South African Institute of Race Relations NPC

Submission to the Department of Employment and Labour

regarding the

Labour Law Amendment Bill of 2025 and the

Labour Relations Amendment Bill of 2025

28 March 2026

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1 INTRODUCTION

The Department of Employment and Labour ("the Department") and the minister of employment and labour, Ms Nomakhosazana Meth ("the minister"), have invited interested persons to submit public comments to the Department by 28 March 2026 on the Labour Law Amendment Bill of 2025 ("the LLA Bill") and the Labour Relations Amendment Bill of 2025 ("the LRA Bill").

This submission is made by the South African Institute of Race Relations NPC ("the IRR"), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the people of South Africa.

2 INADEQUATE PUBLIC PARTICIPATION

Public participation in the legislative process is a vital aspect of South Africa's democracy, as the Constitutional Court has repeatedly reaffirmed in judgments spanning well over a decade. These include *Matatiele Municipality and others* v *President of the Republic of South Africa and others*, *Doctors for Life International* v *Speaker of the National Assembly and others*, *Land Access Movement of South Africa and others* v *Chairperson of the National Council of Provinces and others*, and *Mogale and others* v *Speaker of the National Assembly and others*.[1]

In the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs noted that there were many ways in which public participation could be facilitated. He added: "What matters is that…a reasonable opportunity is offered to members of the public and all interested parties *to know about the issues* and to *have an adequate* say". This passage was quoted with approval in *Doctors for Life*, the *Land Access* case, and in the recent *Mogale* judgment striking down the Traditional and Khoi-San Leadership Act of 2019.[2]

2.1 No socio-economic impact report

To help the public "know about the issues", as the *New Clicks* ruling and other judgments require, the Department should have provided a comprehensive evaluation of both the LLA Bill and the LRA Bill and their likely socio-economic impacts. A report of this kind is also what is needed under the government's own *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)*.

The *Guidelines* were developed by the Department of Planning, Monitoring, and Evaluation in May 2015 and took effect in September that year. The aim of the SEIA system is to ensure that "the full costs of regulations and especially the impact on the economy" are fully understood before new rules are introduced.[3] According to the *Guidelines*, the SEIA system must be applied

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[1] [2006] ZACC 12; 2007 (1) BCLR 47 (CC); 2006 (6) SA 416 (CC); 2016] ZACC 22; [2023] ZACC 14.

[2] Section 59(1), Constitution of the Republic of South Africa, 1996; *Minister for Health and another* v *New Clicks South Africa (Pty) Ltd and others*, [2005] ZACC 14, at para. 630, emphasis supplied by the IRR; *Doctors for Life*, at para. 145; *Land Access* judgment, at para. 59; *Mogale* judgment, at para. 34.

[3] Department of Planning, Monitoring and Evaluation, "Socio-Economic Impact Assessment System (SEIAS), Revised Impact Assessment: National Health Insurance Bill," 26 June 2019 (2019 SEIAS Assessment); *SEIAS Guidelines*, p. 3, May 2015.

at various stages in the policy process. Once new legislation has been proposed, "an initial assessment" must be conducted to identify different "options for addressing the problem" and making "a rough evaluation" of their respective costs and benefits. Thereafter, "appropriate consultation" is needed, along with "a continual review of the impact assessment as the proposals evolve."[4]

A "final impact assessment" must then be developed that "provides a detailed evaluation of the likely effects of the [proposed law] in terms of implementation and compliance costs as well as the anticipated outcome." When a bill is published "for public comment and consultation with stakeholders," this final assessment must be attached to it. A particularly important need is to "identify when the burdens of change loom so large that they could lead to excessive costs to society, for instance through disinvestment by business or a loss of skills to emigration."[5]

The unemployment crisis in South Africa dwarfs all other problems and has long resulted in "excessive costs to society." This makes it all the more important that the Bills should have been accompanied by objective and comprehensive SEIA reports setting out the extent to which these measures are likely to overcome the human tragedy of joblessness. Yet no proper SEIA assessment of the Bills has been made available to help the public "know about the issues" raised by the Bill and then "have an adequate say."

2.2 Poor compliance with the National Policy Development Framework

The Department is also expected to comply with the *National Policy Development Framework* (the *Framework*), which was approved by the Cabinet in December 2020 and is intended to help give effect to the *National Development Plan: Vision 2030*.

The *Framework* seeks to improve policy development by "ensuring meaningful participation" and "inculcating a culture of evidence-based policy making."[6] In a section dedicated to "Stakeholder Engagement in Policy Making," the *Framework* states: "Chapter 10 of the Constitution prescribes that people's needs must be responded to, and the public must be encouraged to participate in policy making. Therefore, the involvement of the public in policy making is a constitutional obligation that government institutions must respect and institutionalise."[7]

The *Framework* goes on to list some of the key requirements for proper public participation. "Consultation with stakeholders should commence as early as possible," it says. All relevant stakeholders should be identified, including "those who will benefit when [existing] problems are addressed" and "those who will bear the cost of implementation of the proposed intervention." Policy makers must also identify and counter all "barriers to active participation" and ensure that "consultation is infused in all aspects of the policy making cycle."[8]

According to the *Framework*, adequate thought must be given to "which policy solutions would best achieve the public policy objective" and "how best" the proposed policy solution can be

[4] *SEIAS Guidelines* p. 7.
[5] *SEIAS Guidelines*, p. 11.
[6] National Policy Development Framework, 2020, p. 3.
[7] Ibid, p. 19.
[8] Ibid, pp. 19 – 20.

implemented. Policy makers must "inform and engage stakeholders" on "the nature and magnitude of a policy issue," along with its likely "impacts and risks." These assessments must be "informed by the best available evidence, data, and knowledge."[9]

In addition, policy makers must be willing to adjust their proposals in the light of the feedback provided. "Policy makers must not impose their preconceived ideas…and pre-empt the outcome of the policy consultation process. They need to be willing to be persuaded and acknowledge the input of stakeholders with a view to creating a win-win policy outcome." They must also avoid any impression that "the consultation process is staged, managed, cosmetic, token, and a mere compliance issue." Instead, they must "strive to produce an outcome based on bargaining, negotiation, and compromise."[10]

The *Framework* requires the Department to "inform and engage" with all stakeholders, not only those represented in the National Economic Development and Labour Council (Nedlac). It is supposed to provide stakeholders with a comprehensive assessment of likely "impacts and risks," based on "the best available evidence, data, and knowledge." The Framework's emphasis on negotiation and compromise in the best interests of country, is also being brushed aside. Instead, what the *Framework* expressly rejects – a tick-box approach to public consultation – is already evident as regards both Bills.

2.3 A tick-box approach already evident

Though the Bills are unlikely to help resolve the unemployment crisis and may in fact exacerbate it (as further described in due course), the Department has nevertheless adopted a tick-box approach to public consultation. This has denied South Africans the comprehensive information and evaluation they require to "know about" the relevant issues and to have "an adequate say" on these key Bills.

In addition, the minister has provided a scant 30 days for public comment on two complicated amendment Bills. These Bills cannot be understood without reading the lengthy principal statutes that they seek to change, which makes it considerably more time-consuming to understand and assess the amendments being proposed. Taking weekends into account, moreover, the Department has in fact allowed the public only 21 working days to get to grips with a plethora of proposed changes. This is far too short a time. The deadline set is an unrealistic one, which seems calculated to inhibit – rather than "facilitate" – the public involvement in the legislative process that the Constitution requires.

Worse still, the Department has provided an image of the Bills, rather than a searchable PDF. The document containing the Bills and the Memorandums on their Objects is some 120 pages long, making the need to be able to search it all the more important. This obstacle to swift assessment has made it even more difficult to comply with the deadline. It renders the period allowed for public comment all the more unreasonable.

[9] Ibid, p. 20.
[10] Ibid.

3 THE CONTENT OF THE BILL

Given the short time allowed for public comment, the IRR has been able to focus on only some of the provisions in the two Bills. In describing the content of these clauses, deleted provisions have been marked in **[bold]**, while new provisions to be inserted have been underlined. IRR and other comments on the proposed changes have been *italicised*.

3.1 Rules regarding dismissals

The LRA Bill propose various changes to the Labour Relations Act of 1995 ("the LRA") regarding dismissals. The amendments cover, among other things, fair procedures for dismissal; the dismissal of employees on probation; the dismissal of high-paid employees; caps on the compensation claimable, and the repeal of an outdated Code of Good Practice: Unfair Dismissal which was replaced by a new one in September 2025.

3.1.1 Changes to Section 188 (fair procedures, new employees)

Clause 33 of the LRA Bill seeks to amend Section 188(2), (3) and (4) of the LRA as follows:

Section 188(2): "Subject to subsection (3), any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act."

Section 188(3): Subject to any applicable collective agreement, a fair procedure under subsection (2) in respect of a dismissal contemplated in subsection (1)(a)(i) is one in which the employee has been given an adequate and reasonable opportunity to respond to the reason for dismissal.

Section 188(4): "This section does not apply to a new employee— (a) during the first three months of employment; or (b) if it is a longer period, a period of probation that is specified in a contract of employment and is both reasonable and operationally justifiable."

***Comment**: According to Imraan Mahomed, director of employment law at law firm Cliffe Dekker Hofmeyr, "the amendment reflects a broader shift away from internal disciplinary processes that mimic court proceedings." He notes that "many employers have already moved towards simpler procedures" that are aligned with the Code of Good Practice on Dismissal published in September 2025.[11] Talita Laubscher and Chloë Loubser of Bowmans agree, saying that the proposed amendment "formally endorses that shift." The two note, however, that "the simplified standard remains subject to collective agreements." This means that employers will still be obliged to follow more detailed procedures where these have previously been agreed.[12]*

The Bill also makes it easier to dismiss employees who prove to be unsuitable during initial probationary periods. These periods will generally be limited to the first three months of employment. However, probationary periods may also be longer if the period in issue is included in the employment contract and is "both reasonable and operationally justifiable."

[11] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", 12 March 2026. https://www.moonstone.co.za/labour-law-overhaul-signals-shake-up-of-dismissal-retrenchment-and-gig-work-rules.
[12] Ibid.

It remains uncertain how these criteria will be interpreted in practice. However, as Mr Mahomed has noted, this proposed amendment "effectively introduces a qualifying period for dismissal protection and brings South African labour law closer to international practice." Bowman adds that "employees would still be protected against automatically unfair dismissals, but otherwise their contracts could be terminated on notice during this period."[13]

3.1.2 Change to Section 193 (high-income employees)

Clause 37 of the LRA Bill seeks to amend Section 193 of the LRA by inserting the following sub-section after sub-section (2):

"(2A) Subsection (1) (a) and (b) and subsection (2) do not apply to an employee who earns more than an amount that may be prescribed by the Minister by notice in the Gazette, unless the dismissal was automatically unfair."

Comment: *This amendment would limit the remedies available to high-income employees. Whereas reinstatement is generally the primary remedy for unfair dismissal, high-income employees would be entitled to reinstatement only (as Mr Mahomed notes) "where the dismissal is automatically unfair." In most instances, thus, compensation would become the primary remedy for such employees. Bowman notes that this proposed amendment is in line with the standards set by the International Labour Organization (ILO), which "allow differentiation in the treatment of higher-paid employees."*[14]

3.1.3 Changes to Section 194 (compensation caps, annual adjustments)

Clause 38 of the LRA Bill seeks to amend Section 194 of the LRA by substituting sub-sections (1) and (4) by the following sub-sections:

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

"(4) The compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months' remuneration, to a maximum of an amount that may be prescribed by the Minister by notice in the Gazette, provided that the prescribed amount is not applicable in the case of an unfair labour practice contemplated by section 186(2)(d)."

(Under Section 186(2)(d), the relevant unfair labour practice is "an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.")

To provide for annual inflated-linked changes to the amounts prescribed by the minister under Sections 193 and 194 of the LRA, Clause 41 of the LRA Bill inserts Section 208B into the LRA. This new section states:

[13] Ibid.
[14] Ibid.

"**Determination of amount for purposes of section 193 and 194**

The Minister must adjust the amounts contemplated in sections 193 and 194, by annually publishing a notice in the Gazette increasing or decreasing those amounts in accordance with the Consumer Price Index published by Statistics South Africa in March of that year, which notice must take effect from 1 May of that year."

Under Clause 44 of the LRA Bill, which makes various changes to Schedule 7 of the LRA, the amount initially set by the minister is R1.8 million a year. The relevant new clause reads:

"**Income threshold for purposes of Sections 193 and 194**

38 The Minister must issue a notice which takes effect on the same date as the applicable provisions in the Amendment Act setting the amount applicable to sections 193 and 194 in terms of section 208A at R1,800,000 per annum, adjusted annually in terms of the Consumer Price Index for the period from 30 April 2025 until the date that the provision comes into effect."

***Comment*:** *These proposed amendments would allow the Minister to set a cap on the compensation to be paid. This implies that a high-earning employee who earns more than R1.8 million a year and successfully challenges his or her dismissal could "receive less than [his or her] annual remuneration even if the dismissal is found to be unfair," as Moonstone Information Refinery points out.*[15] *The amendments also allow the amount first set by the minister (and currently set at R1.8 million a year) to be adjusted annually in line with inflation.*

As SEESA Labour Law Consultants ("SEESA") add, the proposed amendments "reduce reinstatement exposure in senior executive dismissals, but do not eliminate procedural obligations." This means that "fair process remains essential."[16]

3.1.4 Changes to Sections 195 and 196 (additional and duplicate claims)

Under Clause 39 of the LRA Bill, Section 195 is substituted by the following provision:

"[An] Subject to section 196, an order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment."

Under Clause 40 of the LRB Bill, a new Section 196 is inserted into the LRA:

"**Prevention of duplication of claims**

196. (1) An employee who has referred a dispute about the fairness of a dismissal in terms of this Chapter may not also bring a claim, arising from the same facts, in respect of the unlawfulness of that dismissal."

(2) An employee who has brought a claim about the unlawfulness of a dismissal may not also refer a dispute, arising from the same facts, in respect of the fairness of that dismissal in terms of this Chapter."

[15] Ibid.

[16] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," 12 March 2026. https://www.seesa.co.za/blog/can-a-disciplinary-chairperson-ignore-a-plea-bargain-agreement-labour-law-guidance-for-south-african-employers.

(This section replaces the original Section 196, which was repealed in 1997 under the Basic Conditions of Employment Act of 1997.)

Comment: *Under the current rules, as legal experts have pointed out, "employees sometimes pursue an unfair dismissal claim under the LRA while simultaneously pursuing a contractual claim for unlawful termination in court." The amendments aim to prevent any such duplication of dismissal claims. According to Mr Mahomed, "the proposed amendment would require employees to choose one route, preventing overlapping claims arising from the same facts." Bowmans adds that the change is intended to reduce the increasing burden of litigation on both the Commission for Conciliation, Mediation and Arbitration ("the CCMA") and the Labour Court*.[17]

3.1.5 A new Section 209A (limitation of liability)

Clause 42 of the LRA Bill inserts a new Section 209A into the LRA, as follows:

"**Limitation of liability**

209A (1) No person exercising a power or performing a function under an employment law that gives effect to this Act, is liable for any damage or loss caused by the exercise or performance of, or failure to exercise or perform, that power or function, unless such exercise or failure is unlawful, grossly negligent or in bad faith.

(2) This section applies to— (a) any person appointed or employed to exercise a power or perform a function under any employment law that gives effect to this Act, and (b) any person or entity required to exercise a power or perform a function under any employment law to give effect to this Act."

Comment*: This proposed limitation of liability will make it harder to hold CCMA commissioners and a host of other individuals and entities accountable for delayed or poor performance of their functions under employment laws. The specified criteria – that their conduct must be "unlawful, grossly negligent or in bad faith" – sets the bar high and may serve to condone (and thereby encourage) inadequate performance that has damaging impacts*.

3.2 Rules dealing with large-scale retrenchments and also with severance pay

3.2.1 Large-scale retrenchments

Clause 35 of the LRA Bill seeks to amend Section 189A of the LRA. Section 189A deals with retrenchments (dismissals for operational reasons) by employers with 50 or more employees and who propose to dismiss 5% (10 employees out of 200) or higher proportions of their staff.

Under the existing rules, the employer seeking to retrench at this scale must give notice of the proposed terminations under Section 189A(2), while employees have the right to strike. The consulting parties – primarily the employer, on the one hand, and a registered trade union or employees, on the other – "may agree to vary the time periods for facilitation or consultation." In addition, "a consulting party may not unreasonably refuse to extend the period for consultation if such an extension is required to ensure meaningful consultation." The CCMA ("the Commission") may appoint a facilitator if either the employer or a majority of employees request this (or in other agreed circumstances too).

[17] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", op. cit.

Against this background, the LRA Bill proposes various changes to Section 189A:

First, any facilitation is to be conducted under "rules" made by the "Commission," rather than under regulations made by the minister (under amended Sections 189A(5) and (6);

Second, if a facilitator has been appointed and 60 days have elapsed since the employer issued a written notice inviting consultation under Section 189(3), the employer may give notice to terminate contracts of employment under Section 37(1) of the Basic Conditions of Employment Act of 1977. A registered trade union or employees may respond by (i) giving notice of a strike or (ii) "referring a dispute concerning **[whether there is a fair reason for]** the fairness of the dismissal to the Labour Court in terms of section 191**,[(11)],** except that the trade union or employees are not required to refer the dismissal to conciliation in terms of section 191(1)."

***Comment**: If a facilitator has been appointed, employees may refer the "fairness" of the dismissal, on both procedural and substantive grounds, to the Labour Court without first having to refer the dismissal to the CCMA for conciliation*.

Third, if no facilitator has been appointed and the employer issues a notice of termination of employment, a trade union or employees may "(bb) refer a dispute concerning **[whether there is a fair reason for]** the fairness of the dismissal to conciliation by a council having jurisdiction or the Commission, and if it is not settled to the Labour Court, in terms of section 191."

***Comment**: In this situation, a trade union or employees must refer the procedural and substantive fairness of the dismissal to conciliation – either by a bargaining council with jurisdiction or by the CCMA – before they may approach the Labour Court*.

Fourth, sub-sections (13) to (18) of Section 189A are to be deleted. Under these rules, "if an employer does not comply with a fair procedure," a consulting party may approach the Labour Court for an order that "compels the employer to comply with a fair procedure;" "restrains an employer from dismissing an employee prior to complying with a fair procedure;" or grants other relief.

***Comment**: According to the Memorandum on the Objects of the LRA Bill, "challenges to procedural fairness during the facilitation process have proved to be extremely complex in practice." They have also given rise to "numerous interpretative difficulties, reflected in a number of Constitutional Court decisions."*[18]

The LRA Bill thus seeks to restore the rules which applied before sub-sections (13) to (18) were introduced. This, says the Memorandum, will allow "a challenge to all aspects of the fairness of [a] retrenchment dismissal [to]…be made after the dismissal." Hence, "if a facilitation process in terms of section 189A is followed by dismissals, the relevant trade unions or employees will be able to refer a dispute about the procedural or substantive fairness of those dismissals to the Labour Court in terms of section 191."[19]

Fifth, a further relevant change is to be introduced under Clause 6 of the LRA Bill. This seeks to amend Section 69 of the LRA by substituting, for the current sub-section 15, a new sub-section 15 which reads:

"(15) For the purposes of this section, "commissioner conciliating the dispute" includes a person appointed by a bargaining council to conciliate the dispute and, in the case of a

[18] Para. 2.34, Memorandum on the Objects of the Labour Relations Amendment Bill of 2025 ("the LRA Bill").
[19] Ibid.

strike contemplated by section 189A (7), the facilitator appointed in terms of section 189A (3) or (4)."

Comment: *This indicates, as Moonstone Information Refinery reports), that "facilitators would also be able to determine picketing rules where unions have issued strike notices during retrenchment consultations."*[20]

Sixth, another relevant change is found in Clause 16 of the LRA Bill. This seeks to amend Section 115 of the LRA, which deals with the "**Functions of [the] Commission**", in various ways. The key change comes in sub-section (2A), under which the Commission "may make rules regulating" various issues. According to the LRA Bill, the word "and" after sub-section (l) is to be deleted and a subsection (lA) is to be added. The proposed changes will empower the CCMA to make rules regulating:

"(lA) the practice and procedure in connection with the facilitation of a dispute in terms of section 189A, including the initiation, form, content and use of facilitation to the extent that these matters are not included in the regulations contemplated in section 189A (5) and (6);"

Comment*: The proposed change significantly expands the powers of the CCMA to makes rules regulating many different aspects of the facilitation process (but not those matters already covered by regulation).*

Overall comment on these retrenchment changes**:** *The LRA Bill proposes significant changes to large-scale retrenchment procedures under section 189A of the LRA. The proposed amendments will give the CCMA the authority to make rules governing facilitation, rather than leaving this function with the minister to regulate. In addition, as earlier noted, facilitators will be empowered to "determine picketing rules where unions have issued strike notices during retrenchment consultations."*[21]

Major changes are also to be made as regards potential legal challenges to large-scale retrenchment disputes. As Bowmans has noted, "the Bill proposes deleting the current provisions that allow urgent court challenges to procedural fairness during ongoing retrenchment consultations. Instead, disputes over both procedural fairness and substantive fairness could be challenged [only] after the dismissal, effectively restoring the legal position that existed before section 189A was introduced."[22]

There may be advantages in requiring challenges to both procedural and substantial fairness to proceed at the same time. However, there is also a risk that disputes over procedural fairness that can be more quickly resolved at an earlier stage under the current rules will in future drag on until well after retrenchment dismissals have been implemented.

3.2.2 Severance pay

Clause 4 of the Labour Laws Amendment Bill ("the LLA Bill" seeks to substitute existing sub-sections (2) and (6) of Section 41 of the Basic Conditions of Employment Act of 1997 ("BCEA") with new sub-sections. These new sub-sections would read:

"(2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements…severance pay equal to at least **[one]** two week's

[20] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", op. cit.
[21] Ibid.
[22] Ibid.

remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35;

"(6) If there is a dispute only about the entitlement to severance pay **[in terms of this section]**, the employee may refer the dispute in writing to— (a) a council, if the parties to the dispute fall within the registered scope of that council; or (b) the CCMA, if no council has jurisdiction."

In addition, Clause 16 of the LLA Bill inserts a new item into Schedule 3 of the BCEA, which reads:

"12 **Application of Basic Conditions of Employment Act, 2025**

(1) For the purposes of this item, "Act" means the Basic Conditions of Employment Act, 2025.

(2) The entitlement to severance pay equal to two week's remuneration only applies to a completed year of service with that employer which commenced after the commencement of this Act.

(3) A provision in this Act relating to the powers of the Department, the Director-General, the CCMA, a bargaining council and the Labour Court applies irrespective of whether the dispute was referred before the commencement date of this Act."

***Comment**: As SEESA Labour Law Consultants ("SEESA") have pointed out, "the proposed increase in statutory severance pay from one week to two weeks' remuneration per completed year of service (applied prospectively) carries clear financial implications. Although only future years of service will attract the higher calculation, employers engaged in long-term workforce planning must reassess retrenchment cost modelling and consultation strategies."*[23]

Moreover, since the Bill allows certain severance disputes to be referred directly to the CCMA for arbitration, this increases the need for "procedurally sound consultations and defensible documentation," SEESA adds. [24]

Business is opposed to the doubling of retrenchment pay from one week's wages for each completed year of service to two weeks. As an editorial in Business Day points out, "for a company forced to retrench due to financial difficulties or because of a restructuring, this could impose an onerous burden."[25] *Though there will be greater relief for workers confronting the risk of joblessness, this must be balanced against the need to preserve the business in question as a going concern. If heavier retrenchment costs and more onerous retrenchment procedures add to its financial difficulties or perhaps push it into liquidation, then more employees will end up without jobs*.

3.3 Two-year exemption from bargaining council agreements for some businesses

Clause 2 of the LRA Bill seeks to amend Section 32 of the LRA, dealing with the "*Extension of collective agreement concluded in bargaining council*." The current section allows such collective agreements to be extended to non-parties – that, by definition, have not agreed to them – in certain circumstances. The proposed amendment introduces a temporary two-year

[23] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," op. cit.
[24] Ibid.
[25] Editorial, "Sweeping labour law reforms open for public comment after talks," 5 March 2026. https://www.businessday.co.za/news/2026-03-05-editorial-sweeping-labour-law-reforms-open-for-public-comment-after-talks.

exemption from the current rules for the benefit of new companies employing fewer than 50 employees.

Clause 2 introduces new sub-sections (12) and (13), which are to be inserted after sub-section (11). These new sub-sections read:

"(12) Despite the provisions of this section, a collective agreement concluded in a bargaining council regulating terms and conditions of employment does not bind— (a) an employer of a new business that employs less than 50 employees; and (b) that employer's employees.

(13) For the purposes of this section, a new business is one that has been in operation for less than two years but excludes— (a) a new employer contemplated in section 197(1)(b); and (b) a business formed by the division or dissolution of any existing business."

Section 197 of the LRA deals with "*Transfer of contract or employment*", while sub-section 197 (1)(b) states that "'transfer' means the transfer of a business by one employer ('the old employer') to another employer ('the new employer') as a going concern." Hence, the exemption to be introduced will not apply to a new business arising from the transfer of a going concern.

Comment: *The proposed amendment will bring two years of relief from the extension of bargaining council agreements to new small SMEs often unable to afford them (see* ***Section 4*** *of this submission). However, smaller firms will know that, once the two-year period has expired, they will become subject to a form of "blanket coverage" that can easily push labour costs up to unaffordable levels. These costs can compel small enterprises into retrenchments or even into liquidation. They are also a significant deterrent to the formation of new businesses. In addition, as SEESA Labour Law Consultants have noted, "all other labour legislation [will] continue to apply, and the change does not amount to a broad deregulation."*[26]

3.4 Greater powers to enforce payment of pension and other contributions

Two proposed changes to the BCEA are in issue. First, under Clause 7 of the LLA Bill, a new Section 62B is to be inserted into Part A of Chapter 10 of the BCEA, which deals with "*Monitoring and Enforcement*". This amendment is intended to help enforce payments by employers to pension and other funds.

The new Section is to read:

"**Employer's failure to pay contribution to benefit fund**

"62B. An employer's failure to pay a contribution to a benefit fund on behalf of an employee in terms of section 34A of this Act must be treated on the same basis as the failure by an employer to pay any amount owing to an employee in terms of this Act, except that in any compliance order, court order or arbitration award the employer must be directed to make the outstanding payment to the benefit fund concerned."

Second, Clause 14 of the LLA Bill seeks to introduce a new Section 77B into the BCEA. The new Section 77B, which deals solely with outstanding contributions to pension or provident funds, is to read:

"**Powers of Labour Court, CCMA and bargaining council in respect of failure to pay contributions to funds falling under Pension Funds Act**

[26] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," op. cit.

77B (1) This section applies to any failure by an employer to pay a contribution to a pension or provident fund on behalf of an employee in terms of any law, collective agreement or contract of employment.

(2) The Labour Court, CCMA or bargaining council to which a dispute concerning any failure by an employer to pay a contribution to a pension or provident fund as contemplated in subsection (1) is referred must, in respect of any amount found to be outstanding, make an order or award, as the case may be— (a) directing the payment of the outstanding amount to the fund on behalf of the employee within a period specified and on such other terms as may be specified, in the order or award; (b) despite the provisions of section 75 of this Act, directing the employer to pay interest on the outstanding amount at the interest rate prescribed in terms of section 13A of the Pension Funds Act, 1956 (Act No.24 of 1956).

(3) The Labour Court, CCMA or bargaining council may not exercise jurisdiction if the Pension Funds Adjudicator appointed in terms of section 30C of the Pension Funds Act, 1956 has issued a determination in terms of section 30M of the Pension Funds Act, 1956 or any other tribunal or court of law having jurisdiction has made a ruling on the matter."

***Comment**: As Moonstone Information Refining reports, "Michelle David, Ntokozo Ngubane and Francisco Andrade-Nobrega of Norton Rose Fulbright [have pointed out that] the amendment addresses a long-standing problem involving unpaid retirement fund contributions regulated under the Pension Funds Act."*[27]

According to these lawyers, "the provision would empower the Labour Court, CCMA, or bargaining councils to order employers to pay outstanding contributions owed on behalf of employees and to pay interest on those amounts." It would also "prevent overlapping processes where the Pension Funds Adjudicator has already issued a determination… The change is likely to encourage employers to strengthen compliance systems, including reviewing payroll processes, auditing historical contributions, and improving record keeping."[28]

The relevant factual background includes the following developments. In 2024 the Financial Sector Conduct Authority (FSCA) said that "it had the names of 7,700 employers" that had deducted retirement fund contributions from employees' salaries but then failed to pay the monies over to the pension funds to which they were due. Some 310,000 employees were affected and the amount in issue in December 2023 totalled some R5.2bn. [29]

Many of the defaulting employers, commented Joe Maswanganyi, chair of Parliament's finance committee, were municipalities.[30] *FSCA deputy commissioner Astrid Ludin noted that "149, or 58%, of the 257 municipalities in the country were in arrears of R1.4bn…with their pension fund contributions.*[31]

"The failure to pay retirement fund contributions has severe consequences for members, affecting their withdrawal benefits," said the FSCA. It was also "a serious offence that could

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[27] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", op. cit.
[28] Ibid.
[29] Ensor, L, "Employers owe R5bn in pension fund arrears," Business Day, 24 November 2024. https://www.businessday.co.za/bd/national/2024-11-24-employers-owe-r5bn-in-pension-fund-arrears.
[30] Ensor, L, "Employers owe R5bn in pension fund arrears," Business Day, 24 November 2024. https://www.businessday.co.za/bd/national/2024-11-24-employers-owe-r5bn-in-pension-fund-arrears; Linda E, "Legal time limit stymies pension funds' claims for arrears", Business Day, 27 November 2024. https://www.businessday.co.za/bd/national/2024-11-27-legal-time-limit-stymies-pension-funds-claims-for-arrears.
[31] Ibid.

amount to theft and, in some instances, fraud." The boards of retirement funds had thus "taken legal action to recover outstanding contributions". They had "applied the bargaining council enforcement process and lodged complaints with the office of the pensions fund adjudicator. They had also reported contraventions to the police."[32]

Against this factual background, it is unlikely that the proposed amendments to the BCEA will be effective in curbing conduct which is already illegal under various laws. In addition, the changes fail to address one of the key problems: the three-year prescription period that applies to unpaid pension fund contributions.

In November 2024 pension funds adjudicator Ms Muvhango Lukhaimane told MPs that "the time limit for claims related to pension fund contributions…is three years from the last contribution." This is the "time limit for legal claims laid down by the Prescription Act." Ms Lukhaimane also said (in an interview with Business Day) that "some employers were using this provision to not pay for three years and then be freed of the liability, leaving the employees concerned without a pension." In addition, since outstanding contributions were owed to the fund – and not its individual members – the latter could not take action themselves. Instead, they had to depend on pension fund boards, some of which were "failing to act and to report non-compliance to the police."[33]

3.5 Additional rules regarding atypical employment

Two changes are envisaged here. First, Section 9 of the BCEA, dealing with "Ordinary hours of work" is to be amended by the insertion of rules covering "gig" workers who are required to be available for work but may not be called in to do it. The second amendment seeks to give organisational and other rights to a wider range of atypical employees.

3.5.1 New rules for "gig" workers

Under Clause 2 of the Labour Laws Amendment Bill, a new Section 9B is to be inserted into the BCEA after the existing Section 9A. The new Section 9A is to read:

"**Employees required to be available for work**

9B. (1) This section applies to an employee who is required to— (a) work only when the employer makes work available to the employee; and (b) be available to accept work that the employer makes available.

(2) An employer must specify in the employee's written particulars of employment— (a) the maximum hours of work for that period: (b) the period which the employee must be available to work; (c) the notice period to the employee to report for work; and (d) the notice period of any cancellation of work.

(3) The notice period referred to in paragraphs (c) and (d) of subsection (2) must be reasonable and must be determined having regard to all relevant factors, including— (a) the nature of the employer's business; (b) the employer's ability to control or foresee the circumstances that may give rise to the notice for the employee to report for work or for cancellation of work; (c) the effect of the cancellation on the employee.

(4) If an employer fails to give the employee the requisite notice of cancellation of work contemplated in subsection (2)(d), the employer must remunerate the employee for the hours of the cancelled work.

[32] Ensor, "Employers owe R5bn in pension fund arrears," op. cit.

[33] Ensor, ""Legal time limit stymies pension funds' claims for arrears," op. cit.

(5) An employer may not require an employee to work if the employer fails to— (a) comply with subsection (2); or (b) provide the employee with the requisite notice to work.

(6) An employer may not prevent, prohibit or restrict an employee who has fulfilled the obligations to be available for work to that employer from working for another person unless— (a) the employer has genuine operational reasons for doing so; and (b) the reasons are stated in the employee's written particulars of employment.

(7) For the purposes of subsection (6)(a), a genuine operational reason includes— (a) protecting the employers commercially sensitive information, intellectual property rights and commercial reputation; or (b) preventing a conflict of interests that cannot be managed in another way.

(8) Despite section 22 (2), an employee contemplated in this section is entitled to an amount of paid sick leave equal to one day's paid sick leave for every 26 days worked.

(9) An employer must treat employees contemplated in this section on the whole not less favourably than those of its employees to whom this section does not apply and who perform the same or similar work, unless there is a justifiable reason for different treatment.

(10) A dispute arising from the interpretation or application of this section must be determined in accordance with the provisions of section 198D of the Labour Relations Act, 1995, read with the changes required by the context.

(11) This section does not apply to employers who employ less than ten employees."

Section 198 of the LRA deals with "*Temporary employment services*". Section 198A covers "*employers earning below earnings threshold*," while Section 198B deals with "*fixed term contracts with employees earning below earnings threshold*" and Section 198C deals with "*Part-time employment of employees earning below earnings threshold*." Against this background, Section 198D sets out "*General provisions applicable to Sections 198A to 198C*." It also deals with what "a justifiable reason for different treatment" might be.

Section 198D(2) states that "a justifiable reason includes that the different treatment is a result of the application of a system that takes into account— (a) seniority, experience or length of service; (b) merit; (c) the quality or quantity of work performed; or (d) any other criteria of a similar nature," provided that "such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998."

Section 6(1) of the Employment Equity Act (the "EE Act") prohibits "unfair discrimination" on race, gender, and 18 other listed grounds as well as on "any other arbitrary ground." Under sub-section 6(4), "a difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination."

Comment: *Under the new rules regarding "on-call" or "gig" workers earning below the BCEA threshold, employers will have considerable additional responsibilities. As SEESA Labour Law Consultants note, employers will be "required to document:*

- *the maximum hours an employee may be required to work within a defined period; and*
- *the period during which the employee must remain available."*[34]

[34] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," op. cit.

Employers will also have to specify "the notice period to the employee to report for work;" and "the notice period of any cancellation of work." In addition, "where work is cancelled without proper notice, remuneration for the cancelled hours will be payable." Adds SEESA: "For industries reliant on flexible scheduling, this change necessitates structured workforce planning. Informal or loosely managed shift systems may expose employers to financial liability and dispute risk."[35]

Mr Mahomed of Cliffe Dekker Hofmeyr notes that "these arrangements have long existed in practice but have not previously been explicitly regulated in legislation." Bowmans adds that "employers would generally not be allowed to prevent "gig" workers from working elsewhere unless [this was] justified by operational requirements."[36]

*Overall costs to employers could rise significantly as "gig" workers are to be entitled to sick leave and might have to be provided with the same benefits – in terms of medical scheme and pension fund contributions – as permanent employees. The new rules could thus provide a considerable disincentive against the hiring of "gig" employees. This would worsen the unemployment crisis, when the key need is to reduce as rapidly as possible (see **Section 4** of this submission).*

3.5.2 Organisational and other rights for atypical employees

Under Clause 46 of the LRA Bill, a new Schedule 11 is to be added to the LRA so as to give a wider range of atypical employees "freedom of association," along with "organisational rights" and access to "collective bargaining." The new Schedule 11 is to read as follows:

"SCHEDULE 11

EXTENSION OF FREEDOM OF ASSOCIATION, ORGANISATIONAL RIGHTS AND COLLECTIVE BARGAINING

Definition of employee

1. For the purposes of this Schedule— 'employee' means an individual, other than an employee as defined in section 213 of the Act, who works for a person that is not a client or customer of any profession, business or undertaking carried on by the individual; and 'employer' means any person or entity for whom an employee works.

Presumption

2. For the purposes of this Schedule, an individual is an employee unless the employer demonstrates that the following factors are satisfied: (a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services: (b) the person is not part of the organisation of the employer: and (c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

Freedom of Association

3. Chapter II applies to employees and their employers.

Collective Bargaining

4 (1) Subject to this item, Chapter III applies to employees and their employers.

[35] Ibid.

[36] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", op. cit.

(2) If a trade union seeks to exercise the rights conferred by Part A of Chapter III in respect of employees, those employees must be taken into account for determining representativeness for the purposes of that Part. For the sake of clarity, if a trade union elects not to exercise those rights in respect of those employees, those employees are not taken into account in determining representativeness.

(3) If a collective agreement contemplated in section (sic) 23, 25 or 26 is intended to bind employees contemplated in this Schedule, those employees must be taken into account for the purpose of determining a majority required by that section.

(4) For the purpose of determining the representativeness of the parties to a bargaining or a statutory council in terms of section 49(1), the registrar may only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees.

(5) For the purpose of determining the representativeness of the parties to a collective agreement in terms of 49(2), the registrar may only take into account employees contemplated in this Schedule, if the scope of the collective agreement includes those employees.

Strikes and lock-outs and extension of certain unfair dismissal protection

5. (1) Chapter IV applies to employees and employers.

(2) A termination of the services of an employee for the reasons contemplated in section 187(1)(a) to (c) constitutes a dismissal for the purposes of those provisions.

Trade unions and employers' organisations

6. (1) A constitution of a trade union may provide for employees to qualify for membership in terms of section 95(5)(b).

(2) A constitution of an employers' organisation may provide for employers to qualify for membership in terms of section 95(5)(b).

Dispute resolution

7. For the purposes of a dispute arising from the application of this Schedule, any relevant provision in the Act relating to dispute resolution applies with the necessary changes required by context."

***Comment**: As Moonstone Information Refinery reports, this amendment seeks to "expand the definition of employment to many forms of non-traditional work, so as to bring all participants in an evolving labour market within the scope of the LRA." It adds: "The amendments respond to the growth of gig work, platform-based services, and other flexible employment arrangements that do not fit neatly into traditional employer-employee relationships. Importantly, the proposal does not replace the existing statutory definition of an employee in the LRA. Instead, it introduces an additional category of workers who may qualify for certain labour rights even if they fall outside the conventional employment relationship."*[37]

According to Mr Mahomed, the amendment "reflects the reality that many modern work arrangements no longer align with traditional labour law concepts." By means of a new Schedule 11, it seeks to extend certain labour rights to "individuals outside the traditional definition of employee" – and who may "perform work for another party even without a formal contract of employment."

[37] Ibid.

Under Schedule 11, a presumption of employment will apply. Hence, "employers will have to rebut this presumption by demonstrating that the individual is not subject to their control, is not integrated into their organisation, and does not provide services to customers on the employer's behalf."[38]

Bowmans notes that Schedule 11 aims to "extend freedom of association, organisational rights, and collective bargaining rights to a broader category of workers – often referred to internationally as dependent contractors." Mr Mahomed adds that the rights to be granted will not include "the full range of dismissal protections enjoyed by traditional employees."[39]

However, if collective agreements are structured to include these non-traditional employees, this could in future help trade unions achieve the majorities needed to secure bargaining council agreements that can then be extended across sectors. If the upshot is to expand blanket coverage, this could have negative effects for SMEs and the jobs they might otherwise be able to generate.

3.6 Proposed changes regarding the national minimum wage

3.6.1 Enforcement of payment obligations

Clause 13 of the LLA Bill seeks to amend Section 76A of the BCEA to strengthen enforcement of the obligation to pay the national minimum wage. The LLA Bill seeks to substitute new subsections 76A(1) and 76A(2) for the existing clauses and to insert an additional sub-section 76(5) at the end of the existing provisions. The new subsections are to read as follows:

" (1) **[Subject to section 76, a]** "A fine that may be imposed in any proceedings in terms of section 73 and 73A on an employer who paid an employee less than the national minimum wage, is an amount that is the greater of— (a) twice the value of the underpayment; or (b) twice the employee's monthly wage."

"(2) For second or further non-compliances, a fine that may be imposed in any proceedings in terms of section 73 or 73A on an employer who paid an employee less than the national minimum wage is an amount that is the greater of-— (a) thrice the value of the underpayment; or (b) thrice the employee's monthly wage."

"(5) Upon receipt of payment from an employer in respect of a fine imposed on such an employer in terms of subsection (1) or (2), the Department or the CCMA must immediately remit the payment to the employee."

3.6.2 Benefits to be excluded in computing minimum wage

Clause 23 of the LLA Bill proposes to substitute the current subsections (4) and (5) of Section 4 of the National Minimum Wage Act ("NMWA") of 2018, which requires the payment of a "national minimum wage".

The new subsections (4) and (5) are to read as follows:

(4) **[Every]** Subject to section 5, every worker is entitled to payment of a wage in an amount no less than the national minimum wage.

(5) **[Every]** Subject to section 5, every employer must pay wages to its workers that is no less than the national minimum wage."

[38] Ibid.
[39] Ibid.

Clause 24 of the LLA Bill seeks to amend Section 5 of the NMWA, which is headed "*Calculation of wage*." This is to be done by the substitution in subsection (1), for the words preceding paragraph (a), of the following words:

"Despite any contract or law to the contrary, the calculation of a wage for the purpose of this Act is the amount payable in money as contemplated in section 32(1)(c) of the Basic Conditions of Employment Act for ordinary hours of work excluding —"

Under the current Section 5(1), "the amount payable in money" excludes

"(a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectorial (sic) determination; (b) any payment in kind including board or accommodation, unless specified otherwise in a sectoral determination; (c) gratuities including bonuses, tips or gifts; and (d) any other prescribed category of payment."

Under the LLA Bill, the word "and" at the end of paragraph (c) is to be deleted and a new paragraph (cA) is to be inserted, which reads:

"(cA) deferred payment: and"

Section 6 of the NMWA, providing for "*Annual review*," is to be amended to delete sub-section (3), which requires the National Minimum Wage Commission to "forward the report on its review and its recommendations for the next year to the Minister on a date fixed by the President by proclamation in the *Gazette*."

Section 9 of the NMWA, which deals with the "*Composition of Commission*," is to be amended too. Subsection 9(1)(c), saying that "the Commission comprises…three members nominated by organised community," is to be deleted. In addition, a new subsection (3) is to be inserted, which is to read:

"(3) A party that nominates persons in terms of subsection (1)(b) and (d) must demonstrate to the Minister that such persons have the appropriate knowledge, skills and experience to perform the functions of a member of the Commission." (Subsection 1(b) refers to the "three members nominated by organised business", while subsection 1(d) refers to the "three members nominated by organised labour.")

Comment: *The most significant proposed amendment is the exclusion of any "deferred payment" under the new Section 5(1)(cA) of the NMWA. As SEESA Labour Law Consultants point out, "the proposed amendments clarify that deferred payments, including retirement fund contributions, are excluded from national minimum wage calculations. Compliance will be assessed based on actual take-home pay." The consultancy cautions that "payroll systems must be aligned accordingly to prevent inadvertent non-compliance."*[40]

Business Unity South Africa (BUSA) opposes the exclusion of pension, medical benefits and contractual bonuses from minimum wage calculations, saying it will put additional pressure on employers, particularly in the agricultural and domestic sectors. By contrast, Cosatu strongly supports it.[41]

Again, however, there is a considerable risk is that what amounts to a demand for higher minimum cash wages will make it uneconomical for employers to take on poorly skilled

[40] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," op. cit.
[41] Editorial, "Sweeping labour law reforms open for public comment after talks," 5 March 2026.

employees – particularly new entrants to the labour market. This could exacerbate the unemployment crisis, especially among the youth.

3.7 Amended rules regarding parental leave

Clause 3 of the LLA Bill makes major changes to Sections 25, 25A and 25B of the BCEA. All three of these sections are substituted by new provisions. In addition, Section 25C is to be deleted, as parental leave for the "commissioning parent" of a child born under a surrogate motherhood agreement is to be dealt with in the new Sections 25, 25A and 25B.

The most important of the proposed changes are set out below.

"**25. Right to parental leave**

(1) An employee is entitled to parental leave if the employee is— (a) the parent of a newborn child: (b) the adoptive parent of a child who is six years of age or less; (c) a commissioning parent of a child born as a result of a surrogate motherhood agreement.

(2) An employee is entitled to at least four consecutive months' parental leave if the employee is — (a) a single parent; or (b) the only employed party in a parental relationship.

(3) If both parties to a parental relationship are employed, they are collectively entitled in the aggregate to four months and ten days' parental leave to be taken in accordance with this section, section 25A and section 25B."

Various other rules apply in instances of stillbirth or miscarriage. In addition, under subsection 25(6), "The Minister must determine the benefits to be paid in respect of parental leave in terms of the Unemployment Insurance Act, 2001 (Act No 63 of 2001)."

A new Section 25A deals with the "**Commencement of parental leave and notice of leave and return to work.**" Under 25A(1): "A female employee who is expecting the birth of a child may commence parental leave— (a) at any time from four weeks before the expected date of birth. unless otherwise agreed: or (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child."

However, under Section 25(3), "If subsection (1) does not apply, an employee may commence parental leave on or after—(a) the day that the employee's child is born; or (b) in the case of adoptive parents – (i) when the child is adopted…"

As to when a mother may return to work, Section 25A(2) states: "No female employee who has given birth to a child may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so."

The new Section 25B deals with the "**Exercise of right to parental leave if two parents are employees**."

Under Section 25B(1), "If both parents are employees and they choose to exercise their right to parental leave, they must conclude and submit to their employers an agreement" as to how they propose to share their parental leave and give their employers' notice of what they have agreed.

Section 25B(2) puts it thus: "The parental leave in terms of an agreement contemplated in terms of sub-section (1) may be taken by them in such manner as they may agree, including concurrently or consecutively, or partly concurrently and partly consecutively, provided that neither employee is entitled to more than four months' leave."

***Comment**: The wording of Section 25B(2) is confusing, for it suggests that **each** parent is legally entitled to "four months' leave" (but not to "more" than this). The wording here is also at odds*

with other clauses, which clearly show that the total amount of leave that can be taken by both parents is four months and ten days – and that this period must be divided between two employed parents both of whom want parental leave.

The splitting in fact required is reflected, for example, in Section 25B(3), which says:

(3) If an agreement contemplated by sub-section (1) cannot be concluded an employee who has given birth to a child must elect to take — (a) four months' parental leave, in which case the other parent is entitled to take 10 days' parental leave; or (b) less than four months' parental leave, in which case the other parent is entitled to take that portion of the parental leave contemplated by sub-section 25(3) that the mother of the child is not taking."

***Comment**: This inconsistency in wording between Section 25B(2) and Section 25B(3) makes for uncertainty as to what precisely is intended and must be corrected.*

3.8 Changes to harassment rules

Clause 18 of the LLA seeks to amend Section 10 of the Employment Equity Act ("the EE Act") of 1998 to deal with forms of harassment other than "sexual" harassment.

Section 10 of the EE Act deals with "*Disputes*". Section 10(6)(aA)(i) currently provides that "if a dispute remains unsettled after conciliation" by the CCMA, then "an employee may refer the dispute to the CCMA for arbitration if— (i) the employee alleges unfair discrimination on the grounds of sexual harassment."

Under the proposed amendment, the word sexual is to be deleted by substituting the current sub-section with a new subsection 10(6)(aA)(i), which says: "(i) the employee alleges unfair discrimination on the grounds of **[sexual]** harassment; or"

Comment: *The Bill expands the scope of the unfair discrimination disputes that may be submitted to the CCMA for arbitration. As SEESA Labour Consultants comment: "Under the proposed rules, any harassment-based discrimination claim, not only sexual harassment, may be referred to the CCMA for arbitration once conciliation fails."*[42] *According to SEESA, "this materially increases employer exposure. Organisations should thus ensure that:*

- *Anti-harassment policies are clear and updated.*
- *Grievance procedures are accessible and documented.*
- *Managers receive appropriate training.*
- *Early intervention mechanisms are consistently applied."*

Moonstone Information Refinery notes that current law requires discrimination disputes based on forms of harassment other than sexual harassment to be heard in the Labour Court in general. By contrast, it reports, "the proposed amendment to section 10 of the EEA would allow claims involving harassment based on race, gender, disability, or other listed grounds…[to] be resolved through CCMA arbitration."[43]

According to labour advisory firm Labournet, "the change recognises that workplace harassment disputes often involve multiple overlapping forms of discrimination, rather than a single category such as sexual harassment." Employers, it adds, may need to review their harassment policies to "ensure they cover psychological, racial, gender-based, and other forms

[42] SEESA Labour Law Consultants, "Labour Law Amendment Bill 2025: Employer Compliance Guide," op. cit.
[43] Moonstone Information Refinery, "Labour law overhaul signals shake-up of dismissal, retrenchment and gig-work rules", op. cit

of harassment," which could now come under "increased…CCMA scrutiny." The amendment may also "reduce fragmented litigation between the CCMA and the Labour Court," it notes.[44]

3.9 Duration of notices regarding socio-economic protests

Clause 11 of the LRA Bill seeks to amend Section 77 of the LRA so as to specify that the period for which a notice of a socio-economic protest action remains valid is limited to two years.

Section 77 deals with "*Protest action to promote or defend socio-economic interests of workers*". It currently provides that employees (other than those involved in essential services, for instance) have "the right to take part in protest action if— (a) the protest action has been called by a registered trade union or federation of trade unions; (b) the registered trade union or federation of trade unions has served a notice on Nedlac stating— (i) the reasons for the protest action; and (ii) the nature of the protest action."

In addition, "the matter giving rise to the intended protest action" must have been "considered by Nedlac or any other appropriate forum" in an attempt to resolve the matter. Moreover, the trade unions involved must "serve a notice on Nedlac of [their] intention to proceed with the protest action" and do so "at least 14 days before the commencement of the protest action."

However, there has long been some confusion as to how long a notice of intended protest action remains valid. To end this uncertainty, the proposed new clause, to be inserted as Section 77(1)(e), states that "the notice in terms of paragraph (d)" must have been "served on Nedlac within 24 months of the date on which the process of consideration in terms of paragraph (c) was concluded."

Comment: *Two years seems an excessively long period, especially as the circumstances surrounding the matter in issue could have changed considerably over that time. The better approach would be to allow a notice to remain valid for three to six months at most. Thereafter, unions should be required to serve a fresh notice on Nedlac if they still propose to commence a protest action which could well include a strike*.

The relevant factual background is as follows. In October 2024 the Congress of South African Trade Unions (Cosatu) sought to call a general strike over "weak economic growth" and "growing retrenchments." It denied it needed to serve a notice of its protest action on Nedlac because it had served a notice over the same issues back in October 2017 (seven years previously). It had also received confirmation that "any protest action arising from this notice is protected."[45]

Nedlac confirmed that Cosatu's proposed strike on 7 October 2024 was protected, as there was no legislation in place providing for its strike certificate to lapse or expire. BUSA objected strongly, saying Cosatu "should not be allowed to use the strike certificate it was first granted in 2017." BUSA CEO-designate Khulekani Mathe said: "BUSA has long advocated for reform…to curb the misuse of strikes. These recurring protests, using outdated Nedlac certificates, place undue strain on businesses and the economy as a whole." [46]

BUSA CEO Cas Coovadia added: "These [strike] actions also hinder our collective efforts to grow the economy at a rate [fast enough to] address unemployment, inequality and poverty. We

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[44] Ibid.

[45] Ebrahim, N, "Business v Cosatu: Heated fight over strike certificate ahead of national protests," News24.com, 6 October 2024. https://www.news24.com/business/Economy/business-vs-cosatu-heated-fight-over-strike-certificate-ahead-of-national-strike-20241006; see also BUSA, "National strike action by Cosatu concerning," Politicsweb.co.za, 4 October 2024. https://www.politicsweb.co.za/politics/nationwide-protest-by-cosatu-concerning--busa.

[46] Ibid.

need to prioritise stability and collaboration to foster long-term economic growth, rather than resorting to measures that negatively impact both business and citizens."[47]

4 RAMIFICATIONS OF THE MAIN PROPOSED AMENDMENTS

The ramifications of all the proposed amendments should have been analysed and made available to all South Africans via a comprehensive and objective SEIA report published together with the Bill. In the absence of this report – and given how short a period has been allowed for public comment – only some of the ramifications of the Bills can be canvassed here.

Any assessment of the likely costs and consequences of the Bills must begin with an acknowledgment of the magnitude of the unemployment crisis in South Africa. Due regard must also be paid to the importance of economic growth – and the extent to which intrusive labour laws have curtailed the higher growth and the many more jobs that are urgently required.

4.1 The magnitude of the unemployment crisis in South Africa

Unemployment is the greatest of all the crises confronting South Africa. The statistics tell the story. In 1994 the unemployment rate stood at 20%, but by 2025 it had risen to 33.2% on the official definition. On the "expanded" definition – which includes discouraged work seekers who have given up actively looking for jobs – the unemployment rate has risen from 31.5% to 42.9%.[48]

The number of people wanting work but unable to find it are enormous. This is especially so on the expanded definition, which many commentators regard as the more accurate one. On this definition, some 3.7 million people were without work in 1994. In 2025, the equivalent number stood at 12.6 million.[49]

"Between 2008 and 2025," notes Ann Bernstein, CEO of the Centre for Development and Enterprise (CDE), a think tank, "the labour force grew by 42%, while total employment rose by just 15%. That means nearly 1,000 South Africans joined the unemployment queue every single day for 17 years." [50]

Adds Ms Bernstein: "[These numbers] make ours the deepest unemployment crisis in the world." In response, the government has "focused on public employment programmes and youth initiatives that provide limited and temporary relief." However, these are "wholly inadequate in addressing the structural causes of mass joblessness." The upshot is "a human tragedy affecting the future stability and prosperity of the nation. Unless bold reforms are implemented, South Africa will deepen the marginalisation of a vast underclass of permanently unemployed citizens."[51]

Overcoming the unemployment crisis is thus a moral, economic and political imperative for the country and the ruling Government of National Unity (GNU). It is also what most South Africans want the most. In IRR opinion polls going all the way back to 2001, black (and most other)

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[47] Ibid.

[48] Centre for Risk Analysis ("CRA"), "Employment," March 2026, p. 45.

[49] Ibid.

[50] Bernstein, A, "SA's jobless problem dwarfs all others," Politicsweb, 14 October 2025. https://www.politicsweb.co.za/opinion/sas-jobless-problem-dwarfs-all-others.

[51] Bernstein, A, "SA's jobless problem dwarfs all others," Politicsweb, 14 October 2025. https://www.politicsweb.co.za/opinion/sas-jobless-problem-dwarfs-all-others.

respondents have consistently identified joblessness as by far the most important problem they would like the government to overcome.[52]

To reduce the unemployment rate to less than 10% within ten years, South Africa needs to generate roughly 900,000 net new jobs a year. Only with job creation at this level will it be possible to find work for those already seeking jobs, plus new entrants to the labour market. Yet the country has generated only some 240,000 net new jobs a year over the past 20 years. Most of those jobs, moreover, were created in the years when economic growth rates averaged some 3% of GDP. [53]

To increase new jobs from their present levels to the necessary 900 000 a year, the GNU must pinpoint the main barriers to job creation and set about removing them with singular determination. Prime among these barriers are anaemic economic growth and a raft of damaging labour laws.

4.2 The urgent need for rapid economic growth

The best way to generate millions more jobs is to trigger a rapid upsurge in economic growth. Only then will thriving businesses in every sector need many more employees to help them meet rising demand. Ideally, as the *IRR Growth Strategy* has explained in reports dating back to 2024, the country requires a sustained annual economic growth rate of around 7% of GDP, which would see the economy double in size every ten years.[54] This level of growth cannot be attained immediately, but it can be reached over time as policy barriers, electricity distribution, water shortages, logistics problems and other constraints are overcome.

By contrast with the 7% needed, South Africa's annual growth rate since 2008 has averaged around 1.3%. At the current pace it will take 54 years for the economy to double its current size. Meanwhile, with the growth rate often lower than the rate of population growth, GDP per capita has been stagnating since 2008. In the words of IRR CEO Dr John Endres:

> "...[I]in 2008, South Africa's GDP per capita ($13,596) was at the same level as global GDP per capita ($13,659). [However], a growing gap started opening up as the world economy resumed its growth after the Global Financial Crisis, while South Africa's stagnated. Sixteen years later, in 2024, South Africa's GDP per capita was unchanged ($13,599), while global GDP per capita had risen by 35.8% to $21,268." [55]

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[52] Jeffery, A, 'Critical Race Theory & Race-Based Policy', *@Liberty*, Issue 49, May 2021, pp. 5 – 6: https://irr.org.za/reports/atLiberty/files/01a-2014-liberty-2013-issue-49-2013-critical-race-theory-13-05-2021-correct-co.pdf; Pretorius, P, 'Hope, Opportunity, Unity and New Common Ground: Findings of IRR Polling 2024', IRR, December 2024, p. 14: https://irr.org.za/reports/occasional-reports/files/irr-polling-2024.pdf; Pretorius, P, "Pro-Growth or Pro-Poverty: Findings of IRR Polling 2025," IRR, Johannesburg, November 2025, pp. 1, 12. https://irr.org.za/reports/irr-polling/report_3_progrowth-or-propoverty-findings-of-irr-polling-2025-1.pdf.

[53] Endres, J, *The IRR's Blueprint for growth: arming the pro-growth forces*, IRR Blueprint Paper, January 2025, p. 11: https://irr.org.za/reports/the-irrs-blueprint-for-growth/the-irr-blueprint-for-growth-2025/irr2019s-blueprint-for-growth-1_-arming-sas-pro-growth-forces.pdf.

[54] Endres, J, "The IRR's Blueprint for growth: arming the pro-growth forces," January 2026, p. 7: https://irr.org.za/reports/the-irrs-blueprint-for-growth/the-irrs-blueprint-for-growth-2026/2026-growth-strategy.pdf.

[55] Ibid, p. 4.

In 2024 GDP growth in South Africa came in at a meagre 0.5%, below the population growth rate of some 1.3%.[56] The full-year figure for 2025 was 1.1%.[57] Growth of a such a paltry kind makes all South Africans poorer on average with every passing year. It reduces consumer demand, inhibits fixed investment, and makes it difficult for businesses to expand or take on more staff. It also leaves 28.3 million South Africans – almost half the population – heavily dependent on tax-funded social grants. Already, moreover, the number grant recipients is four times higher than the number of individuals (roughly 5.8 million) earning enough to pay personal income tax. In time, this imbalance will make it increasingly difficult for a heavily debt-burdened fiscus to sustain its monthly payments to the poor.[58]

Rapid economic growth, in short, is vital to any upsurge in employment. It is also urgently needed to increase tax revenues, thereby helping to maintain the social grants and the wider social wage (free education, health care, housing and the like) on which the poor and jobless largely depend – and which have long helped to maintain the country's social cohesion.

4.3 The damaging impact of intrusive labour laws

The limited time allowed for public comment on the proposed amendments to South Africa's labour laws precludes adequate assessment of the damaging impact of the bulk of the country's labour laws. For present purposes, the focus must be limited to three areas where particular damage is being done and major reform is particularly urgent.

4.3.1 An unusually high national minimum wage

The National Minimum Wage Act ("NMWA") of 2018 was brought into force in 2019. The national minimum wage (NMW) was initially set at R20 an hour or roughly R3,360 a month (assuming 21 working days of eight hours each in most months). At that time, lower amounts were permitted for farm workers (R18 an hour), domestic workers (R15 an hour) and people provided with "temporary employment opportunities" under the state's Expanded Public Works Programme (R11 an hour).[59]

By March 2026, the special dispensation for farm and domestic workers had long ended and the NMW had risen by more than 45% to R30.23 an hour or some R5,080 a month for most employees. Only the individuals working temporarily for the state on public works programmes continued to receive considerably less, at R16.62 an hour.[60]

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[56] The World Bank in South Africa, 'South Africa Overview', updated 11 April 2025: https://www.worldbank.org/en/country/southafrica/overview; Centre for Risk Analysis (CRA), *2025 Socio-Economic Survey of South Africa* ("*2025 Survey*"), April 2025, p. 1: https://mcusercontent.com/fc28875f634942882369b22a1/files/4e441bd4-91f6-d391-9b04-d85bacc8f2cd/000g_mdash_2025_Survey_mdash_CRA_03.04.2025.

[57] "GDP extends its gains in the fourth quarter", Stats SA, 10 March 2026, https://www.statssa.gov.za/?p=19291.

[58] CRA, *2025 Survey*, op cit, pp. 552 – 556, 169 – 170.

[59] *Legalbrief* 26 November 2018; Saftu, 'NMW Act nothing to celebrate', Politicsweb, 25 November 2018. https://www.politicsweb.co.za/politics/nmw-act-nothing-to-celebrate--saftu.

[60] Meth, N, "Government Notice No R7083," Government Gazette, No 54075, 3 February 2026. https://www.gov.za/sites/default/files/gcis_document/202602/54075rg11941gon7083.pdf.

Many nations set the NMW at between 7% and 55% of the median wage.[61] In South Africa, by contrast, the NMW in 2023 already amounted to 76% of the median wage, which is exceptionally high.[62] This helps explain why an estimated 430,000 jobs have been destroyed since the NMW came into effect in 2019.[63]

This estimate of jobs lost may also be too low. About 5.4 million people earn less than the NMW,[64] which makes their jobs illegal and their employers vulnerable to significant penalties. (The risk of such penalties is increasing too, for Cosatu has complained that 45% of employers are failing to pay the NMW, while the minister plans to appoint 10,000 more labour inspectors to help clamp down on unlawful conduct.)[65]

South Africa's high NMW prices the unskilled out of the labour market and encourages job losses and retrenchments. It has thus become a major barrier to job creation. This is especially so for the millions of South Africans who have left school over the last 30 years still functionally illiterate and innumerate – and often without even a matric.[66] It is also one of the main reasons why unemployment among inexperienced youth is so extraordinarily elevated.

For those aged 15 to 24, the jobless rate currently stands at 62.2% on the official definition and at a staggering 71.7% on the expanded definition (which includes those not actively seeking work).[67] These shocking figures confirm that the government's insistence on high entry-level wages is preventing many unskilled and inexperienced people from finding work at all – for the simple reason that their labour is not worth what the government compels employers to pay.

President Cyril Ramaphosa seems well aware of this barrier to employment, for he has acknowledged that employers incur "a loss" when they hire inexperienced employees and so have little reason to take them on.[68] The government is nevertheless still busy pushing entry level wages up to even greater heights via the rapidly rising NMW.[69] This is making youth unemployment even more of a "ticking time bomb," as the African National Congress (ANC) has long described it.[70]

Some proponents of the NMW have argued that employers unable to afford it can always apply for exemption. However, the reduction available is limited to 10% of the NMW payable, which is too little to make much difference. In addition, employers seeking this reduction must provide

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[61] Crouse, G, *Most South African youth will not find work: What can be done to avoid a mounting disaster*, IRR Special Report, May 2022: https://irr.org.za/reports/occasional-reports/files/2022-05-13_youth-will-not-find-work_may_2022.pdf; Crouse, G, "Minimum wage in an era of joblessness", *Financial Mail*, 2 June 2022. https://www.businesslive.co.za/fm/opinion/on-my-mind/2022-06-02-gabriel-crouse-minimum-wage-in-an-era-of-joblessness/.

[62] Development Policy Research Unit, *Measuring the impact of the 2023 National Minimum Wage Increase: a report for the National Minimum Wage Commission*, January 2024, p. 6.

[63] Crouse, G, 'Minimum Wage Estimated to have Destroyed 430,000 jobs – IRR', 20 January 2025: https://irr.org.za/media/minimum-wage-estimated-to-have-destroyed-430-000-jobs-2013-irr.

[64] Ibid.

[65] Roos, T, "Meth says cost of hiring 10,000 inspectors could hit R10bn," Business Day, 9 March 2026. https://www.businessday.co.za/news/2026-03-09-r10bn-plan-to-hire-10000-labour-inspectors.

[66] CRA, *2025 Survey*, op cit, pp. 411 – 412.

[67] CRA, "Employment," op. cit., p. 52.

[68] John Kane-Berman, *Business Day* 29 June 2015, *Business Day* 31 October 2017

[69] https://www.businesslive.co.za/bd/opinion/editorials/2022-03-31-editorial-unemployment-some-good-and-bad-news/; see also Crouse, Most South African Youth Will Not Find Work, pp3-4

[70] https://www.enca.com/news/youth-unemployment-ticking-time-bomb-national-youth-development-agency

comprehensive evidence of "meaningful consultation" with affected employees, plus detailed financial statements and adequate proof of household income.[71] This complex process is a particular burden for the businesses most in need of much bigger reductions: start-ups and other SMEs in township and other disadvantaged areas.[72]

Many jobless South Africans would no doubt prefer to work for less than the NMW – to earn R4,500 a month, say, rather than the R5,080 a month now stipulated – rather than have no income at all. The NMWA nevertheless prevents voluntary agreements of this kind and deprives the poor of any choice in the matter.

4.3.2 Coercive bargaining council agreements

The LRA includes a system of "blanket coverage", under which bargaining council agreements on wages and working conditions – which are generally reached in negotiations between big businesses and big unions – are extended by ministerial regulation to all employers within a given sector. These wage agreements then become binding on SMEs within the sector which have never consented to them, often cannot afford them, and may be forced into retrenchments or even liquidation as a result.[73]

The impact on entry level wages has been considerable and the consequences severe. In the metals & engineering (M&E) sector, for instance, entry-level wages (including employee benefits) rose to some R13,000 a month in 2024, which many smaller businesses could not afford. As journalist Michael Avery reports, even larger employers in the industry acknowledged that "the relentless push for higher entry-level wages,…inflated by decades of collective bargaining, had in effect priced out many entry-level workers, rendering them unemployable unless companies [obtained] exemptions from the collective agreement."[74] Yet seeking exemptions was "a cumbersome and inefficient process." It was also only a temporary solution. As Mr Avery points out, struggling smaller firms know that "the moment [they become] profitable, [they will be] forced into a wage dispensation that will eventually destroy [them]".[75]

4.3.3 Rules raising the costs of dismissals

The LRA also makes it difficult to dismiss poorly performing employees, for all dismissals are automatically deemed unfair unless employers can prove they were carried out for fair reasons and following fair procedures. Dismissed employees can easily claim reinstatement and/or significant damages from employers via the CCMA. Employers are thus constantly at risk of being dragged before the CCMA on grounds that may be spurious but nevertheless take significant time, effort, and money to refute.[76]

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[71] *Business Day* 8 November 2018, *Legalbrief* 20 April 2018

[72] *Business Day* 19 June 2018

[73] Institute of Race Relations (IRR), *1995/96 South Africa Survey*, op cit, pp. 287 – 293, 497 – 498; Douglas, C, "The Basic Conditions of (Un)Employment Bill", *Fast Facts*, IRR, December 1997, p. 2; Israelstam, I, "Unintended consequences abound", *Fast Facts*, IRR, December 2002, p. 4; Kane-Berman, J, "Radical change needed to conquer unemployment", *Fast Facts*, IRR, May 2004, pp. 2 – 4.

[74] Avery, M, "A collective mess awaits the metals industry", *Business Day*, 8 April 2024. https://www.businesslive.co.za/bd/opinion/columnists/2024-04-08-michael-avery-a-collective-mess-awaits-the-metals-industry/.

[75] Ibid.

[76] Kane-Berman, J, @*Liberty*, Issue 19, 24 June 2015, p. 11; Sections 185, 187, 112, Labour Relations Act of 1995.

The CCMA has long had an enormous workload. In 2023/24 alone, for example, close on 187,000 disputes were referred to it, roughly half of which involved dismissals.[77] Moreover, the decisions of CCMA arbitrators are often flawed but cannot easily be set aside on review. As law firm Cliffe Dekker Hofmeyr explained in 2023: "The test is not that the arbitrator came to an incorrect decision [as] this is the basis for an appeal. The test requires that the arbitrator's decision must be [one] which no reasonable decision maker could reach on all the material that was before them." Since that test is hard to satisfy, many flawed CCMA decisions remain unchallenged.[78]

The Labour Court responsible for dealing with reviews is also over-burdened. In 2023 the judge president of the court, Judge Basheer Wagley, noted that the jurisdiction of the CCMA had been extended (by the introduction of the NMW, for example), but the Labour Court's resources had not increased. Since there were "only 14 labour court judges for the whole of South Africa," judgments had to be written on weekends or during recess. In addition, the labour court in Braamfontein had only six court rooms but was "dealing with a caseload of 4,000."[79] Dismissals were increasing too because of the country's low growth rate – and Judge Wagley questioned whether "perhaps, the time had come to reconsider the LRA."[80]

4.4 More harm than benefit from the amendments proposed

When the LRA was first mooted (soon after the political transition), organised business warned against it, saying that "no developing country could adopt labour standards which even the developed world could not afford to maintain."[81] It cautioned that the statute would have "a disastrous effect" on the SMEs that are vital to growth and employment – but would be unable to cope with the statute's enormously complex and onerous rules.[82]

In 1996 a business lobby group – then called the South Africa Foundation and now Business Leadership South Africa (BLSA) – added that the LRA was likely to increase the unemployment rate on the expanded definition from 32% in 1994 to 40% in 2004. This was remarkably prescient, for it was indeed in 2004 that the jobless rate on the expanded definition reached the 40% level of which the BLSA had warned.[83]

The BLSA urged that a "two-tier" labour market should be allowed, with more flexible conditions for young and inexperienced workers who would otherwise struggle to find jobs. But the then

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[77] Commission for Conciliation, Mediation and Arbitration (CCMA), 'Annual Performance Plan 2024/25', pp. 24, 26: https://www.ccma.org.za/wp-content/uploads/2024/04/CCMA-Approved-APP-2024-25-FY-1.pdf; https://www.ccma.org.za/; See CCMA, https://www.ccma.org.za/.

[78] Jorge, J, and Moosa, L, "The review test restated", *Employment Law Alert*, 15 May 2023: https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-15-may-2023-the-review-test-restated.html; see also Labour Appeal Court judgment in *Makuleni* v *Standard Bank of South Africa (Pty) Ltd and others*, [2023] ZALAC 4 8 February 2023.

[79] Mkentane, L, 'Big push under way to resolve CCMA and labour court backlog', *Business Day*, 30 May 2023: https://www.businesslive.co.za/bd/national/2023-05-30-big-push-under-way-to-resolve-ccma-and-labour-court-backlog/.

[80] *Legalbrief*, 'Judge President suggests LRA rethink', 23 September 2022.

[81] Jeffery, A, *Bill of Rights Report 1996/97*, SAIRR, Johannesburg, 1997, p106; *The Citizen* 11 December 1996

[82] Jeffery, *Chasing the Rainbow*, p324;1995/96 *Survey* p301; see also Jean Redpath, 'Radical law reform required', *Fast Facts*, IRR, August 1998, pp2-3

[83] CRA, "Employment," op. cit., p. 45.

labour minister, Tito Mboweni, lambasted these proposals, saying that the idea of a two-tier labour market was "the most ridiculous of all" and "an affront to democracy."[84]

Thirty years later, with youth unemployment standing at 71.7%, the government still refuses to stop pricing the unskilled and inexperienced out of the labour market. It also declines to reduce the enormous burden of labour (and other) regulation on the SMEs vital to growth and employment. Sadly, most of the plethora of changes being proposed by the amendments will do little to achieve the major reforms required. Most will increase the burden of regulation, while few will allow more freedom to either business or the unemployed.

The most important changes being introduced may be summarised as follows:

As regards the NMW, the exclusion of all deferred payments, such as pension fund contributions, means that take-home pay will have to be increased in many instances. This will add to the already crippling burden of the NMW, rather than reducing it.

As for the extension of bargaining council agreements, a two-year exemption for SMEs employing fewer than 50 people will help them avoid artificially high wage costs for a short period. This may give some a firmer foundation for survival and growth than they would otherwise have – but it will do almost nothing to address the overall burden of coercive blanket coverage.

As regards dismissals, most of the amendments are relatively minor or apply only to a small number of employees: those on probation for three months (in general) and those earning more than R1.8 million a year. The most important change lies in the leeway given to employers, as Mr Mahomed says, to avoid "internal disciplinary processes that mimic court proceedings." Yet this shift has effectively already been sanctioned by the Code of Good Practice on Dismissal published in September 2025, to which many employers have already responded by embracing simpler internal disciplinary processes.

As regards major retrenchments (or dismissals for operational reasons), the key change made is clearly negative. Doubling obligatory severance pay will have major ramifications for many companies already battling to survive in an adverse economic environment made worse by rapidly rising administered costs and increasingly dysfunctional municipal governance. It will also provide a further deterrent to the creation of new jobs for the 12.6 million South Africans now unemployed.

As regards harassment rules, the amendment envisaged here could again cause more harm than good. Allowing employees to bring harassment claims on a wide range of grounds is likely to add to the burden on the CCMA. If many more claims are brought – some of which are poorly substantiated – this could also make employers more reluctant to take on new staff if other options can be found.

As for parental leave, giving parents the opportunity to divide four months and ten days of parental leave between them (as the Constitutional Court's recent ruling envisages) could disrupt the workplaces of both parents. In practice, moreover, it might bring few real benefits to babies aged 0 to 4 months, whose needs will generally be better served by breast- rather than bottle-feeding and whose welfare is the most important consideration.

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[84] Jeffery, *Chasing the Rainbow*, p244, Alan Hirsch, *Season of Hope: Economic reform under Mandela and Mbeki*, University of KwaZulu-Natal Press, Scottsville, South Africa, 2005, p102

As regards "gig" workers, imposing complex rules on the employers of such workers could result in fewer "gig" jobs being offered. This would curtail even this precarious form of employment and add to the joblessness crisis.

Overall, moreover, adding reams more rules to labour laws that are already unduly long, complex and onerous will do nothing to reduce the unemployment crisis in South Africa. It could well provide more work for labour consultants and the many additional officials that might be needed to inspect workplaces, monitor compliance and handle increased referrals to the CCMA. However, it will do nothing to help the millions of poorly skilled and inexperienced people increasingly desperate for jobs and the chance to earn their own income.

The GNU could have helped to usher in real reforms to labour legislation. Instead, it has fiddled at the edges by proposing a raft of changes that will help a little in some instances – but will mostly make the burden of excessive labour regulation even worse.

5 THE WAY FORWARD

The way forward lies, firstly, in jettisoning a flawed belief in redistribution and acknowledging the value in a proven formula for faster growth and increased prosperity. It also lies in moving with speed to implement major reforms to labour law.

5.1 Rejecting redistribution and embracing growth

The ANC and its allies in Cosatu and the South African Communist Party have long believed in large-scale redistribution. They seem to believe that prosperity will flow from "placing the state at the centre of the economy and heavily regulating businesses and market participants," while imposing a heavy tax burden on the economy and focusing on wealth extraction rather than wealth generation.[85]

However, the belief that poverty can be defeated through redistribution is profoundly mistaken – as South Africa's own experience has shown and many other countries have also found. In reality, poverty can be beaten only by fast economic growth. "Fortunately," as Dr Endres adds, "there is a formula for rapid growth. All the countries which have applied this formula have greatly boosted their wealth, brought prosperity to their people, and pushed poverty close to zero."[86]

The formula for success is set out in – and also confirmed by – the annual reports on economic freedom published by the Fraser Institute, a thinktank in Canada. For more than 30 years, these reports have demonstrated, on the basis of reliable data, that governments which allow free markets to function and intervene little in their economies achieve much higher rates of economic growth than governments which do the opposite – many of which are socialist states. The difference in annual growth rates between the nations that are economically the "most free" and those that are the "least free" has major real-world consequences for the prosperity and well-being of all their citizens.

In compiling its report, the Fraser Institute divides the countries it studies (165 in the most recent report, published in 2025) into four quartiles, depending on the degree of "economic

[85] Endres, "The IRR's Blueprint for growth: arming the pro-growth forces," 2026, op. cit., p. 7.
[86] Ibid, p. 6.

freedom" that they demonstrate. According to its 2025 report, a comparison of the "most economically free" countries with the "least economically free" shows that "the standard of living in the most economically free nations is far higher than in the least free." Among other things, "average incomes" in the most free countries are "6.2 times greater; the bottom 10% of incomes are 7.8 times greater; people tend to work seven fewer hours each week; people live about 17 years longer; far fewer children die in infancy; people are more satisfied with their lives; governments are less corrupt; and environments are cleaner."[87]

South Africa fortunately does not yet rank among the least free countries, but its ranking is diminishing. Writes Dr Endres: "The Fraser Institute ranked South Africa 83rd of 165 countries in its 2025 report, with a score of 6.61 out of 10 – tied with Oman but above Moldova. This places South Africa in the second quartile of the four economic freedom categories. As recently as 2013, it scored 7.00 and ranked 69th – 14 places higher than today. South Africa's economic freedom is shrinking apace, and economic growth is disappearing along with it."[88]

South Africa needs to achieve high rates of economic growth as rapidly as possible. As international experience confirms, this is the only way in order to lift millions of people out of poverty and give them the freedom – and the choices – they want and deserve. People may question how much can be achieved through growth and how long this may take. However, as Dr Endres points out, "The compounding effects of growth – where this year's growth builds on last year's growth, like a rolling snowball gathering snow – are hard to overstate. For example, in 1950 the Democratic Republic of Congo (DRC) and Sierra Leone were wealthier on a per capita basis than Taiwan and South Korea. Fast forward six decades to 2016, however, and per capita income had halved in the DRC and Sierra Leone. In stark contrast, Taiwan and South Korea, both former colonies of Japan, were no less than 30 times richer than in 1950 – all thanks to sustained economic growth."[89]

5.2 Making real reforms to labour laws

Again, time constraints prevent a full analysis of the real reforms required here. However, some idea of what is needed can be gained by looking again at the three issues earlier outlined – the national minimum wage, blanket cover and rules regarding dismissals – and sketching some essential changes that would have a major impact.

The millions more jobs urgently needed are unlikely to be generated without major reforms to these damaging labour laws. Both the National Minimum Wage Act and the LRA rules for the extension of bargaining council agreements need to be repealed altogether, so that they no longer price the unskilled and inexperienced out of the labour market. Since many jobless people would prefer to work for less than unrealistic NMW or bargaining council wage rates, their preferences should be respected.

At the very least, three meaningful exemptions from NMW and bargaining council rules should be allowed. First, all employers should be permitted to take a leaf out of the government's book and pay entry-level employees at the same hourly rate (R16.62) as the Expanded Public Works

[87] Gwartney, J, et al, Economic Freedom of the World: 2025 Annual Report, Fraser Institute, 25 September 2025, p. 1. https://www.fraserinstitute.org/studies/economic-freedom-world-2025-annual-report.
[88] Endres, "The IRR's Blueprint for growth: arming the pro-growth forces," 2026, op. cit., p. 8.
[89] Ibid, p. 7.

Programme (EPWP) provides. Second, the government should allow people – and particularly the unemployed – to opt out of the protection of these rules for two to three years, while they build up work experience and increase their potential value to employers.

Third, the 12 special economic zones (SEZs) the government has established at a cost of some R25bn should be permitted to exempt investors from these rules. As the Centre for Enterprise and Development (CDE) has pointed out, "SEZs offer a chance to try different approaches to economic policy because they are, by definition, places where different rules apply." At present, however, the tax and other concessions that SEZs offer are too limited to attract much more investment (which is why they have brought in only R31bn and created a mere 27,000 jobs).[90] More meaningful SEZ exemptions should thus be introduced – and exempting employers in SEZs from NMW and bargaining council rules would be a good start.

Rules regarding dismissals must also be reformed. Greater flexibility in the hiring and firing process is vital, as employers must be able to insist on sound performance and swiftly adjust to peaks and valleys in demand. Employers will thus hire freely only if they can dismiss freely too. The presumption that dismissals are unfair unless the employer can prove otherwise should be removed. Instead, employees alleging unfair discrimination should bear the burden of proving this. In addition, employers should be able to dismiss workers under the agreed notice periods included in their employment contracts.

In a hobbled economy unable to generate jobs on anything like the scale required, people have become increasingly desperate for work. In 1999, for instance, the South African National Defence Force advertised 650 posts for which some 51,000 people applied.[91] In May 2017 the Johannesburg Metropolitan Police Department advertised 1,500 new posts and received what it described as a "staggering" 65,000 applications – a telling testament to the "vast" unemployment rate in the city.[92] In June 2023 Gauteng premier Panyaza Lesufi advertised 8,000 job vacancies across various provincial departments as part of his "Nasi Ispani" (isiZulu for "here is a job") campaign and received an even more extraordinary 1.2 million applications.[93] (The Nasi Ispani initiative was terminated after the May 2024 election.)

As Ms Bernstein has written, unemployment is "a human tragedy affecting the future stability and prosperity of the nation. Unless bold reforms are implemented, South Africa will deepen the marginalisation of a vast underclass of permanently unemployed citizens."

The time for those bold reforms has come. The current Bills should be jettisoned and replaced by a new set of labour law amendments that sweep away the burden of coercive regulation and allow business and labour to negotiate and agree on suitable terms of employment without the state's intrusion. The freer the labour market becomes, the more growth and employment will accelerate. Moreover, the best guarantee of decent work is an economy that is doubling in size

[90] Bernstein, A, 'Let the private sector run our SEZs', Business Day, 6 May 2025: https://www.politicsweb.co.za/opinion/let-the-private-sector-run-our-special-economic-zo.

[91] The Star, 17 December 1999; see also The Daily News, 9 September 2009; The New Age, 25 February 2011.

[92] Longwe, L, 'JMPD positions: Staggering 65 000 applications received', 10 May 2017.

[93] Mahlati, Z, '1.2 million applications for 8 000 jobs: Panyaza Lesufi's jobs drive conundrum', News24, 14 July 2023: https://www.news24. com/news24/politics/government/12-million-applications-for-8-000-jobs-panyaza-lesufis-jobs-drive-conundrum-20230714.

every ten years – and in which the demand for labour is strong. That will give employees real bargaining power without any need for state coercion.

The more the economy is set free, the better off the poorest 10% of South Africans will become. This is one of the clearest lessons from Fraser Institute studies of economic freedom over many decades. It is time for the GNU to act on it – and for the Department too to recognise that the current amendments will not achieve the change that most South Africans so badly want and need.

South African Institute of Race Relations NPC **28 March 2026**