

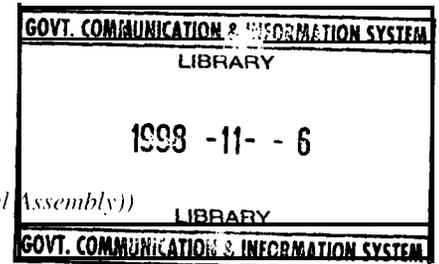
REPUBLIC OF SOUTH AFRICA

LABOUR RELATIONS AMENDMENT BILL

(As amended by the Portfolio Committee on Labour (National Assembly))

(MINISTER OF LABOUR)

[B 133B—98]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP ARBEIDSVERHOUDINGE

(Soos gewysig deur die Portefeuljekomitee oor Arbeid (Nasionale Vergadering))

(MINISTER VAN ARBEID)

[W 133 B—98]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

“to amend the Labour Relations Act, 1995, so as to make the establishment, after the coming into operation of this Act, of a pension, provident or medical aid scheme or fund by a bargaining council or statutory council subject to compliance with the laws relating to pension, provident or medical aid schemes or funds, and to make those laws applicable to such funds that may be so established after that point in time; to adjust the requirements for extending any collective agreement concluded in a bargaining council, to non-parties; to provide for the continuation, in certain circumstances, of a pension, provident or medical aid scheme or fund upon the winding-up of the bargaining council or statutory council which had established the scheme or fund; to empower the Minister of Labour to designate the chairperson of the essential services committee from the number of the committee members; to empower the Commission for Conciliation, Mediation and Arbitration (“the Commission”) to make rules pertaining to certain proceedings and to the practice and procedure applicable in certain matters; to authorise the director of the Commission to delegate certain of the functions of that office to a commissioner; to authorise a commissioner to consolidate various conciliation proceedings between the same parties involved in two or more separate disputes before the commissioner; to impose a time limit on the referral of a matter to arbitration, or to the Labour Court; to adjust the provisions regarding objections to the commissioner appointed to conduct an arbitration, as well as those regarding the representation of parties in arbitration proceedings and in proceedings in the Labour Court; in Schedule 5 to exclude the application of the provisions of the Pension Funds Act, 1956, and the Medical Schemes Act, 1967, to the pension funds and medical schemes of bargaining councils and statutory councils only where such a fund or scheme had been established or continued in terms of a collective agreement concluded in such a council before the coming into operation of this Act, or when such a scheme or fund is so continued or further continued thereafter; in Schedule 7 to empower the Minister of Labour to transfer the functions of the industrial court to the Commission subject to certain provisions and limitations; to effect certain amendments necessary to ensure consistency with the Constitution of the Republic of South Africa, 1996, and certain other technical amendments; and to provide for incidental matters.

B 1111’ ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 28 of Act 66 of 1995

1. Section 28 of the Labour Relations Act 1995 (hereafter called the principal Act), is hereby amended by the addition after the existing provisions (which become subsection (1)) of the following subsections:

- “(2) From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1)(g). 5
- (3) The laws relating to pension, provident or medical aid schemes or funds will apply in respect of any pension, provident or medical aid scheme or fund established in terms of subsection (1)(g) after the coming into operation of the Labour Relations Amendment Act, 1998.” 10

Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996

2. Section 32 of the principal Act is hereby amended— 15
- (a) in subsection (3), by the substitution for paragraphs (e) and (f) of the following paragraphs:
- “(e) provision is made in the collective agreement [establishes or appoints] for an independent body to [grant exemptions to non-parties and to determine the terms of those exemptions] hear and decide, as soon as possible, any appeal brought against— 20
- (i) the bargaining council’s refusal of a non-party’s application for exemption from the provisions of the collective agreement [as soon as possible];
- (ii) the withdrawal of such an exemption by the bargaining council; 25
- (f) the collective agreement contains criteria that must be applied by the independent body when it considers [applications for exemption] an appeal, and that those criteria are fair and promote the primary objects of this Act; and; and 30
- (b) by the deletion of subsection (4).

Amendment of section 43 of Act 66 of 1995, as amended by section 10 of Act 42 of 1996

3. Section 43 of the principal Act is hereby amended by the addition after subsection (3) of the following subsection: 35
- “(4)(a) From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1)(c). 40
- (b) The provisions of the laws relating to pension, provident or medical aid schemes or funds will apply in relation to any pension, provident or medical aid scheme or fund established in terms of subsection (1)(c) after the coming into operation of the Labour Relations Amendment Act, 1998.”, 45

Amendment of section 59 of Act 66 of 1995

4. Section 59 of the principal Act is hereby amended by the addition after subsection (5) of the following subsections: 50
- “(6) For the purposes of this section, the assets and liabilities of any pension, provident or medical aid scheme or fund established by a council will be regarded and treated as part of the assets and liabilities of the council unless—
- (a) the parties to the council have agreed to continue with the operation of the pension, provident or medical aid scheme or fund as a separate scheme or fund despite the winding-up of the council; and

- (b) the *Minister* has approved the continuation of the scheme or fund; and
(c) application has been made in accordance with the provisions of the laws applicable to pension, provident or medical aid schemes or funds, for the registration of that scheme or fund in terms of those provisions,
- (7) A pension, provident or medical aid scheme or fund registered under the provisions of those laws after its application in terms of subsection (6)(c), will continue to be a separate scheme or fund despite the winding-up of the *council* by which it was established. 5
- (8) The *Minister* by notice in the Government Gazette may declare the rules of a pension, provident or medical aid scheme or fund mentioned in subsection (7), to be binding on any *employees* and employer or employers that fell within the *registered scope* of the relevant *council* immediately before it was wound up.”. 10

Amendment of section 70 of Act 66 of 1995

5. Section 70 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

- “(1) The *Minister*, after consulting *NEDLAC*, and in consultation with the Minister for [the Public Service and Administration, must establish an essential services committee under the auspices of the Commission and—
- (a) appoint to that committee, on any terms that the *Minister* considers fit, persons who have knowledge and experience of labour law and labour relations; and 20
- (b) designate one of the members of the committee as its chairperson.”

Amendment of section 115 of Act 66 of 1995, as amended by section 31 of Act 42 of 1996 25

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

- (a) in subsection (2), by the insertion after paragraph (c) of the following paragraph:
- “(cA) make rules—
- (i) to regulate, subject to Schedule 3, the proceedings at its meetings and at the meetings of any committee of the Commission; 30
- (ii) regulating the practice and procedure of the essential services committee;
- (iii) regulating the practice and procedure— 35
- (aa) for any process to resolve a *dispute* through conciliation;
- (bb) at arbitration proceedings; and
- (iv) determining the amount of any fee that the Commission may charge under section 147, and regulating the payment of such a fee in detail;” and 40
- (b) by the addition after subsection (5) of the following subsection;
- “(6) (a) A rule made under subsection (2)(cA) must be published in the Government Gazette. The Commission will be responsible to ensure that the publication occurs.
- (b) A rule so made will not have any legal force or effect unless it has been so published.”. 45

Amendment of section 118 of Act 66 of 1995

7. Section 118 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

- “(6) The *director*, in consultation with the governing body, may delegate any of the functions of that office, except the functions mentioned in sections 120 and 138(8), to a commissioner.”. 50

Amendment of section 135 of Act 66 of 1995, as amended by section 36 of Act 42 of 1996

8. Section 135 of the principal Act is hereby amended—

(a) by the insertion after subsection (3) of the following subsection:

“(3A) If a single commissioner has been appointed, in terms of subsection (1), in respect of more than one *dispute* involving the same parties, that commissioner may consolidate the conciliation proceedings so that all the *disputes* concerned may be dealt with in the same proceedings.”; and

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

“(4) In the conciliation proceedings a party to the *dispute* may appear in person or be represented only by **[a co-employee or by a]**—

(a) a director or employee of that party; or

(b) any member, [an] office bearer or official of that party’s registered trade union or registered employers’ organisation [and if the party is a juristic person, by a director or an employee].”.

Amendment of section 136 of Act 66 of 1995

9. Section 136 of the principal Act is hereby amended—

(a) in subsection (1), by the substitution for paragraph (b) of the following paragraph:

“(b) within 90 days after the date on which that certificate was issued, any party to the *dispute* has requested that the *dispute* be resolved through arbitration. However, the Commission, on good cause shown, may condone a party’s non-observance of that timeframe and allow a request for arbitration filed by the party after the expiry of the 90-day period.”; and

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

“(3) Any party to the *dispute* who **[objects]** wants to object to the arbitration also being conducted by the **[same]** commissioner who **[conciliated]** had attempted to resolve the *dispute* through conciliation, may **[file]** do so by filing an objection in that regard with the Commission within seven days after the date on which the commissioner’s certificate was issued, and must satisfy the Commission that a copy of the objection has been served on all the other parties to the *dispute*.”.

Amendment of section 138 of Act 66 of 1995

10. Section 138 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by—

(a) a legal practitioner [a co-employee or by a];

(b) a director or employee of the party; or

(c) any member, office-bearer or official of that party’s registered trade union or registered employers’ organisation [and, if the party is a juristic person, by a director or an employee].”.

Amendment of section 151 of Act 66 of 1995

11. Section 15 I (1) of the principal Act is hereby amended by the addition of the words “and equity”.

Amendment of section 153 of Act 66 of 1995, as amended by section 42 of Act 42 of 1996

12. Section 153 of the principal Act is hereby amended—

(a) in subsection (1)—

(i) by the substitution for paragraph (a) of the following paragraph:

“(a) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission [as defined in section 1050 of the Constitution] provided for in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), (in this Part and Part E called the Judicial Service Commission), and after consultation with the Minister of Justice, must appoint a Judge President of the Labour Court.”; and

(ii) by the deletion of the words “as defined in section 105 of the Constitution” where they occur in paragraph (b);

(b) in subsection (4), by the deletion of the words “as defined in section 105 of the Constitution”; and

(c) in subsection (6)(a)(i), by the substitution for the words “Supreme Court” of the words “High Court”.

Amendment of section 154 of Act 66 of 1995, as amended by section 43 of Act 42 of 1996

13. Section 154 of the principal Act is hereby amended by the substitution for the words “Supreme Court” wherever they occur in subsections (3), (4), (5), (6) and (7), of the words “High Court”,

Amendment of section 157 of Act 66 of 1995

14. Section 157 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Labour Court has concurrent jurisdiction with the [Supreme Court] High Court [(a)] in respect of any alleged [violation] or threatened violation [by the State in its capacity as employer] of any fundamental right entrenched in Chapter [3] 2 of the Constitution of the Republic of South Africa, 1996, and arising from—
 (a) employment and from labour relations;
 (b) [in respect of] any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
 (c) the application of any law for the administration of which the Minister is responsible.”.

Amendment of section 159 of Act 66 of 1995, as amended by section 45 of Act 42 of 1996

15. Section 159 of the principal Act is hereby amended by the substitution for the words “Supreme Court” wherever they occur in subsections (7) and (8), of the words “High Court”,

Substitution of section 161 of Act 66 of 1995

16. The following section is hereby substituted for section 161 of the principal Act:

“ 161. Representation before Labour Court

In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by—

(a) a legal practitioner [a co-employee, or by a];

(b) a director or employee of the party;

(c) any member, [an] office-bearer or official of that party’s registered trade union or registered employers’ organisation [and, if the party is a Juristic person, by a director or an employee];

(d) a designated agent of a council; or

(e) an official of the Department of Labour.”.

Amendment of section 163 of Act 66 of 1995

17. Section 163 of [the principal Act is hereby amended by the substitution for the words “Supreme Court” of the words “High Court”],

Amendment of section 167 of Act 66 of 1995

18. Section 167(3) of the principal Act is hereby amended by the substitution for the 5 words “Appellate Division of the Supreme Court” of the words “Supreme Court of Appeal”.

Amendment of section 168 of Act 66 of 1995, as amended by section 46 of Act 42 of 1996

19. Section 168(1) of the principal Act is hereby amended by the substitution for the 10 words “Supreme Court” where they occur in paragraph (c), of the words “High Court”.

Amendment of section 169 of Act 66 of 1995, as substituted by section 47 of Act 42 of 1996

20. Section 169 of the principal Act is hereby amended—
- (a) in subsection (1), by the deletion of the expression “as defined in section 105 15 of the Constitution”; and
 - (b) in subsection (2), by the substitution for the words “Supreme Court” of the words “High Court”.

Amendment of section 170 of Act 66 of 1995, as amended by section 48 of Act 42 of 1996

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21. Section 170 of the principal Act is hereby amended by the substitution for the words “Supreme Court” wherever they occur in subsections (3), (4) and (5), of the words “High Court”.

Amendment of section 173 of Act 66 of 1995

22. Section 173 of the principal Act is hereby amended—
- (a) by the deletion of subsection (2); and
 - (b) in subsection (3), by the substitution for the words “Appellate Division of the Supreme Court” of the words “Supreme Court of Appeal”.

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Amendment of section 177 of Act 66 of 1995

23. Section 177(2) of the principal Act is hereby amended by the substitution for the 30 words “court of a provincial division of the Supreme Court” of the words “High Court”.

Amendment of section 180 of Act 66 of 1995

24. Section 180 of the principal Act is hereby amended by the substitution for the words “Supreme Court” of the words “High Court”,

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Amendment of section 191 of Act 66 of 1995

25. Section 191 of the principal Act is hereby amended by the addition after subsection (10) of the following subsection:

- “(11) (a) The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved. 40
- (b) However, the Labour Court may condone non-observance of that timeframe on good cause shown.”.

Amendment of section 207 of Act 66 of 1995, as amended by section 50 of Act 42 of 1996

26. Section 207 of the principal Act is hereby amended—

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

“(1) The Minister, after consulting NEDIAC, by notice in the Government Gazette may **[add to]** change **[or]**, replace **[any Schedule] or add to Schedules 2 and 4 to this Act [including a Schedule which at any time may have been added to this Act, but excluding Schedules 1, 5 and 6]** and the Schedule envisaged in subsection (3).” and

(b) by the deletion of subsections (2) and (6).

Amendment of Schedule 5 to Act 66 of 1995, as amended by section 55 of Act 42 of 1996

27. Schedule 5 to the principal Act is hereby amended—

(a) by the substitution for items 3 and 4 of the following items:

“3. Amendment of section 2 of Pension Funds Act, 1956

Section 2 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of this Act shall not apply in relation to any pension fund which has been established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), before the Labour Relations Amendment Act, 1998, has come into operation, nor in relation to a pension fund so established or continued and which, in terms of a collective agreement concluded in that council after the coming into operation of the Labour Relations Amendment Act, 1998, is continued or further continued (as the case may be). **[except that]** However, such a pension fund shall from time to time furnish the registrar with such statistical information as may be requested by the Minister.”

4. Amendment of section 2 of Medical Schemes Act, 1967

Section 2(I) of the Medical Schemes Act, 1967 (Act No. 72 of 1967), is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) shall, subject to the provisions of subsection (2A), apply with reference to—

(i) a particular medical scheme established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), before the Labour Relations Amendment Act, 1998, has come into operation:

(ii) a particular medical scheme which was established or continued in the circumstances mentioned in subparagraph (i) and which, in terms of a collective agreement so concluded in that council after the coming into operation of the Labour Relations Amendment Act, 1998, is continued or further continued (as the case may be),

only if the Minister, at the request of the Minister of Labour and by notice in the Gazette, has declared the said provisions to be applicable with reference to **[that]** such a particular medical scheme.”; and

(b) by the addition after item 4 of the following items:

“5. Amendment of section 1 of Insurance Act, 1943

Section 1 (1) of the Insurance Act, 1943 (Act No. 27 of 1943), is hereby amended by the substitution for paragraph (d) of the definition of ‘insurance business’ of the following paragraph: 5

‘(d) any transaction under the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995);’.

6. Amendment of section 2 of Friendly Societies Act, 1956

Section 2(1) of the Friendly Societies Act, 1956 (Act No. 25 of 1956), is hereby amended by the substitution for paragraph (g) of [the following paragraph: 10

‘(g) the relief or maintenance of members, or any group of members, when unemployed or in distressed circumstances, otherwise than in consequence of the existence of a strike or lockout as defined in section [1] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995);’. 15

7. Amendment of section 3 of Friendly Societies Act, 1956

Section 3(1) of the Friendly Societies Act, 1956, is hereby amended by the substitution for paragraph (a) of the following paragraph: 20

‘(a) which has been established or continued in terms of [an agreement published or deemed to have been published under section 48] a collective agreement concluded in a council in terms of the Labour Relations Act, [1956 (Act No. 28 of 1956),] 1995. [except that] However, such a friendly society shall from time to time furnish the registrar with such statistical information as may be requested by the Minister;’. 25

Amendment of Schedule 7 to Act 66 of 1995, as amended by section 56 of Act 42 of 1996 30

28. (1) Schedule 7 to the principal Act is deemed to have been amended—

- (a) with effect from 11 November 1996, as set out in Schedule 1 to this Act;
- (b) with effect from 6 December 1996, as set out in Schedule 2 to this Act; and
- (c) with effect from 9 May 1997, as set out in Schedule 3 to this Act.

(2) Schedule 7 to the principal Act is hereby amended by the insertion after item 22 of the following item: 35

“22A. Minister may authorise Commission to perform industrial court’s functions

- (1) The *Minister*, after consulting the Commission, may authorise the Commission, by notice in the Government Gazette, to perform the industrial court’s functions in terms of item 22(1)—
 - (a) in respect of the Republic as a whole or any province specified in the notice; and
 - (b) with effect from a date so specified. 45
- (2) The authorisation of the Commission in terms of subitem (1)—
 - (a) does not affect the competence of the industrial court in terms of item 22(1) to decide and finalise all pending matters that are partly heard by it as at [the date when the authorisation takes effect, nor does it relieve that court of 50

- its functions, duties and responsibility with regard to those matters;
- (b) does not empower the Commission to perform any of the industrial court's functions with regard to the matters mentioned in paragraph (a); and 5
- (c) has the effect of substituting the Commission for the industrial court in so far as all other pending matters are concerned.
- (3) In the application of this item —
- (a) the provisions of item 22 (1) will apply to the Commission in all respects as if it were the industrial court; and 10
- (b) the rules governing the proceedings at the industrial court in terms of item 22(2A) and (2B) will apply to the proceedings at [all pending matters to be decided by the Commission by virtue of its authorisation in terms of this item.”. 15
- (3) The provisions of subsection (1)(a), (1)(h) and (1)(c) will be deemed to have come into operation on 11 November 1996, 6 December 1996 and 9 May 1997, respectively.

Adjustment of table of contents of Act 66 of 1995

29. The table of contents of the principal Act under the general heading “**CONTENTS OF ACT**”, is hereby adjusted— 20
- (a) in the portion under the heading “**CHAPTER VII**”, by the substitution for the entry relating to section 169, of the following entry: 25
- “169. Appointment of other judges of Labour Appeal Court”;
- (b) in the portion under the heading “**CHAPTER IX**”, by the insertion after the entry relating to section 208, of the following entry: 25
- “208A. Delegations”;
- (c) in the portion under the heading “**SCHEDULE 5**”, by the addition after the entry relating to item 2, of the following entries: 30
- “3. Amendment of section 2 of Pension Funds Act, 1956
4. Amendment of section 2 of Medical Schemes Act, 1967
5. Amendment of section 1 of Insurance Act, 1943
6. Amendment of section 2 of Friendly Societies Act, 1956
7. Amendment of section 3 of Friendly Societies Act, 1956”;
- (d) in the portion under the heading “**SCHEDULE 7**”— 35
- (i) by the insertion after the entry relating to item 8, of the following entry: “8A. Pending enquiries by industrial registrar”;
- (ii) by the insertion after the entry relating to item 12, of the following entry: “12A. Designated agents”;
- (iii) by the substitution for the entry relating to item 19, of the following entry: 40
- “19. Collective agreements in South African Police Service”;
- (iv) by the insertion after the entry relating to item 21, of the following entry: “21A. Dispute resolution by council: before their accreditation”;
- (v) by the addition after the entry relating to item 23, of the following: 45
- “**PART G — ESSENTIAL SERVICES**
24. Essential services in the public service
25. Essential services provided for in Labour Relations Act”;
- (e) in the portion under the heading “**SCHEDULE 8**”, by the substitution for the entry relating to item 3 of the following entry: 50
- “3. Disciplinary measures short of dismissal”.

Short title and commencement

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

SCHEDULE 1

(Section 28(1)(a))

AMENDMENT OF SCHEDULE 7 TO THE LABOUR RELATIONS ACT, 1995

1. Item 5 of Schedule 7 to the principal Act is hereby amended by the substitution for subitem (1) of the following subitem:

“(1) A *trade union* or *employers’ organisation* registered or deemed to be registered in terms of the labour relations laws immediately before the commencement of *this Act*, will be deemed to be a registered *trade union* or registered *employers’ organisation* under *this Act* and continues to be a body corporate”.
2. Item 7 of that Schedule (hereafter called Schedule 7), is hereby amended by the substitution for subitem (1) of the following subitem:

“(1) An industrial council registered or deemed to be registered in terms of the Labour Relations Act immediately before the commencement of *this Act*, will be deemed to be a *bargaining council* under *this Act* and continues to be a body corporate.”.
3. The following item is hereby inserted in Schedule 7 after item 8:

“8A. Pending enquiries by industrial registrar

Any pending enquiry conducted by the industrial registrar under section 12(3) of the Labour Relations Act, must, after the commencement of *this Act*, be continued and dealt with further by the same person in terms of the Labour Relations Act as if it had not been repealed.”.

4. Item 12 of Schedule 7 is hereby amended—
 - (a) by the substitution for subitem (1) of the following subitem:

“(1) (a) Any agreement promulgated in terms of section 48, any award binding in terms of sections 49 and 50, and any order made in terms of section 51A, of the Labour Relations Act and in force immediately before the commencement of *this Act*, remains in force and enforceable, subject to paragraphs (b) and (c) of this subitem, and to subitem (5B), for a period of 18 months after the commencement of *this Act* or until the expiry of that agreement, award or order, whichever is the shorter period, in all respects, as if the Labour Relations Act had not been repealed.
 - (b) On the request of any council deemed by item 7(I) to be a *bargaining council*, an agreement referred to in paragraph (a) that had been concluded in that council—
 - (i) if it expires before the end of the 18-month period referred to in paragraph (a), may be extended in accordance with the provisions of subsection (4)(a)(i) of section 48 of the Labour Relations Act for a period ending before or on the expiry of that 18-month period, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements extended in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement extended on the authority of this subparagraph as if those various provisions had not been repealed;

- (ii) may be cancelled, in whole or in part, in accordance with the provisions of subsection (5) of section 48 of the Labour Relations Act, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements wholly or partly cancelled in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement wholly or partly cancelled on the authority of this subparagraph as if those various provisions had not been repealed,
- (c) An agreement referred to in paragraph (a) that had been concluded by parties to a conciliation board—
- (i) if it expires before the end of the 18-month period referred to in paragraph (a), may, at the request of the parties that were represented on that conciliation board at the time of the conclusion of that agreement, be extended in accordance with, and in the manner provided for in, paragraph (b)(i) which will apply, read with the changes required by the context, in relation to the extension of agreements of that nature;
- (ii) may, at the request of those parties, be cancelled, in whole or in part, in accordance with paragraph (b)(ii) which will apply, read with the changes required by the context, in relation to the cancellation of agreements of that nature.”;
- (b) by the insertion after subitem (1) of the following subitem:
- “(1A) (a) An agreement referred to in subitem (1) that had been concluded in a council deemed by item 7(1) to be a *bat-gaining council*, may be amended or amplified by a further agreement concluded in that *bargaining council* and promulgated in accordance with the provisions of subsections (1) and (2) of section 48 of the Labour Relations Act, which provisions will apply in all respects, read with the changes required by the context, for the purposes of this paragraph as if they had not been repealed.
- (b) Subitems (1)(b), (3) and (8)(a) will apply to any further agreement concluded and promulgated on the authority of paragraph (a) of this subitem, in all respects as if it were an agreement referred to in subitem (1)(a).”;
- (c) by the insertion after subitem (5) of the following subitems:
- “(5A) Any exemption from an agreement or award, or from an order, contemplated in subitem (1), that was in force immediately before the commencement of *this Act*, will remain in force for a period of 18 months after the commencement of *this Act* or until the period for which the exemption had been granted, has expired, whichever is the shorter period, as if the Labour Relations Act had not been repealed.
- (5B) Any one or more of or all the provisions of an order referred to in subitem (1)(a), may be cancelled, suspended or amended by the *Minister* in accordance with the provisions of section 51A(4)(a) of the Labour Relations Act, which provisions will apply for the purposes of this subitem as if they had not been repealed.”
- (d) by the substitution for subitem (6) of the following subitem:
- “(6) Any pending application for an exemption from all or any of the provisions of any agreement or award remaining in force in terms of subitem (1), or for an exemption from any

provision of an order remaining in force in terms of that subitem, must—

- (a) in the case of that agreement or award, be dealt with in terms of the provisions of section 5 I and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects, read with the changes required by the context, as if the provisions in question had not been repealed;
- (b) in the case of that order, be dealt with in terms of the provisions of section 5 I A and, whenever applicable, any other relevant provisions, of the Labour Relations Act as if the provisions in question had not been repealed.”; and

(e) by the addition after subitem (7) of the following subitem:

“(8) After the commencement of *this Act* and despite the repeal of the Labour Relations Act—

- (a) any person or class of persons bound by an agreement or award remaining in force in terms of subitem (1), may apply in accordance with the provisions of section 5 I of the Labour Relations Act for an exemption from all or any of the provisions of that agreement or award (as the case may be). Any application so made, must be dealt with in terms of the provisions of section 5 I and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects as if the provisions in question had not been repealed;
- (b) any person bound by an order remaining in force in terms of subitem (1), may apply in accordance with the provisions of section 5 I A of the Labour Relations Act for exemption from an order provision of that order. Any application so made, must be dealt with in terms of the provisions of section 5 I A and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects as if the provisions in question had not been repealed.”.

5. The following item is hereby inserted in Schedule 7 after item 12:

“12A. Designated agents

- (1) Any person appointed under section 62 of the Labour Relations Act as a designated agent of an industrial council deemed by item 7(1) to be a *bargaining council*, who holds that office immediately before the commencement of *this Act*, will be deemed to be a designated agent appointed for that *bargaining council* under section 33 of *this Act*.
- (2) The certificate of appointment that had been issued in terms of section 62(2) of the Labour Relations Act to that designated agent, will be deemed to have been issued in terms of section 33(2) of *this Act*.”.

6. The following item is hereby inserted in Schedule 7 after item 21:

“21A. Dispute resolution by councils before their accreditation

- (1) Despite the provisions of section 52, a *council* may attempt to resolve through conciliation—
 - (a) any *dispute* that may be referred to it in terms of *this Act* before 1 December 1996; and

- (b) if the *council* has applied for accreditation in terms of section 127 of *this Act* before 1 December 1996, also any *dispute* so referred to it after 1 December 1996 but before the governing body of the Commission has made a decision on that application in terms of section 127(5) of *this Act*.
- (2) For the purposes of subitem (1), any person appointed by a *council* to perform on its behalf the dispute resolution function referred to in that subitem, will be competent to exercise any of the powers conferred on a commissioner by section 142 of *this Act*, except the powers contemplated in subsection (1) (c) and (d) of that section. In applying that section for the purposes of this subitem, that section must be read with the changes required by the context, and any reference in that section to the *director* must be read as a reference to the secretary of the *council*,
- (3) A *council* must refer to the Commission, for arbitration, any *dispute* that—
- (a) was referred to the *council* in terms of *this Act* on the authority of subitem (1); and
 - (b) remains unresolved after the *council* has attempted to resolve it through conciliation; and
 - (c) is by *this Act* required to be resolved through arbitration.”.
7. Item 22 of Schedule 7 is hereby amended—
- (a) by the insertion after subitem (2) of the following subitems:
- “(2A) In relation to any proceedings which, in terms of this Schedule, are brought or continued before the industrial court, the rules which, immediately before the commencement of *this Act*, were in force under the provisions of paragraph (c) or (d) of section 17(22) of the Labour Relations Act, will apply as if those provisions had not been repealed, subject to subitem (2B).
 - (2B) The *Minister*, after consultation with the president of the industrial court, may make rules in accordance with the provisions of paragraph (c) of section 17(22) of the Labour Relations Act, and, in accordance with the provisions of paragraph (d) of that section may repeal or alter any rule so made as well as any of the rules contemplated in subitem (2A), as if those provisions had not been repealed and the *Minister* were the Board contemplated in those provisions.”; and
- (b) by the addition after subitem (5) of the following subitem:
- “(6) Despite the provisions of any other law but subject to the Constitution, no appeal will lie against any judgment or order given or made by the Labour Appeal Court established by *this Act* in determining any appeal brought in terms of subitem (5).”.

8. Schedule 7 is hereby amended by the addition of the following Part:

“PART G—ESSENTIAL SERVICES

24. Essential services in the public service

An essential service contemplated in section 20(1) of the Public Service Labour Relations Act, will be deemed to have been designated an essential service in terms of *this Act* for a period of six months as from the commencement of *this Act*.

25. Essential services provided for in the Labour Relations Act

The services in which employers referred to in paragraphs (a) and (b) of section 46 (1) of the Labour Relations Act, and *employees* referred to in paragraphs (e) and (f) of that section, are engaged, as well as any service contemplated in paragraph (a) or (b) of section 46 (7) of that Act in which the employers and *employees* to whom a notice in terms of the latter section applied immediately before the commencement of *this Act*, are engaged, will be deemed to have been designated essential services in terms of *this Act* for a period of six months as from the commencement of *this Act*."

SCHEDULE 2**(Section 28(1)(b))****AMENDMENT OF SCHEDULE 7 TO THE LABOUR RELATIONS ACT, 1995**

Item 12(1)(b) of Schedule 7 to the principal Act is hereby amended by the substitution for subparagraph (i) of the following subparagraph:

“(i) if it expires before the end of the 18-month period referred to in paragraph (a), may be extended or declared effective in accordance with the provisions of subsection (4)(a) of section 48 of the Labour Relations Act, for a period ending before or on the expiry of that 18-month period, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements extended or declared effective in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement extended or declared effective on the authority of this subparagraph” as if those various provisions had not been repealed. However, the *Minister* may not on the authority of this subparagraph declare an agreement to be effective if it expires after 31 March 1997;”.

SCHEDULE 3

(Section 28(1)(c))

AMENDMENT OF SCHEDULE 7 TO THE LABOUR RELATIONS ACT, 1995

Schedule 7 to the principal Act is hereby amended by the substitution for items 24 and 25 of the following items:

“24, Essential services in the public service

- (1) An essential service contemplated in section 20(1) of the Public Service Labour Relations Act, will be deemed to have been designated an essential service in terms of *this Act* for a period ending on a date 10 months after the commencement of *this Act* or on the date of the publication of the notice of designation mentioned in subitem (2), in the Government Gazette, whichever date occurs first.
- (2) The essential services committee must, in the case of the services contemplated in section 20(1) of the Public Service Labour Relations Act, as soon as possible after the commencement of *this Act* make a new designation, under section 71 of *this Act*, of services that are essential services. Such a designation will be effective from the date of the publication of the notice of designation in the Government Gazette in terms of section 71(8) of *this Act*.

25. Essential services provided for in the Labour Relations Act

- (1) The services in which employers referred to in paragraphs (a) and (b) of section 46(1) of the Labour Relations Act, and *employees* referred to in paragraphs (e) and (f) of that section, are engaged, as well as any service contemplated in paragraph (a) or (b) of section 46(7) of that Act in which the employers and *employees* to whom a notice in terms of the latter section applied immediately before the commencement of *this Act*, are engaged, will be deemed to have been designated essential services in terms of *this Act* for a period ending on a date 10 months after the commencement of *this Act* or on the date of the publication of the notice of designation mentioned in subitem (2), in the Government Gazette, whichever date occurs first.
- (2) The essential services committee must, in the case of the services contemplated in subitem (1), as soon as possible after the commencement of *this Act* make a new designation, under section 71 of *this Act*, of services that are essential services. Such a designation will be effective from the date of the publication of the notice of the designation in the Government Gazette in terms of section 71(8) of *this Act*.”

MEMORANDUM ON THE **OBJECTS OF THE**
LABOUR RELATIONS AMENDMENT BILL, 1998

1. The overall objectives of the Labour Relations Amendment Bill, 1998 ("the Bill") are to enhance the institutional functioning of the Commission for Conciliation, Mediation and Arbitration ("the Commission") in order to ameliorate the case flow, to phase out the industrial court, and to improve the functioning of bargaining councils, through effecting apposite amendments to the Labour Relations Act, 1995 (Act No. 66 of 1995 — "the principal Act"). The Bill also proposes several amendments of a technical nature,
2. The most prominent amendments to the principal Act that are envisaged by the Bill, are the following:
 - (a) All pension, provident or medical aid schemes or funds established henceforth in terms of any collective agreements concluded in bargaining councils and statutory councils, will be subject to the provisions of and control measures in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), and the Medical Schemes Act, 1967 (Act No. 72 of 1967), respectively. See clauses 1 and 3 of the Bill.
 - (b) To require, as a prerequisite for the extension of a collective agreement concluded in a bargaining council, to non-parties, that the collective agreement must provide for an independent body to decide appeals brought by non-parties against the refusal of their applications for exemption from the collective agreement, or the withdrawal of the exemptions. (This requirement supersedes the one requiring that there be an independent body to consider non-parties' applications for such exemptions.)
 - (c) A pension, provident or medical aid scheme or fund established in terms of a collective agreement concluded in a bargaining council or statutory council, may continue operating as a separate scheme or fund after the council is wound up, if the parties to the council have agreed thereto and certain other requirements (amongst others with regard to registration of the scheme or fund) are met. (See clause 4.)
 - (d) The Minister of Labour ("the Minister") is empowered to designate the chairperson of the essential services committee. (See clause 5.)
 - (e) The Commission is authorised to make rules regulating the proceedings of its governing body and the practice and procedure for the resolution of disputes under its auspices. Furthermore, the Commission's director is authorised to delegate the functions of that office, excluding the appointment of staff and the extension of the period within which an arbitration award is to be served and filed, to a commissioner. (See clauses 6 and 7.)
 - (f) The joining of two or more disputes involving the same parties, so that those disputes may be dealt with in the same proceeding. (See clause 8.)
 - (g) If a dispute is not resolved through conciliation, that any party who wishes to make a request for arbitration, must do so within 90 days, so as to avoid long time lapses in referrals to arbitration. Where a party has an objection against an arbitration being done by the same commissioner who attempted to resolve the dispute through conciliation, the objection is to be filed within seven days after the dispute was certified as remaining unresolved. (See clause 9. See also clause 25 as regards referrals to the Labour Court.)
 - (h) As regards representation of the parties to a dispute in any conciliation, arbitration and Labour Court proceedings, the right of a party to be represented by a fellow employee, **is done away with. In so far as parties' representation, in those proceedings, by their trade unions and employers' organisations are concerned, provision is further made that the parties' trade unions and employers' organisations may represent those parties only if registered in terms of the principal Act.** (See clauses 8, 10 and 16 of the Bill.)
 - (i) The provisions of section 157(2) of the principal Act relating to the (concurrent) jurisdiction of the Labour court with regard to matters involving the fundamental rights entrenched in Chapter 2 of the Constitution of the Republic of South Africa,

1996 (Act No. 10X of 1996 — “the Constitution”) are narrowed down so as to cover only issues concerning the constitutionality of matters arising from:

- * employment and labour relations;
- * the application of any law for the administration of which the Minister is responsible; and
- * action or threatened action by the State as employer.

(See clause 14 of the Bill.)

- (j) The power conferred on the Minister by section 207 of the principal Act to amend, replace or add to Schedules 3, 7 and 8 to the principal Act by way of notice in the *Gazette*, is done away with, as well as the power so conferred on the Minister for the Public Service and Administration to do so as regards Schedule 1 to the principal Act. These amendments are motivated by a notion in certain legal circles that Parliament, through making such an arrangement in section 207, has delegated to members of the Executive an (unbridled) power to amend an Act of Parliament (i.e. the principal Act) which, according to the judgment of the Constitutional Court in *Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa, and Others*, 1995(4 SA 879 (CC), would be unconstitutional. (See clause 26.)
- (k) Consequently, since Schedule 7 to the principal Act had already been so amended by the Minister on three previous occasions, the Bill makes provision, in clause 28(1)(a), (b) and (c) and (3) read with Schedules 1, 2 and 3 to the Bill, for the re-enactment (and, accordingly, the reinstatement) of those amendments retrospectively to the respective dates on which they were destined to become effective.
- (l) At present, the industrial court is being phased out. A new item 22A is being added by the Bill to Schedule 7 to the principal Act so as to empower the Minister to authorise the Commission by way of a notice in the *Gazette* to perform the industrial court’s functions in relation to all pending disputes, but excluding those which are partly heard by the industrial court as at the date of the authorisation. (Those partly heard matters must be disposed of by the industrial court.) In performing the industrial court’s functions, the Commission is bound by all the rules of law and procedure applicable to that court in performing those functions itself.

3. The social partners in the National Economic, Development and Labour Council (“NEDLAC”) support the Bill and have advised the Minister accordingly in terms of section 8 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994).

4. The view is held by the State Law Advisers and the Department of Labour that the Bill should be dealt with in accordance with the procedure provided for in section 75 of the Constitution, inasmuch as the Bill—

- * is designed to regulate matters relating to labour relations, which do not fall within any of the functional areas mentioned in Schedule 4 or 5 to the Constitution and, indeed, fall exclusively within the national sphere of government;
- * does not contemplate any amendment to the Constitution nor propose the imposition of any tax, levy or duty; and
- * does not provide for legislation of the nature envisaged in section 76(3)(a) to (e), (4) or (5) of the Constitution.