparagraph (i).
- 2** Amends section 26 (3) of the Labour Relations Act 66 of 1995 by substituting in paragraph *(d)* the words preceding subparagraph (i).
- 3** Amends section 27 of the Labour Relations Act 66 of 1995 by adding subsection (4).
- 4** Amends section 29 (13) and (14) of the Labour Relations Act 66 of 1995 by substituting in the Afrikaans text the expression '30-daetydperk' for the expression '30-dae tydperk'.
- 5** Amends section 30 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)* ; and paragraph *(b)* adds subsection (5).
- 6** Substitutes section 31 of the Labour Relations Act 66 of 1995 .
- 7** Amends section 32 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (3) *(b)* and *(c)* ; paragraph *(b)* substitutes subsection (5) *(a)* and *(b)* ; and paragraph *(c)* adds subsection (9).
- 8** Amends section 37 (4) of the Labour Relations Act 66 of 1995 by substituting paragraph *(b)* .
- 9** Amends section 38 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsections (2), (3) and (4); and paragraph *(b)* substitutes subsection (6).
- 10** Amends section 43 of the Labour Relations Act 66 of 1995 by substituting subsection (3).
- 11** Amends section 51 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* adds subsection (2) *(a)* (ii); and paragraph *(b)* adds subsection (6).
- 12** Substitutes section 52 of the Labour Relations Act 66 of 1995 .
- 13** Amends section 53 (5) of the Labour Relations Act 66 of 1995 by substituting the words preceding paragraph *(a)* .
- 14** Amends section 55 of the Labour Relations Act 66 of 1995 ; as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* deletes subsection (3).
- 15** Amends section 58 of the Labour Relations Act 66 of 1995 by substituting subsection (1).
- 16** Amends section 62 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)* ; and paragraph *(b)* inserts subsection (3A).
- 17** Amends section 63 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph *(a)* .
- 18** Amends section 64 (2) of the Labour Relations Act 66 of 1995 by deleting the word 'and' at the end of paragraph *(b)* .
- 19** Amends section 66 of the Labour Relations Act 66 of 1995 by substituting subsection (1).
- 20** Amends section 69 (2) of the Labour Relations Act 66 of 1995 by substituting the words preceding paragraph *(a)* .
- 21** Amends section 74 (7) of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* deletes the word 'and' at the end of paragraph *(a)* ; and paragraph *(b)* substitutes paragraph *(b)* .
- 22** Amends section 75 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (2); paragraph *(b)* substitutes subsection (4); and paragraph *(c)* adds

subsections (5) to (7).

**23** Amends section 78 (a) of the Labour Relations Act 66 of 1995 by deleting subparagraph (i).

**24** Amends section 80 (8) of the Labour Relations Act 66 of 1995 by deleting the word 'remaining'.

**25** Amends section 82 (1) of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes paragraph (s) ; paragraph (b) substitutes paragraph (t) ; paragraph (c) deletes the word 'and' at the end of paragraph (u) ; paragraph (d) adds the word 'and' at the end of paragraph (v) ; and paragraph (e) adds paragraph (w) .

**26** Amends section 87 of the Labour Relations Act 66 of 1995 by substituting subsection (4).

**27** Amends section 88 of the Labour Relations Act 66 of 1995 by substituting subsection (1).

**28** Amends section 89 of the Labour Relations Act 66 of 1995 by inserting subsection (2A).

**29** Amends section 94 (1) of the Labour Relations Act 66 of 1995 by inserting paragraph (a A) .

**30** Amends section 103 (3) of the Labour Relations Act 66 of 1995 by inserting the word 'an' between the words 'granting' and 'order'.

**31** Amends section 115 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes subsection (2) (d) , (e) and (i) ; and paragraph (b) substitutes subsection (3) (i) .

**32** Amends section 124 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph (a) .

**33** Amends section 127 (4) of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) adds the word 'and' at the end of paragraph (f) ; paragraph (b) substitutes the expression 'society.' for the expression 'society; and' at the end of paragraph (g) ; and paragraph (c) deletes paragraph (h) .

**34** Amends section 128 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph (a) .

**35** Amends section 132 of the Labour Relations Act 66 of 1995 by substituting subsection (1).

**36** Amends section 135 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substituted in subsection (2) of the Afrikaans text the expression '30-daetydperk' for the expression '30-dae tydperk'; paragraph (b) substitutes in subsection (5) the words preceding paragraph (a) ; and paragraph (c) substitutes in subsection (6) (b) of the Afrikaans text the expression 'sewedaetydperk' for the expression 'sewe-dae tydperk'.

**37** Amends section 137 (4) of the Labour Relations Act 66 of 1995 by substituting paragraph (b) .

**38** Amends section 138 (10) of the Labour Relations Act 66 of 1995 by adding the word 'or' at the end of paragraph (a) .

**39** Amends section 141 (6) of the Labour Relations Act 66 of 1995 by substituting the expression '(1)' for the expression '(1) (a) '.

**40** Amends section 142 (1) of the Labour Relations Act 66 of 1995 by adding paragraph (f) (iii).

**41** Amends section 147 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes in subsection (5) (a) the words preceding subparagraph (i); paragraph (b) substitutes subsection (6); and paragraph (c) adds subsections (8) and (9).

**42** Amends section 153 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (5); and paragraph (b) substitutes subsection (6) (a) (ii).

**43** Amends section 154 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (5) (a) ; and paragraph (b) adds subsections (8) and (9).

- 44** Amends section 158 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph (e) .
- 45** Amends section 159 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes in subsection (3) (e) the expression 'section 6' for the expression 'section 8'; and paragraph (b) adds subsections (7) to (10).
- 46** Amends section 168 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph (c) .
- 47** Substitutes section 169 of the Labour Relations Act 66 of 1995 .
- 48** Amends section 170 of the Labour Relations Act 66 of 1995 by adding subsections (6) and (7).
- 49** Amends section 201 of the Labour Relations Act 66 of 1995 by substituting subsection (3).
- 50** Amends section 207 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsections (5) and (6).
- 51** Inserts section 208A in the Labour Relations Act 66 of 1995 .
- 52** Amends section 213 of the Labour Relations Act 66 of 1995 by deleting the symbols ' (d) ', ' (e) ' and ' (f) ' preceding the definitions of 'director', 'dispute' and 'employee', respectively.
- 53** Amends section 214 of the Labour Relations Act 66 of 1995 by substituting subsection (2).
- 54** Amends Schedule 1 to the Labour Relations Act 66 of 1995 by substituting paragraph (a) of item 2 (6).
- 55** Amends Schedule 5 to the Labour Relations Act 66 of 1995 by inserting items 3 and 4.
- 56** Amends Schedule 7 to the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes item 8 (2); paragraph (b) (i) substitutes item 12 (1); paragraph (b) (ii) adds item 12 (7); paragraph (c) (i) substitutes item 13 (1) (b) ; paragraph (c) (ii) substitutes item 13 (5); paragraph (d) substitutes item 19; and paragraph (e) substitutes item 22 (5).
- 57** Amends Schedule 8 to the Labour Relations Act 66 of 1995 by substituting the heading of item 3.
- 58 Short title and commencement**

This Act will be called the Labour Relations Amendment Act, 1996, and will come into operation on a date to be determined by the President by proclamation in the *Gazette* .

### **LABOUR RELATIONS AMENDMENT ACT 127 OF 1998**

[ASSENTED TO 20 NOVEMBER 1998] [DATE OF COMMENCEMENT: 1 FEBRUARY 1999]

*(English text signed by the President)*

### **ACT**

**To amend the Labour Relations Act, 1995, so as to make the establishment, after the coming into operation of this Act, of a pension, provident or medical aid scheme or fund by a bargaining council or statutory council subject to compliance with the laws relating to pension, provident or medical aid schemes or funds, and to make those laws applicable to such funds that may be so established after that point in time; to adjust the requirements for extending any collective agreement concluded in a bargaining council, to non-parties; to provide for the continuation, in certain circumstances, of a pension, provident or medical aid scheme or fund upon the winding-up of the bargaining council or statutory council which had established the scheme or fund; to empower the Minister of Labour to designate the chairperson of the essential services committee from the number of the committee members; to empower the Commission for Conciliation, Mediation and Arbitration ('the Commission') to make rules pertaining to certain proceedings and to the practice and procedure applicable in certain matters; to authorise**

**the director of the Commission to delegate certain of the functions of that office to a commissioner; to authorise a commissioner to consolidate various conciliation proceedings between the same parties involved in two or more separate disputes before the commissioner; to impose a time limit on the referral of a matter to arbitration, or to the Labour Court; to adjust the provisions regarding objections to the commissioner appointed to conduct an arbitration, as well as those regarding the representation of parties in arbitration proceedings and in proceedings in the Labour Court; in Schedule 5 to exclude the application of the provisions of the Pension Funds Act, 1956, and the Medical Schemes Act, 1967, to the pension funds and medical schemes of bargaining councils and statutory councils only where such a fund or scheme had been established or continued in terms of a collective agreement concluded in such a council before the coming into operation of this Act, or when such a scheme or fund is so continued or further continued thereafter; in Schedule 7 to empower the Minister of Labour to transfer the functions of the industrial court to the Commission subject to certain provisions and limitations; to effect certain amendments necessary to ensure consistency with the Constitution of the Republic of South Africa, 1996, and certain other technical amendments; and to provide for incidental matters.**

- 1 Amends section 28 of the Labour Relations Act 66 of 1995 by adding subsections (2) and (3), the existing section becoming subsection (1).
- 2 Amends section 32 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (3) (e) and (f) ; and paragraph (b) deletes subsection (4).
- 3 Amends section 43 of the Labour Relations Act 66 of 1995 by adding subsection (4).
- 4 Amends section 59 of the Labour Relations Act 66 of 1995 by adding subsections (6), (7) and (8).
- 5 Amends section 70 of the Labour Relations Act 66 of 1995 by substituting subsection (1).
- 6 Amends section 115 of the Labour Relations Act 66 of 1995 ; as follows: paragraph (a) inserts subsection (2) (c A ) , and paragraph (b) adds subsection (6).
- 7 Amends section 118 of the Labour Relations Act 66 of 1995 by adding subsection (6).
- 8 Amends section 135 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) inserts section (3A); and paragraph (b) substitutes subsection (4).
- 9 Amends section 136 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1) (b) ; and paragraph (b) substitutes subsection (3).
- 10 Amends section 138 of the Labour Relations Act 66 of 1995 by substituting subsection (4).
- 11 Amends section 151 (1) of the Labour Relations Act 66 of 1995 by adding the words 'and equity'.
- 12 Amends section 153 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) (i) substitutes subsection (1) (a) ; paragraph (a) (ii) deletes in subsection (1) (b) the words 'as defined in section 105 of the Constitution'; paragraph (b) deletes in subsection (4) the words 'as defined in section 105 of the Constitution'; and paragraph (c) substitutes in subsection (6) (a) (i) the words 'High Court' for the words 'Supreme Court'.
- 13 Amends section 154 (3), (4), (5), (6) and (7) of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court' wherever they occur.
- 14 Amends section 157 of the Labour Relations Act 66 of 1995 by substituting subsection (2).
- 15 Amends section 159 (7) and (8) of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court' wherever they occur.
- 16 Substitutes section 161 of the Labour Relations Act 66 of 1995 .
- 17 Amends section 163 of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court', wherever they occur.

**18** Amends section 167 (3) of the Labour Relations Act 66 of 1995 by substituting the words 'Supreme Court of Appeal' for the words 'Appellate Division of the Supreme Court'.

**19** Amends section 168 (1) (c) of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court', wherever they occur.

**20** Amends section 169 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes in subsection (1) the expression 'as defined in section 105 of the Constitution'; and paragraph (b) substitutes in subsection (2) the words 'High Court' for the words 'Supreme Court'.

**21** Amends section 170 (3), (4) and (5) of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court', wherever they occur.

**22** Amends section 173 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes subsection (2); and paragraph (b) substitutes in subsection (3) the words 'Supreme Court of Appeal' for the words 'Appellate Division of the Supreme Court'.

**23** Amends section 177 (2) of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'court of a provincial division of the Supreme Court'.

**24** Amends section 180 of the Labour Relations Act 66 of 1995 by substituting the words 'High Court' for the words 'Supreme Court'.

**25** Amends section 191 of the Labour Relations Act 66 of 1995 by adding subsection (11).

**26** Amends section 207 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsections (2) and (6).

**27** Amends Schedule 5 to the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes items 3 and 4; and paragraph (b) adds items 5, 6 and 7.

**28** (1) Amends Schedule 7 to the Labour Relations Act 66 of 1995 , as follows: paragraph (a) with effect from 11 November 1996, as set out in Schedule 1 to this Act; paragraph (b) with effect from 6 December 1996, as set out in Schedule 2 to this Act; and paragraph (c) with effect from 9 May 1997, as set out in Schedule 3 to this Act.

(2) Amends Schedule 7 to the Labour Relations Act 66 of 1995 by inserting item 22A.

(3) The provisions of subsection (1) (a) , (1) (b) and (1) (c) will be deemed to have come into operation on 11 November 1996, 6 December 1996 and 9 May 1997, respectively.

**29** Adjusts the table of contents of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes in the portion under the heading 'CHAPTER VII' the entry relating to section 169; paragraph (b) inserts the entry 208A in the portion under the heading 'CHAPTER IX'; paragraph (c) adds in the portion under the heading 'Schedule 5' the entries 3, 4, 5, 6 and 7; paragraph (d) (i) inserts in the portion under the heading 'Schedule 7' the entry 8A; paragraph (d) (ii) inserts in the portion under the heading 'Schedule 7' the entry 12A; paragraph (d) (iii) substitutes in the portion under the heading 'Schedule 7' the entry relating to item 19; paragraph (d) (iv) inserts in the portion under the heading 'Schedule 7' the entry 21A; paragraph (d) (v) adds in the portion under the heading 'Schedule 7' the entries 24 and 25; and paragraph (e) substitutes in the portion under the heading 'Schedule 8' the entry relating to item 3.

### **30 Short title and commencement**

This Act is called the Labour Relations Amendment Act, 1998, and will come into operation on a date to be determined by the President by proclamation in the *Gazette* .

#### **Schedule 1**

(Section 28 (1) (a) )

**1 and 2** Amend respectively Schedule 7 to the Labour Relations Act 66 of 1995 by substituting items 5 (1) and 7 (1).

**3** Amends Schedule 7 to the Labour Relations Act 66 of 1995 by inserting item 8A..



**4** Amends item 12 of Schedule 7 to the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subitem (1); paragraph (b) inserts subitem (1A); paragraph (c) inserts subitems (5A) and (5B); paragraph (d) substitutes subitem (6); and paragraph (e) adds subitem (8).

**5 and 6** Amend respectively Schedule 7 to the Labour Relations Act 66 of 1995 by inserting items 12A and 21A.

**7** Amends item 22 of Schedule 7 to the Labour Act 66 of 1995 , as follows: paragraph (a) inserts subitems (2A) and (2B); and paragraph (b) adds subitem (6).

**8** Amends Schedule 7 to the Labour Act 66 of 1995 by inserting PART G.

#### **Schedule 2**

(Section 28 (1) (b))

Amends item 12 (1) (b) of Schedule 7 to the Labour Act 66 of 1995 by substituting subparagraph (i).

#### **Schedule 3**

(Section 28 (1) (c))

Amends Schedule 7 to the Labour Relations Act 66 of 1995 by substituting items 24 and 25.

### **LABOUR RELATIONS AMENDMENT ACT 12 OF 2002**

[ASSENTED TO 18 JUNE 2002] [DATE OF COMMENCEMENT: 1 AUGUST 2002]

*(English text signed by the President)*

#### **ACT**

**To amend the Labour Relations Act, 1995, so as to provide for-  
the enforcement of collective bargaining agreements;**

**the extension of the functions of bargaining councils so as to enhance the effective enforcement of bargaining council agreements and to clarify the dispute resolution powers of bargaining councils;**

**the rationalisation of the registration and amalgamation of bargaining councils in the public service and for the resolution of jurisdictional disputes between such bargaining councils;**

**the extension of the information that bargaining councils must supply to the registrar and for the clarification of the registrar's powers in respect of bargaining councils and in respect of registration and winding-up of employers' organisations and trade unions;**

**the extension of the powers of the Commission to make rules concerning procedures;**

**the making of regulations by the Minister concerning representation at the Commission and the charging of fees by the Commission;**

**the making of settlement agreements into arbitration awards or Labour Court orders;**

**the exclusion of the application of the Arbitration Act, 1965, to bargaining council arbitrations;**

**the concurrent appointment of Labour Court judges as High Court judges;**

**the regulation of the right of employees not to be subjected to unfair labour practices;**

**the regulation of the resolution of disputes concerning an occupational detriment in terms of the Protected Disclosures Act, 2000;**

**the clarification and revision of procedures for resolving disputes in respect of dismissals based on the employer's operational requirements;**

**the expediting of the resolution of disputes by the Commission by conciliation or arbitration;**

**the clarification of the compensation that may be awarded in respect of unfair dismissals;**

**the clarification of the transfer of contracts of employment in the case of transfers of a business, trade or undertaking as a going concern;**

**a rebuttable presumption as to who is an employee;**

**and to provide for matters incidental thereto.**

- 1 Amends section 23 of the Labour Relations Act 66 of 1995 by substituting subsection (4).
- 2 Amends section 24 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); and paragraph (b) adds subsection (8).
- 3 Amends section 28 (1) of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes the word 'and' at the end of paragraph (i) ; and paragraph (b) adds paragraphs (k) and (l) .
- 4 Amends section 29 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (3); and paragraph (b) adds subsection (16).
- 5 Amends section 32 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (5) (a) ; and paragraph (b) adds subsection (10).
- 6 Amends section 33 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); paragraph (b) inserts subsection (1A); and paragraph (c) substitutes subsection (3).
- 7 Inserts section 33A in the Labour Relations Act 66 of 1995 .
- 8 and 9 Substitute respectively sections 37 and 38 of the Labour Relations Act 66 of 1995 .
- 10 Amends section 44 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2).
- 11 Amends section 49 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (2); paragraph (b) substitutes subsection (3); and paragraph (c) adds subsections (4) and (5).
- 12 Amends section 51 of the Labour Relations Act 66 of 1995 by adding subsections (7), (8) and (9).
- 13 Amends section 53 of the Labour Relations Act 66 of 1995 by adding subsection (6).
- 14 Amends section 54 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes in subsection (2) the word 'and' at the end of paragraph (d) and adds the word 'and' to the end of paragraph (e) ; paragraph (b) adds subsection (2) (f) ; and paragraph (c) adds subsections (4) and (5).
- 15 Amends section 58 of the Labour Relations Act 66 of 1995 by adding subsection (3).
- 16 Amends section 61 of the Labour Relations Act 66 of 1995 by adding subsections (14) and (15).
- 17 Amends section 68 (1) of the Labour Relations Act 66 of 1995 by substituting paragraph (b) .
- 18 Amends section 95 of the Labour Relations Act 66 of 1995 by adding subsections (7) and (8).
- 19 Amends section 103 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes the heading; paragraph (b) substitutes subsection (1); paragraph (c) inserts subsection (1A); paragraph (d) substitutes subsection (5); and paragraph (e) adds subsection (6).

- 20** Amends section 105 of the Labour Relations Act 66 of 1995 by substituting the heading.
- 21** Amends section 106 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* inserts subsections (2A) and (2B).
- 22** Amends section 115 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* inserts subsection (2A); and paragraph *(b)* substitutes subsection (6).
- 23** Amends section 127 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* deletes subsection (5) *(a)* (iv); and paragraph *(b)* inserts subsection (5A).
- 24** Amends section 128 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1) *(a)* ; and paragraph *(b)* adds subsection (3).
- 25** Amends section 133 of the Labour Relations Act 66 of 1995 by substituting subsection (2).
- 26** Amends section 135 of the Labour Relations Act 66 of 1995 by deleting subsection (4).
- 27** Amends section 138 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* deletes subsection (4); and paragraph *(b)* substitutes subsection (10).
- 28** Amends section 140 of the Labour Relations Act 66 of 1995 by deleting subsection (1).
- 29** Amends section 141 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* substitutes subsection (3).
- 30** Amends section 142 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (7); paragraph *(b)* substitutes subsection (9); and paragraph *(c)* adds subsections (10), (11) and (12).
- 31** Inserts section 142A in the Labour Relations Act 66 of 1995 .
- 32** Amends section 143 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* adds subsections (3) and (4).
- 33** Substitutes section 144 of the Labour Relations Act 66 of 1995 .
- 34** Amends section 145 of the Labour Relations Act 66 of 1995 by inserting subsection (1A).
- 35** Amends section 150 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (2); and paragraph *(b)* adds subsection (3).
- 36** Amends section 158 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes subsection (1) *(c)* ; paragraph *(b)* substitutes subsection (1) *(g)* ; and paragraph *(c)* inserts subsection (1A).
- 37** Amends section 161 of the Labour Relations Act 66 of 1995 by substituting paragraph *(d)* .
- 38** Amends section 173 of the Labour Relations Act 66 of 1995 by deleting subsection (3).
- 39** Substitutes the heading to Chapter VIII of the Labour Relations Act 66 of 1995 .
- 40** Substitutes section 185 of the Labour Relations Act 66 of 1995 .
- 41** Amends section 186 of the Labour Relations Act 66 of 1995 , as follows: paragraph *(a)* substitutes the heading; paragraph *(b)* adds paragraph *(f)* ; and paragraph *(c)* adds subsection (2).
- 42** Amends section 187 (1) of the Labour Relations Act 66 of 1995 by adding paragraphs *(g)* and *(h)* .
- 43** Inserts section 188A in the Labour Relations Act 66 of 1995 .
- 44** Substitutes section 189 of the Labour Relations Act 66 of 1995 .
- 45** Inserts section 189A in the Labour Relations Act 66 of 1995 .

**46** Amends section 191 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes the heading; paragraph (b) substitutes subsection (1); paragraph (c) substitutes subsection (2); paragraph (d) inserts subsection (2A); paragraph (e) substitutes subsection (5) (a) (ii); paragraph (f) adds subsection (5) (a) (iv); paragraph (g) inserts subsection (5A); paragraph (h) substitutes subsection (6); and paragraph (i) adds subsections (12) and (13).

**47** Amends section 193 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes the heading; and paragraph (b) adds subsection (4).

**48** Amends section 194 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes subsection (1); paragraph (b) deletes subsection (2); and paragraph (c) adds subsection (4).

**49** Substitutes section 197 of the Labour Relations Act 66 of 1995 .

**50 and 51** Insert respectively sections 197A, 197B and section 200A in the Labour Relations Act 66 of 1995 .

**52** Amends section 203 of the Labour Relations Act 66 of 1995 by adding subsection (4).

**53** Amends section 204 of the Labour Relations Act 66 of 1995 by substituting the words preceding paragraph (a) .

**54** Amends section 213 of the Labour Relations Act 66 of 1995 , as follows: paragraph (a) substitutes the definition of 'Basic Conditions of Employment Act'; paragraph (b) inserts the definition of 'employment law'; paragraph (c) substitutes the definition of 'public service'; paragraph (d) substitutes paragraph (b) of the definition of 'registered scope'; paragraph (e) substitutes paragraph (a) of the definition of 'workplace'; and paragraph (f) deletes paragraph (b) of the definition of 'workplace'.

**55** Amends Schedule 7 to the Labour Relations Act 66 of 1995 , as follows: paragraph (a) deletes items 2, 3 and 4; and paragraph (b) adds Part H.

**56** Amends Schedule 8 to the Labour Relations Act 66 of 1995 by substituting the heading and item 8 (1).

**57** Substitutes Schedule 10 to the Labour Relations Act 66 of 1995 .

## **58 Short title and commencement**

(1) This Act is called the Labour Relations Amendment Act, 2002, and comes into operation on a date determined by the President by proclamation in the *Gazette* .

(2) Section 27 (b) of this Act does not come into operation before the rules made by the Commission in terms of section 115 (2A) (j) of the principal Act come into effect.

### **Footnotes:**

- (1) Amend footnote 11 to section 51 of the principal Act by inserting after 'disputes' in the first line of the footnote 'contemplated by subsection (3)'.
- (2) Amend footnote 11 to section 51 of the principal Act by inserting after 'disputes' in the second paragraph of the footnote 'contemplated by subsection (3)'.
- (3) Insert footnote 53a to section 197 (4) into the principal Act with the following text: 'Section 14 (1) (c) of the Pensions Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable, and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in terms of the fund rules, and to additional benefits which have become established practice.'