

DISTRIBUTED BY VERITAS

**VERITAS MAKES EVERY EFFORT TO ENSURE THE PROVISION OF RELIABLE INFORMATION,
BUT CANNOT TAKE LEGAL RESPONSIBILITY FOR INFORMATION SUPPLIED.**

CHAPTER 28:01**LABOUR RELATIONS ACT**

Acts 16/1985, 12/1992, 20/1994 (s. 19), 22/2001 (s. 4)¹.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Application of Act.

PART II

FUNDAMENTAL RIGHTS OF EMPLOYEES

4. Employees' entitlement to membership of trade unions and workers committees.
5. Protection of employees against discrimination.
6. Protection of employees' right to fair labour standards.
7. Protection of employees' right to democracy in the work place.

PART III

UNFAIR LABOUR PRACTICES

8. Unfair labour practices by employer.
9. Unfair labour practices by trade union or workers committee.
10. Minister may prescribe further unfair labour practices.

PART IV

GENERAL CONDITIONS OF EMPLOYMENT

11. Contracts by young persons.
12. Duration and termination of contract where contract is silent.
13. Wages and benefits upon termination of employment.
14. Incapacitation of worker by illness or accident.
15. Death of employer.
16. Rights of employees on transfer of undertaking.
17. Regulatory powers of Minister.
18. Maternity leave.

PART V

WAGE AND SALARY CONTROL

19. Advisory boards.
20. Minimum wage notices.
21. Prohibition of termination of services of employee.
22. Maximum wage notices.

PART VI

WORKERS COMMITTEES: FORMATION AND FUNCTIONS

23. Formation of workers committees.
24. Functions of workers committees.
25. Effect of collective bargaining agreements negotiated by workers committees.
26. Minister may make regulations relating to workers committees.

¹ Criminal Penalties Amendment Act, 2001 (with effect from 20th May, 2002). The provisions affected are: sections 5(3), 6(2), 7(3), 8(b), 13(2), 17(4), 18(5), 20(3), 21(3), 22(3), 48(5), 52 [insertion of subsection (3)], 53 [insertion of subsection (3)], 54 [insertion of subsection (6)], 55 [insertion of subsection (3a)], 61 [insertion of subsection (3a)], 63(4), 76 [insertion of subsection (3a)], 82(3), 93(3), 99(2), 112 [new section substituted], 118 [new section substituted], 120(1), 124(2) [subsection repealed], 125(2), 126(5), 127(3), 128.

PART VII
TRADE UNIONS, EMPLOYERS ORGANIZATIONS AND FEDERATIONS OF TRADE UNIONS
AND EMPLOYERS ORGANIZATIONS

27. Right to form trade unions or employers organizations.
28. Requirements for formation of trade unions and employers organizations.
29. Registration and certification of trade unions and employers organizations and privileges thereof.
30. Unregistered trade unions and employers organizations.
31. When trade union may act as agent union.
32. Agent union to disclose other agencies.
33. Application for registration.
34. Requirements of application for registration.
35. Requirements of constitution of registered trade unions or employers organizations.
36. Registration of trade unions, employers organizations and federations.
37. Application for certification of registered trade union or employers organization.
38. Certification of registered trade unions or employers organizations.
39. Application or proposal to vary, suspend or rescind registration or certification.
40. Variation, suspension or rescission of registration or certification.
41. Accreditation proceedings.
42. Notice of accreditation proceedings.
43. Procedure at accreditation proceedings.
44. Notification of decision made at accreditation proceedings.
45. Considerations relating to registration, certification or variation, suspension or rescission of registration or certification of trade unions or employers organizations.
46. Matters to be determined by Tribunal.
47. Right of appeal.
48. Notice of appeal.
49. Appeals before regional hearing officer.
50. Right of membership of registered or certified trade unions and employers organizations.
51. Supervision of election of officers.
52. Right to union or association dues.
53. Restrictions on payment of union dues by employers.
54. Collection of union dues.
55. Minister may regulate union dues.

PART VIII
EMPLOYMENT COUNCILS

56. Voluntary employment councils.
57. Statutory employment councils.
58. Constitution of employment councils.
59. Registration of employment councils.
60. Employment councils to be bodies corporate.
61. Variation of registration of employment councils.
62. Duties of employment councils.
63. Designated agents of employment councils.

PART IX
EMPLOYMENT BOARDS

64. Appointment of employment boards.
65. Notice of intention to appoint employment board.
66. Composition of employment boards.
67. Procedure of employment boards.
68. Duties of employment boards.
69. Representations to employment boards.
70. Summoning and examination of witnesses by employment boards.
71. Submission of recommendations of employment boards.
72. Directions by Minister to employment boards.
73. Dissolution of employment boards.

PART X
COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

74. Scope of collective bargaining agreements.
75. Obligation to negotiate in good faith.
76. Duty of full disclosure when financial incapacity alleged.
77. Representation of parties.
78. Ratification of collective bargaining agreements.
79. Submission of collective bargaining agreements for approval or registration.

80. Publication of collective bargaining agreements.
81. Amendment of registered collective bargaining agreements by Minister.
82. Binding nature of registered collective bargaining agreements.

PART XI

LABOUR RELATIONS TRIBUNAL

83. Establishment of Tribunal.
84. Removal of Chairman and Deputy Chairman from office.
85. Disqualifications for appointment as member.
86. Vacation of office by member.
87. President may require member to vacate office or suspend him.
88. Filling of vacancies.
89. Functions of Tribunal.
90. Exercise of functions by Tribunal.
91. Determination of disputes.
92. Effect of determination.

PART XII

DETERMINATION OF DISPUTES AND UNFAIR LABOUR PRACTICES

93. Powers of Labour relations officers.
94. Prescription of disputes.
95. Powers of senior labour relations officers.
96. Determination by labour relations officers and senior labour relations officers.
97. Appeal to Tribunal.
98. Reference to compulsory arbitration.
99. Effect of reference to compulsory arbitration.
100. Procedure relating to compulsory arbitration.
101. Employment codes of conduct.

PART XIII

COLLECTIVE JOB ACTION

102. Interpretation in Part XIII.
103. Appeal against declaration of essential service.
104. Right to resort to collective job action.
105. Lock-outs and actions connected therewith.
106. Show cause orders.
107. Disposal orders.
108. Immunity of workers committees and trade unions from suit.
109. Immunity of employees.
110. Appeals.
111. Cessation of collective job action.
112. Offences under Part XIII.

PART XIV

EMPLOYMENT AGENCIES

113. Interpretation in Part XIV.
114. Employment agencies to be registered.
115. Application for registration, issue, variation and cancellation of certificates of registration.
116. Duties of persons conducting employment agencies.
117. Powers of employment officers.
118. Offences under Part XIV.
119. Minister may make regulations.

PART XV

GENERAL

120. Investigation of trade unions and employers organizations.
121. Officials.
122. Acquisition of undertakings by trade unions and trade union congress.
123. Minister may raise levies to meet certain expenses.
124. Protection against multiple proceedings.
125. Records to be kept by employers, principals and contractors.
126. Investigative powers of labour relations officers.
127. Regulations.
128. General offences and penalties.

AN ACT to declare and define the fundamental rights of employees; to define unfair labour practices; to regulate conditions of employment and other related matters; to provide for the control of wages and salaries; to provide for the appointment and functions of workers committees; to provide

for the formation, registration, certification and functions of trade unions, employers organizations, employment councils and employment boards; to regulate the negotiation, scope and enforcement of collective bargaining agreements; to provide for the establishment and functions of the Labour Relations Board and the Labour Relations Tribunal; to provide for the prevention of trade disputes, and unfair labour practices; to regulate and control collective job action; to regulate and control employment agencies; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 15th December, 1985.]

PART I PRELIMINARY

1 Short title

This Act may be cited as the Labour Relations Act [*Chapter 28:01*].

2 Interpretation

In this Act—

“**accreditation proceedings**” means proceedings held in terms of section *forty-one*;

“**agent union**” means a trade union acting as an agent union in terms of section *thirty-one*;

“**appropriate trade union**”, in relation to any employees means—

(a) a trade union which is an agent union for the employees concerned; or

(b) where there is no agent union for the employees concerned, the trade union which is registered or certified for interests which correspond most closely to those of the employees concerned;

“**association dues**” means money levied by an employers organization in terms of section *fifty-two*;

“**certificate of registration**” means a certificate relating to the registration of an employment agency issued in terms of paragraph (a) of subsection (2) of section *one hundred and fifteen*;

“**certified**”, in relation to a registered trade union or employers organization, means certified in terms of section *thirty-eight*;

“**Chairman**” means the Chairman of the Tribunal;

“**code**” means an employment code of conduct registered in terms of section *one hundred and one*;

“**collective bargaining agreement**” means an agreement negotiated in accordance with this Act which regulates the terms and conditions of employment of employees;

“**collective job action**” means an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, lock-out, sit-in or sit-out, or other such concerted action;

“**compulsory arbitration**” means compulsory arbitration in terms of section *ninety-eight*;

“**contractor**” means a person who renders to an employer services which are related to or connected with those of the employer’s undertaking;

“**Deputy Chairman**” means the Deputy Chairman of the Tribunal;

“**dispute**” means a dispute relating to any matter concerning employment which is governed by this Act;

“**employee**”, subject to the provisions of section *three*, means any person employed by or working for any employer, and receiving or entitled to receive any remuneration in respect of such employment or work;

“**employer**”, subject to the provisions of section *three*, means any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and includes the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed;

“**employers organization**” means any association or organization formed to represent or advance the interests of any employers or groups thereof in respect of matters relating to employment;

“**employment agency**” means any business carried on for gain or reward in which employment of any nature whatsoever is procured for persons seeking work, or in which advice in regard to the procurement of employment is given to such persons;

“**employment board**” means an employment board appointed in terms of Part IX;

“**employment council**” means an employment council formed in terms of section *fifty-six* or *fifty-seven*;

“**employment officer**” means an officer designated as such in terms of his employment in the Public Service;

“**federation**” means a group of trade unions or employers organizations, each of which is representative of a single undertaking or industry;

“**fixed date**” means the 15th December, 1985;

“**labour relations officer**” means a labour relations officer referred to in paragraph (d) of subsection (1) of section *one hundred and twenty-one*, and includes a senior labour relations officer and an employment officer;

“**managerial employee**” means an employee whose contract of employment requires or permits him to hire, transfer, promote, suspend, lay off, dismiss, reward, discipline or adjudge the grievances of other employees, or to make recommendations on these matters to his employer;

“**maximum wage notice**” means a notice issued in terms of section *twenty-two*;

“**member**” means a member of the Tribunal including the Chairman or Deputy Chairman;

“**membership fees**”, in relation to a trade union or employers organization, means those fees chargeable by the trade union or employers organization concerned in respect of membership or renewal thereof;

“**minimum wage notice**” means a notice issued in terms of section *twenty*;

“**Minister**” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**region**” means any area within Zimbabwe declared by the Minister, by statutory instrument, to be a region for the purposes of this Act;

“**Registrar**” means the Registrar of Labour Relations referred to in paragraph (c) of subsection (1) of section *one hundred and twenty-one*, and includes an Assistant Registrar referred to in that paragraph;

“**relevant particulars**” means such information and other particulars as are within the interests of a workers committee, trade union, employers organization or federation, as the case may be, and which relate to the issue that is legitimately before the organization requesting such information and other particulars;

“**trade union**” means any association or organization formed to represent or advance the interests of any employees or class thereof in respect of their employment;

“**Tribunal**” means the Labour Relations Tribunal established by section *eighty-three*;

“**unfair labour practice**” means an unfair labour practice specified in Part III, or declared to be so in terms of any other provision of this Act;

“**union agreement**” means a collective bargaining agreement that has been negotiated by an appropriate trade union and an employer or employers organization;

“**union dues**” means money levied by a trade union in terms of section *fifty-two*;

“**workers committee**” means a workers committee appointed or elected in terms of Part VI;

“**works council**” means a council composed of an equal number of representatives of an employer and representatives drawn from members of a workers committee.

3 Application of Act

This Act shall apply to all employers and all employees except those whose conditions of employment are otherwise provided for by or under the Constitution.

PART II

FUNDAMENTAL RIGHTS OF EMPLOYEES

4 Employees' entitlement to membership of trade unions and workers committees

(1) Notwithstanding anything contained in any other enactment, every employee shall, as between himself and his employer, have the following rights—

- (a) the right, if he so desires, to be a member or an officer of a trade union;
- (b) where he is a member or an officer of a trade, the right to engage in the lawful activities of such trade union for the advancement or protection of his interests;
- (c) the right to take part in the formation and registration or certification of a trade union;
- (d) the same rights, *mutatis mutandis*, as are set out in paragraphs (a), (b), and (c) in relation to workers committees.

(2) Every employee shall have the right to be a member of a trade union which is registered or certified, as the case may be, for the undertaking or industry in which he is employed if he complies with the conditions of membership.

(3) No term or condition of employment and no offer of employment shall include a requirement that an employee or prospective employee shall undertake—

- (a) if he is a member or officer of a trade union or workers committee, to relinquish his membership or office of such trade union or workers committee; or
 - (b) not to take part in the formation of a trade union or workers committee;
- and any such requirement shall be void.

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any infringement or threatened infringement of a right specified in subsection (1) shall be entitled to apply under Part XII for either or both of the following remedies—

- (a) an order directing the employer or other party concerned to cease the infringement or threatened infringement, as the case may be;
- (b) an order for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be.

5 Protection of employees against discrimination

(1) No employer shall discriminate against any employee or prospective employee on grounds of race, tribe, place of origin, political opinion, colour, creed or sex in relation to—

- (a) the advertisement of employment; or
- (b) the recruitment for employment; or
- (c) the creation, classification or abolition of jobs or posts; or
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits; or

- (e) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) No person shall discriminate against any employee or prospective employee on the grounds of race, tribe, place of origin, political opinion, colour, creed or sex in relation to—

- (a) the advertisement of employment; or
- (b) the recruitment of persons; or
- (c) the introduction of prospective employees for jobs or posts; or
- (d) any other matter related to employment.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of an employer in contravention of subsection (1) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

- (a) damages from the employer for any loss caused directly or indirectly as a result of the contravention;
- (b) an order directing the employer to redress the contravention, including an order to employ any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged.

(5) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of any person in contravention of subsection (2) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

- (a) damages from such person for any loss caused either directly or indirectly as a result of the contravention;
- (b) an order directing such person to redress the contravention.

(6) For the purposes of this section, a person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of a particular race, tribe, place of origin, political opinion, colour, creed or sex to be treated—

- (a) less favourably; or
- (b) more favourably;

than persons of another race, tribe, place of origin, political opinion, colour, creed or sex, unless it is shown that such act or omission was not attributable wholly or mainly to the race, tribe, place of origin, political opinion, colour, creed or sex of the persons concerned.

(7) Notwithstanding subsections (1) and (2), no person shall be deemed to have discriminated against another person—

- (a) on the grounds of sex where—
 - (i) in accordance with this Act or any other law, he provides special conditions for female employees; or
 - (ii) in accordance with this Act or any other law, or in the interests of decency or propriety, he distinguishes between employees of different sexes; or
 - (iii) it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a men's or women's or boys' or girls' organization in the *bona fide* pursuit of the lawful objects of such organization;
- (b) on the grounds of political opinion or creed where it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a political, cultural or religious organization in the *bona-fide* pursuit of the lawful objects of such organization.

(8) It shall be no defence to a charge in respect of a contravention of subsection (1) or (2) to prove that—

- (a) the employee or prospective employee concerned was not in fact taken into employment by the employer concerned or that such employee would, in any case, not have been taken into such employment for any other lawful reason; or
- (b) the employee or prospective employee concerned has left or has not left the employment of the employer concerned; or
- (c) the employee or prospective employee concerned has subsequently been taken into employment by the employer concerned in circumstances showing that he has not been discriminated against; or
- (d) the employer concerned subsequently withdrew or did not fill the vacancy; or
- (e) the person charged is no longer committing any contravention of subsection (1) or (2); or
- (f) the employee or prospective employee concerned was party to the alleged contravention or did not complain about it; or
- (g) it was in the business interests of the person charged to commit the contravention; or
- (h) the contract or agreement which forms the subject of the charge was entered into prior to the fixed date.

6 Protection of employees' right to fair labour standards

(1) No employer shall—

- (a) pay any employee a wage which is lower than that to fair labour specified for such employee by law or by agreement made under this Act; or
- (b) require any employee to work more than the maximum hours permitted by law or by agreement made under this Act for such employee; or
- (c) fail to provide such conditions of employment as are specified by law or as may be specified by agreement made under this Act; or
- (d) require any employee to work under any conditions or situations which are below those prescribed by law or by the conventional practice of the occupation for the protection of such employee's health or safety; or
- (e) hinder, obstruct or prevent any employee from, or penalize him for, seeking access to any lawful proceedings that may be available to him to enable him lawfully to advance or protect his rights or interests as an employee.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

7 Protection of employees' right to democracy in the work place

(1) No person shall—

- (a) hinder, obstruct or prevent any employee from forming or conducting any workers committee for the purpose of airing any grievance, negotiating any matter or advancing or protecting the rights or interests of employees;
- (b) threaten any employee with any reprisal for any lawful action taken by him in advancing or protecting his rights or interests.

(2) Every employer shall permit a labour relations officer or a representative of the appropriate trade union or employment board, if any, to have reasonable access to his employees at their place of work during working hours for the purpose of—

- (a) advising the employees on the law relating to their employment; and
- (b) advising and assisting the employees in regard to the formation or conducting of workers committees and trade unions; and
- (c) ensuring that the rights and interests of the employees are protected and advanced;

and shall provide such labour relations officer or representative of the appropriate trade union or employment board, if any, with reasonable facilities and access for the exercise of such functions.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Notwithstanding subsection (3), nothing done to prevent any disruption of normal production processes, or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (1) or (2).

PART III

UNFAIR LABOUR PRACTICES

8 Unfair labour practices by employer

An employer commits an unfair labour practice if, by act or omission, he—

- (a) prevents, hinders or obstructs any employee in the exercise of any right conferred upon him in terms of Part II; or
- (b) contravenes any provision of Part II or of section *eighteen*; or
- (c) refuses to negotiate in good faith with a workers committee or a trade union which has been duly formed and which is authorized in terms of this Act to represent any of his employees in relation to such negotiation; or
- (d) refuses to co-operate in good faith with an employment council or employment board on which the interests of any of his employees are represented; or
- (e) fails to comply with or to implement—
 - (i) a collective bargaining agreement; or
 - (ii) a decision or finding of an employment council or employment board on which any of his employees are represented; or
 - (iii) a decision or finding made under Part XII; or
 - (iv) any determination or direction which is binding upon him in terms of this Act;
 or
- (f) bargains collectively or otherwise deals with another trade union, where a certified trade union representing his employees exists.

9 Unfair labour practices by trade union or workers committee

A trade union or a workers committee commits an unfair labour practice if by act or omission it—

- (a) prevents, hinders or obstructs an employee in the exercise of any right conferred upon him in terms of Part II; or
- (b) contravenes any of its constitution; or

- (c) fails to represent an employee's interests with respect to any violation of his rights under this Act or under a valid collective bargaining agreement, or under a decision or finding of an employment council or employment board, or under Part XII; or
- (d) fails to comply with or to implement any decision or finding of an employment council or employment board, or any decision or finding made under Part XII, or any determination or direction under this Act which is binding upon it; or
- (e) not being registered, purports to act as a collective bargaining agent in terms of Part X or participates in the collection of union dues; or
- (f) recommends collective job action in contravention of a valid collective bargaining agreement; or
- (g) except as may be authorized in terms of this Act, purports to act as the collective bargaining agent for employees, or calls for collective job action when another trade union has duly been certified to represent the employees concerned; or
- (h) purports to enter upon an agency agreement or collective bargaining agreement when another trade union has been duly certified for the workers concerned.

10 Minister may prescribe further unfair labour practices

(1) The Minister may, after consultation with the Board, from time to time, prescribe by statutory instrument acts or omissions which constitute unfair labour practices, whether by employers, employees, workers committees or trade unions or otherwise and may from time to time vary, amend or repeal any such notice.

(2) Before exercising his powers in terms of subsection (1), the Minister shall publish in the *Gazette* notice of intent and shall call for any objections thereto within a period specified in such notice.

PART IV

GENERAL CONDITIONS OF EMPLOYMENT

11 Contracts by young persons

No contract of employment shall be enforceable against any person under the age of sixteen years, whether or not such person was assisted by his guardian, married, or otherwise tacitly or expressly emancipated, but such person may enforce any rights that have accrued to him by or under such contract:

Provided that a contract of apprenticeship duly entered into and registered in terms of the law relating to apprentices shall, notwithstanding the age of the apprentice concerned, be enforceable against the apprentice.

12 Duration and termination of contract where contract is silent

(1) Except where a longer period of notice has been provided for in any contract or in any relevant enactment, every contract of employment made without reference to time, not being a contract to perform some specific service, shall be deemed in the case where—

- (a) the contract is to pay wages at a monthly rate, to be a contract from month to month, terminable by either party at any time upon giving not less than one month's notice, terminating on the last day of a month;
- (b) the contract is to pay wages at a fortnightly rate, to be a contract from fortnight to fortnight, terminable by either party at any time upon giving not less than a fortnight's notice;
- (c) the contract is to pay wages at a weekly rate, to be a contract from week to week, terminable by either party at any time upon giving not less than one week's notice;
- (d) the contract is to pay wages at a daily or hourly rate, to be a contract from day to day, terminable by either party at the close of any working day upon giving one day's notice;
- (e) the wages are not fixed by such contract or where the contract is to pay wages at any rate other than an annual rate not referred to in paragraph (a), (b), (c) or (d), to be a contract at will and terminable by either party, at the close of any working day without notice:

Provided that where a person has been continuously employed—

- (a) for a period of six months or more but less than two years, the contract shall be terminable by the employer by not less than one week's notice;
- (b) for a period of two years or more, the contract shall be terminable by the employer by not less than one month's notice;
- (c) in the circumstances referred to in paragraph (e), for a period of six months or more on a weekly, fortnightly, monthly or annual basis, the contract shall be terminable by the employer by not less than one month's notice.

(2) Notwithstanding subsection (1), the parties to any contract of employment may, subject to this Act or any regulations made in terms of this Act, by mutual agreement, waive the right to notice:

Provided that where the termination is at the initiative of the employer, the employee shall have a right to payment for a period corresponding to the appropriate period required in terms of subsection (1).

13 Wages and benefits upon termination of employment

- (1) Subject to this Act or any regulations made in terms of this Act, whether any person—
 - (a) is dismissed from his employment or his employment is otherwise terminated; or
 - (b) resigns from his employment; or
 - (c) is incapacitated from performing his work; or

(d) dies;

he or his estate, as the case may be, shall be entitled to the wages and benefits due to him up to the time of such dismissal, termination, resignation, incapacitation or death, as the case may be, including benefits with respect to any outstanding vacation and notice period, medical aid, social security and any pension, and the employer concerned shall pay such entitlements to such person or his estate, as the case may be, as soon as reasonably practicable after such event, and failure to do so shall constitute an unfair labour practice.

(2) Any employer who without the Minister's permission withholds or unreasonably delays the payment of any wages or benefits owed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) The court convicting an employer of an offence in terms of subsection (2) may order him to pay—

(a) to the employee concerned; or

(b) to any person specified by it for the benefit of the employee concerned;

in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(4) The court may at any time on the application of the employer, employee or specified person concerned, for good cause shown, vary an order made in terms of subsection (3).

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the amount specified in an order made in terms of subsection (3) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding a person referred to in subsection (1) or his representative or the executor of his estate, as the case may be, from claiming over and above any wages or benefits to which he or his estate is entitled in terms of subsection (1), damages for any prejudice or loss suffered in connection with such dismissal, termination, resignation, incapacitation or death, as the case may be.

14 Incapacitation of worker by illness or accident

Except where more favourable conditions have otherwise been provided for in the contract of employment concerned or in terms of any relevant enactment—

(a) where an employee becomes temporarily incapacitated by reason of illness or accident not self-inflicted he shall, notwithstanding such incapacity, be entitled to receive his wages and all other benefits provided for expressly or impliedly in his employment contract for a period of not less than, in any one year of service, twenty-two working days in relation to a five-day working week, or twenty-six working days in relation to a six-day working week;

(b) where, owing to illness or accident, an employee is unable for a period exceeding one month to fulfil the conditions of his employment contract, the employer shall be entitled to terminate the contract on due notice, and in such event the employee shall be entitled to all the benefits provided for expressly or impliedly in his employment contract up to the date of termination.

15 Death of employer

Except where more favourable conditions have otherwise been provided for in the employment contract concerned or in terms of any relevant enactment, including any regulations made in terms of this Act, or in any agreement or determination made or given effect to in terms of any enactment, a contract of employment between an employee and an employer who is an individual shall not be terminated on the death of the employer but shall continue to have effect until the expiration of the period after which it would have terminated had due notice of termination been given on the day on which the employer died, and during such period the employee shall be entitled to such wages and other benefits as are provided for in the employment contract from the person legally representing the deceased employer in his capacity as such.

16 Rights of employees on transfer of undertaking

(1) Subject to this section, whenever any undertaking in which any persons are employed is alienated or transferred in any way whatsoever, the employment of such persons shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

(2) Nothing in subsection (1) shall be deemed—

(a) to prevent the employees concerned from being transferred on terms and conditions of employment which are more favourable to them than those which applied immediately before the transfer, or from obtaining terms and conditions of employment which are more favourable than those which applied immediately before, or subsequent to, the transfer;

(b) to prevent the employees concerned from agreeing to terms and conditions of employment which are in themselves otherwise legal and which shall be applicable on and after the transfer, but which are less favourable than those which applied to them immediately before the transfer:

Provided that no rights to social security, pensions, gratuities or other retirement benefits may be diminished by any such agreement without the prior written authority of the Minister;

- (c) to affect the rights of the employees concerned which they could have enforced against the person who employed them immediately before the transfer, and such rights may be enforced against either the employer or the person to whom the undertaking has been transferred or against both such persons at any time prior to, on or after the transfer;
 - (d) to derogate from or prejudice the benefits or rights conferred upon employees under the law relating to insolvency.
- (3) It shall be an unfair labour practice to violate or evade or to attempt to violate or evade in any way the provisions of this section.

17 Regulatory powers of Minister

(1) Subject to this Act, the Minister may make regulations providing for the development, improvement, protection, regulation and control of employment and conditions of employment.

(2) Regulations made by the Minister in terms of subsection (1) shall, unless such regulations otherwise provide, prevail over any other statutory instrument or of any agreement or arrangement whatsoever, and in the event of any inconsistency, such other statutory instrument, agreement or arrangement shall, to the extent of such inconsistency, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring them into conformity with the regulations made by the Minister.

(3) Without prejudice to the generality of subsection (1), the Minister may make regulations in terms of that subsection providing for—

- (a) the rights of employees, including minimum wages, benefits, social security, retirement and superannuation benefits, and other conditions of employment;
- (b) the deductions which may be made from the wages of employees;
- (c) the hours of work of employees, including overtime, night and shift work and the remuneration therefor;
- (d) rest and meal breaks, the provision of food and other services at work in special cases and the charges that may be made from wages therefor;
- (e) leave, including sick leave, maternity leave and bereavement leave, that shall be granted to employees and the remuneration and allowances that shall be payable in respect thereof;
- (f) the holidays that shall be granted to, or that may be withheld from, employees, and the remuneration and allowances that shall be payable in respect thereof;
- (g) the establishment of pension, social security, sick, medical, holiday, provident, insurance and other funds for employees, and the levying of contributions thereto by employers and employees;
- (h) the special conditions that shall be applicable to female, juvenile and disabled employees, including the prohibition of the employment of persons below the age of sixteen years;
- (i) the restriction on the employment of juveniles and pregnant women in specified types and categories of employment or at specified hours, and the rights and privileges of mothers with suckling infants;
- (j) the regulation and control of employment on contract, overtime, part-time, short-time or casual basis, including the conditions relating to any such employment;
- (k) the encouragement of employment of disabled persons and the remuneration and allowances payable to, and the facilities which should be provided for, such persons;
- (l) the settling of disputes in a category or class of employment by reference to specified officials or tribunals;
- (m) the protection of the rights of employees in respect of wages, pensions, benefits and holidays where the employer terminates or transfers his undertaking;
- (n) the implementation of any national or international standards of employment, including those related to the rights and obligations of employers and employees as to safety, health and compensation for occupational disablement;
- (o) the recruitment and employment of unskilled, semi-skilled and skilled labour and apprentices in any occupation, including the regulation and control of the recruitment of citizens, non-citizens and residents for any type of employment within and outside Zimbabwe:
Provided that no regulations shall be made in terms of this paragraph without prior consultation with the Minister responsible for apprenticeship training;
- (p) the employment of unemployed persons and persons released from penal institutions;
- (q) regulating and restricting the circumstances in which employers may suspend or terminate the employment of any of their employees;
- (r) specifying or otherwise restricting the circumstances in which contracts of employment may be terminated summarily or otherwise;
- (s) the reinstatement of employees where they have been retrenched, whether voluntarily or otherwise in circumstances which are to their disadvantage, or which are contrary to the national interest;
- (t) the regulation and control of persons recruiting labour or operating employment agencies, including the registration of such persons or employment agencies;
- (u) any other matter relating to or connected with employment which it may be necessary to regulate.

(4) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof: Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

(5) Unless in the opinion of the Minister the urgency of the situation demands otherwise, the Minister shall, before making regulations in terms of this section, cause to be published in the *Gazette* a notice

setting forth the general purport of the proposed regulations and stating that the regulations shall be open for inspection at a place specified in the notice, and calling upon persons who have any objections to the proposed regulations to lodge them in writing with the Minister within thirty days of the date of publication of such notice:

Provided that failure by the Minister to comply with this subsection shall not affect the validity of the regulations concerned.

18 Maternity leave

(1) Unless more favourable conditions have otherwise been provided for in any employment contract or in any enactment, a female employee who is pregnant and who furnishes to her employer a certificate signed by a registered medical practitioner or State Registered Nurse certifying that the birth of her child is likely to take place within the next forty-five days shall, at her request, be granted maternity leave from a date specified by her for any period to which she is entitled in terms of subsection (2), under the following conditions as may be applicable to her case—

- (a) if, prior to going on maternity leave, she agrees to forfeit the leave or vacation days which she was entitled to accumulate in the previous six months, she shall, in addition to receiving all her normal benefits payable by the employer, be entitled to not less than seventy-five *per centum* of her normal pay which shall be payable as and when it would have been regularly payable, had she not gone on such maternity leave; or
- (b) if she was not entitled to any leave or vacation days in terms of paragraph (a), or if she is unwilling or unable to forfeit such leave or vacation days as are referred to in paragraph (a), she shall be paid not less than sixty *per centum* of her normal pay and benefits payable by the employer:

Provided that—

- (i) where a female employee who has benefited from paragraph (a) or (b) fails, for any reason other than death, or dismissal by the employer, to return to the employer's service for a period at least as long as that during which she was on maternity leave and on terms not less favourable than she enjoyed prior to going on such leave, she shall be liable for the repayment to the employer of all the wages and benefits she received from the employer in consideration of such leave;
 - (ii) the frequency of paid maternity leave that a female employee may take in terms of this subsection shall not exceed once every twenty-four months and a total of three times with respect to her total service to any one employer.
- (2) The aggregate of maternity leave which a female employee may take in terms of subsection (1) before and after the birth of her child shall be ninety days:

Provided that—

- (i) where the birth of her child in fact takes place after the expiry of the forty-five days referred to in the certificate mentioned in subsection (1), the period of ninety days shall be extended without pay by the number of days that have elapsed between the expiry of such period of forty-five days and the date of birth of the child;
- (ii) where a registered medical practitioner or State Registered Nurse certifies that, as a result of complications accompanying the birth of a child, the child's mother needs to convalesce for a specified period in excess of forty-five days after such birth, the period of ninety days shall be extended without pay to include the whole of such specified period.
- (iii) the employee shall go on maternity leave at least fourteen days before the birth of her child.

(3) During the period when a female employee is on maternity leave in accordance with subsections (1) and (2), her normal benefits and entitlements, including her rights to seniority or advancement and the accumulation of pension rights, shall continue uninterrupted in the manner in which they would have continued had she not gone on such leave, and her period of service shall not be considered as having been interrupted, reduced or broken by the exercise of her right to maternity leave in terms of this section.

(4) A female employee who is the mother of a suckling child shall, during each working day, be granted at her request at least one hour or two half-hour periods, as she may choose during normal working hours, for the purpose of nursing her child, and such employee may combine the portion or portions of time to which she is so entitled with any other normal breaks so as to constitute longer periods that she may find necessary or convenient for the purpose of nursing her child.

(5) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) Notwithstanding subsections (4) and (5), the grant of breaks during normal working time to a female employee for the purpose of nursing her child shall be made in accordance with the exigencies of her employment and nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (4).

(7) A female employee shall be entitled to the benefits under subsection (4) for the period during which she actually nurses her child or six months, whichever is the lesser.

PART V

WAGE AND SALARY CONTROL

19 Advisory boards

The Minister may, either on his own initiative or on the recommendation of any employer or employee, or of any association representing employers or employees, appoint advisory boards consisting of such persons as he may deem fit, or request an employment board or employment council, to investigate and make recommendations to him as to—

- (a) the fixing of minimum wages and benefits for employees; or
- (b) the fixing of ceilings on wages or salaries or benefits; or
- (c) any other matters to which minimum wage notices or maximum wage notices may relate.

20 Minimum wage notices

- (1) The Minister may, by statutory instrument—
 - (a) in respect of any class of employees in any undertaking or industry—
 - (i) specify the minimum wage and benefits in respect of such class of employees;
 - (ii) require employers to grant or negotiate increments on annual income of such minimum amount or percentage as he may specify; and prohibit the payment of less than such specified minimum wage, benefits or increments to such class of employees;
 - (b) regulate or prohibit the making of deductions from the wages and benefits of an employee to whom such notice relates;
 - (c) regulate or prohibit the withdrawal, reduction or alteration of any benefits to which an employee to whom such notice relates was entitled in respect of his employment immediately before the date of commencement of such notice;
 - (d) give such other direction or make such other provision as he may deem necessary or desirable to ensure the payment of a minimum or other specified wage or benefits to any class of employees;
 - (e) provide for exemptions from paragraphs (a), (b), (c) and (d).
- (2) Where the Minister has issued a minimum wage notice in terms of subsection (1)—
 - (a) every contract, agreement, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such minimum wage notice relates and which provides for wages, benefits or deductions from wages which are less favourable to the employee than those specified in the notice, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice;
 - (b) every agreement or arrangement of any kind whatsoever, express or implied, whether made before or after the date of commencement of such minimum wage notice by an employer or employee to whom such notice relates, which conflicts with such notice shall, to the extent of such conflict, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice.
- (3) Any person who contravenes a notice issued in terms of subsection (1) shall—
 - (a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and
 - (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (4) The court convicting an employer of an offence in terms of paragraph (b) of subsection (3) may order him to pay—
 - (a) to the employee concerned; or
 - (b) to any person specified by it for the benefit of the employee concerned;in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.
- (5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the amount specified in an order made in terms of subsection (4) as if such amount were a fine referred to in those sections.
- (6) Nothing contained in this section shall be construed as precluding an employee, notwithstanding an order made in terms of subsection (4), from recovering by civil proceedings any amount or additional amount by which he has been prejudiced as a result of any contravention of a minimum wage notice.

21 Prohibition of termination of services of employee

- (1) No employer shall, otherwise than in terms of an exemption granted to him in terms of subsection (2), terminate the services of an employee solely on the ground of a requirement to pay him a minimum wage in terms of a minimum wage notice.
- (2) Where the Minister considers that special circumstances exist, he may, by notice in writing, and on such terms and conditions as he may specify, grant an employer exemption from subsection (1).
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

22 Maximum wage notices

- (1) The Minister may, by statutory instrument, after consultation with the Minister responsible for finance—

- (a) fix a maximum wage, and the maximum amount that may be payable by way of benefits, allowances, bonuses or increments;
- (b) require employers to grant or negotiate such increments on annual income up to such maximum amount or percentage as he may specify;

in respect of employees generally or of any particular class of employees, and may prohibit the payment to and receipt by such employees of any amount greater than may be fixed or specified in terms of this subsection.

(2) In any notice made in terms of subsection (1) the Minister may provide for exemptions from any provisions of such notice.

(3) Any person who contravenes a notice issued in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART VI

WORKERS COMMITTEES: FORMATION AND FUNCTIONS

23 Formation of workers committees

(1) Subject to this Act and any regulations, employees employed by any one employer may appoint or elect a workers committee to represent their interests:

Provided that no managerial employee shall be appointed or elected to a workers committee, nor shall a workers committee represent the interests of managerial employees, unless such workers committee is composed solely of managerial employees appointed or elected to represent their interests.

(2) For the purposes of appointing or electing a workers committee, employees shall be entitled to—

- (a) be assisted by a labour relations officer or a representative of the appropriate trade union; and
- (b) reasonable facilities to communicate with each other and meet together during working hours at their place of work; and
- (c) be provided by their employer with the names and relevant particulars of all employees employed by him;

so however, that the ordinary conduct of the employer's business is not unduly interfered with.

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), the labour relations officer concerned or any other officer acting in a similar capacity, shall, after considering the representations of the parties concerned, make such fair and reasonable determination as he deems fit, and such determination shall be binding on the parties:

Provided that if any person is aggrieved by the determination of the labour relations officer or such other officer, he may appeal to a senior labour relations officer who, after taking into account the representations of the parties concerned, shall determine the matter and his decision shall be final.

24 Functions of workers committees

(1) A workers committee shall—

- (a) subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and
- (b) subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and
- (c) subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and
- (d) where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.

(2) Subject to subsection (3), where a workers committee has been appointed or elected to represent employees, no person other than such workers committee and the appropriate trade union, if any, may—

- (a) act or purport to act for the employees in negotiating any collective bargaining agreement; or
- (b) direct or recommend collective job action to the employees.

(3) Where an appropriate trade union exists for any employees, a workers committee of those employees may negotiate a collective bargaining agreement with an employer—

- (a) in the case where the trade union has no collective bargaining agreement with the employer concerned, only to the extent that such negotiation is authorized in writing by the trade union concerned; or
- (b) in the case where there is a collective bargaining agreement, only to the extent permitted by such collective bargaining agreement; or
- (c) where the Minister certifies in writing that—
 - (i) the issue in question was omitted from or included in the principal collective bargaining agreement when it should not have been so omitted or included; and
 - (ii) the parties to the principal collective bargaining agreement have failed or are not in a position to reach an agreement on such an issue.

25 Effect of collective bargaining agreements negotiated by workers committees

(1) Every collective bargaining agreement which has been negotiated by a workers committee shall be referred by the workers committee to the employees and the trade union concerned, and, if approved by the

trade union and by more than fifty *per centum* of the employees, shall become binding on the employer and the employees concerned:

Provided that where there is any conflict between the terms and conditions of any such collective bargaining agreement and collective bargaining agreement negotiated by an appropriate trade union, the latter shall prevail unless the terms and conditions of the former collective bargaining agreement are more favourable to the employees concerned, in which case such last-mentioned terms and conditions shall prevail.

(2) Where a collective bargaining agreement which has been negotiated by a workers committee contains any provision which is, or has become—

- (a) inconsistent with this Act or any other enactment; or
- (b) inequitable to consumers or to members of the public generally or to any party to the collective bargaining agreement; or
- (c) unreasonable or unfair, having regard to the respective rights of the parties;

the Minister may direct the parties to the agreement to negotiate, within such period as he may specify, an amendment to the agreement in such manner or to such extent as he may specify, and he may give such other directions relating to the operation of the agreement pending its amendment as he may deem fit, and such directions shall be binding on the parties.

(3) Where the Minister has made a direction in terms of subsection (2), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate an amendment to the agreement in good faith, and to report back to the Minister within the period specified in the direction the extent to which they have been able or unable to agree in amending the agreement.

(4) The Minister may, after considering any report submitted to him in terms of subsection (3), amend the collective bargaining agreement concerned in accordance with the report of the parties or in such other manner as he may deem necessary in the national interest, having regard to the considerations specified in paragraphs (a), (b) and (c) of subsection (2), and the agreement, as amended, shall, subject to this Act, be binding on the employer and the employees concerned.

(5) A collective bargaining agreement negotiated in terms of this section shall not be affected by—

- (a) where the employer is a corporate body, a change in membership of the management or ownership of the employer; or
- (b) a change in membership of the workers committee or the employees concerned; or
- (c) a transfer of the undertaking or industry in which the employees concerned are employed.

26 Minister may make regulations relating to workers committees

(1) The Minister may make such regulations as he considers necessary for the control of workers committees and, without derogation from the generality of his power in this regard, such regulations may provide for—

- (a) the methods or procedures to be followed for the formation of workers committees;
- (b) the tenure of office of members of workers committees;
- (c) the operation, management and conduct of the affairs of workers committee;

(2) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed the penalties referred to in section *one hundred and twenty-eight*.

PART VII

TRADE UNIONS, EMPLOYERS ORGANIZATIONS AND FEDERATIONS OF TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

27 Right to form trade unions or employers organizations

- (1) Subject to this Act, any group of employees may form a trade union.
- (2) Subject to this Act, any group of employers may form an employers organization.
- (3) Subject to this Act, any group of trade unions or employers organizations may form a federation.

28 Requirements for formation of trade unions and employers organizations

(1) Every trade union, employers organization or federation shall—

- (a) subject to subsection (2), before it raises funds from any source; and
- (b) within six months of its formation;

adopt a written constitution which shall provide for—

- (i) the qualifications for membership, including membership fees, if any; and
- (ii) the right of any person to membership if he is prepared to abide by the rules and conditions of membership; and
- (iii) the number of officials and office bearers, their powers and functions and their appointment or election; and
- (iv) the holding of annual general meetings; and
- (v) the submission by any official or office bearer to re-appointment or re-election if a petition therefor is made—
 - A. within one year of his appointment or election, as the case may be, by not less than three quarters; or

B. later than one year of his appointment or election, as the case may be, by not less than one quarter;
of the members of the trade union, employers organization or federation; and
(vi) the call and conduct of meetings of members or representatives of members of the trade union, employers organization or federation; and
(vii) the prohibition of discrimination against any members or class of members on grounds of race, tribe, place of origin, political opinion, colour, creed or sex; and
(viii) the amendment of the constitution; and
(ix) the winding up of the trade union, employers organization, or federation;
and failure to so provide in the constitution shall constitute an unfair labour practice by the trade union, employers organization, or federation concerned.

(2) A trade union, employers organization or federation may, notwithstanding subsection (1) and before it has adopted a written constitution in terms of that subsection, raise funds in respect of membership fees to an amount not exceeding such amount as may be specified by the Minister by statutory instrument for the purposes of this subsection.

(3) Every trade union, employers organization or federation shall, within six months of its formation, submit two copies of its constitution to the Minister, and shall within one month of any amendment of its constitution submit copies of such amendment with a statement of the purpose thereof to the persons and authorities mentioned in this subsection.

(4) It shall be the duty of every official or office bearer of a trade union, employers organization or federation to ensure compliance with this section.

29 Registration and certification of trade unions and employers organizations and privileges thereof

(1) Subject to this Act, any trade union, employers organization or federation may, if it so desires, apply for registration.

(2) Every trade union, employers organization or federation shall, upon registration, become a body corporate and shall in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act or thing which its constitution requires or permits it to do, or which a body corporate may, by law, do.

(3) Subject to this Act, any registered trade union or employers organization may, if it so desires, apply for certification.

(4) Subject to this Act, a registered or certified trade union or federation of such unions shall be entitled—

- (a) to be assisted by a labour relations officer or designated agent of the appropriate employment council in its dealings with employers; and
- (b) through its duly authorized representatives, to the right of access to employees conferred by subsection (2) of section *seven*; and
- (c) to be provided by employers with the names and other relevant particulars, including particulars as to wages of all employees who are employed in the industry or undertaking for which the trade union or federation is registered or certified, and who are members of the trade union or federation concerned; and
- (d) to make representations to a determining authority or the Tribunal; and
- (e) to be represented on any appropriate employment board; and
- (f) to form or be represented on any employment council; and
- (g) to recommend collective job action; and
- (h) to levy, collect, sue for and recover union dues; and
- (i) to act as an agent union in terms of section *thirty-one*; and
- (j) to exercise any other right or privilege conferred by this Act on registered or certified trade unions or federations thereof.

(5) Subject to this Act, a registered or certified employers organization shall be entitled—

- (a) to be assisted by a labour relations officer or a designated agent of the appropriate employment council in its dealings with trade unions or workers committees; and
- (b) through its duly authorized representatives, to be provided by trade unions and workers committees with the names and other relevant particulars of all their members; and
- (c) to make representations to a determining authority or the Tribunal; and
- (d) to be represented on any appropriate employment board; and
- (e) to form or be represented on any employment council; and
- (f) to exercise any other right or privilege conferred by this Act on registered or certified employers organizations.

30 Unregistered trade unions and employers organizations

(1) No unregistered trade union or employers organization may in its corporate name—

- (a) make representations to the Tribunal; or
- (b) be assisted by a labour relations officer or a designated agent of any employment council.

(2) No unregistered trade union or employers organization may, whether in its corporate name or through any of its members—

- (a) be represented on any employment board; or
 - (b) form or be represented on any employment council; or
 - (c) be entitled to be provided with the particulars specified in paragraph (c) of subsection (4) or paragraph (b) of subsection (5) of section *twenty-nine*.
- (3) No unregistered trade union may, whether in its corporate name or otherwise—
- (a) recommend collective job action; or
 - (b) have the right of access to employees conferred by subsection (2) of section *seven*; or
 - (c) levy, collect, sue for or recover union dues.

31 When trade union may act as agent union

(1) Subject to subsection (2), a certified trade union may act as the agent union of employees in any undertaking or industry who are not otherwise represented by a certified trade union if—

- (a) not less than fifty *per centum* of the employees concerned are in favour of such trade union representing them; or
- (b) an unregistered trade union or a registered trade union which otherwise represents the employees concerned requests the certified trade union to act as its agent union; or
- (c) the Minister so requests.

(2) Except where the Minister has requested a certified trade union to act as an agent union or has consented to such a request in terms of paragraph (c) of subsection (1), a certified trade union that desires so to act shall apply to the Minister in writing, setting out the circumstances giving rise to the application.

(3) On receipt of an application in terms of subsection (2), the Minister may, after taking into account—

- (a) the extent to which the certified trade union appreciates the interests and needs of the employees concerned; and
- (b) the views of any employers or employees who may be affected; and
- (c) any levies or dues the certified trade union proposes to levy from the employees concerned; and
- (d) the ability of the certified trade union to act as an agent union;

grant or refuse the application.

(4) No certified trade union shall act as an agent union—

- (a) for a period of more than three years unless, before the expiry of three years after commencing so to act, the Minister extends such period; or
- (b) after a trade union representing the employees concerned has been certified or has re-acquired its competency to represent the employees concerned.

(5) A certified federation of trade unions may act, *mutatis mutandis*, as an agent union with respect to the members of one of its component unions or undertakings.

(6) The Minister may on his own initiative or on the application of any interested party, at any time, revoke the authority of a certified trade union or federation of trade unions to act as an agent union.

32 Agent union to disclose other agencies

A certified trade union or federation of trade unions which is acting as an agent union for any employees may, in terms of section *thirty-one*, become the agent union for any other employees if it discloses to such other employees its prior agency.

33 Application for registration

(1) Every application for registration by a trade union or employers organization or federation shall, subject to section *thirty-four*, be made to the Registrar in the prescribed form.

(2) The Registrar shall cause notice to be published in the *Gazette* of every application made in terms of this section, and in such notice shall invite any person who wishes to make any representations relating to the application to lodge such representations with the Registrar within such period, not being less than thirty days from the date of the notice, as may be specified in the notice, and to state whether or not he wishes to appear in support of his representations at accreditation proceedings.

34 Requirements of application for registration

An application for registration of a trade union or employers organization or federation shall contain the following information—

- (a) the name of the trade union or employers organization or federation; and
- (b) the names and relevant particulars of the persons intending to secure the registration; and
- (c) the coverage of the proposed trade union or employers organization or federation with regard to the undertakings or industries concerned, with such exclusions as may be intended; and
- (d) the affiliates to and the affiliations of the trade union or employers organization or federation, including international, national or local unions, organizations or workers communities; and
- (e) sources of funds and material, both current and anticipated, for organizing the trade union or employers organization or federation, and the address of its bank;

and shall be accompanied by a copy of its constitution or operational rules.

35 Requirements of constitution of registered trade unions or employers organizations

The constitution of every registered or certified trade union or employers organization or federation shall, in addition to the matters referred to in section *twenty-eight*, provide for—

- (a) consultation between the various governing bodies or branches of the trade union or employers organization and members thereof before such trade union or employers organization or federation—
 - (i) enters upon a collective bargaining agreement; or
 - (ii) recommends collective job action; or
 - (iii) embarks upon any new programme which is likely to substantially affect the rights and interests of its members; or
 - (iv) increases fees and other dues payable by its members; or
 - (v) assigns an official to represent its members in a particular matter that is of considerable significance to its members;and
- (b) the keeping of books of accounts and the submission of such books of accounts for auditing within three months of the end of each financial year, and the making available to members of certified true copies of the audited accounts and the auditor's report thereon; and
- (c) the prohibition of the use of union or association dues of the trade union or employers organization or federation for electioneering for the trade union or employers organization or federation or for political purposes; and
- (d) in the case of a trade union, limitations designed to ensure the prohibition of the payment of excessive wages, salaries and benefits to officials and office bearers; and
- (e) the equitable sharing of the funds of the trade union or employers organization with any of its branches; and
- (f) the maintenance of a register of members and a record of the fees, if any, paid by each member and the periods to which those fees relate; and
- (g) the giving to any person who is refused membership or who is expelled of written reasons for such refusal or expulsion; and
- (h) such other matters as may be prescribed.

36 Registration of trade unions, employers organizations and federations

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (2) of section *thirty-three* and after the holding of accreditation proceedings, if any, grant or refuse an application for the registration of a trade union or employers organization or federation.

(2) When granting any application for registration in terms of subsection (1), the Registrar may, after consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for registration.

(3) Where the Registrar grants an application for registration of a trade union or employers organization, he shall enter in his register—

- (a) the name of the trade union or employers organization; and
- (b) every undertaking or industry in respect of which the trade union or employers organization is registered; and
- (c) such other particulars as may be prescribed;

and shall issue the trade union or employers organization with a certificate of registration in the prescribed form.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made by him in terms of this section.

37 Application for certification of registered trade union or employers organization

(1) A registered trade union or employers organization may, subject to this section, within one year after being registered, apply in the form and manner prescribed to the Registrar for certification.

(2) The Registrar may, on the application of any registered trade union or employers organization, by notice in writing to the trade union or employers organization concerned, extend the period referred to in subsection (1):

Provided that the Registrar may not extend the period for more than one year at a time or for an aggregate of more than two years.

(3) The Registrar shall cause notice to be published in the *Gazette* of every application made in terms of this section, and in such notice shall invite any person who wishes to make any representations relating to the application to lodge such representations with the Registrar within such period, not being less than thirty days from the date of the notice, as may be specified in the notice, and to state whether or not he wishes to appear in support of such representations at accreditation proceedings.

(4) Where a registered trade union or employers organization has not applied for certification within the period referred to in subsection (1) or within any extension thereof granted in terms of subsection (2), its registration shall lapse and the Registrar shall rescind the registration of the trade union or employers organization concerned.

38 Certification of registered trade unions or employers organizations

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (3) of section *thirty-seven* and after the holding of accreditation proceedings, if any, grant or refuse an application for the certification of a registered trade union or employers organization.

(2) When granting any application for certification in terms of subsection (1), the Registrar may, after consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for certification.

(3) Where the Registrar grants an application for certification of a registered trade union or employers organization, he shall enter in his register—

- (a) the name of the trade union or employers organization; and
 - (b) every undertaking or industry in respect of which the trade union or employers organization is certified; and
 - (c) such other particulars as may be prescribed;
- and shall issue the trade union or employers organization concerned with a certificate of certification in the prescribed form.

(4) Where the Registrar refuses to grant an application for the certification of a registered trade union or employers organization, the registration of the trade union or employers organization concerned shall, unless the Registrar grants an extension, lapse and the Registrar shall rescind the registration of the trade union or employers organization concerned.

(5) The Registrar shall, on request, supply any interested person with his reasons for any decision made by him in terms of this section.

39 Application or proposal to vary, suspend or rescind registration or certification

(1) Any interested person, including the trade union or employers organization concerned, may apply to the Registrar for the variation, suspension or rescission of the registration or certification of a trade union or employers organization.

(2) If a certified or registered trade union or employers organization—

- (a) no longer adequately represents the interests or area for which it was registered or certified; or
- (b) has failed to perform any of its functions in terms of this Act;

the Minister may, after consultation with the trade union or employers organization concerned, direct the Registrar to hold accreditation proceedings to determine whether or not the registration or certification of the trade union or employers organization concerned should be varied, suspended or rescinded.

(3) On receipt of an application in terms of subsection (1) or a direction in terms of subsection (2), the Registrar shall publish notice in the *Gazette* of the application or direction and shall, in such notice, invite any person who wishes to make any representations relating to such application or direction to lodge with him such representations within thirty days of the date of publication of the notice, and to state whether or not he wishes to appear in support of such representations at accreditation proceedings.

40 Variation, suspension or rescission of registration or certification

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (3) of section *thirty-nine* and after the holding of accreditation proceedings, if any, vary, suspend or rescind the registration or certification of a trade union or employers organization.

(2) The rescission of the certification of a trade union or employers organization shall have the effect of rescinding the registration of that trade union or employers organization, unless the Registrar otherwise directs.

(3) The suspension of the registration or certification of a trade union or employers organization shall have the effect of suspending that trade union or employers organization, as the case may be, from performing all or any of the functions of a registered or certified trade union or employers organization, as may be specified in the order of suspension.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made in terms of this section.

41 Accreditation proceedings

Accreditation proceedings shall be held for the purposes of determining whether or not—

- (a) a trade union or employers organization should be registered;
 - (b) a registered trade union or employers organization should be certified;
 - (c) the registration or certification of a trade union or employers organization should be varied, suspended or rescinded;
- in any case where—

- (i) the Registrar considers that such proceedings should be held; or
- (ii) the Minister directs that such proceedings should be held; or
- (iii) any interested person has requested such proceedings, whether in relation to a trade union or employers organization which has already been registered or certified or in relation to a trade union or employers organization which is proposed to be registered or certified, as the case may be:

Provided that the Registrar may, in any case referred to in this subparagraph decline to hold accreditation proceedings.

42 Notice of accreditation proceedings

(1) Whenever accreditation proceedings are proposed to be held, the Registrar shall give not less than thirty days' notice thereof—

- (a) in writing to the parties concerned; and

(b) by publication of a notice in the *Gazette* and in such other publication as he thinks appropriate.

(2) A notice given in terms of subsection (1) shall specify—

(a) the subject of the accreditation proceedings; and

(b) the time and place of the accreditation proceedings;

and shall call upon all interested parties, who wish to do so, to submit any representations they wish to make to the Registrar and to advise him whether or not they will be attending the proceedings.

(3) Where the Registrar has received any representations relating to any matter to be considered at accreditation proceedings, he shall submit or make available a copy thereof to other interested parties as soon as practicable.

43 Procedure at accreditation proceedings

At the hearing of any accreditation proceedings—

(a) the parties—

(i) may appear in person or by any duly authorized representative;

(ii) shall be given a reasonable opportunity of presenting their case;

(b) the Registrar shall preside and shall, subject to any procedure that may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties and to carry out the objects of this Act.

44 Notification of decision made at accreditation proceedings

Upon the completion of any accreditation proceedings, the Registrar shall notify all interested party who appeared at the proceedings of his decision in writing and his reasons therefor.

45 Considerations relating to registration, certification or variation, suspension or rescission of registration or certification of trade unions or employers organizations

(1) In any determination of the registration or certification of a trade union or employers organization or of the variation, suspension or rescission thereof, the Registrar shall—

(a) take into account—

(i) representations by—

A. employers and employees who might be affected; and

B. the Minister and any other Minister whose Ministry or Department may be affected; and

C. any member of the public or any section thereof likely to be affected;

and

(iii) the desirability of affording the majority of the employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests; and

(iv) the desirability of reducing, to the least possible number, the number of entities with which employees and employers have to negotiate; and

(vi) whether representations made in terms of subsection (3) of section *thirty-nine* or at any accreditation proceedings in terms of section *forty-one* indicate that the trade union or employers organization will not be substantially representative of the employees or employers it proposes to represent;

and

(b) ensure compliance with the following requirements—

(i) a trade union shall not represent employers or managerial employees;

(ii) an employers organization shall not represent employees other than managerial employees;

(iii) the constitution of a trade union or employers organization shall not be inconsistent with this Act.

(2) Where any person asserts that there should, in any particular case, be any departure from the general rule referred to in paragraph (d) of subsection (1), the burden of proving such assertion shall lie on such person.

46 Matters to be determined by Tribunal

In the event of any dispute as to—

(a) the extent or description of any undertaking or industry; or

(b) whether any employees are managerial employees;

the matter shall be referred to the Tribunal for determination.

47 Right of appeal

Any person who is aggrieved by a decision of the Registrar—

(a) to register or certify a trade union or employers organization; or

(b) not to register or certify a trade union or employers organization; or

(c) to vary, suspend or rescind the registration or certification of a trade union or employers organization or to decline such variation, suspension or rescission; or

(d) to extend or not to extend the period within which a registered trade union or employers organization must apply for certification; or

(e) to decline to hold accreditation proceedings;

may, subject to this Part, appeal to the Tribunal.

48 Notice of appeal

(1) A person who intends to appeal in terms of section *forty-seven* shall, within thirty days of the date on which he was notified of the decision against which he intends to appeal, in such form and manner as may be prescribed, give notice of appeal and of the grounds on which the appeal is based to the Registrar, and to every person who appeared at the accreditation proceedings, if any, concerned.

(2) Subject to subsection (3), the effect of giving notice of appeal in terms of subsection (1) shall be to suspend the operation or effect of the decision appealed against, pending the determination of the appeal.

(3) The Registrar may, on the application of any person, by notice in writing impose such reasonable restrictions as he considers necessary on the activity of any trade union or employers organization concerned in an appeal referred to in subsection (1) in order to protect the reasonable interests of the public and of persons concerned in the appeal.

(4) Any person upon whom restrictions have been imposed in terms of subsection (3) may, with due notice to the other persons concerned, make representations to the Registrar in respect thereof and the Registrar may, if he thinks fit, vary or revoke such restrictions.

(5) Any person upon whom restrictions have been imposed in terms of subsection (3) shall, if he fails to comply therewith, be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

49 Appeals before regional hearing officer

(1) On an appeal before the Tribunal in terms of section *forty-seven*—

(a) the parties thereto shall be given a reasonable opportunity of presenting their case:

Provided that the Tribunal may direct in any particular case that the parties shall be confined to submitting their representations in writing and, in such case, each party shall be given a reasonable opportunity of replying to the representations of the other party;

(b) the Tribunal shall, subject to such procedures as may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties, and to carry out the objects of this Act.

(2) On an appeal in terms of section *forty-seven*, the Tribunal may, subject to this Part, confirm, vary or set aside the decision of the Registrar appealed against, and may make such other order, whether as to costs or otherwise, as he thinks necessary or appropriate.

50 Right of membership of registered or certified trade unions and employers organizations

(1) Every employee shall be entitled to membership of any registered or certified trade union which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

(2) Every employer shall be entitled to membership of any registered or certified employers organization which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

51 Supervision of election of officers

(1) The Minister may, where the national interest so demands, cause to be supervised the holding of elections to any office or post in a registered or certified trade union or employers organization.

(2) Without derogation from the generality of subsection (1) the Minister may, on the advice of the Registrar—

(a) set aside any election if the election was not properly conducted or if the result of the election did not represent the views of the electors;

(b) postpone, or change the venue of or procedure for, any election, if it is necessary to do so to ensure that the views of electors are given proper expression;

(c) assign responsibility for the conduct of any election to any trade union or employers organization;

(d) if the conduct of any election campaign by any person is leading to a misrepresentation of any issues involved in such election, and the consequences of such misrepresentation have serious implications for the national interest, prohibit any person from so conducting the election campaign;

(e) make regulations for controlling and regulating elections and for fixing the qualifications for officers of registered and certified trade unions and employers organizations.

52 Right to union or association dues

(1) For the purpose of fulfilling its obligation to represent the interests of its members employed or engaged in the undertaking or industry for which it is registered or certified, a registered or certified trade union or employers organization may, subject to this Act, levy, collect, sue for and recover union and association dues.

(2) Subject to this Act, a federation of trade unions or employers organizations shall not, unless permitted to do so in any particular case by the constitution of the member trade union or employers organization concerned, levy, collect or receive membership fees, union dues or association dues, as the case may be, from persons in their capacity as individual employers or employees.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

53 Restrictions on payment of union dues by employers

(1) No employer shall, without the consent of the Minister, pay on behalf of any employee any union dues other than to a registered or certified trade union.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

54 Collection of union dues

(1) Union dues shall be collected by an employer from his employees and transferred to the trade union concerned—

- (a) in a manner agreed upon between the trade union and the employer or employers' organization concerned; or
- (b) failing such agreement as referred to in paragraph (a), in such manner as may be determined by the Minister.

(2) The Minister may, by notice in writing to any employer, prohibit or modify any arrangements made for the collection of union dues by the employer from his employees.

(3) The Minister may in terms of subsection (2) give directions—

- (a) relating to a reduction or increase of the amount deductible by the employer;
- (b) directing payment of the union dues by the employer into a trust fund and not to the trade union concerned;
- (c) in respect of such other matters in connection with the payment of union dues as the Minister considers necessary or desirable in the interest of the employees concerned.

(4) Any person who is aggrieved by any direction given by the Minister in terms of subsection (3) may appeal to the Tribunal.

(5) On an appeal in terms of subsection (4) the Tribunal may confirm, rescind or amend the Minister's direction:

Provided that where the Minister certifies that the reason for the direction was that the certified trade union concerned had engaged or had threatened to engage in an unlawful collective job action, any ruling by the Tribunal rescinding or amending the Minister's direction shall not have effect for six months from the date of such direction.

(6) Any employer who fails or refuses to collect union dues and transfer them to the trade union concerned in accordance with this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

55 Minister may regulate union dues

(1) The Minister may make regulations providing for the proper and systematic collection, management, application and disbursement of union dues by trade unions.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the maximum amount, and method of assessment, of union dues;
- (b) the accounting procedures that shall be followed in connection with the collection, management, application and disbursement of union dues;
- (c) the appointment of auditors and the keeping of books of accounts;
- (d) the payment by trade unions of a percentage of union dues to any association or congress of trade unions recognized by the Minister as being representative of all or most certified trade unions in Zimbabwe;
- (e) limitations on the salaries and allowances that may be paid to employees of trade unions;
- (f) limitations on the staff that may be employed, and the equipment and property that may be purchased, by trade unions;
- (g) limitations on the matters on which and the extent to which union dues may be expended.

(3) The Minister may, in writing, direct any trade union to supply him with such information as he may require in connection with the acquisition and disbursement of union dues.

(3a) Any trade union that fails or refuses to comply with a direction in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) The Minister may exercise the same powers as are conferred upon him in terms of subsections (1), (2) and (3), *mutatis mutandis*, in relation to association dues.

PART VIII

EMPLOYMENT COUNCILS

56 Voluntary employment councils

Any—

- (a) employer, certified employers organization or federation of such organizations; and

(b) certified trade union or federation of such trade unions; may, at any time, form an employment council by signing a constitution agreed to by them for the governance of the council, and by applying for its registration in terms of section *fifty-nine*.

57 Statutory employment councils

(1) The Minister may, whenever the national interest so demands, request—

- (a) any certified employers organization or federation of such organizations; and
- (b) any certified trade union or federation of such trade unions;

to form an employment council and to apply for its registration in terms of section *fifty-nine*.

(2) If within three months of a direction being given in terms of subsection (1), the parties concerned have failed to apply for the registration of an employment council, the Minister may appoint such number of persons as he considers will represent the employers and employees concerned, and such persons shall, within such period as may be specified by the Minister, form an employment council by signing a constitution agreed to by them for the governance of the council and by obtaining registration of the council in terms of section *fifty-nine*.

58 Constitution of employment councils

The constitution of every employment council formed in terms of this Part shall provide for—

- (a) a statement of the aims and objectives of the council; and
- (b) the certified trade union concerned or federation of such trade unions to appoint fifty *per centum* of the members of the employment council, and the employers organization concerned or federation of such organizations to appoint the remaining members; and
- (c) the appointment of a chairman and vice-chairman of the employment council:
Provided that every constitution shall provide that if the chairman is appointed by members representing the certified trade union or federation of trade unions, the vice-chairman shall be appointed by members representing the employers organization or federation of such organizations, and *vice-versa*; and
- (d) the dues which are payable to the employment council by the members thereof; and
- (e) the administration of the funds of the employment council; and
- (f) the keeping of minutes and other records of the proceedings of the employment council; and
- (g) the admission of new parties to the employment council; and
- (h) the procedures for dealing with any disputes within the undertaking or industry represented by the parties to the employment council; and
- (i) the amendment of the constitution; and
- (j) the winding up of the employment council; and
- (k) such other matters as may be prescribed.

59 Registration of employment councils

(1) Upon application for the registration of an employment council, the Registrar shall—

- (a) if he is satisfied, having due regard to section *sixty-one* which shall apply, *mutatis mutandis*, that the employment council and its constitution comply with this Act, register the employment council;
- (b) if he is not satisfied as provided in paragraph (a), refuse to register the employment council.

(2) Whenever the Registrar registers an employment council he shall furnish that employment council with a certificate of registration.

60 Employment councils to be bodies corporate

Every employment council shall, upon registration in terms of this Act, become a body corporate and in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act which its constitution requires or permits it to do, or which a body corporate may by law do.

61 Variation of registration of employment councils

(1) Whenever the Registrar is satisfied that—

- (a) any employment council is not sufficiently representative of the undertaking or industry in respect of which it is registered; or
- (b) any branch or section of the undertaking or industry in respect of which an employment council is registered has been included in the registration by oversight or mistake or that an employment council is not sufficiently representative of any such branch or section; or
- (c) the character of any undertaking or industry in respect of which an employment council is registered is such that a particular branch or section thereof should no longer be included in such undertaking or industry; or
- (d) it is in the interests of employers, employees or the public for a particular branch or section of any undertaking or industry in respect of which an employment council is registered, to form a separate employment council for that branch or section; or
- (e) any branch or section of an undertaking or industry should be included within the undertaking or industry for which an employment council is registered;

he may, after consultation with the employment council, vary the coverage in respect of which the employment council is registered and make the necessary variation in his register.

(2) If at any time the Registrar is satisfied that an employment council—

(a) is not sufficiently representative of any undertaking or industry in respect of which it is registered; or
(b) has failed to comply with this Act;
he may, after consultation with the employment council concerned, cancel the registration of that employment council.

(3) If the Registrar exercises any of the powers conferred upon him by subsection (1) or (2), he shall call upon the secretary of the employment council concerned to transmit to him the certificate of registration issued to it, and the secretary shall, within thirty days of being so called upon, transmit the certificate of registration to the Registrar.

(3a) A secretary of an employment council who fails or refuses to transmit the council's certificate of registration to the Registrar in accordance with subsection (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(4) The Registrar shall, upon receipt by him of a certificate of registration of an employment council in terms of subsection (3)—

- (a) make the necessary alterations therein and return it to the employment council concerned; or
- (b) issue to the employment council concerned a fresh certificate of registration; or
- (c) cancel the certificate of registration;

as may be appropriate.

(5) Any person aggrieved by any action taken by the Registrar in terms of this section may appeal to the Tribunal.

62 Duties of employment councils

(1) An employment council shall, within the undertaking or industry and in the area in respect of which it is registered—

- (a) assist its members in the conclusion of collective bargaining agreements or otherwise prevent disputes from arising, or settle disputes that have arisen or may arise between employers or employers organizations on the one hand and employees, workers committees or trade unions on the other, and shall take such steps as it may consider expedient to bring about the regulation or settlement of matters of mutual interest to such persons or bodies:

Provided that an employment council shall not take any steps in terms of this paragraph in respect of any matter which has been referred to an employment board, unless the Minister requests the employment council to do so;

- (b) take such steps as it may consider expedient to ensure that any collective bargaining agreement and any regulations pertaining to an undertaking or industry with which it is concerned are being observed.

(2) The parties to an employment council registered in respect of any activity carried on by a local authority or statutory body shall have power to enter into an agreement such as is referred to in subsection (1), notwithstanding anything to the contrary contained in any law empowering the local authority or statutory body concerned to make provision with respect to any such agreement.

63 Designated agents of employment councils

(1) For the purpose of enabling it to exercise its powers and perform its functions in terms of this Act, an employment council may, and when so directed by the Registrar shall, advise the Registrar of persons whom it wishes to be appointed as its designated agents.

(2) If the Registrar approves of the persons advised in terms of subsection (1) he shall appoint them as designated agents of the employment council and shall issue them with certificates of appointment.

(3) A designated agent of an employment council may—

- (a) require any employer in the undertaking or industry and within the area for which the employment council is registered—
 - (i) to grant him reasonable access to his employees for the purpose of advising and assisting them in relation to their rights of employment;
 - (ii) to grant him reasonable access to his premises and to the books, records and other documents relating to his employment for the purpose of examining and ascertaining matters relating to or affecting the employment of his employees who are represented by any trade union or federation of trade unions which is a member of the employment council concerned, and of ascertaining whether or not the terms of any relevant collective bargaining agreement and regulations are being observed;
- (b) enter upon any premises of an employer in the undertaking or industry and within the area for which the employment council is registered for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act or for the seizure of any property which is the subject matter of an offence in terms of this Act.

(4) Any person who hinders or obstructs a designated agent of an employment council in the exercise of his powers or the performance of his duties in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) Notwithstanding subsection (4), nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (3).

PART IX EMPLOYMENT BOARDS

64 Appointment of employment boards

Subject to this Part, the Minister may, either on his own initiative or on representations made to him by any employers or employees in the undertaking or industry concerned, appoint an employment board to investigate and make recommendations as to the conditions of employment—

- (a) in any undertaking or industry in respect of which no employment council is registered; or
- (b) for any class of employees who are not represented on any employment council.

65 Notice of intention to appoint employment board

Before appointing any employment board, the Minister shall give public notice of his intention to appoint such employment board, and invite nominations from any employers organization, trade union or other interested organization in the undertaking or industry concerned, and in making such appointment the Minister shall pay due regard to the persons, if any, so nominated.

66 Composition of employment boards

- (1) Every employment board shall consist of—
 - (a) a chairman, who shall be appointed by the Minister; and
 - (b) two or more persons appointed by the Minister with due regard to the interests of employers and employees in the undertaking or industry concerned; and
 - (c) such other persons appointed by the Minister as in his opinion are likely to assist the employment board in carrying out its functions efficiently:

Provided that the number of such other persons shall not exceed one-third of the total number of members of the employment board.

- (2) In constituting an employment board, the Minister shall endeavour to achieve, as far as is practicable in the circumstances, an equality of representation of the interests of employers and employees concerned.

- (3) The members of every employment board shall hold office at the Minister's pleasure.

- (4) Members of an employment board shall be paid out of moneys appropriated for the purpose by Act of Parliament such remuneration and allowances as the Minister may determine.

67 Procedure of employment boards

Subject to such regulations as the Minister may prescribe relating to procedure, any employment board may regulate its own procedure.

68 Duties of employment boards

An employment board shall carry out its investigation in accordance with this Act and make recommendations in regard to the conditions of employment in the undertaking or industry concerned with the object of preventing disputes from arising or of settling disputes that have arisen, including recommendations for the making of employment regulations if, in the opinion of the employment board, such regulations are desirable for the welfare of the employees.

69 Representations to employment boards

- (1) Every employment board shall, in connection with every investigation it carries out, give an opportunity of making oral or written representations to it to—

- (a) any registered employers organization or any employer in the undertaking or industry concerned; and
 - (b) any registered trade union or any employee in the undertaking or industry concerned;
- and may, in its discretion, hear or take evidence from any other persons.

- (2) Every employment board shall publish in a newspaper generally circulating in the area concerned a notice setting forth its terms of reference and the scope of its investigation and stating the period within which, the person with whom, and the address at which representations shall be lodged.

70 Summoning and examination of witnesses by employment boards

An employment board shall have the same powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*] in respect of the summoning and examination of witnesses, other than the power to order a person to be detained in custody.

71 Submission of recommendations of employment boards

- (1) The chairman of every employment board shall, within the period specified by the Minister in the terms of reference of the board, make a report to the Minister embodying the recommendations of the board.

- (2) The Minister shall take account of any recommendations made to him by an employment board before making any regulations relating to the undertaking or industry concerned.

72 Directions by Minister to employment boards

Whenever it appears to the Minister that the interests of any employees which are the subject of investigation by any employment board would be more properly served—

- (a) if they were to be represented by a trade union, whether by being transferred from one trade union to another or by the variation of the registration of any trade union to cover those interests or otherwise, he may direct the Registrar to initiate appropriate accreditation proceedings under Part VII, or request a certified trade union to operate as an agent union of such employees in terms of section *thirty-one*; or
- (b) if they were to be investigated by another employment board, he may transfer the issue to another employment board which is established for the purpose, or to another existing employment board, or make such other direction in relation to the issue as he deems desirable.

73 Dissolution of employment boards

- (1) Every employment board shall cease to exist—
 - (a) upon the registration in terms of section *fifty-nine* of an employment council formed in respect of the industry or undertaking for which the employment board was appointed; or
 - (b) subject to subsection (2), one year after the date on which it was appointed in terms of section *sixty-four*;whichever is the earlier.

(2) If the Minister is satisfied that no employment council in respect of the industry or undertaking for which an employment board was appointed can be formed in terms of section *fifty-six* or *fifty-seven*, he shall extend the term of the employment board by such further period, not exceeding one year, as he considers will be required to enable an employment council to replace the employment board concerned.

(3) Notwithstanding the dissolution of an employment board in terms of this section, any employment regulations made in terms of section *seventeen* on the recommendation of the board concerned which, immediately before the date of dissolution of the board had entered or were capable of entering into force shall, on and after that date, enter into or continue to have force until replaced by a collective bargaining agreement and repealed by statutory instrument.

PART X

COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

74 Scope of collective bargaining agreements

(1) This Part shall apply to collective bargaining agreements negotiated by registered or certified trade unions, employers and employers organizations or federations thereof:

Provided that nothing in this Part contained shall prevent an unregistered trade union or employers organization from negotiating a collective bargaining agreement.

(2) Subject to this Act and the competence and authority of the parties, trade unions and employers or employers organizations may negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties thereto.

(3) Without derogation from the generality of subsection (2), a collective bargaining agreement may make provision for—

- (a) rates of remuneration and minimum wages for different grades and types of occupations;
- (b) benefits for employees;
- (c) deductions which an employer may make from employees' wages, including deductions for membership fees and union dues, and deductions which an employer may be required or permitted by law or by order of any competent court to make;
- (d) methods of calculating, or factors for adjusting rates of pay, and the dates, times and modes of payment;
- (e) all issues pertaining to overtime, piece-work, periods of vacation and vacation pay and constraints thereon;
- (f) the demarcation of the appropriate categories and classes of employment and their respective functions;
- (g) the conditions of employment for apprentices;
- (h) the number of hours of work and the times of work with respect to all or some of the employees;
- (i) the requirements of occupational safety;
- (j) the maintenance of, and access by the parties to, records of employment and pay.

(4) Nothing contained in any collective bargaining agreement shall prevent either or both of the parties from seeking to renegotiate or amend the agreement after twelve months of its operation in order to take account of changed circumstances in the industry or undertaking concerned.

(5) A collective bargaining agreement shall not contain any provision which is inconsistent with this Act or any other enactment, and any collective bargaining agreement which contains any such provision shall, to the extent of such inconsistency, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with this Act or such other enactment.

(6) The existence of a collective bargaining agreement shall not preclude an employer and his employees from agreeing to the introduction of higher rates of pay or other more favourable conditions of em-

ployment before the expiry of such collective bargaining agreement, so however that the rights and interests of the employees are not thereby diminished or adversely affected:

Provided that the collective bargaining agreement shall be endorsed to reflect such higher rates of pay or other more favourable conditions of employment.

75 Obligation to negotiate in good faith

- (1) All parties to the negotiation of a collective bargaining agreement shall—
- (a) disclose all information relevant to the negotiation, including information contained in records, papers, books and other documents; and
 - (b) make no false or fraudulent misrepresentations in regard to matters relevant to the negotiation; and
 - (c) earnestly and expeditiously endeavour to arrive at a successful conclusion in the negotiation; so as to ensure that the entire negotiation is conducted in absolute good faith.

(2) It shall constitute an unfair labour practice to fail to negotiate in absolute good faith, or in any way to bring about a situation that undermines the basis of negotiating in absolute good faith.

76 Duty of full disclosure when financial incapacity alleged

(1) When any party to the negotiation of a collective bargaining agreement alleges financial incapacity as a ground for his inability to agree to any terms or conditions, or to any alteration of any terms or conditions thereof, it shall be the duty of such party to make full disclosure of his financial position, duly supported by all relevant accounting papers and documents, to the other party.

(2) Where there is any disagreement as to whether or not full disclosure has been made in terms of subsection (1), the matter shall be referred to the senior labour relations officer who may make such determination as he deems fit, and such determination shall, unless appealed against to the Tribunal, be final and binding upon the parties.

(3) Any person who fails or refuses to comply with a determination that is binding upon him in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

77 Representation of parties

The parties to the negotiation of a collective bargaining agreement may be represented by committees, delegates or agents:

Provided that—

- (i) the powers of such committees, delegates or agents shall be specified in writing and certified by the parties they represent;
- (ii) copies of such documents shall be served by each party on the other party or parties prior to the commencement of negotiations.

78 Ratification of collective bargaining agreements

(1) Every collective bargaining agreement which has been negotiated by a party and which is required to be ratified by the members thereof or by a constituent branch or other party thereto shall be deemed not to have been ratified unless every portion of the collective bargaining agreement has been ratified.

(2) Notwithstanding subsection (1), where the national interest so demands, the Minister may direct that any portion of a collective bargaining agreement which has not been ratified shall be put into effect prior to the ratification of the other portions of the collective bargaining agreement:

Provided that where a collective bargaining agreement itself stipulates that it shall not be valid unless ratified *in toto*, the Minister shall not exercise his powers in terms of this subsection except in relation to provisions dealing with wages and benefits which have been ratified.

79 Submission of collective bargaining agreements for approval or registration

(1) After negotiation, a collective bargaining agreement shall be submitted to the Registrar for registration.

- (2) Where any provision of a collective bargaining agreement appears to the Minister to be—
- (a) inconsistent with this Act or any other enactment; or
 - (b) inequitable to consumers or to members of the public generally, or to any party to the collective bargaining agreement; or
 - (c) unreasonable or unfair, having regard to the respective rights of the parties;
- he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended by the parties thereto.

(3) Where a collective bargaining agreement is not registered or approved in terms of subsection (2) until it has been amended, it shall be the duty of the parties concerned to negotiate for such amendment in absolute good faith and to duly participate in proceedings necessary therefor, and failure to do so shall constitute an unfair labour practice.

80 Publication of collective bargaining agreements

(1) Upon registration of a collective bargaining agreement the Minister shall publish the agreement as a statutory instrument.

(2) The terms and conditions of a registered collective bargaining agreement shall become effective and binding—

- (a) from the date of publication of the agreement in terms of subsection (1); or
- (b) from such other date as may be specified in the agreement.

81 Amendment of registered collective bargaining agreements by Minister

(1) Where a collective bargaining agreement which has been registered contains any provision which is or has become—

- (a) inconsistent with this Act or any other enactment; or
 - (b) inequitable to consumers or to members of the public generally or to any party to the collective bargaining agreement; or
 - (c) unreasonable or unfair, having regard to the respective rights of the parties;
- the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.

(2) Where the Minister has made a direction in terms of subsection (1), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate in absolute good faith for the amendment of the agreement and to report back to the Minister within the period specified in the direction as to the extent to which they have been able or unable to agree in amending the agreement.

(3) Upon receipt of the report of the parties in terms of subsection (2), the Minister shall consider the same and may thereafter amend the collective bargaining agreement in accordance with the report of the parties or in such other manner as is consistent with the considerations specified in paragraphs (a), (b) and (c) of subsection (1).

(4) Where the Minister amends a collective bargaining agreement in terms of subsection (3), he shall direct the Registrar to register such amendment and section *eighty* shall apply, *mutatis mutandis*, in relation thereto.

82 Binding nature of registered collective bargaining agreements

(1) Where a collective bargaining agreement has been registered it shall—

- (a) with effect from the date of its publication in terms of section *eighty-five*, or such other date as may be specified in the agreement, be binding on the parties to the agreement, including all the members of such parties, and all employers, contractors and their respective employees in the undertaking or industry to which the agreement relates;
- (b) remain binding despite—
 - (i) a change of employer; or
 - (ii) a change of ownership of the undertaking or industry concerned; or
 - (iii) a change in the membership or structure of the trade union or employers organization;
- (c) remain binding until—
 - (i) it is replaced by a substitute agreement, notwithstanding any provision therein contained that it shall expire by lapse of time;
 - (ii) it is terminated by the mutual agreement of the parties thereto; or
 - (iii) it is otherwise nullified, suspended or modified in terms of this Act.

(2) This section shall apply, *mutatis mutandis*, in respect of any part of a collective bargaining agreement.

(3) Any person who fails to comply with a collective bargaining agreement which is binding upon him shall, without derogation from any other remedies that may be available against him for its enforcement—

- (a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and
- (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART XI

LABOUR RELATIONS TRIBUNAL

83 Establishment of Tribunal

(1) There is hereby established a tribunal to be known as the Labour Relations Tribunal which shall be a court of record.

(2) In the performance of its functions under this Act, the Tribunal shall be assisted by the Registrar.

(3) The Tribunal shall consist of—

- (a) the Chairman; and
- (b) the Deputy Chairman; and
- (c) not fewer than two and not more than four other members who shall be qualified legal practitioners or persons experienced in labour relations.

(4) The President shall appoint—

- (a) as Chairman, a person who is or is qualified to be a judge of the High Court, and in so doing he shall act after consultation with the Judicial Service Commission;
- (b) as Deputy Chairman, a person who is registered as a legal practitioner in terms of the Legal Practitioners Act [Chapter 27:07].

(5) A member shall be appointed by the President acting on the advice of the Minister.

(6) A member shall hold office for such period and on such terms and conditions as may be determined by the President at the time of his appointment.

(7) A person who ceases to be a member shall be eligible for re-appointment.

84 Removal of Chairman and Deputy Chairman from office

Section 87 of the Constitution relating to the removal of judges from office shall apply, *mutatis mutandis*, to the removal of the Chairman and the Deputy Chairman from office.

85 Disqualifications for appointment as member

The President shall not appoint a person as a member and no person shall be qualified to hold office as a member who has—

- (a) in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside;
- or
- (b) within the period of five years immediately preceding the date of his proposed appointment, been convicted of an offence and sentenced to a term of imprisonment of six months or more imposed without the option of a fine and has not received a free pardon.

86 Vacation of office by member

A member shall vacate his office and his office shall become vacant—

- (a) one month after the date he gives notice in writing to the President of his intention to resign his office or after the expiration of such shorter period as he and the President may agree upon; or
- (b) on the date on which he begins to serve a sentence of imprisonment, the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- (c) if he becomes disqualified in terms of paragraph (a) of section *eighty-five* to hold office as a member; or
- (d) if he is required in terms of paragraph (a) of section *eighty-seven* to vacate his office; or
- (e) if he is absent from three consecutive meetings of the Tribunal of which he has had notice, without the permission of the Tribunal.

87 President may require member to vacate office or suspend him

(1) The President may require a member to vacate his office if the President is satisfied that the member—

- (a) has been guilty of improper conduct as a member; or
- (b) is mentally or physically incapable of efficiently performing his duties as a member.

(2) The President may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment for six months or more without the option of a fine may be imposed and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

88 Filling of vacancies

On the death of, or the vacation of office by, a member, the President may appoint a person, chosen in the same way as the member was chosen, to fill the vacancy until the expiration of the period during which the member would, but for his death or the vacation of his office, have continued in office.

89 Functions of Tribunal

The Tribunal shall exercise the following functions—

- (a) hearing and determining appeals in terms of any provision of this Act which provides for an appeal to the Tribunal; and
- (b) hearing and determining appeals from any determination, direction or decision of the Minister in terms of section *twenty-five*, *fifty-one*, *seventy-nine* or *eighty-one*; and
- (c) hearing and determining matters referred to it by the Minister in terms of this Act; and
- (d) doing such other things as may be assigned to it in terms of this Act or any other enactment.

90 Exercise of functions by Tribunal

(1) Subject to this section and section *eighty-nine*, the functions of the Tribunal may be exercised by one or more members sitting alone or assisted by one or more assessors appointed in terms of subsection (2).

(2) At any sitting the Tribunal may appoint a person with expert knowledge to assist it in an advisory capacity in proceedings where it appears to the Tribunal that expert knowledge is required for a proper determination of the proceedings, but the Tribunal shall not be bound by any advice tendered by such person.

(3) Any decision on a question of a law determined by the Tribunal consisting of or presided over by the Chairman shall be binding on all members.

(4) Where a question of law is determined by the Tribunal consisting of the Chairman, the Chairman shall as far as necessary take steps to notify members of a decision referred to in subsection (3).

(5) If the Chairman is unable for any period to exercise his functions in terms of this section, the Deputy Chairman shall exercise such functions, other than the power to make binding decisions in terms of subsection (3).

(6) For the purpose of taking evidence on any question of fact before it the Tribunal shall have the powers which the High Court has to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of books, plans and documents.

(7) The procedure at any sitting of the Tribunal shall be as prescribed.

91 Determinations of Tribunal

(1) In determining an appeal in terms of this Part, the Tribunal may confirm, vary or set aside the determination appealed against, or substitute its own determination for the one appealed against, and may make any order as to costs.

(2) Subsections (1) to (4) of section *ninety-six*—

- (a) shall apply, *mutatis mutandis*, where the Tribunal varies a determination or substitutes its own determination for the one appealed against;
- (b) may, at the direction of the Tribunal, *mutatis mutandis*, apply to any determination made by it otherwise than on appeal.

92 Effect of Tribunal's decisions

(1) The Tribunal may fix the date from which any decision or determination made by it shall operate, which date may be the date of such decision or determination or an earlier or later date.

(2) An appeal on a question of law from any decision of the Tribunal shall lie to the Supreme Court.

PART XII

DETERMINATION OF DISPUTES AND UNFAIR LABOUR PRACTICES

93 Powers of labour relations officers

(1) A labour relations officer, acting on his own initiative to redress any dispute or unfair labour practice or upon reference to him by any person of a dispute or unfair labour practice—

- (a) may attempt to redress or rectify the dispute or unfair labour practice through conciliation, mediation or, if agreed by the parties, reference to arbitration; or
- (b) after giving both parties an opportunity to submit representations orally or in writing, may make such determination in regard to the dispute or unfair labour practice as may be just in the circumstances; or
- (c) where he considers it is necessary to do so, may refer the matter to an appropriate workers committee, works council, trade union, employers organization or employment council; or
- (d) in the case of a dispute between one or more trade unions, workers committees, employers or employers organizations, may refer the dispute to compulsory arbitration in terms of section *ninety-eight*:

Provided that, where—

- (i) the Minister requires the labour relations officer to do so, such officer shall; or
- (ii) the parties to the dispute request it and are agreed as to the issues in the dispute, the labour relations officer may;

determine the dispute or unfair labour practice or refer it to compulsory arbitration, as the case may be.

(2) A labour relations officer shall make an adequate written record of all proceedings commenced or completed in terms of subsection (1), incorporating all relevant documentary evidence and statements relating to the dispute or unfair labour practice.

(3) In pursuance of his functions in terms of this section a labour relations officer may, subject to the Justices of the Peace and Commissioners of Oaths Act [*Chapter 7:09*], exercise the powers of a commissioner of oaths for the purpose of attesting affidavits from parties or witnesses to a dispute or unfair labour practice, and any person who makes a false statement in any affidavit sworn before such officer shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) A labour relations officer shall, in accordance with subsection (1), dispose of every dispute or unfair labour practice as soon as is practicable and, in any case, not later than twelve calendar months from the date when he is first seized of the dispute or unfair labour practice.

(5) Any party aggrieved by a determination of a labour relations officer made in terms of this section may, in the time and manner prescribed, apply for the dispute or unfair labour practice concerned to be referred to a senior labour relations officer.

94 Prescription of disputes

(1) Subject to subsection (2), after the 1st January, 1993, no labour relations officer shall entertain any dispute or unfair labour practice which—

- (a) arose before 1st January, 1993, unless it is referred to a labour relations officer within one hundred and eighty days from 1st January, 1993, and any debts arising therefrom have not been prescribed in terms of the Prescription Act [*Chapter 8:11*];
- (b) arises after 1st January, 1993, unless it is referred to a labour relations officer within one hundred and eighty days from the date when such dispute or unfair labour practice first arose.

(2) Subsection (1) shall not apply to an unfair labour practice which is continuing at the time it is referred to or comes to the attention of a labour relations officer.

(3) For the purpose of paragraph (b) of subsection (1), a dispute or unfair labour practice shall be deemed to have first arisen on the date when—

- (a) the acts or omissions forming the subject of the dispute or unfair labour practice first occurred; or
- (b) the party wishing to refer the dispute or unfair labour practice to the labour relations officer first became aware of the acts or omissions referred to in paragraph (a), if such party cannot reasonably be expected to have known of such acts or omissions at the date when they first occurred.

95 Powers of senior labour relations officers

(1) Upon reference to a senior labour relations officer of a dispute or unfair labour practice in terms of subsection (5) of section *ninety-three*, the senior labour relations officer, having considered the record prepared by the labour relations officer in terms of subsection (2) of that section, may—

- (a) confirm, vary, set aside or substitute the determination of the labour relations officer concerned; or
- (b) remit the dispute or unfair labour practice for further investigation and additionally, or alternatively, the making of a further determination by the same or a different labour relations officer.

(2) Pending the determination of a dispute or unfair labour practice referred to him a senior labour relations officer may serve on any party concerned an interim determination—

- (a) for the immediate cessation or rectification of any alleged unfair labour practice; or
- (b) where the dispute involves the suspension or dismissal of an employee, for the reinstatement of the employee or payment to the employee of a portion of his remuneration, not exceeding half the amount he would have earned during the period in question had he not been suspended or dismissed.

(3) Unless otherwise modified by the senior labour relations officer concerned, an interim determination issued in terms of subsection (2) shall have effect for a period of six months from the date when it is issued or until the final determination of the matter, whichever is the earlier, and any person who fails to comply with such an interim determination shall be guilty of an offence.

96 Determinations by labour relations officers and senior labour relations officers

(1) Without derogation from the generality of sections *ninety-three* and *ninety-five*, a determination made in terms of those sections may provide for—

- (a) back pay from the time when the dispute or unfair labour practice arose;
 - (b) in the case of an unfair labour practice involving a failure or delay to pay or grant anything due to an employee, the payment by the employer concerned to the employee or someone acting on his behalf of such amount, whether as a lump sum or by way of instalments, as will, in the opinion of the labour relations officer or senior labour relations officer concerned, adequately compensate the employee for any loss or prejudice suffered as a result of the unfair labour practice;
 - (c) reinstatement or employment in a job:
Provided that any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;
 - (d) insertion into a seniority list at an appropriate point;
 - (e) promotion or, if no promotion post exists, pay at a higher rate pending promotion;
 - (f) payment of legal fees and costs;
 - (g) cessation of the unfair labour practice;
- as may be appropriate.

(2) Any party to whom a determination made in terms of section *ninety-three* or *ninety-five* relates may submit for registration copies thereof, duly certified by the labour relations officer or senior labour relations officer, as the case may be, to the clerk of the magistrates court having jurisdiction in the area where the dispute or unfair labour practice arose.

(3) Where a determination is registered in terms of subsection (2) it shall, for purposes of enforcement, have the effect of a civil judgment of the magistrates court.

(4) If any determination which is registered in terms of subsection (2) is varied or set aside by the Tribunal on appeal, the clerk of the court concerned shall make the appropriate adjustment in his register.

97 Appeal to Tribunal

(1) Any person who is aggrieved by—

- (a) the confirmation, variation, substitution or setting aside of a determination by a senior labour relations officer; or
- (b) the conduct of the investigation of a dispute or unfair labour practice by a labour relations officer or senior labour relations officer;

may, within such time and in such manner as may be prescribed, appeal against such determination or conduct to the Tribunal.

(2) An appeal in terms of subsection (1) may—

- (a) address the merits of the determination or decision appealed against; or
- (b) seek a review of the determination or decision on any ground on which the High Court may review it; or
- (c) address the merits of the determination appealed against and seek its review on a ground referred to in paragraph (b).

(3) An appeal in terms of subsection (1) shall have the effect of suspending the determination or decision appealed against.

(4) Upon receiving notice of an appeal, the Tribunal may—

- (a) proceed with the appeal by way of a hearing; or
- (b) decide the appeal on the record; or
- (c) remit the matter to the senior labour relations officer concerned for further investigation, and, upon the conclusion of such investigation, proceed with the appeal by way of a hearing or decide the appeal on the record.

(5) Pending the determination of an appeal the Tribunal may make such interim determination in the matter as it thinks fit.

98 Reference to compulsory arbitration

(1) At a hearing convened for the purposes of paragraph (e) of subsection (2) of section *ninety-three*, if the labour relations officer, after giving the parties a reasonable opportunity of making representations to him, and after taking into account the consequences likely to flow from collective job action in the undertaking or industry concerned if the dispute is not referred forthwith to compulsory arbitration and such other matters as may be prescribed, considers that compulsory arbitration is appropriate to resolve the dispute, he shall order the dispute to be referred to compulsory arbitration.

(2) In ordering a dispute to be referred to compulsory arbitration in terms of subsection (1), the labour relations officer shall state the issues which, in his opinion, must be arbitrated upon.

(3) Where a dispute concerns the interpretation or application of a collective bargaining agreement which appropriately makes provision for arbitration, the labour relations officer shall refer such dispute to arbitration as provided for in such collective bargaining agreement.

99 Effect of reference to compulsory arbitration

(1) Where a labour relations officer has referred a dispute to compulsory arbitration, no employee, workers committee, trade union, employer or employers organization shall engage in collective job action in respect of the dispute.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

100 Procedure relating to compulsory arbitration

(1) When a labour relations officer orders a dispute to be referred to compulsory arbitration in terms of subsection (1) of section *ninety-eight*, he shall forthwith communicate such order to the Minister.

(2) Within fourteen days of receiving the order referred to in subsection (1), the Minister shall refer the dispute to the Tribunal for determination:

Provided that if the parties so request, the Minister may appoint an independent mediator to mediate between the parties to the dispute for the purpose of resolving it.

(3) The Tribunal or the independent mediator, as the case may be, shall communicate forthwith any decision or determination made in the dispute to the Minister who shall publish such decision or determination in the *Gazette* within fourteen days of receiving such decision or determination.

101 Employment codes of conduct

(1) An employment council or works council may apply in the manner prescribed to the Registrar to register an employment code of conduct that shall be binding in respect of a particular industry, undertaking or workplace:

Provided that—

- (i) a works council may apply for the registration of a code notwithstanding that an employment council has applied or proposes to apply for the registration of a code governing employers and employees represented by the works council;
- (ii) where more than one code is registered pursuant to proviso (i), the code registered on application by the works council shall prevail and be binding in respect of the particular workplace, undertaking or industry for which it is registered.

(2) On application being made in terms of subsection (1), the Registrar shall, if he is satisfied that the code concerned provides for the matters referred to in subsection (3), register the code in the manner prescribed.

(3) A code shall provide for—

- (a) the disciplinary rules to be observed in the undertaking, industry or workplace concerned, including the precise definition of those acts or omissions that constitute misconduct;
- (b) the procedures to be followed in the case of any breach of the code;
- (c) the penalties for any breach of the code, which may include oral or written warnings, fines, reductions in pay for a specified period, suspension with or without pay or on reduced pay, demotion and dismissal from employment;
- (d) the person, committee or authority that shall be responsible for implementing and enforcing the rules, procedures and penalties of the code;

- (e) the notification to any person who is alleged to have breached the code that proceedings are to be commenced against him in respect of the alleged breach;
 - (f) the right of a person referred to in paragraph (e) to be heard by the appropriate person, committee or authority referred to in paragraph (d) before any decision in his case is made;
 - (g) a written record or summary to be made of any proceedings or decisions taken in terms of the code, which record or summary shall be made at the time such proceedings and decisions are taken.
- (4) An applicant referred to in subsection (2) may, at any time after the registration of a code, apply in the manner prescribed to the Registrar to register any amendment to the code, and subsection (3) shall apply, *mutatis mutandis*, in relation to that amendment.
- (5) Notwithstanding this Part, but subject to subsection (6), no labour relations officer or senior labour relations officer shall intervene in any dispute or matter which is or is liable to be the subject of proceedings under a code, nor shall he intervene in any such proceedings.
- (6) If a matter is not determined within thirty days of the date of the notification referred to in paragraph (e) of subsection (3), the employee or employer concerned may refer such matter to a labour relations officer, who may then determine or otherwise dispose of the matter in accordance with section *ninety-three*.
- (7) Any person aggrieved by—
- (a) a determination made in his case under a code; or
 - (b) the conduct of any proceedings in terms of a code;
- may, within such time and in such manner as may be prescribed, appeal against such determination or conduct to the Tribunal.
- (8) On an appeal in terms of subsection (7) the Tribunal may—
- (a) confirm the determination or proceedings appealed against; or
 - (b) remit the matter for determination by the person, committee or authority referred to in paragraph (d) of subsection (3); or
 - (c) substitute its own determination for that appealed against.
- (9) The Minister may, after consultation with representatives of trade unions and employers organizations, by statutory instrument publish a model employment code of conduct.
- (10) An employment council or works council may, by making application in terms of subsection (1), adopt the model code referred to in subsection (9), subject to such modifications as may be appropriate to the industry, undertaking or workplace concerned.

PART XIII COLLECTIVE JOB ACTION

102 Interpretation in Part XIII

In this Part—

“appropriate authority” means a labour relations officer;

“disposal order” means an order made in terms of section *one hundred and seven*;

“essential service” means—

- (a) any service relating to the generation, supply or distribution of electricity; or
 - (b) any fire brigade or fire service; or
 - (c) any health, hospital or ambulance service; or
 - (d) any service relating to the production, supply, delivery or distribution of fuel; or
 - (e) any service relating to the supply or distribution of water; or
 - (f) any communications service; or
 - (g) any transport service, and any service relating to the repair and maintenance, or to the driving, loading and unloading, of a vehicle for use in any transport service; or
 - (h) any other service or occupation whose interruption would endanger the life, health or safety of the whole or a part of the population and which the Minister may, after consultation with the appropriate trade union and employers organization, declare by statutory instrument to be an essential service;
- “lawful collective job action” means collective job action which is not prohibited in terms of subsection (3) of section *one hundred and four*;
- “lock-out” means any one or more of the following acts or omissions by any person who is or has been an employer—
- (a) the exclusion by him of any person or number of persons, who are or have been in his employ, from any premises on which work provided by him is or has been performed; or
 - (b) the total or partial discontinuance by him of his business or of the provision of work; or
 - (c) the breach or termination by him of the contracts of employment of any person or number of persons in his employ; or
 - (d) the refusal or failure by him to re-employ any person or number of persons who have been in his employ;

if that exclusion, discontinuance, breach, termination, refusal or failure is in consequence of a dispute regarding conditions of employment or other matters, and the purpose of that exclusion, discontinuance, breach, termination, refusal or failure is to induce or compel any persons who are or have been in his employ or in the employ of other persons to agree to or comply with any demands concerning conditions

of employment or re-employment or other matters made by him or on his behalf or by or on behalf of any other person who is or has been an employer;

“show cause order” means an order made in terms of section *one hundred and six*;

“unlawful collective job action” means collective job action which is prohibited in terms of subsection (3) of section *one hundred and four*.

103 Appeal against declaration of essential service

Any person who is aggrieved by any statutory instrument by the Minister declaring any service or occupation to be an essential service may appeal against such notice to the Tribunal, and the Tribunal may vary or revoke the statutory instrument as it deems just.

104 Right to resort to collective job action

(1) Subject to this Act, all employees, workers committees and trade unions shall have the right to resort to collective job action for the redress of lawful grievances.

(2) Subject to subsection (4), no employees, workers committee or trade union shall resort to collective job action unless fourteen days' written notice of intent to resort to such action, specifying the grounds for the intended collective job action, has been given to the party against whom the collective job action is to be taken.

(3) Subject to subsection (4), no collective job action may be threatened, recommended or engaged in by—

- (a) any employees, workers committee or trade union—
 - (i) if the employees concerned are engaged in an essential service; or
 - (ii) unless redress in respect of the dispute concerned has been sought in terms of Part XII; or
 - (iii) in respect of any matter that has been determined or disposed of in terms of Part XII; or
 - (iv) in contravention of a show cause order or disposal order; or
 - (v) if the matter in dispute is governed by or provided for in existing employment regulations or by a collective bargaining agreement which has not expired in terms of any provisions specified therein;
- (b) any employees or workers committee, if there is in existence a certified trade union which represents the interests of the employees concerned and that trade union has not approved or authorized the collective job action;
- (c) any trade union, unless the trade union is a certified trade union;
- (d) any workers committee, if there is in existence a union agreement which provides for or governs the matter in dispute, and such agreement has not been complied with or the remedies specified therein have not been exhausted as to the issue in dispute.

(4) Nothing in subsection (1), (2) or (3) shall be deemed to prevent collective job action from being resorted to—

- (a) in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to the health or safety of the persons concerned:

Provided that—

 - (i) the occupational hazard has not been deliberately caused by the persons resorting to the collective job action;
 - (ii) the collective job action resorted to shall remain proportional in scope and locality to the occupational hazard in question;
 - (iii) the collective job action shall diminish in proportion as such occupational hazard diminishes;
- (b) in defence of an immediate threat to the existence of a workers committee or a registered or certified trade union.

105 Lock-outs and actions connected therewith

No employer or employers organization shall, without the consent of the Minister—

- (a) threaten, recommend or engage in a lock-out; or
- (b) lay off, suspend or dismiss any employee or withhold wages or benefits due to any employee as a consequence of or in connection with a lock-out.

106 Show cause orders

(1) Whenever a collective job action or lock-out is threatened, anticipated, in force or, in the case of an unlawful collective job action or lock-out, has taken place, the Minister, acting on his own initiative or upon the application of any person affected or likely to be affected by the collective job action or lock-out, may issue an order calling upon any party to the dispute concerned to show cause why a disposal order should not be made in relation thereto.

(2) A show cause order—

- (a) shall specify—
 - (i) the date, time and place at which, and the appropriate authority before which, the party to whom the order is issued in terms of subsection (1) must appear to show cause why a disposal order should not be made; and
 - (ii) the order or action desired or proposed;
- (b) may direct that pending the determination of the dispute by the appropriate authority, the collective job action concerned be terminated, postponed, suspended or reduced in scope;

- (c) may direct that pending the determination of the dispute by the appropriate authority, the lock-out concerned be terminated.

107 Disposal orders

(1) On the return day of a show cause order the appropriate authority concerned shall, at the time and place specified in the order, inquire into the matter and shall afford the parties concerned an opportunity of making representations in the matter.

(2) After conducting an inquiry in terms of subsection (1), the appropriate authority may issue a disposal order directing that—

- (a) the collective job action or lock-out concerned be terminated, postponed or suspended or reduced in scope; or
- (b) the issue giving rise to the collective job action or lock-out concerned be referred to another authority to be dealt with in terms of Part XII and that, pending the determination of the issue in terms of that Part, the collective job action or lock-out concerned be terminated, postponed, suspended or reduced in scope.

(3) No disposal order may direct that any collective job action shall be postponed or suspended for longer than ninety days.

(4) In addition to providing for the matters referred to in subsection (2), a disposal order may provide for the determination of the dispute giving rise to the collective job action or lock-out concerned, and for such purposes the appropriate authority making the disposal order may exercise any of the powers conferred upon a senior labour relations officer in terms of Part XII, which shall apply, *mutatis mutandis*.

(5) Without derogation from the generality of the powers conferred upon an appropriate authority in terms of subsection (2) to make a disposal order, such order may provide for—

- (a) in the case of an unlawful collective job action—
- (i) discharge or suspension of an employer's liability to pay all or part of the wages or benefits due to specified employees or categories of employees engaged in the unlawful collective job action, in respect of the duration of such collective job action or part thereof;
 - (ii) the lay off or suspension, with or without pay, of specified employees or categories of employees engaged in the unlawful collective job action, for such period as may be specified;
 - (iii) the lay off or suspension, with or without pay, of specified employees or categories of employees not engaged in the unlawful collective job action for such period as may be specified where such lay off or suspension is necessitated by the collective job action;
 - (iv) the dismissal of specified employees or categories of employees engaged in the unlawful collective job action;
 - (v) the prohibition of the collection of union dues by any trade union concerned for such period as may be specified;
 - (vi) the suspension or rescission of the registration or certification of the trade union involved in the collective job action;
- (b) in the case of lawful collective job action—
- (i) discharge or suspension of an employer's liability to pay all or part of the wages or benefits due to specified employees or categories of employees, whether or not they are engaged in the collective job action, in respect of the duration of such collective job action or part thereof;
 - (ii) the lay off or suspension with or without pay, of specified employees or categories of employees, whether or not they are engaged in the collective job action, for such period as may be specified where such lay off is necessitated by the collective job action;
 - (iii) the suspension or dismissal of specified managerial employees who are responsible for or have provoked, or contributed to, the collective job action;
- (c) in the case of a lock-out—
- (i) where wages or benefits due to employees have been withheld or suspended, the payment of such wages or benefits;
 - (ii) the resumption of the normal operations of the undertaking concerned;
 - (iii) where any employees have been laid off, suspended or dismissed, the reinstatement of such employees with all necessary wages, compensation and other related benefits;
 - (iv) the suspension or dismissal of specified managerial employees who are responsible for or have provoked, or contributed to, the lock-out.

(6) Any party to whom an order made in terms of subsection (2) relates may submit for registration copies thereof, duly certified by the determining authority or presiding officer thereof, to whichever court would have had jurisdiction to make the order had the matter been determined by it.

(7) Where an order has been registered in terms of subsection (6) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(8) If any order which has been registered in terms of subsection (6) has been varied or set aside by the Board or the Tribunal on appeal, the clerk or registrar of the court concerned shall make the appropriate adjustment in his register.

108 Immunity of workers committees and trade unions from suit

No workers committee or registered or certified trade union or federation thereof which threatens, recommends or engages in lawful collective job action shall be liable to any civil liability or proceedings therefor other than as specified in this Part:

Provided that such immunity from suit shall not extend to wilful acts or omissions threatening or resulting in the destruction of, or damage to, property other than the perishing of goods caused by employees' absence from work on account of such collective job action.

109 Immunity of employees

All employee shall be entitled to the same immunity as is conferred upon a workers committee or trade union in terms of section *one hundred and eight* and, in addition, his employment shall not be terminated on the ground that he has threatened, recommended or engaged in any lawful collective job action.

110 Appeals

(1) Any person who is aggrieved by—
(a) a show cause order or the refusal to make such order; or
(b) a disposal order made by an appropriate authority or by the refusal of any such authority to make such order;
may appeal to the Tribunal.

(2) The lodging of an appeal in terms of subsection (1) shall not affect any order appealed against:

Provided that pending the determination of the appeal, the Minister may give such directions to, or impose such restrictions on, any of the parties as he considers fair and reasonable, taking into account the respective rights of the parties and the public interest.

111 Cessation of collective job action

Whenever—

(a) the underlying cause of any collective job action or lock-out which is threatened, anticipated or in force has been removed; or
(b) the issue, dispute or complaint giving rise to any collective job action or lock-out which is threatened, anticipated, or in force has been determined or resolved in terms of Part XII or this Part; or
(c) any collective job action by a workers committee or trade union is threatened, anticipated or in force and the executive of such workers committee or trade union or federation thereof, acting in terms of its constitution, has ordered the suspension of such collective job action; or
(d) the termination, postponement or suspension of any collective job action or lock-out is directed in any show cause order or disposal order which has been given;
any person who is or might become involved in such collective job action or lock-out shall, as the case may be, forthwith cease or refrain from participating in or threatening such collective job action or lock-out.

112 Offences under Part XIII

(1) Any person who contravenes or fails to comply with—
(a) subsection (2) or (3) of section *one hundred and four*; or
(b) section *one hundred and five*; or
(c) a direction made in terms of paragraph (b) or (c) of subsection (2) of section *one hundred and six*; or
(d) the terms of a disposal order; or
(e) section *one hundred and eleven*;
shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into account—

(a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and
(b) the extent to which the dispute concerned has been resolved.

PART XIV
EMPLOYMENT AGENCIES

113 Interpretation in Part XIV

(1) In this Part, "registrar" means the registrar of employment agencies referred to in section *one hundred and twenty-one*.

(2) The registrar shall keep a register of employment agencies which have been registered in terms of this Act, and shall perform such other functions as are imposed or conferred upon him under this Act.

(3) The registrar may, subject to the directions of the Minister, delegate any of his functions to any other person employed by the State.

114 Employment agencies to be registered

(1) No person shall—
(a) conduct an employment agency; or

(b) charge or recover any payment or reward for or in connection with the procurement of employment through an employment agency;
unless that employment agency is registered under this Act.

(2) No person shall hold himself out as conducting an employment agency, unless that employment agency is registered under this Act.

115 Application for registration, issue, variation and cancellation of certificates of registration

(1) Application for the registration of an employment agency shall be made to the registrar in the prescribed form.

(2) Upon an application made to him in terms of subsection (1), if the registrar—

(a) is satisfied that the premises concerned are suitable for use as an employment agency, and that having regard to any other relevant matters the application should be granted, he shall grant the application and issue to the applicant a certificate of registration;

(b) is not so satisfied as to the matters specified in paragraph (a), he shall refuse the application and give reasons for his refusal.

(3) A certificate of registration shall specify—

(a) the name of the person to whom the certificate is issued; and

(b) the premises at which the business is to be conducted; and

(c) the period for which the certificate shall be in force; and

(d) the area, including any foreign country, in respect of which the business may be conducted; and

(e) the class or classes of persons or employment in respect of which the business may be conducted; and

(f) any conditions subject to which the business may be conducted.

(4) The registrar may cancel the registration of an employment agency or vary the terms or conditions of any certificate of registration—

(a) after due inquiry and for good cause, if he has notified the holder of the certificate of his intention to do so, and has given the holder the opportunity of making representations to him, and has considered any representations which the holder has made; or

(b) on the application of the holder of the certificate.

(5) Any person aggrieved by a decision of the registrar made in the exercise of his functions under this section may appeal against such decision to the Board, which may determine the matter in such manner as it deems just.

116 Duties of persons conducting employment agencies

(1) Every person who conducts or is in charge of an employment agency registered under this Act shall—

(a) retain any record which by regulations made under this Act he is required to make for a period of three years subsequent to the occurrence of the event recorded; and

(b) on demand by an employment officer made at any reasonable time during the said period of three years, produce the said record for inspection; and

(c) furnish to the registrar such statistical information at such times and in such manner as may be prescribed.

(2) No person shall charge or receive in respect of anything done or to be done at an employment agency—

(a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area and class of business; or

(b) any fee or other payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

Provided that this subsection shall not apply to a business consultant carrying on business at the same place as an employment agency in respect of anything done in the course of such business other than the procurement of employment for clients.

117 Powers of employment officers

(1) An employment officer may, without previous notice and at any reasonable time during the day, enter upon any premises of an employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Part.

(2) In the exercise of the powers conferred upon him by subsection (1) an employment officer may—

(a) require from any person conducting an employment agency the production of any books or documents which relate to his business and which are or have been upon the premises or in his possession or custody, or under his control; and

(b) at any place require from any person who has the possession or custody or control of any books or documents relating to the business of any person who is or was conducting an employment agency, the production of such books or documents; and

(c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b); and

(d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); and

- (e) seize any book or document referred to in paragraph (a) or (b) that, in his opinion, may afford evidence of the commission of any offence under this Act:

Provided that in the exercise of the powers conferred by this subsection, an employment officer shall exercise such reasonable care as to ensure that the smooth and efficient running of an employment agency is not unduly interfered with.

(3) Every employer in connection with whose employment agency any premises are occupied or used, and every person employed by him, shall at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept in the premises, or for making any inquiry in relation thereto.

(4) No person shall—

- (a) make a false statement—
 (i) in any representations to an employment officer; or
 (ii) when giving evidence to or before an employment officer investigating a case in terms of this section;
 which he knows to be false in any material particular, or which he has no reason to believe to be true; or
- (b) refuse to answer any question which an employment officer, in the exercise of his functions in terms of this section, has put to him; or
- (c) refuse to comply to the best of his ability with any requirement made by an employment officer in the exercise of his functions in terms of this section; or
- (d) hinder an employment officer in the exercise of his functions in terms of this section.

118 Offences

(1) Any person who fails to comply with—

- (a) sb1 or (2) of section *one hundred and fourteen*; or
 (b) any condition in a certificate of registration specified pursuant to paragraph (f) of subsection (3) of section *one hundred and fifteen*;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who contravenes—

- (a) subsection (1) or (2) of section *one hundred and sixteen*; or
 (b) subsection (4) of section *one hundred and seventeen*; or
 (c) any regulations made in terms of section *one hundred and nineteen*;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

119 Minister may make regulations

(1) The Minister may make such regulations as he deems necessary or expedient for the purpose of giving effect to, or for the better administration of, this Part.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form in which an application is to be made for a certificate of registration;
 (b) the fee to be paid for a certificate of registration or copies thereof;
 (c) the fees which may be charged in respect of the business of an employment agency;
 (d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;
 (e) the records to be kept in respect of an employment agency.

PART XV

GENERAL

120 Investigation of trade unions and employers organizations

(1) If the Minister has reasonable cause to believe that the property or funds of any trade union, employers organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers organization or federation are being conducted in a manner that is detrimental to the interests of its members as a whole, the Minister may order that such trade union, employers organization or federation be investigated.

(2) For the purpose of any investigation referred to in subsection (1), the Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power—

- (a) to enter any premises; and
 (b) to question any person employed on the premises; and
 (c) to inspect and make copies of and take extracts from any books, records or other documents on the premises;

connected with or related to the trade union, employers organization or federation under investigation.

(3) An investigator appointed in terms of subsection (2) shall report the results of his investigation to the Minister as soon as practicable and, in so doing, may recommend, having regard to all the circumstances of the case, that—

- (a) in the case of an unregistered trade union, employers organization, or federation such trade union or employers organization or federation be wound up; or
- (b) in the case of a registered or certified trade union, employers organization or registered federation such trade union, employers organization or federation—
 - (i) be de-registered and wound up; or
 - (ii) be administered in terms of subsection (7).

(4) During the period of investigation of a trade union, employers organization or federation no person who is or has been an office-bearer of the trade union, employers organization or federation concerned shall, without the consent of the investigator, in any way expend or dispose of any property of the trade union, employers organization or federation concerned.

(5) An investigator shall not refuse to grant consent in terms of subsection (4) in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the trade union, or employers organization or federation concerned.

(6) Where the Minister accepts a recommendation made in terms of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), he shall—

- (a) in the case of an unregistered trade union, employers organization or federation make application to the High Court; or
- (b) in the case of a registered trade union, employers organization or federation make application to the Tribunal;

for the trade union, employers organization or federation concerned to be wound up in terms of its constitution.

(7) Where the Minister accepts a recommendation made in terms of subparagraph (ii) of paragraph (b) of subsection (3), he shall make application to the Tribunal to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the trade union, employers organization or federation in respect of which the recommendation was made:

Provided that an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers organization or federation concerned whichever is the later.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers organization or federation concerned in such a manner as to rectify the matters for the rectification of which he was appointed and, in so doing, may make an order—

- (a) prohibiting any person who is or has been an office-bearer of the trade union, employers organization or federation concerned from—
 - (i) expending, disposing of or in any way dealing with any property of the trade union, employers organization or federation concerned; or
 - (ii) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers organization or federation concerned:

Provided that the administrator shall authorize any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers organization or federation concerned;

- (b) directing any person who is or has been an office-bearer of the trade union, employers organization or federation concerned to refund or return to such trade union, or employers organization or federation any property which he has misappropriated from such trade union, employers organization or federation.

(9) The administrator shall submit for registration any order made in terms of subsection (8) to whichever court would have had jurisdiction to make such an order had the matter been determined by it.

(10) Where an order has been registered in terms of subsection (9), it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) Any person who—

- (a) makes any false representation to, or otherwise hinders or obstructs, an investigator or administrator in the performance of his functions under this section; or
- (b) contravenes subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

121 Officials

(1) For the purposes of this Act, there shall be—

- (a) a Registrar of Labour Relations and such number of Assistant Registrars of Labour Relations as may be necessary for carrying out the functions assigned to such officers in terms of this Act; and
- (b) such number of labour relations officers, senior labour relations officers or employment officers as may be necessary for carrying out the functions assigned to such officers in terms of this Act; and
- (c) a registrar of employment agencies;

whose offices shall form part of the Public Service:

Provided that nothing in this subsection shall be construed as preventing one person from exercising more than one function.

(2) The Minister may give directions of a general nature to any officer referred to in subsection (1) as to the performance of his functions in terms of this Act.

(3) An officer referred to in subsection (1) shall be issued with a certificate signed by the Registrar stating his official title.

122 Acquisition of undertakings by trade unions and trade union congress

(1) Whenever—

- (a) an undertaking which employs persons who are members of one or more registered or certified trade unions or a federation thereof is to be discontinued; and
- (b) it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued;

the Minister may, subject to this section, direct all or any of the trade unions or the federation concerned to endeavour in good faith to acquire the undertaking from their funds.

(2) Where the employees of an undertaking referred to in subsection (1) are not members of a registered or certified trade union, the Minister may, if it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued, subject to this section, direct any federation, association or congress of trade unions to endeavour in good faith to acquire the undertaking from the funds of such association or congress.

(3) Before making any direction in terms of subsection (1) or (2), the Minister shall consult the employees and any trade union, federation, association or congress of trade unions concerned.

(4) When making any direction in terms of subsection (1) or (2), the Minister shall include therein such directions as to the repayment by the employees concerned of such of the costs and expenses of the federation, association or congress of trade unions concerned as the Minister thinks fit.

123 Minister may raise levies to meet certain expenses

(1) Subject to subsection (2), the Minister may, after consultation with the Minister responsible for finance, by statutory instrument provide for the imposition and payment of levies on employees, employers organizations, trade unions and federations thereof for the purpose of meeting the expenses of all or any of the following—

- (a) the Board; and
- (b) the Tribunal; and
- (c) employers organizations or any federation, association or congress of trade unions recognized by the Minister as being representative of all or most certified trade unions; and
- (d) employers organizations recognized by the Minister as being representative of all or most certified employer organizations.

(2) In imposing levies in terms of subsection (1), the Minister shall take into account—

- (a) the extent to which any person upon whom the levy is imposed has utilized or ought to utilize the services of the Board, Tribunal, federation, association or congress of trade unions concerned; and
- (b) the ability of any person or organization upon whom the levy is imposed to pay the levy.

124 Protection against multiple proceedings

Where any proceedings in respect of any matter have been instituted, completed or determined in terms of this Act, no person who is aware thereof shall institute or cause to be instituted, or shall continue any other proceedings, in respect of the same or any related matter, without first advising the authority, court or tribunal which is responsible for or concerned with the second-mentioned proceedings of the fact of the earlier proceedings.

....

125 Records to be kept by employers, principals and contractors

(1) Every employer upon whom any agreement, determination or regulation is binding under this Act in relation to remuneration to be paid, time to be worked or such other particulars as may be prescribed shall at all times keep, in respect of all persons employed by him, records of the remuneration paid, of the time worked and of those other particulars.

(2) The form and manner in which the records referred to in subsection (1) shall be kept as prescribed:

Provided that the Registrar may in writing authorize the keeping of such records in some other form if the records so kept will, in his opinion, enable a labour relations officer or designated agent to ascertain therefrom the required particulars.

(3) Whenever any agreement, determination or regulation regulates the rates at which or the principles upon which payment shall be made by a principal or contractor to any person to whom any work is given out on contract by that principal or contractor, every such principal or contractor shall at all times keep records of payments made by him to any person to whom he has so given out work on contract and of such other particulars as may be prescribed, and every such person to whom work has so been given out on contract shall at all times keep records of payments received by him from any such principal or contractor in respect of such work and such other particulars as may be prescribed.

(4) Every person who is or has been an employer or principal or contractor, as the case may be, shall retain the records referred to in subsections (1) and (3) for a period of three years and shall produce these records on demand made at any time during that period by—

- (a) a labour relations officer; or

(b) a designated agent acting within the scope of his authority, in terms of subsection (3) of section *sixty-three*.

(5) If an employer fails to keep or retain the records referred to in this section or falsifies any such record, it shall be presumed for the purposes of this Act that every employee employed by him during the relevant period was engaged throughout that period for not less than the ordinary hours of work applicable to that employee in terms of any agreement, determination or regulation under this Act.

(6) Where it is proved that any statement or entry contained in any record is false, the person required in terms of this section to keep that record shall be presumed, until the contrary is proved, wilfully to have falsified that record.

(7) Any person who fails to comply with any of the provisions of this section applicable to him or who wilfully falsifies any record referred to in this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

126 Investigative powers of labour relations officers

(1) A labour relations officer—

- (a) may without previous notice enter upon any premises in which any person is being employed; and
- (b) in respect of matters relating to wages, hours or conditions of work, may question, either apart from or in the presence of others, any person who is or has been upon or in any premises in which any person is being employed; and
- (c) may require from any person who is or has been upon or in any premises in which any person is being employed the production then and there, or at a time and place fixed by the labour relations officer, of all relevant books and documents which are or have been upon or in the premises or in the possession or custody or under the control of any employer by whom the premises are occupied or used, or of any employee of that employer; and
- (d) may at any time and at any place require from any person who has the possession or custody or control of any relevant book or document relating to the business of any person who is or was an employer, the production then and there, or at a time and place fixed by the labour relations officer, of that book or document; and
- (e) may examine and make extracts from and copies of all books and documents produced to or examined by him, and may require an explanation of any entries in any such books or documents; and
- (f) may seize any such books or documents as he believes on reasonable grounds may afford evidence of any offence under this Act.

(2) Any employer in connection with whose business any premises are occupied or used, and every person employed by him, shall at all times furnish such facilities as are required by a labour relations officer for the purpose of exercising any of the powers conferred by subsection (1).

(3) Where any work is given out on contract to any person by a principal or contractor who is himself an employer in or is engaged in the undertaking, industry, trade or occupation concerned, a labour relations officer may exercise in relation to that principal or contractor any or all of the powers conferred by subsection (1).

(4) Any labour relations officer exercising a power or performing a duty conferred or imposed upon him by this section shall on demand produce the certificate furnished to him in terms of subsection (3) of section *one hundred and twenty-one*.

(5) Any person who—

- (a) refuses or fails to answer to the best of his ability or knowledge any question which a labour relations officer in the exercise of his functions puts to him; or
- (b) refuses or fails to comply to the best of his ability or knowledge with any request made by a labour relations officer in the exercise of his functions; or
- (c) hinders a labour relations officer in the exercise of his functions;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

127 Regulations

(1) The Minister may make regulations prescribing anything which, in terms of this Act, is to be prescribed or which in his opinion, is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form of applications, notices or orders in terms of this Act;
- (b) the procedures to be followed in making applications or appeals and the procedures to be followed by any official, board, tribunal or authority upon which functions are conferred in terms of this Act;
- (c) the examination and inspection of the books, records and documents of workers committees, trade unions and employers organizations;
- (d) the requirement by workers committees, trade unions and employers organizations to submit returns concerning their affairs to the Minister or such officials as may be specified;
- (e) the duties and functions of officers in terms of this Act.

(3) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

128 General offences and penalties

Any person who—

(a)

(b) falsely holds himself out to be—

(i) a labour relations officer; or

(ii) a designated agent of an employment council; or

(iii) an official of a trade union or employers organization;

or

(c) being an officer, agent or official referred to in paragraph (b), falsely represents that he is authorized by the Minister, an employment council or a trade union or employers organization to collect any moneys when he is not so authorized;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.