

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
LABOUR RELATIONS  
AMENDMENT BILL**

**[B 77—2001]**

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*(As agreed to by the Portfolio Committee on Labour  
(National Assembly))*

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**[B 77A—2001]**

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**AMENDMENTS AGREED TO**  


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**LABOUR RELATIONS AMENDMENT BILL**  
**[B 77—2001]**

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CLAUSE 3

1. On page 3, in line 33, to omit “domestic” and to substitute “home”.

CLAUSE 4

1. On page 3, in line 47, to omit “a bargaining council” and to substitute “bargaining councils”.

CLAUSE 7

1. On page 4, in line 41, after “which” to insert:  

in terms of section 49(1) of the Basic Conditions of Employment Act
2. On page 4, in lines 41 and 42, to omit “a contract of”.
3. On page 4, in lines 43 and 44, to omit “in terms of section 49(1) of the Basic Conditions of Employment Act”.
4. On page 4, in line 52, to omit “Commission” and to substitute “council”.
5. On page 4, after line 52, to add:  

“(b)If a party to an arbitration in terms of this section, that is not a party to the council, objects to the appointment of an arbitrator in terms of paragraph (a), the Commission, on request by the council, must appoint an arbitrator.

(c) If an arbitrator is appointed in terms of subparagraph (b)—

  - (i) the Council remains liable for the payment of the arbitrator’s fee; and
  - (ii) the arbitration is not conducted under the auspices of the Commission.”

CLAUSE 9

1. On page 6, in line 3, to omit “Application to establish statutory council” and to substitute “Disputes between bargaining councils in public service”.

CLAUSE 12

1. On page 7, in line 8, after “(8)” to insert:  

Unless otherwise agreed to in a collective agreement,
2. Amend footnote 11 of the principal Act by inserting after “disputes” in the first line of the footnote “contemplated by subsection (3)”.

3. Amend footnote 11 of the principal Act by inserting after “disputes” in the second paragraph of the footnote “contemplated by subsection (3)”.

#### CLAUSE 15

1. On page 8, in line 11, to omit “needs” and to substitute “need”.

#### CLAUSE 17

1. On page 8, in line 25, to omit “any”.
2. On page 8, in lines 25 and 26, to omit “in contemplation or in furtherance of the strike or lock-out”.

#### CLAUSE 22

1. On page 10, in line 30, to omit “and”.
2. On page 10, after line 30, to add:  

“(k) the right of any person or category of persons to represent any party in any conciliation or arbitration proceedings;  
(l) the circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and”
3. On page 10, from line 33, to omit subsection (2B).

#### CLAUSE 30

1. On page 12, in line 12, to omit “to the Commission”.
2. On page 12, in line 12, to omit “for” and to substitute “to”.
3. On page 12, in line 15, to omit paragraph (c) and to substitute:  

The Commission may on good cause shown waive the requirement in paragraph (b) and pay to the witness the prescribed witness fee.

#### CLAUSE 36

Clause rejected.

#### CLAUSE 37

Clause rejected.

#### CLAUSE 38

Clause rejected.

#### CLAUSE 39

Clause rejected.

#### CLAUSE 40

1. On page 15, in line 53, to omit “either”.

#### CLAUSE 45

1. On page 16, in lines 23 and 24, to omit “of employment” and to substitute “or circumstances at work”.

#### CLAUSE 47

1. On page 17, in lines 1 and 2, to omit “inquiry into allegations about employee’s conduct and capacity” and to substitute “pre-dismissal arbitration”.
2. On page 17, in line 4, to omit “inquiry” and to substitute “arbitration”.
3. On page 17, in lines 11 and 12, to omit “an inquiry in terms of this section” and to substitute “a pre-dismissal arbitration”.
4. On page 17, in line 13, to omit “inquiry” and to substitute “arbitration”.
5. On page 17, in lines 16 and 17, to omit “an inquiry in terms of this section” and to substitute “a pre-dismissal arbitration”.
6. On page 17, in line 18, to omit “inquiry” and to substitute “arbitration in terms of this section”.
7. On page 17, in line 26, to omit “inquiry conducted” and to substitute “arbitration”.
8. On page 17, in line 32, to omit “inquiry” and to substitute “arbitration”.
9. On page 17, in line 34, to omit “inquiry” and to substitute “arbitration”.
10. On page 17, after line 37, to add:

(9) An arbitrator conducting an arbitration in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, direct what action, if any, should be taken against the *employee*.

(10) (a) A private agency may only conduct an arbitration in terms of this section if it is accredited for this purpose by the Commission.

(b) A council may only conduct an arbitration in terms of this section in respect of which the employer or the employee is not a party to the council, if the council has been accredited for this purpose by the Commission.

#### CLAUSE 48

1. On page 18, in line 7, after “a” to insert “meaningful”.
2. On page 18, in line 17, after “disclose” to insert “in writing”.
3. On page 18, in line 37, after “arbitrator” to insert “or the Labour Court”.
4. On page 18, in lines 37 and 38, to omit “in terms of section 16(10)”.

## CLAUSE 49

1. On page 19, in line 17, to omit “dispute” and to substitute “dismissal”.
2. On page 19, after line 22, to insert:
 

“(c) the consulting parties may agree to vary the time periods for facilitation or consultation.”
3. On page 19, from line 26, to omit paragraphs (a) and (b) and to substitute the following:
 

“(a) the employer has in its notice in terms of section 189(3) requested facilitation; or  
 (b) consulting parties representing the majority of employees whom the employer contemplates dismissing have requested facilitation and have notified the Commission within 15 days of the notice.”
4. On page 19, from line 36, omit paragraph (b).
5. On page 19, in line 40, to omit paragraph (a) and to substitute:
 

(a) the time period, and the variation of time periods, for facilitation;
6. On page 19, in line 48, to omit “of the termination of” and to substitute “to terminate”.
7. On page 19, in line 48, to omit “contract” and to substitute “contracts”.
8. On page 19, in line 52, to omit “of contract of employment”.
9. On page 19, in line 57, to omit “the” and to substitute “a”.
10. On page 19, in line 57, after “or” to insert “a”.
11. On page 19, in line 58, to omit “a”.
12. On page 20, in line 2, to omit “of termination of” and to substitute “to terminate”.
13. On page 20, in line 2, to omit “contract” and to substitute “contracts”.
14. On page 20, in line 6, to omit “of the contract of employment”.
15. On page 20, from line 13, to omit subsection (10) and to substitute:
 

(10) (a) A consulting party may not—  
 (i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning whether there is a fair reason for that dismissal to the Labour Court;  
 (ii) refer a dispute about whether there is a fair reason for a dismissal to the Labour Court, if it has given notice of a strike in terms of this section in respect of that dismissal.

(b) If a trade union gives notice of a strike in terms of this section—  
 (i) no member of that trade union, and no employee to whom a collective agreement concluded by that trade union dealing with consultation or facilitation in respect of dismissals by reason of the employers’ operational requirements has been extended in terms of section 23(1)(d), may refer a dispute

concerning whether there is a fair reason for dismissal to the Labour Court;

- (ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.

16. On page 20, in line 27, to omit paragraph (b) and to substitute:

(b) subject to subsection (2)(a), section 65(1) and (3);

17. On page 20, after line 46, to add:

(d) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.

18. On page 20, from line 49, to omit paragraph (b).

19. On page 20, in line 58, to omit “a”.

20. On page 21, in line 8, to omit “an operational” and to substitute “a”.

#### CLAUSE 50

1. On page 21, in line 42, after “[30-day]” to insert “relevant”.
2. On page 21, in line 46, to omit “at any stage after” and to substitute “once”.
3. On page 21, in line 52, after “conditions” to insert ‘or circumstances’.
4. On page 21, in line 53, to omit “of” and to substitute “at”.
5. On page 22, in line 5, to omit “section” and to substitute “subsection”.
6. On page 22, in line 21, to omit “the” and to substitute “a”.

#### CLAUSE 51

1. On page 22, in line 36, to omit “a”.

#### CLAUSE 52

1. On page 22, from line 41, to omit subsection (1) and to substitute:

“(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair either because the employer did not prove that the reason for *dismissal* was a fair reason relating to the employee’s conduct or capacity or the employer’s *operational requirements* or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months’ remuneration calculated at the *employee’s* rate of *remuneration* on the date of *dismissal*.”

2. On page 22, after line 51, to add:

“(3) The compensation awarded to an *employee* in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months *remuneration*.”

### CLAUSE 53

1. On page 23, in lines 3 and 4, to omit “or undertaking” and to substitute “undertaking or service”.
2. On page 23, from line 24, to omit subsection (3) and to substitute:
 

“(3) (a) The new employer complies with subsection (2) if that employer employs transferred *employees* on terms and conditions that are on the whole not less favourable to the *employees* than those on which they were employed by the old employer.

(b) Paragraph (a) does not apply to *employees* if any of their conditions of employment are determined by a collective agreement.”
3. On page 23, in line 33, after “satisfied” to insert footnote 53a with the following text:
 

“Section 14(1)(c) of the Pensions Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable, and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in terms of the fund rules, and to additional benefits which have become established practice.”
4. On page 23, from line 45, to omit subsection (6) and to substitute:
 

(6) (a) An agreement contemplated in subsection (2) must be in writing and concluded between—

(i) either the old employer, the new employer, or the old and new employers acting jointly, on the one hand; and

(ii) the appropriate person or body referred to in section 189(1), on the other.

(b) In any negotiations to conclude an agreement contemplated by paragraph (a), the employer or employers contemplated in subparagraph (i), must disclose to the person or body contemplated in subparagraph (ii), all relevant information that will allow it to engage effectively in the negotiations.

(c) Section 16(4) to (14) applies, read with the changes required by the context, to the disclosure of information in terms of paragraph (b).”
5. On page 23, in line 57, after “employer” to insert:
 

in the event of a dismissal by reason of the employer’s operational requirements

### CLAUSE 54

1. On page 24, in line 29, to omit “and” and to substitute “or”.
2. On page 24, in line 37, after “employer’s” to insert “provisional”.
3. On page 24, in line 39, to omit the third “the”.

### CLAUSE 55

1. On page 25, after line 37, to add:
 

“(4) NEDLAC must prepare and issue a Code of Good Practice that sets out guidelines for determining whether persons, including

those who earn in excess of the amount determined in subsection (2) are *employees*.”

#### CLAUSE 59

1. On page 27, in line 8, to omit all the words after “as” up to and including “115(2B)(a)” in line 9 and to substitute:  
  
rules made by the Commission in terms of section 115(2A)(k)
2. On page 27, in line 11, after “repealed” to add:  
  
, and any reference in this item to those sections is a reference to those sections prior to amendment by this Amendment Act
3. On page 27, in line 20, to omit “inquiry” and to substitute “arbitration”.
4. On page 28, from line 49, to omit item 32.

#### CLAUSE 60

1. On page 29, in line 25, to omit “code” and to substitute “Code”.