**DEPARTMENT OF LABOUR**

**REPORT ON PUBLIC COMMENT ON THE LABOUR RELATIONS AMENDMENT BILL, 2017**

**Section 32: Extension of collective agreements concluded in bargaining councils**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Section 32 | Organised labour strongly supports the provisions that enable the extension of collective agreements as envisaged in the amendments. | Noted. | **COSATU, FEDUSA, NACTU Joint Submission** |
| Section 32(3)(b) and (c ) | There is no ‘or’ between section 2(b) and (c).  The explanation in the Memorandum about what the amendment to section 32 seeks to achieve is not clear and there is no evidence in section 32 (or in section 49) of the distinction between representativeness and coverage introduced by the amendments. | This is not correct there is an ‘or ’between section 32(b)and (c) refer to previous. ‘Or’ has been inserted between 3 (b) and (c). | **Labour & Enterprise Policy Research Group, UCT** |
| Section 32(5)(a) and 49(4A)(b) | The two sections refer to each other for authority and neither provide criteria for the determination. | No need for criteria. These sections do not reference to each other. | **Labour & Enterprise Policy Research Group, UCT** |
| s.32 (2A) | Proposed wording is confusing and conflicts with s32(5).  Amendment flies in the face of majoritarianism and will protect entrenched interests. | This is a misreading of the amendments. There is no conflict with section 32(5) as the two sections are intended to deal with requests from parties that are representative and those that are only sufficiently representative. In the latter case, the Minister has discretion to extend an agreement in terms of section 32(5).  The majoritarian issue is dealt with in the Departments response to the comments submitted to the Portfolio Committee. | **Free Market Foundation** |
| Collective bargaining & section 32 amendments | NUMSA asserts that collective bargaining is under attack in councils such as the MEIBC and MIBCO.  The NUMSA submission accepts the proposed amendments to section 32 of the LRA. | Noted.  That is why we are making the changes in section 32 to protect collective bargaining. | **NUMSA** |
|  | **Adjusting representivity –** The effect of these amendments is that even if unions do not represent a majority of employees who are union members but as long as their “social partner”, the employers’ organisations, employ the majority of employees the Minister must extend collective agreements or the Registrar can agree to the establishment of a Bargaining Council.  Proposals:  Proposed amendments on strike ballots, default picketing rules, extended conciliation and advisory arbitration be scrapped.  The LRA to be amended to prevent employers from using scab labour during procedural strikes.  Reinstatement into the LRA of workers’ rights to strike over disputes of right.  Trade unions organise a majority of workers in a sector before the establishment of a bargaining council is permitted or for bargaining councilagreements to be extended to non-parties, without this being an equivalent requirement for employer. | The amendment to allow the Minister the extend a collective agreement where either the employer parties or the trade union parties are representative is intended to strengthen collective bargaining. The provision will ensure that conditions in sectors where bargaining councils exist can still be regulated through collective bargaining and thereby supports the objective of the LRA, namely to promote collective bargaining at sector level. The minister can only extend an agreement that has been agreed in terms of the BC constitution.  The proposals are noted. The proposals on strikes, balloting, picketing are intended to stablise the labour market.  This will be against government policy to stabilise the labour market  The amendments looks at any of the two parties. | **OXFAM** |
| S32(2A) | Reference to s32(5) is confusing as it contains additional criteria and it is not clear whether these criteria will apply. | Section 32 and the amendments to this section aim to clearly separate requests to extend collective agreement within a 60 day period where the request complies with the criteria contained in section 32 (3) versus requests where the Minister may exercise his/her discretion whether to extend a collective agreement after considering public comment.  The latter route allows for 90 days as per section 32(5) of the LRA. The criteria are not changed, but the majority status of the parties is the deciding factor. | **NEASA** |
| S32(3)(b) & (c) | The insertion of ‘or’ between (b) and (c) flies in the face of the majoritarianism principles on which collective bargaining is based. It will benefit large employers at the expense of SMME’s and may further the decline of trade unions. The proposal will not pass constitutional muster. | The amendment aims to strengthen collective bargaining arrangements through bargaining councils and is consistent with section 23(5) of the constitution. | **NEASA** |
| Deletion of 32(6)(b) | The deletion of this section will allow the Minister to extend the period of operation of agreements without having to adhere to the provisions of section 32(3) and (5). This would allow parties with low representativity to keep agreements alive with no legitimate right to do so. It will impact on the legal right of non-parties to be heard and will not pass constitutional muster. | The amendment seeks to ensure that agreements that enable the continued existence of a council, the delivery of its services and its benefit funds are not at risk due to the inability of parties to reach an agreement. Non-parties still have a remedy via the exemption process.  The deletion of 32(6)(b) is consequent on the insertion of s.32A. |  |
| Insertion of 32A | The amendment allowing for the extension of the period of operation of a funding agreement will infringe the constitutional and collective bargaining principle of majoritarianism and will infringe the voluntary nature of collective bargaining. | See above. |  |
| Insertion of s49(4A) | There seems to be an omission in this amendment as there is no reference to section 32(3)(b). | Section 49(4A)(a) amended to include “or s32(3) (b).” | **NEASA** |
| Insertion of s150 (A-D) | Drafting concerns are raised with regard to sections 150 A to D that relate mainly to cross-referencing. | Cross referencing has been checked and amended where necessary. |  |

**Section 32A: Renewal and extension of funding agreements**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Clause 2 | It is proposed that the new proposed sections 32A(4)(a) and (b) be reconsidered and redrafted as this is a restatement of the common law. The clause is unnecessary. | The common law does not address reviews of the Minister’s decision in relation to the extension of agreements. The applicability of decisions cannot be assumed to remain in force until set aside. There have been conflicting views in this previously. | **Provincial Minister of Economic Opportunities, WC Govt.** |

**Section 69 & section 95: Picketing and meaning of a ballot**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Section 95(9) & section 69 | CALS submits that the amendment in relation to clarifying the definition of secret ballots will reduce the autonomy of trade unions as well as to make it more burdensome to hold a protected strike and picket. CALS argues that this will have a disproportionate impact on women.  CALS also suggests that the requirement to have picketing rules will impair the right to protest. | Provision for a secret ballot is intended to ensure that individual union members are able to exercise their right to decide about strike action in a democratic manner. Strike action that is decided on democratically by a majority of those affected is unlikely to be accompanied by violence and intimidation.  Every strike must have picketing rules and parties may agree on their own rules other the default rules will apply. | **Centre for Applied Legal Studies (CALS)** |
| Section 69 subsection 4,5 and 6 (Picketing Rules) | The proposed amendments by expecting a CCMA Commissioner to deal with the wage disputes in conciliation and to apply his/her mind to the issue of picketing rules will impact on the duration of the conciliation process and place a huge burden on the already strained capacity of the CCMA.  Commissioners are far removed from the terrain of conflict, i.e. the workplace, and would tend to impose formal rules that have no relation to the workplace. Generic picketing rules are likely to lead to increased frustration and confrontation between workers, unions and employers.  SAFTU views the amendments to s.69 as an infringement on the right to strike as it bans picketing unless picking rules have been agreed or decided on by a Commissioner of the CCMA. | The amendment requires a commissioner to determine picketing rules in absence of an agreement on rules. This takes place in accordance with the prescribed rules, thereby ensuring that the task is easier for a Commissioner.  The 30 day period remains for conciliation remains, unless extended.  Picketing is not banned by the amendments. The LRA 711 referral form will make reference to the picketing rules. If no rules are agreed between the parties, default rules will be issued together with the certificate of non-resolution of the dispute.  The purpose of this limitation is to require trade unions to take responsibility for pickets to ensure that the constitutional rights of others are not infringed. The levels of picket line violence that has come to characterise strikes in the last few years requires more stringent regulation to ensure the orderly conduct of pickets during strike action. | **CALS**  **SAFTU** |
| Section 95- Secret balloting | Secret ballots undermine the essential collective decision making of a strike. The forced imposition of a secret ballot on strike action is a major restriction on the right to strike. It not only individualises an otherwise collective decision but more fundamentally it wrests from the control of workers their ability to choose their own democratic processes and procedures.  The introduction of compulsory secret ballots takes away the fundamental right that workers and unions should have to determine their own internal democratic processes.  The forced conducting of a secret strike ballot puts enormous obstacles in the way of organising effective strike action. Conducting secret ballots will put considerable organisational and institutional strain on trade unions at a time when they are already severely weakened. It exposes unions to an array of possible legal actions from employers who will have the opportunity to interdict strikes on the basis of how the secret ballot was conducted. | This provision applies to both trade union and employers’ organisation that they should provide in their constitutions for secret balloting. A secret ballot gives individual workers the final say in contributing to a decision that has major implications for them. This decision is central to good, democratic practice.  The provision for secret ballots in a constitution is already in the LRA and does not restrict the right to strike. |  |
| Strike Ballots | NUMSA rejects the “introduction of balloting before a strike” as a limitation of the right to strike.  SAFTU view the definition of ballot as a ‘back-door infringement’ on the right to strike.  Who organises the ballot? Many small unions will not have the capacity to organise such a ballot.  SAFTU demands the repeal of section 95 of the LRA. Unions who do not represent their members will be brought to book by those members. | The amendments to section 95 of the LRA clarify the definition of ‘ballot’ as any system of voting by members that is recorded and secret.  The requirement for a trade union to ballot arises from the LRA requiring the constitution of any trade union that seeks to register to make provision for the conduct of a ballot before calling a strike. This has been in the LRA since 1995.    Guidelines will be issued in relation to ballots, but trade unions could be assisted by the CCMA or an accredited agency to conduct ballots.  Section 95 deals with the requirements for registration of a trade union including the requirements of a union constitution. This section has been in place since 1995 and is key to the registration process. There have been a number of instances where union members have not been able to call their leadership to account and the checks and balances contained in section 95 are important to provide oversight of trade union activity by the Registrar of Labour Relations. | **SAFTU & NUMSA** |
| Ballots and advisory arbitration | Secret ballots prior to strike action are supported and the submission is made that the majority of unions elect leaders through secret ballots and vote on strikes through secret ballots.  An earlier draft of the bill required a ballot on offers made by employers and this is rejected by organised labour. | Noted. | **COSATU, FEDUSA, NACTU Joint Submission** |
|  | **Secret ballots** undermine the essential collective decision making of a strike. The forced imposition of a secret ballot on strike action is a major restriction on the right to strike. The forced conducting of a secret strike ballot puts enormous obstacles in the way of organising effective strike action. Conducting secret ballots will put considerable organisational and institutional strain on trade unions at a time when they are already severely weakened. It exposes union to an array of possible legal action from employers. The proposed change provides employers with more tools through which to disrupt strike action.  **Picketing rules,** will prevent the CCMA commissioner from being allowed to issue a certificate of non-resolution of a mutual interest dispute unless there is an agreement on these rules. The amendment will allow this to continue to take place but in instances where agreement cannot be reached the amendment will empower the Commissioner to determine the picketing rules. Commissioners are far removed from terrain of conflict, i.e. the workplace, and would tend to impose formal rules that have no relation to the workplace. Generic picketing rules are likely to lead to increased frustration and confrontation between works, unions and employers. | The amendments to the LRA do not impose an obligation to conduct a secret ballot prior to strike action. The amendments clarify the definition of a secret ballot, but the provision for TU constitutions to contain a clause requiring balloting prior to strike action is already in the law.  The conduct of a ballot is good practice in that allows affected workers to express their views regarding strike action. A number of trade unions do carry out ballots and it should be possible for all to do so.  The failure to conduct a secret ballot does not invalidate the protected status of a strike or lockout.  The lack of agreement on picketing rules will not prevent the Commissioner from issuing a certificate of non-resolution as he/she may issue default rules. There is no evidence that the default rules will frustrate workers, as they will specify minimum requirements for pickets. The solution lies in ensuring agreement on the picketing rules between the affected parties. | **OXFAM** |

**Section 127 & 128: Accreditation of agency and council**

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| Section 127 & 128 | According to the memorandum on the objects of the proposed amendments to the Labour Relations Act (the Act), the amendments to section 127 provide that a council or accredited agency may apply for the accreditation of its dispute resolution panel.  This amendment must also be read with the proposed amendment to section 128 that will now allow for a council accredited to perform dispute resolution functions to only appoint a person to resolve a dispute if that person is accredited by the governing body of the commission.  It is believed that such amendments may be contrary to the provisions of the power and functions of a bargaining council as listed in section 28 of the Act.  By interpretation bargaining councils do not have to seek accreditation from the governing body as contemplated in section 127 for disputes of those parties as defined in section 51 of the Act. It is accepted that accreditation is only required for those disputes where one of the parties may not be a party to the bargaining council. Commonly referred to as non-party disputes.  The discretion and the right to appoint a panel of conciliators and arbitrators for council disputes and indirectly accrediting those persons to perform such functions, is solely that of the council. It cannot be by decision of the governing body.  These amendments have critical implications for bargaining councils that would want to comply with the concept of accreditation for purposes of good governance, not forgoing their right to perform dispute resolution functions to parties of council as provided for in the Act. It also has a direct implication on the State in relation to span and control of dispute resolution functions.  To prevent ambiguity in the interpretation of the Act it is suggested that the proposed amendment of subsection 1 be worded as follows;  “Any council or private agency may apply to the governing body in the prescribed from for accreditation [and] or for accreditation of its dispute resolution panel to perform any of the following functions-“  Furthermore that section 128, subsection 3 be worded as follows;  “(3)(a)(i) An accredited council may confer on any person who is accredited by the governing body and appointed by the council to resolve a non-party dispute or to resolve a dispute not provided for in the constitution of that council, the powers of a commissioner in terms of section 142, read with the changes required by the context.” | The amendment is intended to give authority to the CCMA for accreditation and not to interfere with other aspects of a Councils dispute resolution functions. Accreditation by the CCMA should apply both to the Council as the dispute resolution agency and to the panellists of the Council. This does mean that the CCMA appoints panellists. This is the same as the body that register auditors.it register the company and Auditors. | **PSCBC** |
| Section 127 | CAPES is not in favour of the CCMA Governing Body accrediting bargaining council panellists. They argue that this power should remain with the agency. | Noted. This has been addressed in the Departments response to the same comment by the BCCEI and the PSCBC. The amendment is intended to give authority to the CCMA for accreditation of panellists to ensure that the same standards of dispute resolution are adhered to by all agencies concerned. | **CAPES, Corning (Pty) Ltd.** |
| Section 127 & 128 | The amendments to sections 127 and 128 will undermine the objectives of the LRA and will negatively impact on bargaining councils and private agencies. The amendments effectively prescribe to councils and agencies how to run their internal affairs.  The dispute resolution industry has established the Dispute Settlement Accreditation Council (DISAC) which they intend to register as a professional body to regulate their affairs.  For the CCMA to accredit commissioners as well as panellists will place an unnecessary burden on the CCMA.  The proposed amendments to these sections are contested and Tokiso would like to see them left out. | The intention of the LRA is to ensure that the CCMA is the standard setter for dispute resolution. The amendment is aimed at giving effect to this by formalising authority of the Governing Body to accredit panellists of bargaining councils. The accreditation of councils and panellists is not intended to interfere with self-governance of a council’s dispute resolution process, but it will require panellists to be accredited and qualified according to the standards set by the CCMA. | **Tokiso** |
| Section 127 & 128 | The CCMA welcomes the amendment as it will enable it to properly monitor the competency and compliance levels of the panellist members performing accredited functions on behalf of the Councils and/or Agencies.  The CCMA notes that there is no corresponding power to withdraw such accreditation which may give rise to disputes relating to the actual power of the CCMA to withdraw such accreditation thus limiting the power of the CCMA to monitor compliance with accreditation terms and/or conditions. A further amendment to section 130 is proposed to achieve this. | Noted.  Section 130 to be amended accordingly: “If an accredited council, accredited agency or panellist fails to comply to a material extent with the terms of its accreditation, the governing body may withdraw its accreditation after having given reasonable notice of the withdrawal to that council, accredited agency and/or panellist.” | **CCMA** |
| Section 127 | Powers of Governing Body should not include the vetting of accredited agencies dispute resolution panels.  LRA should have a clear right for an employer to approach the Labour Court for an interdict declaring a strike unprotected where there is violence and intimidation. |  | **Hilton Green Consulting** |
| Section 127 & 128 |  | The intention of the LRA is to ensure that the CCMA is the standard setter for dispute resolution. The amendment is aimed at giving effect to this by formalising authority of the Governing Body to accredit panellists of bargaining councils. The accreditation of councils and panellists is not intended to interfere with self-governance of a council’s dispute resolution process, but it will require panellists to be accredited and qualified according to the standards set by the CCMA. | **BCCEI** |
| Section 127 | Powers of governing body should not include vetting of accredited agencies dispute resolution panels. Such power should remain with the agency. | See comment above in relation to BCCEI and the intention for the CCMA to be able to set standards for agencies and panellists and accredit accordingly. | **SA Home Textile Manufacturers Employers’ Organisation** |

**Section 135: Resolution of disputes through conciliation**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Section 135 | This amendment is confusing.  It is not clear if the amendment intends to prevent prolonged postponement of matters at conciliation or does it provide for a mechanism where the director believes, where reasonable prospect exist, a further postponement of the conciliation, for not more than 5 days, will result in the matter being resolved, he/she may then arbitrarily decide to postpone the matter?  It is also not understood why a matter will be postponed by the director if a party refuse to agree to such extension, being unreasonable or not, as the party will still return after 5 days with no settlement.  Subsection 2(A), is also not clear what happens if the parties diaries does not allow them to convene within or on the 5th day? It also does not consider the already published case roll of the CCMA or a bargaining council for the 5th day or any other day before then.  It is suggested that the proposed insertion of section 2(A) be deleted in its entirety.  It’s noted that section 2(C) allows for the exclusion of the application where the State is the employer. This is welcomed. However the note in the memorandum that states that “no extensions is however permitted where the state is the employer”, cannot be correct as a blanket provision. Extensions is provided for in terms of the dispute resolution procedures and rules of those bargaining councils where the state is the employer. | The intention of the amendment is simply to allow for a further extension to the conciliation period. As the comment notes, this does not apply to the state as employer which is confirmed by the Memorandum. | **PSCBC** |
| Section 135 subsection 2A, B | The amendment proposes the possibility of extending conciliation. The speedy processing of mutual interests disputes is vital. The extension of conciliation will merely frustrate the ability of workers to exercise their right to strike. It will also allow employers more time to prepare for strike action through stockpiling and organising scab labour. | The possibility of a further extension to the conciliation process is intended to provide for more time where there are reasonable prospects of reaching an agreement. This would give added meaning to effective conciliation. |  |
|  | **Extending conciliation** in the event of strikes becomes possible if the amendments are enacted and this will frustrate the ability of workers to exercise their right to strike. The speedy processing of mutual interest disputes is critical, and this is facilitated by swift conciliation. | The intention of the provision for conciliation to be extended by 5 days is not to frustrate trade unions and workers but to provide an opportunity for a settlement to be reached when there are good prospects for this to happen. | **OXFAM** |

**Section 150A, 150B, 150C and 150D: Matters concerning the advisory arbitration panel**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Sections 150A, 150B, 150C and 150D | The principle of introducing advisory arbitration is one that is supported. Parties need to have an alternative mechanism to “unlock” deadlocks. However this cannot be done at the cost of the ideologies of our labour legislation.  Section 150A (1) (a) reads as follows; *“…..on the directors own accord or on application of one of the parties to the dispute;”* – Our labour legislation is build on the principle of majoritarianism. The request for advisory arbitration must therefore also be based on the principle of the majority party. The majority of parties cannot be bound by the “request” of the minority. The principle should also be read and understood in the wording of subsection 3 (b).  It is recommended that the clause be amended to reflect the following;  Section 150A (1) (a) to read as follows; “…..on the directors own accord or on application of one of the parties to the dispute, in the case of a labour party requesting the facilitation, such request must have the agreement of the majority of labour parties to the dispute;” The wording in clause 3(b) to be amended within the same context.  Section 150A (1) (a) reads as follows; *“…..on the directors own accord or on application of one of the parties to the dispute;”*- A legal understanding that might be challenging in the interpretation of law is created by allowing for the Director on his own accord to appoint a panel to conduct the advisory process in subsection 1, while in subsection 3 the right for the panel to facilitate a resolution of the dispute excludes the principle of by “own accord” of the director.  It is recommended that the clause be amended to reflect the following;  Section 150A (1) (a) to read as follows; “…..[on the directors own accord or] on application of one of the parties to the dispute, in the case of a labour party requesting the facilitation, such request must have the agreement of the majority of labour parties to the dispute;”  Subsection (2) read as follows; *“the panel contemplated in subsection (1) must facilitate a resolution of the dispute at any time after a commissioner has issued a certificate of unresolved dispute under section 135(5)(a) or a notice of the commencement of the strike or lockout contemplated in section 64(1)(b),(c) and (d), whichever is the earlier.”* By a layman’s reading this implies that before employees has gone out on strike the panel “must” facilitate the resolution of the dispute as long as one of the activators in subsection 1 is present and whichever occurs at the earliest date. This does also not read well with sub clause 4 (a) that requires the strike or lockout to be no longer functional.  Subsection (3) reads as follows; “(3) Subject to subsection (3), the panel may only……..” – The referencing to subsection (3) should be “subsection (4)”. Furthermore clause (c) in subjection 3, makes reference to subsection (4) that should read subsection (5).  Subsection (4) allows for the director to appoint a panel in terms of subsection 3 (a) and (b) if the director has reasonable grounds to believe that one or more of the listed circumstances exist. Does this by implication mean that even if “directed to do so by the Minister” the Director still has the discretion to disregard the “direction” of the Minister. If so clause 3 (a) should rather be amended to read; “if [directed] requested to do so by the Minister” Alternatively the right “to believe” should be limited to only clause 3(b).  Subsection (5) the reference to subsection (2) (c) should be corrected. The section has no subsection (2) (c).  Section 150B subsection 6 refers to section 150A (2) (a) to (c). Subsection 150A has no subsection 2.  Section 150C (3) refers to the publication of the award in terms of subsection (6), it should read in terms of subsection (7).  Section 150D 1(b) refers to subsection 3 or 5(b), the reference to 5(b) is not understood.  It is also not clear how the insertion of sections 150A-D will be applicable to the State.  There should be a broader consideration of the implication of the process of an advisory award, read with the provisions of the Labour Relations Act specifically referring disputes within essential services (within the State) to parliament for endorsement. Consideration should also be given to the powers and functions of the Minister for Public Service and Administration in determining conditions of service for the public service and how an advisory award published by the Minister of Labour may impact on the same. | The main proposal that a request for an advisory arbitration should be by a majority of the parties would defeats the purpose of the amendments. It is intended to trigger an advisory arbitration in the public interest if the conditions specified in the bill are present. The amendment will apply to the public sector as much as it will to private sector. There should be no additional requirements for public sector disputes where an advisory arbitration process is triggered.  The department agrees that references must be corrected. | **PSCBC** |
| Section 150 | The composition of the advisory arbitration panel should be extended to a person or association of persons who may have a vested interest in the dispute. | A person or association of persons materially affected by a strike or lockout may apply to the Labour Court for an order to have an advisory arbitration panel appointed. The composition of the panel need not change, however, as the panel members as envisaged in the amendments will be required to have the relevant expertise in arbitrating in the dispute. | **SAIPA** |
| Sections 150A, 150B, 150C & 150D | The proposed amendments to advisory arbitration introduce further frustrations to the right to strike.  The circumstances under which an advisory arbitration panel can be convened are extremely broad which includes if a director of the CCMA deems the strike as ‘no longer functional to collective bargaining’. This enables a director of the CCMA to make a decision to effectively end a strike based on their own opinion. This fundamentally compromises the right to strike.  Furthermore, as employers can request advisory arbitration it provides them with another tool with which they can drag workers and unions into a process that will frustrate workers and unions. Employers will exploit advisory arbitration as a way in which to prevent and stop strikes as they can apply for advisory arbitration as soon as a strike certificate is issued.  The process of advisory arbitration will mean that unions are now expected to involve experts and technically inclined personnel to engage in the deliberations of the advisory arbitration panel. Collective bargaining will become more technical in character and far removed from the control and direction of workers.  Further the reluctant union has to indicate whether it agrees or disagrees with the advisory arbitration recommendations. Where the union rejects the recommendations it is obliged to provide reasons and must demonstrate that its rejections are based on a mandate from its workers. This will once again open unions up to interdicts and legal challenges from employers who will demand proof of the way in which the mandate was arrived at.  Further, if unions do not respond the arbitration becomes binding. At a time when union capacity is weak the likelihood of non-response is high, even when the substantive issues in the dispute are completely legitimate.  In cases where already non-representative trade unions who are parties to bargaining councils accept the advisory arbitration recommendations these will become collective  agreements, which can then be extended to an entire sector. This means thousands of workers who are not members of trade unions will be bound by agreements from disputes they were not part of and decisions from which they were excluded. | The provision for advisory arbitration is intended to come into effect after a strike has commenced and only in the particular circumstances indicated in the new section 150A(4). It does not interfere with the right to strike, nor can it be used to stop strikes. The award is not binding nor does it interrupt a strike.  The advisory award is intended to offer an impartial view of what may be a reasonable settlement to a dispute. It is intended as a constructive, non-binding input to the parties to the dispute in an attempt to facilitate a settlement. |  |
| Clause 16 | In relation to section 150A(2), clarity is sought on whether the parties may still proceed to arbitrate a dispute independently of the advisory arbitration envisaged in the new section 150A.  What effect will the envisaged advisory arbitration have on bargaining council arbitration rules. | Yes. The provision for advisory arbitration in the public interest will apply only to strike action or a lockout where the circumstances outlined in section 150A(4) apply.  The advisory arbitration panels and any rules that may apply to them will exist in parallel to arbitration rules that are in place in the CCMA and bargaining councils. The proposed amendments to section 150 are intended to provide a way or resolving strikes that are intractable, violent or may cause a local or national crisis and do not apply to disputes that go to arbitration in terms of existing provisions of the LRA. | **Provincial Minister of Economic Opportunities, WC Govt,** |
|  | Organised labour is comfortable with the provision for advisory arbitration. | Noted | **COSATU, FEDUSA, NACTU Joint Submission** |
|  | **Advisory arbitration** will introduce further frustration to the right to strike. The circumstances under which an advisory arbitration panel can be convened are extremely broad. This includes if a director of the CCMA deems the strike as ‘no longer functional to collective bargaining’. This enables a director of the CCMA to reach a decision to effectively end a strike based on their own opinion. This fundamentally compromises the right to strike. Allowing employers to request advisory arbitration, provides them with another tool with which they can drag workers and unions into a process that will frustrate workers and unions.  Employers will exploit advisory arbitration as a way in which to prevent and stop strikes as they can apply for advisory arbitration as soon as a strike certificate is issued. | The introduction of an advisory panel as per the amendments to section 150 will not end a strike, nor does it compromise the right to strike. The intervention is intended to provide a tool to assist parties to settle difficult disputes that result in prolonged strike action. | **OXFAM** |
| Conciliations and arbitrations | What evidence does the Director of the CCMA require prior to convening a panel? This is in relation to the new section 150A(4).  The system is open to abuse by employers.  How does a union of 400,000 members consult its members on whether to accept or reject an advisory award.  If it is not rejected, the advisory award becomes binding. | The circumstances outlined in section 150A(4) are recognised by the ILO as grounds for intervention in strike situations by the State. The intervention to establish a panel and make an advisory award is in accordance with ILO jurisprudence and the award does not suspend the strike.  A union will, first of all, have to consult in terms of the requirements of its constitution.  Not all union members are required to accept or reject an advisory award, but only those who participate in a particular strike.  The award only become binding if one or more of the trade unions party to the dispute accept or are deemed to have accepted the award and if a bargaining council, in accordance with section 31, applies to the Minister to have the award extended. | **SAFTU** |

**General Principles**

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| **Section** | **Comment** | **Response** | **Comment by** |
| General Principles | Recommended that envisaged measures not be proceeded with.  Should be included in a comprehensive response to the former President’s call for job creation.  High levels of job security have costly consequences.  Small firms and complex regulations.  Inflexibility of labour laws.  Regulatory bias against employment of low-skilled workers. | Noted. The submission makes general arguments and assumptions that do not address the amendments and their intentions directly. | **Free Market Foundation** |

**Accord and Code**

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| **Section** | **Comment** | **Response** | **Comment by** |
| Accord and Code | NUMSA rejects the Accord on Collective Bargaining and Industrial Action and the Code of Good Practice on Collective Bargaining, Industrial Action and Picketing. It does so on the basis that it views the Accord and Code as placing the blame for violence during strikes on workers. | The Accord seeks a commitment from parties to take necessary steps to prevent violence during strike action. The Code is intended as a guide to assist parties to build capacity for strengthening collective bargaining and ensuring proper conduct during picketing and strike action. NUMSA’s rejection of these is noted. | **NUMSA** |

**CCMA Rules**

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| **Section** | **Comment** | **Response** | **Comment by** |
| CCMA Rules | Limitations on representation at the CCMA by commissioners is questionable. Everyone is equal before the law and should benefit from it  The submission provides an interpretation of the rule of law in order to make an argument against the exclusion of certain persons from being able to represent in matters at the CCMA. Professionals are cited as a case in point. | The submission goes beyond the scope of the Bills and concerns the Rules of the CCMA. | **V Phillips** |

**General**

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| **Section** | **Comment** | **Response** | **Comment by** |
| General | Agency shop should be abolished as it disadvantages employees.  Better communication in the form of secret ballots at workplaces.  Grievance procedure needs to be strengthened with punishable offences to accounting officers of labour unions as well. | Comments are noted. They are beyond the scope of the current amendments although the provision for secret ballots is dealt with in the Transitional provisions to the LRA. | **ZS Ntshudu** |
| General | The LRA should have a clear right to approach the Labour Court for an interdict declaring a strike unprotected where there is violence and intimidation during a strike. | Such a provision could interfere with the right to strike. | **CAPES, PSCBC** |
| General | Endorsement of submission by organised labour | The Community Constituency endorses the submission by organised labour and highlights a number of points contained in the Labour submission. The Community Constituency also expresses support for Labour’s recommendation on the “inclusion of bargaining councils for low wage sectors.” | **NEDLAC Community Constituency** |
| General | Propose amendments to the strike ballots, default picketing rules, extended conciliation and advisory arbitration be scrapped.  The LRA be amended to prevent employers from using scab labour during procedural strikes.  Reinstatement into the LRA of workers’ right to strike over dispute of right  CWAO proposes that it become mandatory for labour inspectors to consult with and account to workers when workplace inspections are carried out.  Enforcement of workers’ rights to remain the responsibility of a completely overhauled labour inspectorate with increased skilled personnel and extended powers of enforcement of compliance orders. | See comments above and further comments noted. | **CWAO** |
| General | LRA should have a clear right to approach the Labour Court for an interdict declaring a strike unprotected. | Such a right is likely to limit the right to strike and is open to abuse. | **CAPES** |
| General | Agency shop should be abolished as it disadvantages employees.  Better communication in the form of secret ballots at workplaces.  Grievance procedure needs to be strengthened with punishable offences to accounting officers of labour unions as well. | Comments are noted. They are beyond the scope of the current amendments although the provision for secret ballots is dealt with in the Transitional provisions to the LRA. | **ZS Ntshudu** |
|  | Strike notices – SAFTU contends that the current requirement to give notice is an infringement on the right to strike. Amendments include new rules for strike notices which place more obstacles in the path of workers in dispute. | The LRA currently requires 48 hours notice in writing to the employer in the event of a strike. This is a procedural requirement that is required for a protected strike to take place and does not infringe the right to strike.  The amendments do not introduce new rules for strike notices, but the amendment to section 69(6A) requires that picketing rules be issued at the same time as issuing a certificate of non-resolution of a dispute. | **SAFTU** |
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**Drafting Omissions**

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| **Section** | **Comment** | **Response** | **Comment by** |
| LRA | Business submits that consideration should be given to the following in order to give effect to the NEDLAC agreement:   * Advisory arbitration – the process is not adequately regulated with regard to situations where there may be more than one union and employer party to the dispute. How are assessors appointed in multi-party situations? What are the procedures where one union accepts the award or is deemed to have done so. Will others be bound or not by the award? * Subsection 150D(1) – no corresponding provision whether the employer party to the dispute is an employer, rather than an employers’ organisation. | Further regulation to deal with multi union or employer situations will not be necessary. In the case of a bargaining council, the decision of parties will follow the council decision making procedure. In the case of other workplaces, decision making will be by consensus for an award to be accepted or rejected. Section 150C(8) makes further provision for a panel to reconvene to mediate a settlement if required. This could also apply to multi-party situations.  Section 150D also specifies the effect of an award on other parties. | **BUSA** |