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PRESIDENT'S OFFICE

KANTOOR VAN DIE PRESIDENT

No. 1502.

10 September 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 42 of 1996: Labour Relations Amendment Act, 1996.

No. 1502.

10 September 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 42 van 1996: Wysigingswet op Arbeidsverhoudinge, 1996.

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.

ACT

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

(English text signed by the President.)
(Assented to 4 September 1996.)

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

Amendment of section 25 of Act 66 of 1995

1. Section 25 of the Labour Relations Act, 1995 (hereinafter referred to as the principal Act), is hereby amended—

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

“(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as an agency shop agreement, requiring the employer to deduct an agreed agency fee from the wages of [its] *employees* [who are] identified in the agreement [, and] who are not members of the *trade union* but are eligible for membership thereof.”; and

(b) in paragraph (d) of subsection (3) by the substitution for the portion preceding subparagraph (i) of the following:

“no [part of the amount] agency fee deducted may be—”.

Amendment of section 26 of Act 66 of 1995

2. Section 26(3) of the principal Act is hereby amended by the substitution in paragraph (d) for the portion preceding subparagraph (i) of the following:

“It provides that no [part of the amount] membership subscription or levy deducted may be—”.

Amendment of section 27 of Act 66 of 1995

3. Section 27 of the principal Act is hereby amended by the addition after subsection (3) of the following subsection:

“(4) A bargaining council may be established for more than one sector.”.

Amendment of section 29 of Act 66 of 1995

4. Section 29 of the principal Act is hereby amended by the substitution for the expression “30-dae tydperk” where it occurs in subsections (13) and (14) in the Afrikaans text of the expression “30-daetydperk”.

Amendment of section 30 of Act 66 of 1995

5. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the portion preceding paragraph (a) of the following:

“The constitution of every *bargaining council* must at least provide for—”; and

(b) by the addition after subsection (4) of the following subsection:

“(5) The procedures for the resolution of disputes referred to in subsection (1)(h), (i) and (j) may not entrust dispute resolution functions to the Commission unless the governing body of the Commission has agreed thereto.”.

Substitution of section 31 of Act 66 of 1995

6. The following section is hereby substituted for section 31 of the principal Act:

“31. **Binding nature of collective agreement concluded in bargaining council**

Subject to the provisions of section 32 and the constitution of the *bargaining council*, a *collective agreement* concluded in a *bargaining council* binds [only]—

(a) the parties to the *bargaining council* who are also parties to the *collective agreement*;

(b) each party to the collective agreement and the members of every other party to the collective agreement in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and

(c) the members of a registered *trade union* that is a party to the *collective*

agreement and the employers who are members of a registered employers' organisation that is such a party, if the collective agreement regulates—

- (i) terms and conditions of employment; or
- (ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers.”

Amendment of section 32 of Act 66 of 1995

7. Section 32 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (b) and (c) of subsection (3) of the following paragraphs:

“(b) the majority of all the employees [employed within the registered scope of the bargaining council] who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are [party] parties to the bargaining council;

(c) the members of the employers' organisations that are [party] parties to the bargaining council will, upon the extension of the collective agreement, be found to employ the majority of all the employees [employed within the registered scope of the bargaining council] who fall within the scope of the collective agreement.”;

(b) by the substitution for paragraphs (a) and (b) of subsection (5) of the following paragraphs:

“(a) the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council in the area in respect of which the extension is sought; and

(b) the Minister is satisfied that [the] failure to extend the agreement may undermine collective bargaining at sectoral level or in the public service as a whole.”; and

(c) by the addition after subsection (8) of the following subsection:

“(9) For the purposes of extending collective agreements concluded in the Public Service Co-ordinating Bargaining Council or any bargaining council contemplated in section 37(3) or (4)—

(a) any reference in this section to an employers' organisation must be read as a reference to the State as employer; and

(b) subsections (3)(c), (e) and (f) and (4) of this section will not apply.”.

Amendment of section 37 of Act 66 of 1995

8. Section 37(4) of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) A bargaining council must be established in respect of a sector designated by the President in terms of paragraph (a), and the provisions of item [3(3) to (9)] 3(4) to (10) of Schedule 1 will apply.”.

Amendment of section 38 of Act 66 of 1995

9. Section 38 of the principal Act is hereby amended—

(a) by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2) The functions of the dispute resolution committee are to resolve any jurisdictional dispute between the Public Service Co-ordinating Bargaining Council and any bargaining council [established in terms of] contemplated in section 37(3), or between two or more bargaining councils of the latter type.

(3) If there is a jurisdictional dispute between the Public Service Co-ordinating Bargaining Council and a bargaining council [established in terms of] contemplated in section 37(3), or between two or more bargaining councils of the latter type, any party to the

dispute may refer the *dispute* in writing to the dispute resolution committee.

- (4) The party who refers the *dispute* to the dispute resolution committee must satisfy [it] that committee that a copy of the referral has been served on [the Public Service Co-ordinating Bargaining Council] all other bargaining councils that are parties to the *dispute*.”; and

(b) by the substitution for subsection (6) of the following subsection:

- “(6) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration by the dispute resolution committee.”.

Amendment of section 43 of Act 66 of 1995

10. Section 43 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) If a *statutory council* concludes a *collective agreement* in terms of subsection (1)(d), the provisions of section 31, [and] 32 and 33 apply, read with the changes required by the context.”.

Amendment of section 51 of Act 66 of 1995

11. Section 51 of the principal Act is hereby amended—

- (a) in paragraph (a) of subsection (2) by the addition to the existing provisions, which become subparagraph (i), of the following subparagraph:

“(ii) For the purposes of subparagraph (i), a party to a *council* includes the members of any registered trade union or registered employers' organisation that is a party to the *council*.”; and

- (b) by the addition after subsection (5) of the following subsection:

“(6) A *council* may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the *council*, its dispute resolution functions in terms of this section.”.

Substitution of section 52 of Act 66 of 1995

12. The following section is hereby substituted for section 52 of the principal Act:

“52. Accreditation of council or appointment of accredited agency

- (1) With a view to performing its dispute resolution functions in terms of section 51(3), every *council* must—

(a) apply to the governing body of the Commission for accreditation to perform [any of the functions referred to in section 51] those functions; or

(b) appoint an accredited agency to perform [any] those of the functions referred to in section [51] 51(3) for which the council is not accredited.

- (2) The *council* must advise the Commission in writing as soon as possible of the appointment of an accredited agency in terms of subsection (1)(b), and the terms of that appointment.”.

Amendment of section 53 of Act 66 of 1995

13. Section 53(5) of the principal Act is hereby amended by the substitution for the portion preceding paragraph (a) of the following:

“The money of a [bargaining] council or of any fund established by a [bargaining] council that is surplus to its requirements, or the expenses of the fund, may be invested only in—”.

Amendment of section 55 of Act 66 of 1995

14. Section 55 of the principal Act is hereby amended—

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

“(1) A *council* may delegate any of its powers and functions to a committee on any conditions [but any decision of a committee may be amended or set aside by] imposed by the council in accordance with its constitution.”; and

(b) by the deletion of subsection (3).

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Amendment of section 58 of Act 66 of 1995

15. Section 58 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the *registrar* is satisfied that the *sector* and *area* within which a *council* is representative does not coincide with the *registered scope* of the *council*, the *registrar*, acting independently or in response to an application from the council [*or NEDLAC*], may vary the *registered scope* of the *council*.”.

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Amendment of section 62 of Act 66 of 1995

16. Section 62 of the principal Act is hereby amended—

(a) in subsection (1) by the substitution for the portion preceding paragraph (a) of the following:

“Any registered *trade union*, employer, *employee*, registered *employers' organisation* or *council* that has a direct or indirect interest in the application contemplated in this section may apply to the Commission in the *prescribed* form and manner for a determination as to—”; and

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

“(3A) In any proceedings before an arbitrator about the interpretation or application of a *collective agreement*, if a question contemplated in subsection (1)(a) or (b) is raised, the arbitrator must adjourn those proceedings and refer the question to the Commission if the arbitrator is satisfied that—

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(a) the question raised—

(i) has not previously been determined by arbitration in terms of this section; and

(ii) is not the subject of an agreement in terms of subsection (2); and

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(b) the determination of the question raised is necessary for the purposes of the proceedings.”.

Amendment of section 63 of Act 66 of 1995

17. Section 63(1) of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

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“(a) the *dispute* [~~did not arise~~] has arisen in the course of arbitration proceedings or proceedings in the Labour Court; or”.

Amendment of section 64 of Act 66 of 1995

18. Section 64(2) of the principal Act is hereby amended by the deletion of the word “and” where it occurs at the end of paragraph (b).

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Amendment of section 66 of Act 66 of 1995

19. Section 66 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In this section ‘secondary strike’ means a *strike*, or conduct in contemplation or furtherance of a *strike*, that is in support of a *strike* by other *employees* against their employer, but does not include a *strike* in pursuit of a demand [~~and~~] that has been referred to a council if the striking *employees*, employed within the *registered scope* of that *council*, have a material interest in that demand.”.

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Amendment of section 69 of Act 66 of 1995

20. Section 69(2) of the principal Act is hereby amended by the substitution for the portion preceding paragraph (a) of the following:

“Despite any law regulating the right of assembly, a picket authorised in terms of subsection (1) may be held—”

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Amendment of section 74 of Act 66 of 1995

21. Section 74(7) of the principal Act is hereby amended—

(a) by the deletion of the word “and” where it occurs at the end of paragraph (a); and

(b) by the substitution for paragraph (b) of the following paragraph:

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“(b) the period referred to in subsection (5)(b), that period will run from the expiry of the period referred to in [subsection (a)] paragraph (a) of this subsection or from the beginning of the next session of Parliament.”

Amendment of section 75 of Act 66 of 1995

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22. Section 75 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) If there is no *collective agreement* relating to the provision of a maintenance service, an employer may apply in writing to the essential services committee for a determination that the whole or a part of the employer’s business or service is a maintenance service.”;

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

“(4) The essential services committee must determine, as soon as possible, whether or not the whole or a part of the employer’s business or service is a maintenance service.”; and

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(c) by the addition after subsection (4) of the following subsections:

“(5) As part of its determination in terms of subsection (4), the essential services committee may direct that any *dispute* in respect of which the *employees* engaged in a maintenance service would have had the right to strike, but for the provisions of section 65(1)(d)(ii), be referred to arbitration.

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(6) The committee may not make a direction in terms of subsection (5) if—

(a) the terms and conditions of employment of the *employees* engaged in the maintenance service are determined by collective bargaining; or

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(b) the number of *employees* prohibited from striking because they are engaged in the maintenance service does not exceed the number of *employees* who are entitled to strike.

(7) If a direction in terms of subsection (5) requires a *dispute* to be resolved by arbitration—

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(a) the provisions of section 74 will apply to the arbitration; and

(b) any arbitration award will be binding on the *employees* engaged in the maintenance service and their employer, unless the terms of the award are varied by a *collective agreement*.”

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Amendment of section 78 of Act 66 of 1995

23. Section 78(a) of the principal Act is hereby amended by the deletion of subparagraph (i).

Amendment of section 80 of Act 66 of 1995

24. Section 80(8) of the principal Act is hereby amended by the deletion of the word “remaining”.

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Amendment of section 82 of Act 66 of 1995

25. Section 82(1) of the principal Act is hereby amended—

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

“(s) provide for the designation of full-time members of the workplace forum [where] if there are more than 1000 employees in a workplace;”;

(b) by the substitution for paragraph (t) of the following paragraph:

“(t) provide that the [forum] workplace forum may invite any expert to attend its meetings [of the workplace forum], including meetings with the employer or the employees, and that an expert is entitled to any information to which the workplace forum is entitled and to inspect and copy any document that members of the workplace forum [is] are entitled to inspect and copy;”;

(c) by the deletion of the word “and” where it occurs at the end of paragraph (u);

(d) by the addition of the word “and” at the end of paragraph (v); and

(e) by the addition after paragraph (v) of the following paragraph:

“(w) establish the manner in which decisions are to be made.”.

Amendment of section 87 of Act 66 of 1995

26. Section 87 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A review of the disciplinary codes and procedures, and rules, must be conducted in accordance with the provisions of section 86(2) to (7) except that, in applying section 86(4), either the employer or the workplace forum may refer a dispute between them to arbitration or to the Commission.”.

Amendment of section 88 of Act 66 of 1995

27. Section 88 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the employer operates more than one workplace and separate workplace forums have been established in two or more of those workplaces, and if a matter has been referred to arbitration in terms of section 86(4)(a) or (b) or by a workplace forum in terms of section 87(4), the employer may give notice in writing to the chairpersons of all the workplace forums that no other workplace forum may refer a matter that is substantially the same as the matter referred to arbitration.”.

Amendment of section 89 of Act 66 of 1995

28. Section 89 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The employer must notify the workplace forum in writing if of the view that any information disclosed in terms of subsection (1) is confidential.”.

Amendment of section 94 of Act 66 of 1995

29. Section 94(1) of the principal Act is hereby amended by the insertion after paragraph (a) of the following paragraph:

“(aA) a workplace forum;”.

Amendment of section 103 of Act 66 of 1995

30. Section 103(3) of the principal Act is hereby amended by the insertion of the word “an” between the words “granting” and “order”.

Amendment of section 115 of Act 66 of 1995

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

- (a) in subsection (2) by the deletion of paragraphs (d), (e) and (i); and
- (b) in subsection (3) by the substitution for paragraph (i) of the following paragraph:

“(i) the prevention of sexual harassment in the workplace.”

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Amendment of section 124 of Act 66 of 1995

32. Section 124(1) of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) contract with any person to do work for the Commission [and] or contract with an accredited agency to perform, whether for reward or otherwise, any function of the Commission on its behalf; and”

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Amendment of section 127 of Act 66 of 1995

33. Section 127(4) of the principal Act is hereby amended—

- (a) by the addition of the word “and” at the end of paragraph (f);
- (b) by the substitution for the expression “society; and”, where it occurs at the end of paragraph (g), of the expression “society.”; and
- (c) by the deletion of paragraph (h).

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Amendment of section 128 of Act 66 of 1995

34. Section 128(1) of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) An accredited *council* or accredited agency may charge a fee for performing any of the functions for which it is accredited in circumstances in which [this Act] section 140(2) allows [the Commission, or] a commissioner to charge a fee.”

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Amendment of section 132 of Act 66 of 1995

35. Section 132 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Any council may apply to the governing body in the prescribed form for a subsidy for performing any dispute resolution functions that the council is required to perform in terms of this Act, and for training persons to perform those functions.

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(b) Any accredited agency, or a private agency that has applied for accreditation, may apply to the governing body in the *prescribed* form for a subsidy for performing any dispute resolution functions for which it is accredited or has applied for accreditation, and for training persons to perform those functions.”

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Amendment of section 135 of Act 66 of 1995

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

- (a) by the substitution for the expression “30-dae tydperk” where it occurs in subsection (2) of the Afrikaans text of the expression “30-daetydperk”; and
- (b) in subsection (5) by the substitution for the portion preceding paragraph (a) of the following:

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“When conciliation has failed, or at the end of the 30 day period or any further period agreed between the parties—”;

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- (c) by the substitution for the expression “sewe-dae tydperk” where it occurs in subsection (6)(b) of the Afrikaans text of the expression “sewedaetydperk”.

Amendment of section 137 of Act 66 of 1995

37. Section 137(4) of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) if the application has been refused, confirm the appointment of the commissioner initially appointed, subject to section 136(4).” 5

Amendment of section 138 of Act 66 of 1995

38. Section 138(10) of the principal Act is hereby amended by the addition of the word “or” at the end of paragraph (a).

Amendment of section 141 of Act 66 of 1995

39. Section 141(6) of the principal Act is hereby amended by the substitution for the expression “(1)(a)” of the expression “(1)”. 10

Amendment of section 142 of Act 66 of 1995

40. Section 142(1) of the principal Act is hereby amended in paragraph (f) by the addition after subparagraph (ii) of the following subparagraph:

“(iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement; and” 15

Amendment of section 147 of Act 66 of 1995

41. Section 147 of the principal Act is hereby amended—

(a) in paragraph (a) of subsection (5) by the substitution for the portion preceding subparagraph (i) of the following: 20

“If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been referred to an accredited agency [in terms of a *collective agreement between the parties to the dispute*], the Commission may—” 25

(b) by the substitution for subsection (6) of the following subsection:

“(6) [(a)] If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been resolved through private dispute resolution in terms of a private agreement between the parties to the *dispute*, the Commission may— 30

[(i)](a) refer the *dispute* to the appropriate person or body for resolution through private dispute resolution procedures; or

[(ii)](b) appoint a commissioner to resolve the *dispute* in terms of *this Act*.”; and 35

(c) by the addition after subsection (7) of the following subsections:

“(8) The Commission may perform any of the dispute resolution functions of a *council* or an accredited agency appointed by the *council* if the *council* or accredited agency fails to perform its dispute resolution functions in circumstances where, in law, there is an obligation to perform them. 40

(9) For the purposes of subsections (2) and (3), a party to a *council* includes the members of a registered *trade union* or registered *employers' organisation* that is a party to the *council*. 45

Amendment of section 153 of Act 66 of 1995

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

(a) by the substitution for subsection (5) of the following subsection:

“(5) [The President, acting on the advice of *NEDLAC* and the Judicial Service Commission as defined in section 105 of the Constitution, and after consultation with] The Minister of Justice [and the], after consultation with the Judge President of the Labour Court, may appoint one or more persons who meet the requirements of 50

- subsection (6) to serve as acting judges of the Labour Court for such a period as the Minister of Justice in each case may determine.”; and
- (b) in subsection (6)(a) by the substitution for subparagraph (ii) of the following subparagraph:
- “(ii) be a person who [has been] is a legal practitioner [for a cumulative period of at least 10 years before that person’s appointment]; and”.

Amendment of section 154 of Act 66 of 1995

43. Section 154 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (5) of the following paragraph:
- “(a) The remuneration payable to a judge of the Labour Court [appointed in terms of section 153(6)] who is a person referred to in section 153(6)(a)(ii), must be the same as that payable to a judge of the Supreme Court.”; and
- (b) by the addition after subsection (7) of the following subsections:
- “(8) Despite the expiry of the period of a person’s appointment as a judge of the Labour Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only—
- (a) for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person’s appointment or which, having been so disposed of before or after the expiry of that person’s appointment, have been re-opened; and
- (b) for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.
- (9) The provisions of subsections (2) to (8) apply, read with the changes required by the context, to acting judges appointed in terms of section 153(5).”.

Amendment of section 158 of Act 66 of 1995

44. Section 158(1) of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:
- “(e) determine a dispute between a registered trade union [, a] or registered employers’ organisation and any one of [its] the members or applicants for membership thereof, about any alleged non-compliance with—
- (i) the constitution of that trade union or employers’ organisation (as the case may be); or
- (ii) section 26(5)(b);”.

Amendment of section 159 of Act 66 of 1995

45. Section 159 of the principal Act is hereby amended—
- (a) in subsection (3) by the substitution for the expression “section 8”, where it occurs in paragraph (e), of the expression “section 6”; and
- (b) by the addition after subsection (6) of the following subsections:
- “(7) (a) A member of the Board who is a judge of the Supreme Court may be paid an allowance determined in terms of subsection (9) in respect of the performance of the functions of a member of the Board.
- (b) Notwithstanding anything to the contrary in any other law, the payment, in terms of paragraph (a), of an allowance to a member of the Board who is a judge of the Supreme Court, will be in addition to any salary or allowances, including allowances for reimbursement of travelling and subsistence expenses, that is paid to that person in the capacity of a judge of that Court.
- (8) A member of the Board who is not a judge of the Supreme Court nor subject to the Public Service Act, 1994, will be entitled to the remuneration, allowances (including allowances for reimbursement of travelling and subsistence expenses), benefits and privileges determined in terms of subsection (9).

- (9) The remuneration, allowances, benefits and privileges of the members of the Board—
- (a) are determined by the Minister of Justice with the concurrence of the Minister of Finance;
 - (b) may vary according to rank, functions to be performed and whether office is held in a full-time or part-time capacity; and
 - (c) may be varied by the Minister of Justice under any law in respect of any person or category of persons.
- (10) (a) Pending publication in the Government Gazette of rules made by the Board, matters before the Court will be dealt with in accordance with such general directions as the Judge President of the Labour Court, or any other judge or judges of that Court designated by the Judge President for that purpose, may consider appropriate and issue in writing;
- (b) Those directions will cease to be of force on the date of the publication of the Board's rules in the Government Gazette, except in relation to proceedings already instituted before that date. With regard to those proceedings, those directions will continue to apply unless the Judge President of the Labour Court has withdrawn them in writing."

Amendment of section 168 of Act 66 of 1995

46. Section 168(1) the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

- "(c) [three] such number of other judges who are judges of the Supreme Court, as may be required for the effective functioning of the Labour Appeal Court."

Substitution of section 169 of Act 66 of 1995

47. The following section is hereby substituted for section 169 of the principal Act:

"169. Appointment of other judges of Labour Appeal Court

- (1) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission as defined in section 105 of the Constitution, after consultation with the Minister of Justice and the Judge President of the Labour Appeal Court, must appoint the [three] judges of the Labour Appeal Court referred to in section 168(1)(c).
- (2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the Supreme Court to serve as acting judges of the Labour Appeal Court."

Amendment of section 170 of Act 66 of 1995

48. Section 170 of the principal Act is hereby amended by the addition after subsection (5) of the following subsections:

- "(6) Despite the expiry of the period of a person's appointment as a judge of the Labour Appeal Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only—
- (a) for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person's appointment or which, having been so disposed of before or after the expiry of that person's appointment, have been re-opened; and
 - (b) for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.

- (7) The provisions of subsections (2) to (6) apply, read with the changes required by the context, to acting judges appointed in terms of section 169(2)."

Amendment of section 201 of Act 66 of 1995

49. Section 201 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

- "(3) (a) A person convicted of an offence in terms of this section, may be sentenced to a fine [to be determined by the court, or imprisonment] not exceeding R10 000.
(b) The *Minister*, in consultation with the Minister of Justice, may from time to time by notice in the Government Gazette, amend the maximum amount of the fine referred to in paragraph (a)."

Amendment of section 207 of Act 66 of 1995

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

- (a) by the substitution for subsection (1) of the following subsection: 15
 "(1) The *Minister*, after consulting *NEDLAC*, by notice in the Government Gazette, may add to, change or replace any Schedule to *this Act*, including a schedule which at any time may have been added to *this Act*, but excluding Schedules 1 [and 7], 5 and 6."; and
 (b) by the substitution for subsections (5) and (6) of the following subsections: 20
 "(5) The [Minister] *Minister* may add to, change or replace any page header or footnote.
 (6) The [Minister] *Minister*, in consultation with the Minister of Trade and Industry and after consulting [NEDLAC] *NEDLAC*, by notice in the Government Gazette, may add to *this Act* a further schedule listing institutions referred to in section 32(4)."

Insertion of section 208A in Act 66 of 1995

51. The following section is hereby inserted in the principal Act after section 208:

"208A. Delegations

- (1) The *Minister*, in writing, may delegate to the Director General or any other officer of the Department of Labour any power, function or duty conferred or imposed upon the *Minister* in terms of *this Act*, except the powers, functions and duties contemplated in section 32 (but excluding subsection (6)), and sections 44, 207 and 208. 30
 (2) A delegation in terms of subsection (1) does not limit or restrict the competence of the *Minister* to exercise or perform any power, function or duty that has been delegated. 35
 (3) The *Minister* may make a delegation subject to any conditions or restrictions that are deemed fit. 40
 (4) The *Minister* may at any time—
 (a) withdraw a delegation made in terms of subsection (1); and
 (b) withdraw or amend any decision made by a person in exercising a power or performing a function or duty delegated in terms of subsection (1)."

Amendment of section 213 of Act 66 of 1995

52. Section 213 of the principal Act is hereby amended by the deletion of the symbols "(d)", "(e)" and "(f)" preceding the definitions of "director", "dispute" and "employee", respectively.

Amendment of section 214 of Act 66 of 1995

53. Section 214 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) This Act [comes] will come into operation on a date [fixed] to be determined by the President by proclamation in the Government Gazette, except in the case of any provision in relation to which some other arrangement regarding commencement is made elsewhere in this Act.” 5

Amendment of Schedule 1 to Act 66 of 1995

54. Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (a) of item 2(6) of the following paragraph: 10

“(a) issue a certificate of registration that must specify the *registered scope* of the Public [Services] Service Co-ordinating Bargaining Council; and”.

Amendment of Schedule 5 to Act 66 of 1995

55. Schedule 5 to the principal Act is hereby amended by the insertion of the following items after item 2: 15

“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 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 (Act No. 66 of 1995), except that such fund shall from time to time furnish the registrar with such statistical information as may be requested by the Minister.”. 20 25

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

Section 2(1) 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 a particular medical scheme established under [an agreement published or deemed to have been published] a collective agreement concluded in a council in terms of [section 48 of] the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995), only if the Minister [has], at the request of the Minister of [Manpower] Labour and by notice, in the *Gazette*, has declared the said provisions to be applicable with reference to that medical scheme;” 30 35

Amendment of Schedule 7 to Act 66 of 1995

56. Schedule 7 to the principal Act is hereby amended— 40

(a) by the substitution for sub-item (2) of item 8 of the following sub-item:

“(2) In any pending appeal in terms of section 16 of the Labour Relations Act against the refusal to register or vary the scope of an industrial council, the *Minister* or the registrar of the Supreme Court, as the case may be, must refer the matter to the registrar of labour relations, who must consider the application anew as if it were an application for registration made in terms of *this Act*.”; 45

(b) in item 12—

- (i) by the substitution for sub-item (1) of the following sub-item: 5
 “(1) Any agreement promulgated in terms of section 48, [and] any award made in terms of section 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 for a period of 18 months after the commencement of *this Act* or until the expiry of that agreement, whichever is the shorter period, as if [that] the Labour Relations Act had not been repealed.”; and
- (ii) by the addition after sub-item (6) of the following sub-item: 10
 “(7) An exclusion granted in terms of section 51(12) of the Labour Relations Act will remain in force until it is withdrawn by the Minister.”;
- (c) in item 13—
- (i) by the substitution for paragraph (b) of sub-item (1) of the following paragraph: 15
 “(b) excludes an agreement promulgated in terms of section 48 of the Labour Relations Act [or section 12 of the Education Labour Relations Act];”; and
- (ii) by the substitution for sub-item (5) of the following sub-item: 20
 “(5) An existing non-statutory agency shop or closed shop agreement is not binding unless the agreement complies with the provisions of [sections 25 or 26 of this Act respectively. This provision becomes] this item. Sections 25 and 26 of this Act become effective 180 days after the commencement of [*this Act*] this item.”;
- (d) by the substitution for item 19 of the following item: 25

“19. Collective agreements in South African Police Service”

The provisions of the South African Police [**Services Employment**] Service Labour Relations Regulations, read with the changes required by the context, despite the repeal of those regulations, will have the effect and status of a *collective agreement* binding on the State, the parties to the National Negotiating Forum and all the employees within its *registered scope*.”; and 30

- (e) by the substitution for sub-item (5) of item 22 of the following sub-item: 35
 “(5) Any appeal from a decision of the industrial court or the agricultural labour court in terms of sub-item (1) or (2), must be made to the Labour Appeal Court established by section [151] 167 of *this Act*, and that Labour Appeal Court must deal with the appeal as if the labour relations laws had not been repealed.”.

Amendment of Schedule 8 to Act 66 of 1995

57. Schedule 8 to the principal Act is hereby amended by the substitution for the heading of item 3 of the following heading: 40

“3. [Misconduct] Disciplinary measures short of dismissal”.

Short title and commencement

58. This Act will be called the Labour Relations Amendment Act, 1996, and will come into operation on a date to be determined by the President by proclamation in the *Gazette*. 45