



**REPORT ON LEGISLATION ADMINISTERED  
BY DEPARTMENT OF LABOUR**

**PROJECT 25:  
STATUTORY LAW REVISION**

**OCTOBER 2011**



**TO MR JT RADEBE, MP, MINISTER OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

I am honoured to submit to you in terms of section 7(1) of the South African Law Reform Commission Act 19 of 1973 (as amended) for your consideration and referral to the Minister of Labour, the Commission's report on Statutory Law Revision (Legislation administered by the Department of Labour).

A handwritten signature in black ink, appearing to read 'Y Mokgoro', is centered on the page. The signature is fluid and cursive, with a small mark above the final 'o'.

**JUDGE Y MOKGORO**

**CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION**

**22 OCTOBER 2011**



## South African Law Reform Commission

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 –

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The Honourable Mr Justice WL Seriti (Vice Chairperson)  
Professor C Albertyn  
The Honourable Mr Justice DM Davis  
Mr T Ngcukaitobi  
Advocate DB Ntsebeza SC  
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The Secretary of the SALRC is Mr Michael Palumbo. The project leader responsible for this investigation is the Honourable Mr Justice Dennis Davis. The SALRC official assigned to this investigation is Mr Linda Mngoma. The SALRC's offices are on the 5th Floor, Die Meent Building, 266 Andries Street (corner of Andries and Pretorius Streets), Pretoria.

On 30 July 2008, Ms MS Mabandla, the then Minister of Justice and Constitutional Development, appointed the following advisory committee members to assist with this investigation:

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# Table of contents

	<i>Page</i>
<b>EXECUTIVE SUMMARY</b>	
A Introduction .....	x
B Discussion Paper 117 .....	xi
C Draft Labour Laws General Amendment and Repeal Bill .....	xiii
1 Redundant and obsolete legislation recommended for repeal	
(a) Second Wage Amendment Act, 1981 (Act 58 of 1981)	
(b) Black Labour (Transfer of Functions) Act, 1980 (Act 88 of 1980)	
(c) Agricultural Labour Act 147 of 1993 and the Agricultural Labour Amendment Act, 1994 (Act 50 of 1994)	
(d) Amendment Acts to the Unemployment Insurance Act, 1966 (Act 30 of 1966)	
2 Legislation recommended for amendment	
(a) Unemployment Insurance Act, 2001 (Act 63 of 2001)	
(b) Basic Conditions of Employment Act, 1997 (Act 75 of 1997)	
(c) Employment Equity Act 55 of 1998	
(d) National Economic Development and Labour Council Act 35 of 1994	
D Summary of recommendations .....	xvii
E Concluding remarks .....	xviii
 <b>CHAPTER 1</b>	
<b>PROJECT 25: STATUTORY LAW REVISION</b>	
A Introduction .....	1
1 The objects of the South African Law Reform Commission	
2 History of investigation	
B What is statutory law revision? .....	2
C The initial investigation .....	5
D Scope of the project .....	7
E Assistance by government departments and stakeholders .....	8
F Consultation with Department of Labour .....	9

**CHAPTER 2**  
**EXPLANATORY NOTES ON DRAFT LABOUR LAWS GENERAL AMENDMENT**  
**AND REPEAL BILL**

A	Introduction .....	10
B	Legislation recommended for repeal .....	11
	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 Acts	
	6 Second Unemployment Insurance Amendment Acts	
	7 Unemployment Insurance Amendment Act 9 of 1979	
	8 Unemployment Insurance Amendment Act 1 of 1981	
	9 Unemployment Insurance Amendment Act 1 of 1982	
	10 Second Unemployment Insurance Amendment Act 89 of 1982	
	11 Unemployment Insurance Amendment Act 27 of 1986	
	12 Unemployment Insurance Second Amendment Act 30 of 1986	
	13 Unemployment Insurance Amendment Act 36 of 1987	
	14 Unemployment Insurance Second Amendment Act 102 of 1987	
	15 Unemployment Insurance Amendment Act 29 of 1988	
	16 Unemployment Insurance Amendment Act 130 of 1992	
C	Legislation recommended for amendment .....	21
	1 Unemployment Insurance Act 63 of 2001	
	2 Basic Conditions of Employment Act 75 of 1997	
	(a) Definition of 'employment law'	
	(b) Section 1: Definition of 'medical practitioner'	
	(c) Section 50: Variation by the Minister	
	(d) Section 59: Employment Conditions Commission	
	3 Employment Equity Act 55 of 1998	
	4 The National Economic, Development and Labour Council Act 35 of 1994	
D	Statutes reviewed and recommended to be retained .....	28
	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	
	4 Labour Relations Act 66 of 1995	
	(a) Section 26: Closed shops agreements	
	(b) Section 95(6): The constitution of a trade union or employers'	



	organisation may not discriminate on grounds of race or sex	
	(c) Section 167(2): Status of Labour Appeal Court	
E	Anomalies in certain legislation administered by the DOL .....	35
1	Labour Relations Act 66 of 1995	
	(a) Sections 23(1)(d) and 32: Binding effect of collective agreement on non-parties	
	(b) Section 31: Binding nature of collective agreement concluded in bargaining council	
2	Unemployment Insurance Act 63 of 2001	
	(a) Section 1 of Act 63 of 2001: Definition of a 'child'	
	(b) Definition of 'dependant', 'spouse' and 'life partner'	
	(c) Section 27 of Act 63 of 2001	
	(d) Schedule 1 of Act 63 of 2001	
3	Compensation for Occupational Injuries and Diseases Act 130 of 1993	
4	Occupational Health and Safety Act 85 of 1993	
	Annexure A	
	Labour Laws General Amendment and Repeal Bill .....	46
	Annexure B	
	Statutes administered by the Department of Labour .....	52
	Annexure C	
	List of respondents to Discussion Paper 117 .....	54
	Bibliography .....	55
	List of cases .....	55
	List of legislation .....	55

# EXECUTIVE SUMMARY

## A. Introduction

1. Since the advent of the constitutional democracy in 1994, no comprehensive review of the statute book for constitutionality, redundancy or obsolescence has been undertaken, although a number of Acts have been amended or repealed by Parliament on an *ad hoc* basis. To address this unsatisfactory state of affairs, in 2004, the South African Law Reform Commission (SALRC) included in its law reform programme an investigation into statutory law revision. The purpose of this investigation is two-fold: (a) to align the South African statute book with the right to equality entrenched in section 9 of the Constitution of the Republic of South Africa, 1996; and (b) to provide a statute book that is free from obsolete and unnecessary matter.

2. On 1 August 2009, the SALRC wrote a letter to the then Acting Director-General: Department of Labour (DOL), Mr Sam Morotoba, requesting for comments on provisional findings and proposals for legislative reforms contained in the Consultation Paper and Draft Labour Laws Amendment and Repeal Bill attached to the letter. On 06 October 2009, comments and input were received from the DOL's legal advisers.

3. In the letter addressed to the SALRC referred to in paragraph 2 above, the DOL supports the repeal of redundant and obsolete legislation mentioned in Schedule 1 of the Draft Labour Laws Amendment and Repeal Bill (hereinafter the Draft Bill), as well the proposed amendment of legislation mentioned in Schedule 2 of the said Draft Bill.

4. As part of this investigation, the SALRC has reviewed 47 Acts administered by the DOL which were enacted between 1966 and 2003, and are still in force in the Republic, for the purposes mentioned in paragraph 1 above.

5. Although the Skills Development Levies Act, 1999 (Act No.9 of 1999) was initially included in the list of statutes administered by the DOL when the SALRC approved Discussion Paper 117 for information and public comments, however, the review of this Act is excluded in this Report since in terms of Proclamation No. 56 of 2009, published in Government Gazette No. 32549 of 4 September 2009, the administration, powers and functions entrusted to the Minister of Labour in terms of the Skills Development Levies Act, 1999 and the Skills Development Act, 1998 (in so far as the provisions of the latter Act do

not apply to Productivity South Africa and employment services) were transferred by the President of the Republic of South Africa to the Minister of Higher Education and Training.

## **B. Discussion Paper 117**

6. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC developed a discussion paper incorporating comments and input received from the DOL and published it as Discussion Paper 117 (the Discussion Paper) for general information and comment in September 2010.

7. In the Discussion Paper, the SALRC listed all the 48 statutes administered by the DOL, including the Skills Development Levies Act, 1999 mentioned in paragraph 5 above; explained the background to statutory law revision; set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of these statutes; provided detailed findings and proposals for law reform in respect of the statutes found wanting; appended the Draft Bill setting out legislation or provisions in legislation which needed to be amended and repealed, and the extent of such repeal; and contained an invitation to interested parties to submit comments to the SALRC. The closing date for submission of public comments was 30 November 2010.

8. The stakeholders to whom the Discussion Paper was distributed include the Director-General: Department of Labour; the judiciary; academia; research institutions; various employer and employee organizations and institutions reporting to the Minister of Labour, among others, the National Economic Development and Labour Council (NEDLAC), Commission for Conciliation, Mediation and Arbitration (CCMA); Unemployment Insurance Board and the Compensation Board.

9. The SALRC received comments from the following organizations, namely: Business Unity South Africa (BUSA); and joint comments received from Social Law Project (SLP), Faculty of Law, University of Western Cape; SA Domestic Services and Allied Workers Union (SADSAWU); COSATU: Western Cape; Labour Research Services (LRS); Labour and Enterprise Policy Research Group (LEP), University of Cape Town; International Labour Research and Information Group (ILRIG), Black Sash and the National Economic Development and Labour Council (NEDLAC).

10. The comment received from BUSA concerns the proposed review of the definition of 'medical practitioner' in section 1 of the Basic Conditions of Employment Act 75 of 1997 with a view to possibly include 'traditional healers' in the said definition. Discussion Paper 117 had provisionally proposed in paragraph 2.60 that although legislation on traditional healers has not been promulgated yet, attention is drawn to the future possibility of this definition (of 'medical practitioner' in section 1 of the Basic Conditions of Employment Act 75 of 1997 which excludes traditional healers) discriminating against traditional healers by omitting to include them in the definition, and, more specifically, of discriminating against employees who wish to consult such healers. In their submission to the SARLC, BUSA indicated that there will be a lot of unintended consequences emanating from the proposed amendment of the definition of 'medical practitioner' in Act 75 of 1997 to include traditional healers on the basis that the Institution and Practice of Traditional Healers is not regulated and it could be because it is a difficult area to regulate. Accordingly, it is not recommended in this Report that the Basic Conditions of Employment Act, 1997 be amended in order to include traditional healers in the definition of 'medical practitioner'.

11. The comments received jointly from the other organizations mentioned in paragraph 9 above all respond to the exclusion of domestic workers from the application of the provisions of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA). The definition of 'employee' in section 1 of the COIDA excludes at:

“(d)(v) a domestic employee employed as such in a private household.”

12. The Discussion Paper had provisionally recommended 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.

13. According to the submission received jointly from the nine organisations mentioned in paragraph 9 above:

(T)here are no compelling reasons for the exclusion of domestic workers from COIDA. The exclusion of domestic workers from COIDA denies them access to legal protection and benefits equal to that enjoyed by other workers. In the absence of sufficient justification, this amounts to an infringement of their rights to equal treatment in terms of section 9(1) of the Constitution.

14. Although the above organisations submitted that the SALRC should recommend the deletion of paragraph (d)(v) of the definition of “employee” in section 1 of COIDA rather than merely a review of the exclusion, however, the SALRC’s recommendation on this matter is that a review of the exclusion of domestic workers from the application of the provisions of COIDA is warranted on the basis that NEDLAC’ Founding Declaration<sup>1</sup> states that:

NEDLAC is the vehicle by which government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country.

15. Furthermore, section 5 of the National Economic, Development and Labour Council Act 35 of 1994 provides that:

(1)(c) The Council shall consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament.

16. The comment received from NEDLAC proposes that:

(A)ny reference to **[Minister without Portfolio in the Office of the President]** in the National Economic, Development and Labour Council Act, 1994 (Act No.35 of 1994) should be removed and replaced with the “Minister of Labour”, and any reference to the **[Senate]** should also be removed.

## **C. Draft Labour Laws General Amendment and Repeal Bill**

### **1 Redundant and obsolete legislation recommended for repeal**

#### **(a) Second Wage Amendment Act, 1981 (Act 58 of 1981)**

17. The Draft Bill seeks to repeal the whole Act which appears to be redundant. The purpose of the Act was to repeal the Principal Act (Wage Act 1957). However, the Principal

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<sup>1</sup> NEDLAC Annual Report 2008/2009 on 5.

Act was repealed by the Basic Conditions of Employment Act, 1997. The proposed repeal is supported by the DOL.

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

18. The Draft Bill seeks to repeal the whole Act which appears to be obsolete. The purpose of the Act was to repeal the Black Labour Act 67 of 1964. However, the latter Act 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. The proposed repeal is supported by the DOL.

**(c) Agricultural Labour Act 147 of 1993 and the Agricultural Labour Amendment Act, 1994 (Act 50 of 1994)**

19. The Draft Bill seeks to repeal the whole Acts which appear to be redundant. The purpose of the Agricultural Labour Amendment Act 50 of 1994 is to amend provisions of the Agricultural Labour Act 147 of 1993. The latter Act consists of two Chapters, that is, Chapters 1 and 2. Chapter 1 of the Act was repealed by the Labour Relations Act 66 of 1995 and Chapter 2 of the Act was repealed by the Basic Conditions of Employment Act 75 of 1997.

**(d) Amendment Acts to the Unemployment Insurance Act, 1966 (Act 30 of 1966)**

20. The Draft Bill seeks to repeal the under-mentioned 21 Amendment Acts to the Unemployment Insurance Act, 1966 (Act No. 30 of 1966) which appear to be redundant. These Amendment Acts were not repealed when the Principal Act (Unemployment Insurance Act, 1966) was repealed by section 70 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). Although the Principal Act was repealed except to the extent mentioned in Schedule 1 of Act 63 of 2001, however, all the Amendment Acts should have been repealed together with the Principal Act. The issues that are dealt with by these Amendment Acts are covered by the provisions of the Unemployment Insurance Act 63 of 2001. The latter Act came into operation on 1 April 2002. The Amendment Acts to the Unemployment Insurance Act 30 of 1966 that are proposed for repeal by the Draft Bill are the following:

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. Unemployment Insurance Amendment Act 29 of 1977;
7. Unemployment Insurance Amendment Act 6 of 1978;
8. Second Unemployment Insurance Amendment Act 108 of 1976;
9. Second Unemployment Insurance Amendment Act 118 of 1977;
10. Second Unemployment Insurance Amendment Act 97 of 1979;
11. Second Unemployment Insurance Amendment Act 113 of 1981;
12. Unemployment Insurance Amendment Act 9 of 1979;
13. Unemployment Insurance Amendment Act 1 of 1981;
14. Unemployment Insurance Amendment Act 1 of 1982;
15. Second Unemployment Insurance Amendment Act 89 of 1982;
16. Unemployment Insurance Amendment Act 27 of 1986;
17. Unemployment Insurance Second Amendment Act 30 of 1986;
18. Unemployment Insurance Amendment Act 36 of 1987;
19. Unemployment Insurance Second Amendment Act 102 of 1987;
20. Unemployment Insurance Amendment Act 29 of 1988; and
21. Unemployment Insurance Amendment Act 130 of 1992.

## **2. Legislation recommended for amendment**

### **(a) Unemployment Insurance Act, 2001 (Act 63 of 2001)**

21. The Draft Bill seeks to update all references in the Act to the old “Child Care Act 74 of 1983” with references to the new “Children’s Act 38 of 2005”. Sections 27(1)(a) and (2) of the Act refer to the **[Child Care Act, 1983 (Act No. 74 of 1983)]** respectively. However, the latter Act was repealed as a whole by the “Children’s Act, 2005 (Act No. 38 of 2005)”.

### **(b) Basic Conditions of Employment Act, 1997 (Act 75 of 1997)**

22. The Draft Bill seeks to effect the following amendments in the Act:

1. Update the reference to the **[Unemployment Insurance Act, 1996 (Act No. 30 of 1966)]** in the definition of ‘employment law’ in section 1 of the Act with reference to the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). The Unemployment Insurance Act 30 of 1966 was repealed by section 70 of the Unemployment Insurance Act 63 of 2001.
2. Update the reference to the **[Minister for Welfare and Population Development]** in sections 50(6) and 59(2)(f) of the Act with reference to the Minister of Social Development.

**(c) Employment Equity Act 55 of 1998**

23. The Draft Bill seeks to effect the following amendments in the Act:

1. Update the reference to the **[Unemployment Insurance Act, 1996 (Act 30 of 1966)]** in paragraph (a) of the definition of ‘employment law’ in section 1 of the Act with reference to the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
2. To delete the reference to the **Guidance and Placement Act, 1981 (Act 62 of 1981)** in paragraph (b) of the same definition; and
3. To update the reference to the **Manpower Training Act, 1981 (Act 56 of 1981)** in paragraph (c) of the same definition with reference to the Skills Development Act, 1998 (Act No. 97 of 1998).

24. The Draft Bill seeks to align the wording used in section 12 with the wording used in section 4 of the Act in order to achieve consistency between the two sections. Thus, the Draft Bill recommends that section 12 of the Act be substituted by the following section 12:

“Except where otherwise provided, this Chapter applies only to designated employers and people from designated groups.”



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

25. The Draft Bill seeks to amend the reference to the **[Minister without Portfolio in the Office of the President]** in the definition of 'organisations of community and development interest' in section 1 of the Act, and in subsections 3 (4), 3 (5) and 9 (4) of the Act with reference to the Minister of Labour and to remove the reference to the **[Senate]** in section 8 of the Act.

## **D Summary of recommendations**

26. In this report the SALRC recommends that the following Acts be repealed as a whole:

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

25. Unemployment Insurance Amendment Act, 1992 (Act No. 130 of 1992).

27. In this report the SALRC recommends that the specified provisions in the following Acts be amended:

1. Section 27(1)(a) and (2) of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).
2. Sections 1, 50(6) and 59(2)(f) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).
3. Sections 1 and 12 of the Employment Equity Act, 1998 (Act No. 55 of 1998).
4. Sections 1, 3(4) and (5), 8 and 9(4) of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994).

## **E Concluding remarks**

28. The SALRC has prepared this report for consideration by the Minister of Justice and Constitutional Development in terms of section 7(1) of the South African Law Reform Commission Act, 1973 (Act No.19 of 1973) and for referral to the Minister of Labour.

29. The SALRC wishes to express its sincere gratitude to the officials of the Department of Labour for their co-operation and assistance during the investigation process.

# CHAPTER 1

## PROJECT 25: STATUTORY LAW REVISION

### A Introduction

#### 1 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 –

1. the repeal of obsolete or unnecessary provisions;
2. the removal of anomalies;
3. the bringing about of uniformity in the law in force in the various parts of the Republic; and
4. 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.

#### 2 History of 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 is the review of statutes to determine whether they need updating or are still relevant and enjoy practical application. The purpose of the review is to modernise and simplify those statutes that need modernization or updating and to reduce the size of the statute book to the benefit of legal professionals and all other parties who make use of it. It also ensures people are not misled by obsolete laws on the statute book which seem to be relevant or 'live' law. If legislation features in the statute book and is

referred to in text-books, users reasonably enough assume those statutes still serve a purpose.

1.8 Legislation identified for repeal is selected on the basis that it is no longer of practical utility. Usually this is because these laws no longer have any legal effect on technical grounds – because they are spent, unnecessary or obsolete. But sometimes they are selected because, although strictly speaking they do continue to have legal effect, the purposes for which they were enacted, either no longer exist, or are currently being met by alternative means.

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

1.10 Provisions commonly repealed by Repeals of Laws Acts include the following:

1. Reference to bodies, organisations, etc that have been dissolved or wound up or which have otherwise ceased to serve any purpose.
2. Reference to issues that are no longer relevant as a result of changes in social or economic conditions.
3. Reference to Acts that have been superseded by more modern legislation or by an international convention.
4. Reference to statutory provisions (i.e. sections, schedules, etc) that have been repealed.
5. Repealing provisions for example “Section 28 is repealed/shall cease to have effect”.
6. Commencement provisions once the whole of an Act is in force.
7. Transitional or savings provisions that are spent.
8. Provisions that are self-evidently spent: for example a once-off statutory obligation to do something becomes spent once the required act has duly been done.
9. Powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.11 The meaning of the terms expired, spent, repealed in general terms, virtually repealed, superseded and obsolete was explained by the Law Commission of India as follows:<sup>2</sup>

1. 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 their object the continuance of previous temporary enactments for periods now gone by effluxion of time;
2. 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;
3. 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;
4. Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;
5. Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise;
6. 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 The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete, often it is simply a case of legislation being overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. These include commencement and transitory provisions and 'pump-priming' provisions (e.g. initial funding and initial appointments to a Committee or a Board) to implement the new legislation. Next to go may be subordinate legislation-making powers that are no longer needed. Then the Committee or Board established by the Act no longer meets and can be abolished.

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<sup>2</sup> Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* The Law Commission of India 15 July 2011 Web 26 September 2011.

1.13 Much statutory law revision is possible because of the general savings provisions of section 12(2) of the Interpretation Act 33 of 1957. This 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, 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

obsolescence. CALS pursued four main avenues of research in their study conducted in 2001:<sup>3</sup>

1. 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.
2. 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.
3. 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.
4. 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:

1. Recognition of Customary Marriages (August 1998)
2. Review of the Marriage Act 25 of 1961 (May 2001)

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<sup>3</sup> Centre for Applied Legal Studies: University of the Witwatersrand *Feasibility and Implementation Study on the Revision of the Statute Book* Unpublished paper 2001.



3. Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001)
4. Traditional Courts (January 2003)
5. Recognition of Muslim marriages (July 2003)
6. Repeal of the Black Administration Act 38 of 1927 (March 2004)
7. Customary Law of Succession (March 2004)
8. Domestic Partnerships (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 –

1. differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose;
2. unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
3. 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.<sup>4</sup> 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. 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 Cabinet endorsed in 2004 that government departments should be requested to participate in and contribute to this investigation. Sometimes it is impossible to tell whether a provision can be repealed without information that is not readily ascertainable without access to 'inside' knowledge held by a department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo, until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the preliminary consultation paper drafted by the SALRC invites the department being consulted to supply the necessary information. 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 during this review, and dealt with responsively and without creating unintended negative consequences.

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<sup>4</sup> Cathi Albertyn prepared guidelines for the SALRC for assessing the South African Statute Book for constitutionality against section 9 of the Constitution. Albertyn C *Summary of the Equality Jurisprudence and Guidelines for assessing the SA Statute Book for constitutionality against section 9 of the 1996 Constitution* Unpublished paper prepared for the South African Law Reform Commission 2006.

## **F Consultation with Department of Labour**

1.22 As stated above, the SALRC has reviewed 47 statutes administered by the DOL. In August 2009 and in accordance with its policy to consult widely and to involve the Department likely to be affected by the proposals made, the SALRC developed and submitted to DOL its Consultation Paper. The Consultation Paper explains the background to statutory law revision, sets out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by DOL, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting. Appended to the Consultation Paper was a Draft Labour Laws General Amendment and Repeal Bill setting out statutes which needed to be amended and repealed, and the extent of such repeal, and invited DOL to peruse the preliminary findings, proposals and questions for comment and submit comments to the SALRC. In September 2009, the DOL submitted comments to the SALRC.

1.23 On 14 August 2010, the SALRC approved Discussion Paper 117, which incorporated comments and input received from DOL, for general information and comment. In a nutshell, the DOL supports the proposed amendment and repeal of legislation or provisions in legislation that are redundant and obsolete. The SALRC wishes to express its appreciation to the DOL, and in particular to the officers in the Legal Services Directorate, for their support and participation in all the stages of this review leading to the development of this Report.

# CHAPTER 2

## EXPLANATORY NOTES ON DRAFT LABOUR LAWS GENERAL AMENDMENT AND REPEAL BILL

### A Introduction

2.1 The mission of the Department of Labour<sup>5</sup> is as follows:

To regulate the South African labour market for a sustainable economy through –

- Appropriate legislation and regulations;
- Inspection, compliance monitoring and enforcement;
- Protection of human rights;
- Provision of employment services;
- Promoting equity;
- Social and income protection; and
- Social dialogue.

2.2 The following institutions report to the Minister of Labour:<sup>6</sup>

- Advisory Council for Occupational Health and Safety (ACOHS);
- Commission for Conciliation, Mediation and Arbitration (CCMA);
- Commission for Employment Equity (CEE);
- Compensation Board;
- Employment Conditions Commission (ECC);
- National Economic Development and Labour Council (NEDLAC);
- Productivity South Africa; and
- Unemployment Insurance Board.

2.3 The SALRC has identified 47 pieces of legislation as being statutes that are administered by the DOL (see Annexure B of this Report). The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed or amended as a result of redundancy, obsolescence or unconstitutionality in terms of

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<sup>5</sup> Department of Labour Annual Report 2009/2010 on 2.

<sup>6</sup> Department of Labour Annual Report 2009/2010 on 3.

section 9 of the Constitution, has identified a number of Acts that may be repealed fully and some Acts that may otherwise be amended.

2.4 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 and the removal of anomalies.

2.5 Most of the pre-1994 Unemployment Insurance Amendment Acts that are listed in Schedule 1 of the Draft Employment Laws General Amendment and Repeal Bill are recommended for repeal on the basis that they are redundant owing to the repeal of the Unemployment Insurance Act, 1996 (Act No.30 of 1966) by section 70 of the Unemployment Insurance Act 63 of 2001. Furthermore, the matters that are dealt with by the Unemployment Insurance Act 30 of 1966 are now included in the Unemployment Insurance Act 63 of 2001. If the transitional arrangements provided for in Schedule 1 of Act 63 of 2001 have been fulfilled, the Acts may be repealed.

2.6 This chapter provides a detailed explanation why the Acts and provisions contained in the Draft Labour Laws General Amendment and Repeal Bill should be repealed or amended. 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:

1. Legislation recommended for repeal.
2. Legislation recommended for amendment.
3. Statutes reviewed and recommended to be retained.
4. Anomalies in certain legislation administered by the DOL.

## **B Legislation recommended for repeal**

### **1 Second Wage Amendment Act 58 of 1981**

2.7 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 book.

2.8 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 obsolete and therefore may be repealed.

## **2 Black Labour (Transfer of Functions) Act 88 of 1980**

2.9 The Black Labour (Transfer of functions) Act 88 of 1980 is recommended for repeal because the principal Act (the Black Labour Act 67 of 1964) to which it refers no longer exists in the statute book.

2.10 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.

2.11 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. Furthermore, the Act draws a distinction in the employment or placing in employment of persons based on race, contrary to section 9 of the Constitution of the Republic of South Africa Act, 1996.<sup>7</sup> Accordingly the Act is obsolete and therefore may be repealed.

## **3 Agricultural Labour Act 147 of 1993**

2.12 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.

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<sup>7</sup> Section 1(1) of the Act provides that "The State President may by proclamation in the Gazette declare that as from a date specified therein any function relating to the employment or the placing in employment of Blacks, assigned by or in terms of the Black Labour Act, 1964 (Act 67 of 1964), or the Black Labour Regulations, 1965, ... to any officer and specified in the said proclamation, shall devolve upon an officer or a category of officers of the Department of Manpower Utilization, or upon any other person irrespective of whether he is an officer as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957), similarly specified."

2.13 The Act consists of only two chapters, namely: chapters 1 and 2. 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.

2.14 Accordingly the Agricultural Labour Act 147 of 1993 is recommended for repeal because the principal Acts to which it refers were repealed. The Act is obsolete and therefore may be repealed.

#### **4 Agricultural Labour Amendment Act 50 of 1994**

2.15 The Agricultural Labour Amendment Act 50 of 1994 is recommended for repeal because chapters 1 and 2 of the principal Act (the Agricultural Labour Act 147 of 1993) were repealed respectively by the Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act 75 of 1997.

2.16 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.

2.17 Section 1 of the Act was repealed by section 212(1) of the Labour Relations Act 66 of 1995, whereas section 2 of the Act was repealed by section 95(5) of the Basic Conditions of Employment Act 75 of 1997. 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.

#### **5 Unemployment Insurance Amendment Acts**

2.18 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:

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. Unemployment Insurance Amendment Act 29 of 1977
7. Unemployment Insurance Amendment Act 6 of 1978

2.19 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,<sup>8</sup> sections<sup>9</sup> 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, the Acts 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.

## **6 Second Unemployment Insurance Amendment Acts**

2.20 The following Second Unemployment Insurance Amendment Acts providing for the preservation of benefits and allowances of certain persons who were contributors in the former TBVC homelands are recommended for repeal:

1. Second Unemployment Insurance Amendment Act 108 of 1976
2. Second Unemployment Insurance Amendment Act 118 of 1977
3. Second Unemployment Insurance Amendment Act 97 of 1979
4. Second Unemployment Insurance Amendment Act 113 of 1981

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<sup>8</sup> The long title to the Unemployment Insurance Amendment Act 27 of 1967 provides 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".

<sup>9</sup> 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".



2.21 These statutes made provision for the preservation of benefits and allowances of certain persons who were contributors in the former homelands of Transkei, Bophuthatswana, Venda and Ciskei.<sup>10</sup> 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.

## **7 Unemployment Insurance Amendment Act 9 of 1979**

2.22 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<sup>11</sup>.

2.23 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,<sup>12</sup> unless the definition in question is no longer appropriate. There is no definition of “Black” in

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<sup>10</sup> See long titles.

<sup>11</sup> See the long title of the Unemployment Insurance Amendment Act 9 of 1979.

<sup>12</sup> See sections 4, 9, 10, 11, 36A, 37, 46, 58 and 60-61 of Act 63 of 2001.

the 2001 Act<sup>13</sup> 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.

## **8 Unemployment Insurance Amendment Act 1 of 1981**

2.24 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.

2.25 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.

## **9 Unemployment Insurance Amendment Act 1 of 1982**

2.26 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.

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<sup>13</sup> The definition of 'Black' in the 1966 Act (Act 30 of 1966) was deleted by the Unemployment Insurance Amendment Act 1 of 1981.

2.27 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.

## **10 Second Unemployment Insurance Amendment Act 89 of 1982**

2.28 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.

2.29 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.

## **11 Unemployment Insurance Amendment Act 27 of 1986**

2.30 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.<sup>14</sup>

2.31 The matters dealt with by Act 27 of 1986 are now included under Act 63 of 2001.<sup>15</sup> 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

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<sup>14</sup> See the long title of Act 27 of 1986.

<sup>15</sup> See sections 1, 5, 36A, 37, 43- 45, 47-51, and 58 of Act 63 of 2001.

democratic state in 1994.<sup>16</sup>

## **12 Unemployment Insurance Second Amendment Act 30 of 1986**

2.32 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. However, section 6 of Act 63 of 2001 provides that:

“the raising of funds by way of loans and bank overdraft facilities in respect of the Fund must be done in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999).”

2.33 As a result, this Act is redundant and is recommended for repeal as the principal Act which it is amending was repealed by section 70 of Act 63 of 2001.

## **13 Unemployment Insurance Amendment Act 36 of 1987**

2.34 The Unemployment Insurance Amendment Act 36 of 1987 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.<sup>17</sup>

2.35 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:

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...

2.36 The Unemployment Insurance Amendment Act 36 of 1987 is therefore

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<sup>16</sup> See also Act 9 of 1979, Act 108 of 1976, Act 118 of 1977 and Act 97 of 1979.

<sup>17</sup> See the long title of Act 36 of 1987.

unconstitutional since its provisions unfairly discriminate against persons on the basis of gender. It is therefore recommended that the Act be repealed.

## **14 Unemployment Insurance Second Amendment Act 102 of 1987**

2.37 It is 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.

2.38 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.<sup>18</sup>

2.39 Chapter 3 of the Unemployment Insurance Act 63 of 2001 now covers unemployment benefits and the procedure for their application. Furthermore, section 36 of the Act provides for the suspension of the contributor's right to benefits under certain conditions stipulated in subsection 36(1)(a)-(d) of the Act. If all 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.

## **15 Unemployment Insurance Amendment Act 29 of 1988**

2.40 It is 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.

2.41 The Unemployment Insurance Amendment 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

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<sup>18</sup> See the long title of Act 102 of 1987.

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.

2.42 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.<sup>19</sup> The above matters are now included under the Unemployment Insurance Act 63 of 2001,<sup>20</sup> 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.

## **16 Unemployment Insurance Amendment Act 130 of 1992**

2.43 It is recommended 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.

2.44 The Unemployment Insurance Amendment 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 provision 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 unemployment insurance fund and empowers the Director General to acquire and alienate immovable property in consultation with the unemployment insurance board without the approval of the Minister of Finance.<sup>21</sup>

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<sup>19</sup> See the long title.

<sup>20</sup> Section 68 of Act 63 of 2001.

<sup>21</sup> See the long title of Act 130 of 1992.

2.45 The Unemployment Insurance Act 63 of 2001 now provides for the matters dealt with by Act 130 of 1992. Among others, section 4 of the Act establishes the Unemployment Insurance Fund, and the Unemployment Insurance Board is established by the Minister in terms of section 47 of the Act. Furthermore, in terms of section 58(6)(a), (b) and (b) of Act 63 of 2001, the Director-General, may after consultation with the Board, purchase or otherwise acquire immovable property required for purposes of this Act; alienate or let immovable property so acquired or permit the use of any immovable property so acquired. 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.

## C Legislation recommended for amendment

### 1 Unemployment Insurance Act 63 of 2001

2.46 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.

2.47 The purpose of Act 63 of 2001 is, among others, to provide for the payment from the Unemployment Insurance 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.

2.48 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)]** "Children's Act, 2005 (Act 38 of 2005)";
- (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)]** "Children's Act, 2005 (Act 38 of 2005)".

2.49 The Child Care Act 74 of 1983 was repealed as a whole by the Children's Act 38 of 2005. 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.

## **2 Basic Conditions of Employment Act 75 of 1997**

2.50 The following amendments are recommended:

1. Reference to the 'Unemployment Insurance Act, 1966 (Act 30 of 1966)' in the definition of 'employment law' should be amended to read 'Unemployment Insurance Act, 2001 (Act 63 of 2001)';
2. Subsections 50(6) and 59(2)(f) of Act 75 of 1997 should be amended in order to substitute the 'Minister of Social Development' for the 'Minister for Welfare and Population Development'.

2.51 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 by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith. The recommendations made below deal mainly with technical amendments.

### **(a) Definition of 'employment law'**

2.52 It is recommended that the reference to the Unemployment Insurance Act, 1966 (Act 30 of 1966) in paragraph (a) of the definition of 'employment law' in section 1 of the Basic Conditions of Employment Act, 1997 be substituted by reference to the Unemployment Insurance Act, 2001 (Act No.63 of 2001). The Unemployment Insurance Act, 1966 was repealed by section 70 of the Unemployment Insurance Act, 2001.



**(b) Section 1: Definition of ‘medical practitioner’**

2.53 Discussion Paper 117 had provisionally recommended that although legislation on traditional healers has not been promulgated yet, attention should be 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. However, this proposal is not supported by the Business Unity South Africa (BUSA). In their submission to the SALRC, BUSA stated that there will be a lot of unintended consequences emanating from this proposal. BUSA says that the Institution and Practice of Traditional Healers is not regulated and it could be because it is a difficult area to regulate. Accordingly, it is not recommended in this Report that the Basic Conditions of Employment Act, 1997 be amended in order to include traditional healers in the definition of ‘medical practitioner’.

**(c) Section 50: Variation by the Minister**

2.54 Section 50(6) of Act 75 of 1997 provides that:

(6) If a determination in terms of subsection (1) concerns the employment of children, the Minister must consult with the Minister for Welfare and Population Development before making the determination.

2.55 It is recommended that subsection (6) be amended in order to update the designation of the Minister to ‘Minister of Social Development’.<sup>22</sup>

**(d) Section 59: Employment Conditions Commission**

2.56 Section 59(2)(f) of Act 75 of 1997 provides that:

(2) The functions of the Commission are to advise the Minister –  
 (f) and the Minister for Welfare and Population Development, on any matter concerning the employment of children ...

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<sup>22</sup> Government Communications *Statement by President Jacob Zuma on the appointment of the new Cabinet* 10 May 2009 Web 7 April 2011.

2.57 It is recommended that subsection (2)(f) be amended to update the designation of the Minister to the 'Minister of Social Development'.<sup>23</sup>

### **3 Employment Equity Act 55 of 1998**

2.58 Under the definition of 'employment law' in section 1 of the Act, paragraph (a) refers to the Unemployment Insurance Act 30 of 1966; paragraph (b) refers to the Guidance and Placement Act 62 of 1981; and paragraph (c) refers to the Manpower Training Act 56 of 1981.

2.59 It is recommended that reference to the 'Unemployment Insurance Act, 1966 (Act 30 of 1966)' in paragraph (a) of the definition of 'employment law' in section 1 of the Act should be amended to refer to the 'Unemployment Insurance Act, 2001 (Act 63 of 2001)'.

2.60 It is recommended that the reference to the 'Guidance and Placement Act, 1981 (Act No. 62 of 1981) in paragraph (b) of the definition of 'employment law' in section 1 of the Act be deleted. The Guidance and Placement Act 62 of 1981 was repealed by section 37 of the Skills Development Act, 1998 (Act 97 of 1998). It is further recommended that the reference to the "Manpower Training Act, 1981 (Act No. 56 of 1981) in paragraph (c) of the definition of 'employment law' in section 1 of the Act be amended to refer to the 'Skills Development Act, 1998 (Act No. 97 of 1998)'.

2.61 It is recommended that sections 4 and 12 of Act 55 of 1998 be amended so as to be consistent with each other. Section 4 is too narrow and should be amended to make provision for section 50(2)(d) of the Act.

2.62 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.

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Government Communications *Statement by President Jacob Zuma on the appointment of the new Cabinet* 10 May 2009 Web 7 April 2011.

2.63 Section 12 of Chapter III states:

Except where otherwise provided, this Chapter applies only to designated employers.

2.64 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.

2.65 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.

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

2.67 Secondly, the caveats in the sections are not consistent. Section 4 states that:

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.

2.68 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).

2.69 There is no reason why sections 4 and 12 should be worded differently 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.

2.70 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.

#### **4 The National Economic, Development and Labour Council Act 35 of 1994**

2.71 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.

2.72 Although Act 35 of 1994 is generally not in conflict with the equality provisions in the Constitution, references, however, 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 sections 3(4), 3(5) and 9(4) of the Act should be amended to refer to the 'Minister of Labour'.

2.73 According to comments received from NEDLAC in response to Discussion Paper 117, any reference to the 'Minister without Portfolio in the Office of the President' in the Act should be removed and replaced with the 'Minister of Labour', and any reference to the 'Senate' should be removed.

2.74 Accordingly, it is recommended that the Act be amended as follows:

1. By the substitution for the definition of 'organisations of community and development interests' in section 1 of the Act of the following definition:  
    **"organisations of community and development interests"** means those non-governmental organisations identified by the Minister **[without Portfolio in the Office of the President]** in terms of section 3(5) as representing community interests relating to reconstruction and development;"
  
2. By the substitution for subsection (4) of section 3 of the following subsection:  
    “(4) The members referred to in subsection 1(c) shall be appointed by the Minister **[without Portfolio in the Office of the President]** from persons nominated by the organisations of community and development interest identified by the Minister **[without Portfolio in the Office of the President]** in terms of subsection (5).”
  
3. By the substitution for subsection (5) of section 3 of the following subsection:  
    “(5) The Minister **[without Portfolio in the Office of the President]** shall in consultation with the executive council identify organisations of community and development interest that –
  - (a) represent a significant community interest on a national basis;
  - (b) have a direct interest in reconstruction and development; and
  - (c) are constituted democratically.”
  
4. By the substitution for section 8 of the following section:  
    “8. Any report of the Council, including the annual report or a report on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the Minister and every such report shall as soon as practicable be laid upon the Table of the **[Senate and of the]** National Assembly.”
  
5. By the substitution for subsection (4) of section 9 of the following subsection:  
    “(4) The Minister **[, in consultation with the Minister without Portfolio in the Office of the President,]** shall invite persons who represent organisations of community and development interest to attend the meeting.”

## **D Statutes reviewed and recommended to be retained**

### **1 Integration of Labour Laws Act 49 of 1994**

2.75 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.

2.76 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).

2.77 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.

2.78 Although the Agricultural Labour Act 147 of 1993 is recommended for repeal in this Report, however, the Integration of Labour Laws 49 of 1994 is recommended for retention on the basis that section 2 of the Act which extends the application of the Occupational Health and Safety Act, 1993 and the Compensation for Occupational Injuries and Diseases Act, 1993 to the whole of the national territory of the Republic of South Africa is still enforceable.

### **2 Integration Measures in respect of Labour Laws, Amendment and Adjustments Act 68 of 1996**

2.79 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”.

2.80 Although the Sefalana Employee Benefits Organisation has now been disestablished and the Sefalana Employee Benefits Organisation Act, 1989, has been repealed in terms of the Sefalana Employee Benefits Organisation Act Repeal Act, 2003 (Act No.14 of 2003), however, Act 68 of 1996 is not recommended for repeal since it validates 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, including certain putative functions and acts in relation to the unemployment insurance fund of the former Bophuthatswana and other related matters purporting to have been performed in terms of the said Sefalana Employee Benefits Organisation Act, 1989, after that Act had ceased to apply to such funds and matters.

### 3 Skills Development Act

2.81 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.

2.82 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.

2.83 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 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”.

2.84 In terms of Proclamation 56 of 4 September 2009, the President of the Republic of South Africa transferred the administration, powers and functions entrusted to the Minister of Labour by the Skills Development Act, 1998 to the Minister of Higher Education and Training in so far as these provisions do not apply to the Productivity South Africa and employment services.<sup>24</sup>

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<sup>24</sup> All the provisions of the Skills Development Act were transferred to the Minister of Higher Education and Training except-



2.85 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.

#### **4 Labour Relations Act 66 of 1995**

2.86 The purpose of the Labour Relations Act 66 of 1995 (the “LRA”)<sup>25</sup> 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;
- (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.

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- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p), and (q), item 7 of Schedule 4; and
  - (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services”, as defined in section 1, or Productivity South Africa, as established by section 26K, but excluding section 23(1)(b) and (c).

<sup>25</sup> As amended by the Labour Relations Amendment Act 42 of 1996, Act 127 of 1998, and Act 12 of 2002.

**(a) Section 26: Closed shops agreements**

2.87 The question of whether the trade union security arrangements provided for in section 26 of the LRA should be reviewed was considered. It was decided that any violation of the right to freedom of association is tempered by the restrictions in section 26 of the LRA which are applicable to closed shop agreements<sup>26</sup> and that this section is thus not inconsistent with the Constitution.

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

2.88 The implication of the express prohibition of discrimination on the grounds of race or sex in the constitution of any trade union or employers' organisation, and the absence of any express prohibition of discrimination on other grounds was considered. 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.

2.89 The SALRC 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.

2.90 The SALRC also noted 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) or that it may also be permissible to establish a trade union for workers who hold particular religious beliefs.

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<sup>26</sup> Currie I & De Waal J *The Bill of Rights Handbook* 5<sup>th</sup> ed 2005 on 512.

2.91 The SALRC 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, it would not be clear into which category certain potential grounds of discrimination (for example, language) would fall.

2.92 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.<sup>27</sup>

2.93 In order to prevent the prohibition on grounds of race and sex from being interpreted as permitting discrimination on other grounds, the provision could be amended by the DOL as follows:

(6) 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".

2.94 Alternatively, the section could be amended to read as follows:

(6) The constitution of any trade union or employers' organisation which intends to register may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex, or any other ground which in the opinion of the Registrar may unfairly affect the rights or dignity of workers or employers.

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<sup>27</sup> 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".

**(c) Section 167(2): Status of Labour Appeal Court**

2.95 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.

2.96 In the *National Union of Metalworkers of South Africa and others v Fry’s Metals (Pty) Ltd*,<sup>28</sup> the SCA held that:

[16] We conclude that the Constitution vests this court with power to hear appeals from the LAC in both constitutional and non-constitutional matters, and that the provisions of the LRA that confer final appellate power on the LAC must be read subject to the appellate hierarchy created by the Constitution itself. This follows from the subordination to the Constitution that the LRA itself mandates. It does not entail that any provisions of the LRA are unconstitutional any more than the recognition of the appellate jurisdiction of the CC and of this court in constitutional matters required a finding of unconstitutionality.

[17] This conclusion conforms with the reasoning in *Chevron Engineering (Pty) Ltd v Nkambule*.<sup>29</sup> [18] The question was whether, on a proper interpretation of item 22(6), an appeal lay to this court from all decisions of the LAC given on appeal to it from the industrial court. The applicant argued that item 22(6) should be read so as to be consistent with the provisions of s 168(3) of the Constitution. Farlam JA held that ‘[i]f it were not for the inclusion of the words “subject to the Constitution”, the wording would impel one to the conclusion that the drafters did not intend to permit such appeals, which would raise squarely the question whether the provision could withstand constitutional scrutiny, given the clear wording of s 168(3) of the Constitution’. Given the qualification, however, this court held that the applicant was entitled to appeal against the LAC’s decision.

2.97 In general, another issue that was considered is 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.<sup>30</sup>

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<sup>28</sup> 2005 (5) BLLR 430 (SCA).

<sup>29</sup> 2003 (7) BLLR 631 (SCA).

<sup>30</sup> Section 1(d)(iv).

2.98 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. 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.

## **E Anomalies in certain legislation administered by the DOL**

2.99 The SALRC has identified a number of anomalies in the following statutes administered by the DOL:

1. Labour Relations Act 66 of 1995
2. Unemployment Insurance Act 63 of 2001
3. Compensation for Occupational Injuries and Diseases Act 130 of 1993

### **1 Labour Relations Act 66 of 1995**

#### **(a) Sections 23(1)(d) and 32: Binding effect of collective agreement on non-parties**

2.100 The SALRC considered whether or not these provisions give rise to any conflict with constitutional rights, including the right to freedom of association,<sup>31</sup> the right to freedom of trade, occupation and profession,<sup>32</sup> the right to fair labour practices<sup>33</sup> and the right to

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<sup>31</sup> Section 18 of the Constitution.

<sup>32</sup> Section 22 of the Constitution.

<sup>33</sup> Section 23 of the Constitution.

property,<sup>34</sup> but was satisfied that these provisions were not unconstitutional.

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

2.101 It is suggested that consideration be given to an anomaly that exists within the LRA. It concerns section 31 when considered in the context of section 23.

2.102 Firstly, 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”).

2.103 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.

2.104 The one view is that it is 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.<sup>35</sup>

2.105 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. The same

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<sup>34</sup> Section 25 of the Constitution.

<sup>35</sup> 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).

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.

2.106 The other view is that 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.

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

- 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.”
- 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 ...”

## **2 Unemployment Insurance Act 63 of 2001**

2.108 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:

**(a) Section 1 of Act 63 of 2001: Definition of a ‘child’**

2.109 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.

2.110 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.<sup>36</sup> 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.<sup>37</sup>

2.111 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.

**(b) Definition of ‘dependant’, ‘spouse’ and ‘life partner’**

2.112 The Act does not contain a definition of ‘dependant’, ‘spouse’ and ‘life partner’. 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 dependent child is entitled to this benefit if it has not been claimed by a surviving spouse or life partner.

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<sup>36</sup> See also section 28(3) of the Constitution.

<sup>37</sup> Section 30(2) of Act 63 of 2001.



2.113 The Act was promulgated before the coming into operation of the Civil Unions Act, 2006 (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.<sup>38</sup> 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.

2.114 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.

**(c) Section 27 of Act 63 of 2001**

2.115 Section 27(1) of the Act provides that only one contributor of the adopting parties is entitled to adoption benefits. The 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. It is not clear whether the term 'adopting parties' in section 27(1) includes same-sex couples.

Section 231(1) of the Children's Act 38 of 2005 provides that:

- (1) A child may be adopted-
- (a) jointly by-
    - (i) a husband and wife;
    - (ii) partners in a permanent domestic life-partnership; or
    - (iii) other persons sharing a common household and forming a permanent family unit;
  - (b) by a widower, widow, divorced or unmarried person;
  - (c) by a married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child;
  - (d) by the biological father of a child born out of wedlock; or
  - (e) by the foster parent of the child.

2.116 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.<sup>39</sup>

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<sup>38</sup> See long title, preamble and definition of civil union and civil union partner of Act 17 of 2006.

<sup>39</sup> Section 231 of Act 38 of 2005 lists persons who may adopt a child and this includes same-sex couples.

**(d) Schedule 1 of Act 63 of 2001**

2.117 The purpose of Schedule 1 was to ensure smooth transition from the Unemployment Insurance Act 30 of 1966 as amended by 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.

2.118 If the purpose of the schedule (Transitional Arrangements) has been achieved then the provision is spent and, it has become redundant and may be repealed.

**3 Compensation for Occupational Injuries and Diseases Act 130 of 1993**

2.119 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.

2.120 The assessment of employers is further regulated by this amending Act. The Compensation for Occupational Injuries and Diseases 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.

2.121 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'.

2.122 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.

2.123 Section 1 further defines a ‘dependant of an employee’ in parts (d)<sup>40</sup> and (e)<sup>41</sup> of the 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.

2.124 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’.

2.125 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.<sup>42</sup>

2.126 Section 1 (definition of ‘employee’) excludes at subparagraph (v) ‘a domestic employee employed as such in a private household’.<sup>43</sup> Discussion Paper 117 had

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<sup>40</sup> 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’.

<sup>41</sup> The definition in part (e) states that ‘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’.

<sup>42</sup> In family law, criminal law and labour law the age of a ‘child’ may vary depending on the circumstances.

<sup>43</sup> 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.

provisionally recommended 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.

1.127 However, according to the joint submission received from the nine organisations mentioned in paragraph 3 of Annexure C of this Report,<sup>44</sup> ‘there are no compelling reasons for the exclusion of domestic workers from COIDA. The exclusion of domestic workers from COIDA denies them access to legal protection and benefits equal to that enjoyed by other workers. In the absence of sufficient justification, this amounts to an infringement of their rights to equal treatment in terms of section 9(1) of the Constitution.’

1.128 Although the above organisations submitted that the SALRC should recommend the deletion of paragraph (d) subparagraph (v) of the definition of ‘employee’ in section 1 of COIDA rather than merely a review of the exclusion, the SALRC’s recommendation on this matter however, is that a review of the exclusion of domestic workers from the application of the provisions of COIDA by NEDLAC is warranted. The NEDLAC’s Founding Declaration provides that:

Nedlac is the vehicle by which government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country.

1.129 Furthermore, section 5 of the National Economic, Development and Labour Council Act 35 of 1994 provides that:

(1)(c) The Council shall consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament.

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<sup>44</sup> Social Law Project (SLP), Faculty of Law,(UWC); SA Domestic Services and Allied Workers Union (SADSAWU); COSATU (Western Cape); Labour Research Services (LRS); Labour and Enterprise Policy Research Group (LEP), UCT; Industrial Health Resource Group (IHRG) UCT; Division of Occupational Therapy, UCT; International Labour Research and Information Group (ILRIG) and the Black Sash.

## 4 Occupational Health and Safety Act 85 of 1993

2.130 The Occupational Health and Safety Amendment Act 181 of 1993 amended the Occupational Health and Safety Act 85 of 1993, by substituting section 4(1)(f) and (g) and section 15, 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 sections 17 and 18 to regulate the duty not to interfere with or damage things as well as regulating the appointment and functions of health and safety representatives.

2.131 This Act also amends the Occupational Health and Safety Act, 1993 by substituting sections 23 and 26 to further regulate the prohibition on victimisation. 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 shall 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...'<sup>45</sup> 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'.<sup>46</sup>

2.132 There is no reference in this section to the Protected Disclosures Act 26 of 2000 which protects employees who make a disclosure which is protected in terms of the Act. Sections 186(2)(d) and 187(1)(h) of the Labour Relations Act 66 of 1995 provide for protection to so called whistle blowers against unfair labour practices and unfair dismissal in contravention 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 in order to provide protection to employees who make a protected disclosure as defined in the Protected

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<sup>45</sup> Section 26(1) of the 1993 Act (Act 85 of 1993).

<sup>46</sup> Section 26(2) of the 1993 Act (Act 85 of 1993).

Disclosures Act.

2.133 Sections 39 (6) and 44 (6) of the Occupational Health and Safety Act, 1993 refer to the Standards Act, 1993 (Act 29 of 1993) which was repealed by section 35 of the Standards Act, 2008 (Act 8 of 2008). These sections provides as follows:

Section 39 Proof of certain facts

- (6) notwithstanding the provisions of section 31(3) of the Standards Act, 1993 (Act 29 of 1993),<sup>47</sup> whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that he is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be prima facie proof of the facts stated therein.

Section 44 Incorporation of health and safety standards in regulations

- (6) The provisions of section 31 of the Standards Act, 1993 (Act 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.

2.134 Section 28 of the Standards Act 8 of 2008 now deals with the incorporation of South African national standards in laws. This section provides that-

Section 28 Incorporation of South African National Standards in laws

- (1) A South African National Standard, or any provision thereof, that has been published in terms of this Act in respect of any commodity,

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<sup>47</sup> Section 31(3) of Act 29 of 1993 provided as follows:

- (3) (a) Criminal prosecution may only be instituted against a person on a charge of having contravened or failed to comply with a provision so incorporated if the State department, local authority or other institution or body referred to in subsection (2) has in every case furnished to the attorney-general or public prosecutor concerned a copy issued by the SABS, of each relevant standard or document which he shall in terms of the said subsection keep available for free inspection.
- (b) The standard or document referred to in paragraph (a) shall on the mere production thereof be prima facie proof of the contents of the standard concerned or an amendment thereof.

product or service which may affect public safety, health, or environmental protection, may be incorporated in any law.

- (2) The South African National Standard, or any provision thereof, contemplated in subsection (1) may be incorporated by referring to-
  - (a) the title and the number; or
  - (b) the title, the number and the year or edition number.
- (3) If the South African National Standard, or any provision thereof, contemplated-
  - (a) In subsection (2) (a) is subsequently amended, such amended South African National Standard, or any provision thereof, is deemed to be incorporated;
  - (b) In subsection (2) (b) is subsequently amended, such amended South African National Standard, or any provision thereof, is not deemed to be incorporated.

2.135 It is recommended that sections 39 (6) and 44 (6) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) be reviewed by the Department of Labour in light of the new provisions of the Standards Act, 2008 (Act 8 of 2008).

# Annexure A

## Labour 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 indicated words underlined with a solid line indicate insertions in existing enactments.

### Bill

**To repeal certain obsolete and redundant labour laws of the Republic and to amend certain laws pertaining to labour 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 the Labour Laws Amendment and Repeal Act, and comes into operation on a date determined by the President by proclamation in the Gazette.



**Schedule 1**

<b>Item no.</b>	<b>No. and year of law</b>	<b>Title and subject</b>
1.	Act 58 of 1981	Second Wage Amendment Act 58 of 1981
2.	Act 88 of 1980	Black Labour (Transfer of Functions) Act 88 of 1980
3.	Act 147 of 1993	Agricultural Labour Act 147 of 1993
4.	Act 50 of 1994	Agricultural Labour Amendment Act 50 of 1994
5.	Act 27 of 1967	Unemployment Insurance Amendment Act 27 of 1967
6.	Act 87 of 1968	Unemployment Insurance Amendment Act 87 of 1968
7.	Act 61 of 1971	Unemployment Insurance Amendment Act 61 of 1971
8.	Act 12 of 1974	Unemployment Insurance Amendment Act 12 of 1974
9.	Act 51 of 1975	Unemployment Insurance Amendment Act 51 of 1975
10.	Act 108 of 1976	Second Unemployment Insurance Amendment Act 108 of 1976
11.	Act 29 of 1977	Unemployment Insurance Amendment Act 29 of 1977
12.	Act 118 of 1977	Second Unemployment Insurance Amendment Act 118 of 1977
13.	Act 6 of 1978	Unemployment Insurance Amendment Act 6 of 1978
14.	Act 97 of 1979	Second Unemployment Insurance Amendment Act 97 of 1979
15.	Act 113 of 1981	Second Unemployment Insurance Amendment Act 113 of 1981
16.	Act 9 of 1979	Unemployment Insurance Amendment Act 9 of 1979
17.	Act 1 of 1981	Unemployment Insurance Amendment Act 1 of 1981
18.	Act 1 of 1982	Unemployment Insurance Amendment Act 1 of 1982
19.	Act 89 of 1982	Unemployment Insurance Amendment Act 89 of 1982
20.	Act 27 of 1986	Unemployment Insurance Amendment Act 27 of 1986
21.	Act 30 of 1986	Unemployment Insurance Second Amendment Act 30 of 1986
22.	Act 36 of 1987	Unemployment Insurance Amendment Act 36 of 1987
23.	Act 102 of 1987	Unemployment Insurance Second Amendment Act 102 of 1987
24.	Act 29 of 1988	Unemployment Insurance Amendment Act 29 of 1988
25.	Act 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	<p>1. Section 27 of the Act is hereby amended –</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) the child has been adopted in terms of the [<b>Child Care Act, 1983 (Act 74 of 1983)</b> <u>Children’s Act, 2005 (Act No. 38 of 2005)</u>];”</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the [<b>Child Care Act, 1983 (Act 74 of 1983)</b> <u>Children’s Act, 2005 (Act No. 38 of 2005)</u>].”.</p>
2.	75 of 1997	Basic Conditions of Employment Act 75 of 1997	<p>1. Section 1 of the Act is hereby amended by the substitution for paragraph (a) of the definition of ‘employment law’ of the following paragraph:</p> <p>“(a) The Unemployment Insurance Act, [<b>1966 (Act 30 of 1966)</b> <u>2001 (Act No. 63 of 2001)</u>];”</p> <p>2. Section 50 of the Act is hereby amended by the substitution for subsection (6) of the following subsection:</p> <p>“(6) If a determination in terms of subsection (1) concerns the employment of children, the Minister must consult with the Minister [<b>for Welfare and Population</b>] <u>of Social Development</u> before making the determination.”</p> <p>3. Section 59 of the Act is hereby</p>

Item no.	No. and year of law	Title and subject	Extent of amendment
			<p>amended by the substitution for paragraph (f) of subsection (2) of the following paragraph:</p> <p>“(f) and the Minister <b>[for Welfare and Population]</b> <u>of Social Development</u>, on any matter concerning the employment of children, including the review of section 43;”.</p>
3.	55 of 1998	Employment Equity Act 55 of 1998	<p>1. Section 1 of the Act is hereby amended –</p> <p>(a) by the substitution for paragraph (a) of the definition of ‘employment law’ of the following paragraph:</p> <p>“(a) The Unemployment Insurance Act, <b>[1966 (Act 30 of 1966)]</b> <u>2001 (Act No. 63 of 2001)</u>;”; and</p> <p>(b) by the deletion in the same section of paragraph (b) of the definition of ‘employment law’;</p> <p>(c) by the substitution in the same section for paragraph (c) of the definition of ‘employment law’ of the following paragraph:</p> <p>“(c) the Skills Development Act, 1998 (Act 97 of 1998);”</p> <p>3. The Act is hereby amended by the substitution for section 12 of the following section:</p> <p>“12. Except where otherwise provided, this Chapter applies only to designated employers <u>and people from designated groups</u>.”.</p>
4.	35 of 1994	National Economic, Development and Labour Council Act 35 of 1994	<p>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:</p> <p>“ ‘<b>organisations of community and development interests</b>’</p>

Item no.	No. and year of law	Title and subject	Extent of amendment
			<p>means those non-governmental organisations identified by the Minister <b>[without Portfolio in the Office of the President]</b> in terms of section 3(5) as representing community interests relating to reconstruction and development;”.</p> <p>2. Section 3 of the Act is hereby amended –</p> <p>(a) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) The members referred to in subsection 1(c) shall be appointed by the Minister <b>[without Portfolio in the Office of the President]</b> from persons nominated by the organisations of community and development interest identified by the Minister <b>[without Portfolio in the Office of the President]</b> in terms of subsection (5).”; and</p> <p>(b) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) The Minister <b>[without Portfolio in the Office of the President]</b> shall in consultation with the executive council identify organisations of community and development interest that –</p> <ul style="list-style-type: none"> <li>(a) represent a significant community interest on a national basis;</li> <li>(b) have a direct interest in reconstruction and development; and</li> <li>(c) are constituted democratically.”</li> </ul> <p>3. Section 8 of the Act is hereby substituted by the following section:</p> <p>“8. Any report of the Council, including the annual report or a report on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the Minister and every such report shall as soon as</p>

Item no.	No. and year of law	Title and subject	Extent of amendment
			<p>practicable be laid upon the Table of the <b>[Senate and of the]</b> National Assembly.</p> <p>4. Section 9 of the Act is hereby amended by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) The Minister <b>[, in consultation with the Minister without Portfolio in the Office of the President,]</b> shall invite persons who represent organisations of community and development interest to attend the meeting.”.</p>

## 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
29.	Agricultural Labour Act 147 of 1993

<b>No.</b>	<b>Name of Act, number and year</b>
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.	Unemployment Contributions Act 4 of 2002

## Annexure C

### List of respondents to Discussion Paper 117

1. Mr Vikashnee Harbhajan: Executive Director: Social Policy. Business Unity South Africa
2. Mr Herbert Mkhize: Executive Director: National Economic Development and Labour Council (NEDLAC)
3. Mr Fairuz Mullage: Social Law Project. Faculty of Law: University of the Western Cape on behalf of the following organisations:
  - (i) Social Law Project (SLP), Faculty of Law, UWC;
  - (ii) SA Domestic Services and Allied Workers Union (SADSAWU);
  - (iii) COSATU: Western Cape;
  - (iv) Labour Research Services (LRS);
  - (v) Labour and Enterprise Policy Research Group (LEP), University of Cape Town;
  - (vi) Industrial Health Resource Group (IHRG), University of Cape Town;
  - (vii) Division of Occupational Therapy, University of Cape Town;
  - (viii) International Labour Research & Information Group; and
  - (ix) Black Sash.



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