REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

No. 1198. 16 July 1993

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

No. 102 of 1993: Public Service Labour Relations Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1198. 16 Julie 1993

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

No. 102 van 1993: Wet op Arbeidsverhouding vir die Staatsdiens, 1993.

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

ACT

To regulate anew labour relations in the Public Service, including collective bargaining at central and departmental levels, the registration, recognition and admission of employee organizations, and the prevention and settlement of disputes of a collective and individual nature between the State as employer, its employees and employee organizations; and to provide for matters connected therewith.

(Afrikaans text signed by the Acting State President.)
(Assented to 28 June 1993.)

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

Definitions

1. In this Act, unless the context otherwise indicates—

(i) "admitted employee organization" means any employee organization referred to in section 26(5) and (6), as well as any other employee organization admitted to a chamber of the Council in terms of the provisions of section 10; (xxviii)

(ii) "agreement" means an agreement in writing which is concluded in any chamber of the Council as contemplated in sections 12(7) and 13; (xx)

(iii) "central" or "central level" means the ambit of the power of the State as employer with regard to—

(a) matters in respect of which the Commission has the power to make recommendations or give directions, the expenditure in respect of which, if any, the Department of State Expenditure has the power to approve; and

(b) those matters on which a particular department has the power to act on behalf of departments; (xxv)

(iv) "classified information" means any document, model, article or information contemplated in section 4(1)*(b)*(iv) of the Protection of Information Act, 1982 (Act No. 84 of 1982), or any other document or information the disclosure of which would prejudice effective public administration; (xii)

(v) "Commission" means the Commission as defined in section 1(1) of the Public Service Act; (xiv)

(vi) "Commission for Administration Act" means the Commission for Administration Act, 1984 (Act No. 65 of 1984); (xxxvii)

(vii) "Council" means the Public Service Bargaining Council established by section 5(1); (xxiii)

(viii) "department" means a department as defined in section 1(1) of the Public Service Act; (viii)

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om arbeidsverhoudinge in die Staatsdiens opnuut te reël, met inbegrip van kollektiewe bedinging op sentrale en departementele vlakke, die registrasie, erkenning en toelating van werknemerorganisasies, en die voorkoming en beslegting van geskille van 'n kollektiewe en individuele aard tussen die Staat as werkgewer, sy werknemers en werknemerorganisasies; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Waarnemende Staatspresident geteken.)
(Goedgekeur op 28 Junie 1993.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

(i) "aangeleenthede van onderlinge belang", behoudens artikel 4(14), alle aangeleenthede binne die bevoegdheid van die werkgewer met betrekking tot indienshouding, die werkgewer-werknemerverhouding, met inbegrip van, maar nie beperk nie tot, bedinge en voorwaardes van diens, dissiplinêre en grieweprosedures en verwante prosedures, werknemerkompensering, besoldiging en diensvoordele, soos daarvoor in die beleidsraamwerke voorsiening gemaak word; (xxiii)

(ii) "ampsdraer" 'n ander persoon as 'n amptenaar wat enige amp in 'n werknemerorganisasie, werkgewerorganisasie of federasie beklee, en ook 'n ander lid as 'n lid *ex officio* van 'n komitee van so 'n organisasie of federasie; (xxvi)

(iii) "amptenaar" enige personeellid van 'n werknemerorganisasie, werkgewerorganisasie of federasie in diens as sekretaris, assistent-sekretaris of organiseerder van sodanige organisasie of federasie of in enige ander amptelike hoedanigheid, hetsy sodanige personeellid in 'n heeltydse hoedanigheid in diens is, al dan nie; (xxvii)

(iv) "Arbeidsappèlhof" die hof ingestel by artikel 17A(1) van die Wet op Arbeidsverhoudinge; (xix)

(v) "beleidsraamwerk" daardie voorskrifte, maatreëls en bepalings bepaal by hierdie Wet, die Staatsdienswet, die Staatsdiensregulasies, die Staatsdienspersoneelkode en enige ander voorskrif van die Kommissie, en enige ander wet en voorskrif ingevolge waarvan die werkgewer mag handel; (xxix)

(vi) "besoldiging" salarisse, lone, bonusse, besoldigende toelaes en betaling vir oortyd, met inbegrip van die bepaling van die grondslae en koerse daarvan, betaalbaar aan werknemers in ruil vir die uitvoering

(ix) "departmental level" means the ambit of the power of the State as employer regarding matters within the power or duty of a head of department or heads of department grouped together or acting in association; (ix)

(x) "employee" means an officer or employee as defined in section 1(1) of the Public Service Act, and includes, for the purposes of sections 18, 22(2)*(a)*, 23, 24 and 25, as well as section 22 in so far as it pertains to the said sections, a person who was such an officer or employee, but does not include—

(a) a person employed in terms of an Act other than the Public Service Act; and

(b) a person whose salary and conditions of employment are determined according to general education policy in terms of section 2(1)*(b)* and (2) of the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984); (xxxiii)

(xi) "employee compensation" means payments, including reimbursements, and services to employees so as to prevent personal losses by them, whether monetary or otherwise, in the execution of their duties or in acting upon instructions of the employer; (xxxiv)

(xii) "employee organization" means an organization which consists wholly or partly of a number of employees in a department, organizational component, institution, trade or occupation formally associated together and organized in a staff association or trade union for the purpose, whether by itself or with other purposes, of regulating relations between themselves or some of them and their employers or some of their employers; (xxxv)

(xiii) "employer" means the State as employer as represented—

(a) at central level, by representatives appointed for that purpose by the responsible Minister; and

(b) at departmental level, by representatives appointed for that purpose by the head of department concerned; (xxxi)

(xiv) "employer organization" means any number of employers associated or grouped together for the purpose, whether by itself or with other purposes, of regulating relations between themselves or some of them, and their employees or some of their employees; (xxxii)

(xv) "essential service" means a service contemplated in section 20(1); (xvii)

(xvi) "head of department" means a head of department as defined in section 1(1) of the Public Service Act, or his authorized representative; (x)

(xvii) "headquarters" means the city, town or place where the principal duties of an employee are or have to be performed or which may be indicated as his headquarters by his head of department; (xiii)

(xviii) "Industrial Court" means the court established by section 17 of the Labour Relations Act; (xviii)

(xix) "Labour Appeal Court" means the court established by section 17A(1) of the Labour Relations Act; (iv)

(xx) "Labour Relations Act" means the Labour Relations Act, 1956 (Act No. 28 of 1956); (xxxvi)

(xxi) "lock-out" means any one or more of the following acts or omissions by the employer or a person who has been the employer:

(a) The exclusion by him of any number of employees who are or persons who have been in his employ, from any premises on or in which work provided by him is or has been performed; or

(b) the total or partial discontinuance by him of his activities or of the provision of work; or

(c) the breach or termination by him of the contracts of employment of any number of employees in his employ; or

(d) the refusal or failure by him to re-employ any number of persons who have been in his employ,

if the purpose of that exclusion, discontinuance, breach, termination, refusal or failure is to induce or compel any employees who are or any persons who have been in his employ or are or have been in the employ of other employers—

(i) to agree to or comply with any demands or proposals concerning terms or conditions of employment or other matters made by him or

van hul toegewese take en hul nakoming van die werkgewer se gedragskode; (xxxiii)

(vii) "bestuurskader" daardie groep werknemers wat die poste van direkteur of die hoër of gelykwaardige poste beklee wat die Kommissie bepaal; (xxii)

(viii) "departement" 'n departement soos omskryf in artikel 1(1) van die Staatsdienswet; (viii)

(ix) "departementele vlak" die omvang van die bevoegdheid van die Staat as werkgewer rakende aangeleenthede binne die bevoegdheid of plig van 'n departementshoof of departementshoofde wat saam gegroepeer is of saam optree; (ix)

(x) "departementshoof" 'n departementshoof soos omskryf in artikel 1(1) van die Staatsdienswet, of sy gemagtigde verteenwoordiger; (xvi)

(xi) "diensvoordele" voordele, artikels in *natura*, en geld, uitgesonderd besoldiging en werknemerkompensering, voorsien aan werknemers in ruil vir die uitvoering van hul toegewese take en hul nakoming van die werkgewer se gedragskode; (xxxv)

(xii) "geklassifiseerde inligting" enige dokument, model, voorwerp of inligting beoog in artikel 4(1)*(b)*(iv) van die Wet op die Beveiliging van Inligting, 1982 (Wet No. 84 van 1982), en ook enige ander dokument of inligting waarvan die openbaarmaking afbreuk aan doeltreffende staatsadministrasie sal doen; (iv)

(xiii) "hoofkwartier" die stad, dorp of plek waar die vernaamste werk van 'n werknemer verrig word of verrig moet word, of wat deur sy departementshoof as sy hoofkwartier aangewys word; (xvii)

(xiv) "Kommissie" die Kommissie soos omskryf in artikel 1(1) van die Staatsdienswet; (v)

(xv) "lid" 'n werknemer wat 'n volwaardige lid van 'n werknemerorganisasie is en enige intreegeld wat in die konstitusie van die organisasie voorgeskryf word, betaal het en nie meer as drie maande agterstallig is nie met die betaling van die ledegeld wat ingevolge genoemde konstitusie betaalbaar is; (xxiv)

(xvi) "Minister" 'n Minister of 'n Administrateur soos omskryf in artikel 1(1) van die Staatsdienswet, of sy gemagtigde verteenwoordiger; (xxv)

(xvii) "noodsaaklike diens" 'n diens bedoel in artikel 20(1); (xv)

(xviii) "Nywerheidshof" die hof ingestel by artikel 17 van die Wet op Arbeidsverhoudinge; (xviii)

(xix) "onbillike arbeidspraktyk" enige handeling of versuim, uitgesonderd 'n staking of 'n uitsluiting, wat die uitwerking het of kan hê dat—

(a) enige werknemer of klas werknemers onregverdig daardeur geraak word of kan word of dat sy of hul werkgeleenthede of werksekerheid daardeur benadeel of in gevaar gestel word of kan word;

(b) die aktiwiteite van enige werkgewer of klas werkgewers onregverdig daardeur geraak of ontwrig word of kan word;

(c) arbeidsonrus daardeur geskep of bevorder word of kan word;

(d) die arbeidsverhouding tussen werkgewer en werknemer nadelig daardeur geraak word of kan word; of

(e) die beginsels beoog in artikel 4(1) tot (15) nie nagekom word nie; (xxxvii)

(xx) "ooreenkoms" 'n geskrewe ooreenkoms aangegaan in enige kamer van die Raad soos beoog in artikels 12(7) en 13; (ii)

(xxi) "organisasiekomponent" 'n organisasiekomponent bedoel in artikel 6(1) van die Staatsdienswet; (xxviii)

(xxii) "perseel" enige grond, gebou of struktuur deur die Staat besit, gehuur of geokkupeer en ook enige voertuig, vliegtuig, vaartuig of boortoring; (xxx)

(xxiii) "Raad" die Staatsdiensbedingingsraad ingestel by artikel 5(1); (vii)

(xxiv) "Registrateur" 'n persoon aangestel of aangewys deur die kamer van die Raad op sentrale vlak om as Registrateur ingevolge die bepalings van hierdie Wet op te tree; (xxxii)

(xxv) "sentrale" of "sentrale vlak" die omvang van die bevoegdheid van die Staat as werkgewer met betrekking tot—

on his behalf or by or on behalf of any other employer or person who is or has been an employer; or

(ii) to accept any change in the terms or conditions of employment; or

(iii) to agree to the employment of a person or the suspension or termination of the employment of any employee; (xxix)

(xxii) "management echelon" means that group of employees who hold the posts of director or higher or equivalent posts determined by the Commission; (vii)

(xxiii) "matters of mutual interest" means, subject to section 4(14), all matters within the power of the employer related to employment, the employer and employee relationship, including, but not limited to, terms and conditions of employment, disciplinary and grievance procedures and related procedures, employee compensation, remuneration and service benefits, as are provided for in the policy frameworks; (i)

(xxiv) "member" means an employee who is a member in good standing of an employee organization and who has paid any entrance fee laid down in the constitution of the organization and is not more than three months in arrears with the payment of the membership fees payable in terms of the said constitution; (xv)

(xxv) "Minister" means a Minister or an Administrator as defined in section 1(1) of the Public Service Act or his authorized representative; (xvi)

(xxvi) "office-bearer" means a person, other than an official, who holds any office in an employee organization, employer organization or federation, and includes a member, other than a member *ex officio*, of a committee of such an organization or federation; (ii)

(xxvii) "official" means any staff member of an employee organization, employer organization or federation employed as secretary, assistant secretary or organizer of such an organization or federation or in any other official capacity, whether or not such staff member is employed in a full-time capacity; (iii)

(xxviii) "organizational component" means an organizational component referred to in section 6(1) of the Public Service Act; (xxi)

(xxix) "policy framework" means those rules, measures and provisions laid down by this Act, the Public Service Act, the Public Service Regulations, the Public Service Staff Code and any other instruction of the Commission, and any other law and rule in accordance with which the employer may act; (v)

(xxx) "premises" means any land, building or structure owned, leased or occupied by the State, and includes any vehicle, aircraft, vessel or rig; (xxii)

(xxxi) "Public Service Act" means the Public Service Act, 1984 (Act No. 111 of 1984); (xxvi)

(xxxii) "Registrar" means a person appointed or designated by the chamber of the Council at central level to act as Registrar in terms of the provisions of this Act; (xxiv)

(xxxiii) "remuneration" means salaries, wages, bonuses, remunerative allowances and payment for overtime, including the determination of bases and rates thereof, payable to employees in exchange for the execution of their assigned tasks and their compliance with the employer's code of conduct; (vi)

(xxxiv) "responsible Minister" means the Minister authorized by the State President in terms of section 26(2) of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), to administer the Office of the Commission for Administration; (xxx)

(xxxv) "service benefits" means privileges, *natura* items and moneys, excluding remuneration and employee compensation, provided to employees in exchange for the execution of their assigned tasks and their compliance with the employer's code of conduct; (xi)

(xxxvi) "strike" means any one or more of the following acts or omissions by any number of employees who are or persons who have been employed either by the same employer or by different employers:

(a) The refusal or failure by them to continue to work (whether the discontinuance is complete or partial) or to resume their work or to

(a) aangeleenthede ten opsigte waarvan die Kommissie oor die bevoegdheid beskik om aanbevelings te doen of lasgewings te gee, en ten opsigte waarvan die Departement van Staatsbesteding die uitgawes, indien daar is, kan goedkeur; en

(b) daardie aangeleenthede ten opsigte waarvan 'n bepaalde departement oor die bevoegdheid beskik om namens departemente te handel; (iii)

(xxvi) "Staatsdienswet" die Staatsdienswet, 1984 (Wet No. 111 van 1984); (xxxi)

(xxvii) "staking" een of meer van die onderstaande handelinge of versuime deur enige getal werknemers wat in diens is of persone wat in diens was by óf dieselfde werkgewer óf verskillende werkgewers:

(a) Die weiering of versuim deur hulle om aan te hou met werk (hetsy die stopsetting volkome of gedeeltelik is), of om hul werk te hervat of om herindiensneming aan te neem of om aan die bedinge of voorwaardes van diens wat op hulle van toepassing is, te voldoen, of die vertraging deur hulle van die vooruitgang van werk, of die belemmering deur hulle van werk; of

(b) die verbreking of beëindiging deur hulle van hul dienskontrakte, indien—

(i) daardie weiering, versuim, vertraging, belemmering, verbreking of beëindiging plaasvind na aanleiding van 'n samespanning, ooreenkoms of verstandhouding tussen hulle, hetsy uitdruklik of nie; en

(ii) die doel van daardie weiering, versuim, vertraging, belemmering, verbreking of beëindiging is om die werkgewer of enige ander werkgewer of persoon by wie hulle of enige ander werknemers of persone in diens is of was, te beweeg of te dwing om—

(aa) toe te stem tot of te voldoen aan enige eise of voorstelle in verband met bedinge of voorwaardes van diens of ander aangeleenthede wat gestel of gedoen is deur of namens hulle of enigeen van hulle of enige ander werknemers wat in diens is of persone wat in diens was; of

(bb) na te laat om gevolg te gee aan enige voorneme om bedinge of voorwaardes van diens te verander, of, as so 'n verandering aangebring is, die bedinge of voorwaardes te herstel tot wat hulle was voor die verandering aangebring is; of

(cc) enige persoon in diens te neem of te skors of sy diens te beëindig; (xxxvi)

(xxviii) "toegelate werknemerorganisasie" enige werknemerorganisasie bedoel in artikel 26(5) en (6), asook enige ander werknemerorganisasie wat ingevolge die bepalings van artikel 10 tot 'n kamer van die Raad toegelaat is; (i)

(xxix) "uitsluiting" een of meer van die onderstaande handelinge of versuime deur die werkgewer of iemand wat die werkgewer was:

(a) Die nie-toelating deur hom van enige getal werknemers wat in sy diens is of persone wat in sy diens was, tot 'n perseel waarop of waarin werk deur hom verskaf, verrig word of verrig is; of

(b) die algehele of gedeeltelike stopsetting deur hom van sy aktiwiteite of van die verskaffing van werk; of

(c) die verbreking of beëindiging deur hom van die dienskontrakte van enige getal werknemers in sy diens; of

(d) die weiering of versuim deur hom om enige getal persone wat in sy diens was, weer in diens te neem,

indien die doel van daardie nie-toelating, stopsetting, verbreking, beëindiging, weiering of versuim is om werknemers wat in sy diens is of persone wat in sy diens was of in die diens van ander werkgewers is of was, te beweeg of te dwing om—

(i) toe te stem tot of te voldoen aan enige eise of voorstelle betreffende bedinge of voorwaardes van diens of ander aangeleenthede wat gestel of gedoen is deur of namens hom of deur of namens enige ander werkgewer of iemand wat 'n werkgewer is of was; of

accept re-employment or to comply with the terms or conditions of employment applicable to them, or the retardation by them of the progress of work, or the obstruction by them of work; or

(b) the breach or termination by them of their contracts of employment,

if—

(i) that refusal, failure, retardation, obstruction, breach or termination is in pursuance of any combination, agreement or understanding between them, whether expressed or not; and

(ii) the purpose of that refusal, failure, retardation, obstruction, breach or termination is to induce or compel the employer or any other employer or person by whom they or any other employees or persons are or have been employed—

(aa) to agree to or to comply with any demands or proposals concerning terms or conditions of employment or other matters made by or on behalf of them or any of them or any other employees who are or persons who have been employed; or

(bb) to refrain from giving effect to any intention to change terms or conditions of employment, or, if such a change has been made, to restore the terms or conditions to those which existed before the change was made; or

(cc) to employ or to suspend or terminate the employment of any person; (xxvii)

(xxxvii) "unfair labour practice" means any act or omission, other than a strike or lock-out, which has or may have the effect that—

(a) any employee or class of employees is or may be unfairly affected or that his or their employment opportunities or work security is or may be prejudiced or jeopardized thereby;

(b) the activities of any employer or class of employers are or may be unfairly affected or disrupted thereby;

(c) labour unrest is or may be created or promoted thereby;

(d) the labour relationship between employer and employee is or may be detrimentally affected thereby; or

(e) the principles contemplated in section 4(1) to (15) are not adhered to. (xix)

Administration and interpretation of Act

2. (1) The responsible Minister shall administer this Act.

(2) Any rights of employees in terms of this Act shall be in addition to any rights which they have in terms of any other law or the common law and shall take preference over rights in terms of any other applicable law.

Application of Act

3. This Act shall apply to all employees, to departments and organizational components employing such employees, and to any other employers at whose disposal employees have been placed in terms of section 14 of the Public Service Act, in so far as any unfair labour practice arising from the employment and utilization of the last-mentioned employees is concerned.

Fundamental principles

4. (1) All employers and employees shall, subject to subsections (3), (4) and (5), have the right respectively to establish and, further subject only to the rules of the organizations concerned, to join any employer and employee organizations of their own choice or to refrain from establishing and joining any employer and employee organizations.

(ii) 'n verandering in die bedinge of voorwaardes van diens te aanvaar; of

(iii) toe te stem tot die indiensneming van 'n persoon of die skorsing of beëindiging van die diens van 'n werknemer; (xxi)

(xxx) "verantwoordelike Minister" die Minister deur die Staatspresident ingevolge artikel 26(2) van die Grondwet van die Republiek van Suid-Afrika, 1983 (Wet No. 110 van 1983), gemagtig om die Kantoor van die Kommissie vir Administrasie te administreer; (xxxiv)

(xxxi) "werkgewer" die Staat as werkgewer soos verteenwoordig—

(a) op sentrale vlak, deur verteenwoordigers vir dié doel benoem deur die verantwoordelike Minister; en

(b) op departementele vlak, deur verteenwoordigers vir dié doel benoem deur die betrokke departementshoof; (xiii)

(xxxii) "werkgewerorganisasie" enige getal werkgewers wat saam geassosieer of gegroepeer is met die doel, hetsy alleen of saam met ander doelstellings, om verhoudinge tussen hulle of party van hulle en hul werknemers of party van hul werknemers te reël; (xiv)

(xxxiii) "werknemer" 'n beampte of werknemer soos omskryf in artikel 1(1) van die Staatsdienswet, en, by die toepassing van artikels 18, 22(2)*(a)*, 23, 24 en 25, asook artikel 22 in soverre dit op genoemde artikels betrekking het, ook iemand wat so 'n beampte of werknemer was, maar nie ook—

(a) 'n persoon in diens geneem ingevolge 'n ander Wet as die Staatsdienswet nie; en

(b) 'n persoon nie wie se salaris en diensvoorwaardes bepaal word ooreenkomstig algemene onderwysbeleid ingevolge artikel 2(1)*(b)* en (2) van die Wet op die Nasionale Beleid vir Algemene Onderwyssake, 1984 (Wet No. 76 van 1984); (x)

(xxxiv) "werknemerkompensering" betalings, met inbegrip van terugbetalings, en dienste aan werknemers om te voorkom dat hulle persoonlike verliese, hetsy geldelik of andersins, ly by die uitvoering van hul pligte of die opdragte van die werkgewer; (xi)

(xxxv) "werknemerorganisasie" 'n organisasie wat in die geheel of gedeeltelik bestaan uit 'n aantal werknemers in 'n departement, organisasiekomponent, instelling, bedryf of beroep wat formeel geassosieer en georganiseer is in 'n personeelvereniging of vakbond met die doel, hetsy alleen of saam met ander doelstellings, om verhoudinge tussen hulle of party van hulle en hul werkgewers of party van hul werkgewers te reël; (xii)

(xxxvi) "Wet op Arbeidsverhoudinge" die Wet op Arbeidsverhoudinge, 1956 (Wet No. 28 van 1956); (xx)

(xxxvii) "Wet op die Kommissie vir Administrasie" die Wet op die Kommissie vir Administrasie, 1984 (Wet No. 65 van 1984). (vi)

Administrasie en uitleg van Wet

2. (1) Die verantwoordelike Minister administreer hierdie Wet.

(2) Regte van werknemers ingevolge hierdie Wet is bykomend by regte wat hulle ingevolge 'n ander wet of die gemene reg het en geniet voorrang bo regte ingevolge enige ander toepaslike wet.

Toepassing van Wet

3. Hierdie Wet is van toepassing op alle werknemers, op departemente en organisasiekomponente wat sodanige werknemers in diens het, en op enige ander werkgewers tot wie se beskikking werknemers ingevolge artikel 14 van die Staatsdienswet gestel is, vir sover enige onbillike arbeidspraktyk wat uit die indienshouding en benutting van laasgenoemde werknemers voortspruit, betrokke is.

Fundamentele beginsels

4. (1) Alle werkgewers en werknemers het, behoudens subartikels (3), (4) en (5), die reg om onderskeidelik werkgewer- en werknemerorganisasies volgens eie keuse te stig en, verder slegs behoudens die reëls van die betrokke

(2) Employer and employee organizations shall have the right respectively to form and join, or refrain from forming and joining, employer and employee federations.

(3) In exercising the rights mentioned in subsections (1) and (2) employers and employees and their respective organizations shall not act contrary to the provisions of this Act or any other law.

(4) Notwithstanding subsection (1), employees in the management echelon shall not represent or assist employee organizations, or employees on behalf of such an organization, for the purposes of the provisions of this Act: Provided that this subsection shall not be construed as prohibiting the first-mentioned employees from being represented in negotiations or otherwise by an employee organization of which they are members.

(5) Notwithstanding subsection (1), employees who are incumbents of the posts mentioned in Column II of Schedules 1 and 2 to the Public Service Act, and employees who are incumbents of posts in the Office of the Commission whose functions are considered by the Commission to be policy-making or managerial, shall not be members of an employee organization or take part in any activity of such an organization.

(6) Employers and employees shall not be intimidated to join, or to refrain from joining, or to resign from, or to refrain from resigning from, employer and employee organizations, respectively.

(7) No employee shall be victimized or unfairly discriminated against on grounds of race, colour, sex, religion, political opinion, membership or non-membership of an employee organization or participation in the activities of such an organization, or any arbitrary grounds.

(8) Any employee who is a member of an employee organization recognized in terms of section 17 may in writing request the employer concerned to deduct membership fees payable to such employee organization from remuneration payable to him, and the employer shall thereupon deduct, as soon as possible, such fees from such remuneration for payment to the employee organization concerned and continue doing so until the request is withdrawn or varied in writing: Provided that the employer may retain as a collection fee a portion, not exceeding five per cent, of the amount so deducted.

(9) No request under subsection (8) shall be withdrawn or varied within three months of the date upon which the first amount in respect of the membership fee of the employee concerned was deducted.

(10) An employee organization recognized in terms of section 17 shall be granted reasonable access during working hours to its members and to the premises and facilities of a department for the purposes of conducting its lawful activities, upon prior approval by the head of that department and, where applicable, the Department of State Expenditure, and such approval shall not be unreasonably withheld.

(11) *(a)* The employer shall provide an employee organization contemplated in subsection (10) with any relevant information which is not classified information, on matters concerning the terms and conditions of employment, remuneration and the employment of employees who are members of such organization, including the full contents of its policy frameworks and any information which is necessary for the negotiation processes in terms of this Act.

(b) If the employer unreasonably refuses to provide an organization with such information or if it is alleged by an organization that relevant information is unreasonably being regarded as classified information, such organization may within 14 days refer the matter to arbitration for resolution on an expedited basis, and the arbitrator's decision shall be binding.

(12) An employer shall not fail or refuse to negotiate on matters of mutual interest with an admitted employee organization within the relevant chamber of the Council.

(13) Subject to subsection (12), an employer shall not be obliged to negotiate, within the period agreed upon in a current agreement, in respect of any matter which is regulated by such agreement, except if the parties concerned by a decision of the relevant chamber of the Council are prepared to negotiate to improve the

organisasies, by werkgewer- en werknemerorganisasies volgens eie keuse aan te sluit, of te verkies om nie werkgewer- en werknemerorganisasies te stig of daarby aan te sluit nie.

(2) Werkgewer- en werknemerorganisasies het die reg om onderskeidelik werkgewer- en werknemerfederasies te stig of daarby aan te sluit, of te verkies om dit nie te stig of nie daarby aan te sluit nie.

(3) By die uitoefening van die regte in subartikels (1) en (2) vermeld, mag werkgewers en werknemers en hul onderskeie organisasies nie teenstrydig met die bepalings van hierdie Wet of enige ander wet optree nie.

(4) Ondanks subartikel (1) mag werknemers in die bestuurskader nie werknemerorganisasies, of werknemers namens so 'n organisasie, vir die doeleindes van die bepalings van hierdie Wet verteenwoordig of bystaan nie: Met dien verstande dat hierdie subartikel nie so uitgelê word nie dat eersgenoemde werknemers verbied word om in onderhandelinge of andersins verteenwoordig te word deur 'n werknemerorganisasie waarvan hulle lede is.

(5) Ondanks subartikel (1) mag werknemers wat bekleërs is van die poste genoem in Kolom II van Bylaes 1 en 2 by die Staatsdienswet, en werknemers wat bekleërs is van poste in die Kantoor van die Kommissie wie se funksies deur die Kommissie geag word beleidmakend of van bestuursaard te wees, nie lede van 'n werknemerorganisasie wees of aan enige bedrywighede van so 'n organisasie deelneem nie.

(6) Werkgewers en werknemers mag nie geïntimideer word om onderskeidelik by werkgewer- en werknemerorganisasies aan te sluit of nie daarby aan te sluit nie, of om daaruit te bedank of nie daaruit te bedank nie.

(7) Geen werknemer mag geviktimiseer word en daar mag teen geen werknemer onbillik gediskrimineer word op grond van ras, kleur, geslag, geloof, politieke sienswyse, lidmaatskap of nie-lidmaatskap van 'n werknemerorganisasie of deelname aan die aktiwiteite van so 'n organisasie, of 'n arbitrêre grond nie.

(8) Enige werknemer wat 'n lid is van 'n werknemerorganisasie wat ingevolge artikel 17 erken word, kan die betrokke werkgewer skriftelik versoek om ledegeld betaalbaar aan dié werknemerorganisasie van besoldiging betaalbaar aan hom af te trek, en die werkgewer moet so gou doenlik daarna sodanige ledegeld van sodanige besoldiging aftrek vir betaling aan die betrokke werknemerorganisasie en daarmee volhou totdat die versoek skriftelik teruggetrek of gewysig word: Met dien verstande dat die werkgewer 'n gedeelte, maar hoogstens vyf persent, van die bedrag wat aldus afgetrek word, as invorderingsgeld kan behou.

(9) Geen versoek kragtens subartikel (8) mag teruggetrek of gewysig word binne drie maande vanaf die datum waarop die eerste bedrag ten opsigte van die betrokke werknemer se ledegeld afgetrek is nie.

(10) 'n Werknemerorganisasie wat ingevolge artikel 17 erken word, moet redelike toegang gedurende werkure tot sy lede en tot die persele en fasiliteite van 'n departement verleen word vir die doeleindes van die verrigting van sy wettige bedrywighede, met die voorafgaande goedkeuring van die departementshoof en, waar van toepassing, die Departement van Staatsbesteding, en dié goedkeuring mag nie onredelik weerhou word nie.

(11) *(a)* Die werkgewer moet 'n werknemerorganisasie beoog in subartikel (10) voorsien van toepaslike inligting wat nie geklassifiseerde inligting is nie, oor aangeleenthede betreffende die bedinge en voorwaardes van diens, besoldiging en die indienshouding van werknemers wat lede van dié organisasie is, met inbegrip van die volledige inhoud van sy beleidsraamwerke en inligting wat noodsaaklik is vir die onderhandelingsprosesse ingevolge hierdie Wet.

(b) Indien die werkgewer onredelik weier om 'n organisasie van sodanige inligting te voorsien of indien 'n organisasie beweer dat tersaaklike inligting onredelik as geklassifiseerde inligting beskou word, kan dié organisasie die aangeleentheid binne 14 dae na arbitrasie verwys vir beslegting op 'n spoedeisende basis, en die arbiter se beslissing is bindend.

(12) 'n Werkgewer mag nie nalaat of weier om oor aangeleenthede van onderlinge belang met 'n toegelate werknemerorganisasie binne die betrokke kamer van die Raad te onderhandel nie.

(13) Behoudens subartikel (12) is 'n werkgewer nie verplig nie om binne die tydperk waarop in 'n bestaande ooreenkoms ooreengekom is, oor 'n aangeleentheid te onderhandel wat in dié ooreenkoms gereël word, behalwe as die betrokke partye by wyse van 'n besluit van die betrokke kamer van die Raad

terms and conditions of such agreement: Provided that negotiations on any matter covered by the first agreement referred to in section 13(5) may take place at any time after the date of the coming into operation of this Act, in accordance with the constitution of the relevant chamber of the Council.

(14) An employer shall be entitled to exercise his managerial rights and prerogatives subject to the provisions of this Act and any other applicable law, including agreements concluded in terms of this Act.

(15) The parties shall at all times ensure that in acting under this Act, they do not compromise the provision of a neutral, non-political and impartial service to the public.

(16) An unfair labour practice shall not be perpetrated by any person.

Public Service Bargaining Council and parties in Council

5. (1) There is hereby established a Public Service Bargaining Council.

(2) The Council shall consist of a chamber at central level and a chamber for each department at departmental level, and the parties in the various chambers shall be the employer concerned and such employee organizations as are admitted to the relevant chamber in accordance with the provisions of this Act and the constitution of the relevant chamber of the Council.

(3) A party in a chamber of the Council shall be represented by a person authorized thereto by such party or by law.

(4) *(a)* The employer's power in regard to the subject to be negotiated, shall determine in which chamber of the Council negotiations shall take place, and shall also determine the representation of the employer as contemplated in the definition of employer.

(b) Any party to a dispute about the jurisdiction of a chamber may within 14 days from the date on which the dispute arose, refer the matter to arbitration for resolution on an expedited basis, and the arbitrator's decision shall be binding.

(5) *(a)* Any employee organization may participate in proceedings in a particular chamber of the Council if it has been admitted to such chamber in terms of section 10(3) and (4): Provided that such an organization may only negotiate on a particular matter if it proves that it represents employees affected by such matter.

(b) Any agreement reached by virtue of proceedings contemplated in this section shall be binding on the parties concerned and the members of the employee organizations concerned.

Chambers of Public Service Bargaining Council are bodies corporate, and limitation of liability of parties

6. (1) Each chamber of the Council shall be a body corporate, and shall be capable in law of suing and being sued and may purchase or otherwise acquire or hold and alienate any movable and immovable property and may perform any other act which it is required or empowered by its constitution to perform.

(2) Unless it is otherwise provided by the constitution concerned, no party in any chamber shall, by reason only of the fact that it is such a party, be liable for any of the obligations of a chamber of the Council.

Duties and functions of chambers of Council

7. (1) Each chamber of the Council shall function in accordance with the provisions of this Act and its constitution.

(2) Each chamber of the Council shall, subject to subsection (3), endeavour to negotiate agreements on matters contemplated in section 13(1), or by means of consultation or otherwise to prevent disputes from arising, and to settle disputes that have arisen or may arise, between employers or employer organizations on the one hand and employee organizations on the other hand, and take such steps as it may think expedient to bring about the regulation or settlement of matters of mutual interest to employers or employer organizations and employee organizations.

(3) A chamber of the Council shall not deal with a matter or dispute concerning an individual.

(4) The chamber of the Council at central level shall—

bereid is om te onderhandel om die bedinge en voorwaardes van dié ooreenkoms te verbeter: Met dien verstande dat onderhandelinge oor enige aangeleentheid wat deur die eerste ooreenkoms vermeld in artikel 13(5) gedek word, te eniger tyd na die datum van inwerkingtreding van hierdie Wet, in ooreenstemming met die konstitusie van die betrokke kamer van die Raad, kan plaasvind.

(14) 'n Werkgewer is daarop geregtig om sy bestuursregte en -prerogatiewe uit te oefen, onderworpe aan die bepalings van hierdie Wet en enige ander toepaslike wet, met inbegrip van ooreenkomste ingevolge hierdie Wet gesluit.

(15) Die partye moet te alle tye verseker dat wanneer hulle kragtens hierdie Wet optree, hulle nie die voorsiening van 'n neutrale, nie-politiese en onpartydige diens aan die publiek kompromitteer nie.

(16) 'n Onbillike arbeidspraktyk mag nie deur enige persoon begaan word nie.

Staatsdiensbedingingsraad en partye in Raad

5. (1) Daar word hierby 'n Staatsdiensbedingingsraad ingestel.

(2) Die Raad bestaan uit 'n kamer op sentrale vlak en 'n kamer vir elke departement op departementele vlak, en die partye in die onderskeie kamers is die betrokke werkgewer en die werknemerorganisasies wat tot die betrokke kamer toegelaat word ooreenkomstig die bepalings van hierdie Wet en die konstitusie van die betrokke kamer van die Raad.

(3) 'n Party in 'n kamer van die Raad moet verteenwoordig word deur iemand wat deur dié party of by wet daartoe gemagtig is.

(4) *(a)* Die werkgewer se bevoegdheid met betrekking tot die onderwerp waaroor onderhandel staan te word, bepaal in watter kamer van die Raad onderhandelinge moet plaasvind, en bepaal ook die verteenwoordiging van die werkgewer soos beoog in die omskrywing van werkgewer.

(b) Enige party by 'n geskil oor die jurisdiksie van 'n kamer kan binne 14 dae vanaf die datum van die ontstaan van die geskil die aangeleentheid na arbitrasie verwys vir beslegting op 'n spoedeisende basis, en die arbiter se beslissing is bindend.

(5) *(a)* 'n Werknemerorganisasie kan aan verrigtinge in 'n bepaalde kamer van die Raad deelneem indien hy ingevolge artikel 10(3) en (4) tot dié kamer toegelaat is: Met dien verstande dat so 'n organisasie slegs oor 'n bepaalde aangeleentheid kan onderhandel indien hy bewys dat hy werknemers verteenwoordig wat deur dié aangeleentheid geraak word.

(b) 'n Ooreenkoms bereik uit hoofde van verrigtinge beoog in hierdie artikel, is bindend vir die betrokke partye en die lede van die betrokke werknemerorganisasies.

Kamers van Staatsdiensbedingingsraad is regspersone, en beperking van aanspreeklikheid van partye

6. (1) Elke kamer van die Raad is 'n regspersoon en is bevoeg om regtens as eiser of verweerder op te tree en kan roerende en onroerende goed koop of andersins verkry of besit en vervreem, en kan enige ander handeling verrig wat hy by sy konstitusie verplig of gemagtig word om te verrig.

(2) Tensy die betrokke konstitusie anders bepaal, is geen party in 'n kamer vir enige van die verpligtinge van 'n kamer van die Raad aanspreeklik nie bloot op grond van die feit dat hy so 'n party is.

Pligte en werksaamhede van kamers van Raad

7. (1) Elke kamer van die Raad moet volgens die bepalings van hierdie Wet en sy konstitusie funksioneer.

(2) Elke kamer van die Raad moet, behoudens subartikel (3), daarna streef om ooreenkomste oor aangeleenthede beoog in artikel 13(1) tot stand te bring, of om deur middel van konsultasie of andersins te voorkom dat geskille ontstaan, en geskille te besleg wat ontstaan het of mag ontstaan, tussen werkgewers of werkgewerorganisasies aan die een kant en werknemerorganisasies aan die ander kant, en die stappe doen wat hy raadsaam ag om die reëling of beslegting van aangeleenthede van onderlinge belang vir werkgewers of werkgewerorganisasies en werknemerorganisasies teweeg te bring.

(3) 'n Kamer van die Raad mag nie 'n aangeleentheid of geskil rakende 'n individu behandel nie.

(4) Die kamer van die Raad op sentrale vlak moet—

(a) from time to time consider the circumstances and needs in the labour field, and make recommendations to the responsible Minister in connection with labour relations arrangements for the Public Service as embodied in any law, as far as employees are concerned; and

(b) advise the responsible Minister regarding legislation and proposed legislation, in so far as it affects employees, before its submission to Parliament.

(5) Each chamber of the Council shall admit employee organizations as members, and terminate such membership, in accordance with the provisions of this Act and the relevant constitution.

(6) Each chamber shall deal with any other matter which it is required or permitted to deal with under this Act or in terms of its constitution.

(7) A report on the activities of each chamber of the Council at departmental level by the head of department concerned shall, after approval thereof by the relevant chamber, be submitted annually by the said head to the Chairman of the chamber at central level, who shall compile an annual report on the activities of the chambers of the Council and submit it, after approval thereof by the chamber at central level, to the responsible Minister.

Chairmen of chambers of Council

8. (1) The Chairman of the chamber at central level shall, subject to the provisions of subsection (4) of this section and section 26(4)*(a)*, be appointed, and his service may be terminated, by the responsible Minister and only in accordance with a recommendation by the chamber, which shall be decided upon by a majority of votes of the employer side as well as a majority of votes of the employee side, determined by a secret ballot at a meeting held for such purpose under chairmanship of an acting Chairman elected at the said meeting by the members of the chamber from among themselves.

(2) If a Chairman contemplated in subsection (1) is unable, for any reason, to carry out his duties the responsible Minister shall, on the recommendation of the chamber decided upon in accordance with the provisions of subsection (1), appoint an acting Chairman for the period of such inability, and the acting Chairman shall, during such period, have all the powers which the Chairman has in terms of this Act or the constitution of the chamber: Provided that the parties may agree that a particular meeting be presided over by a person agreed upon by them.

(3) The Chairman, acting Chairman or other person acting as Chairman, mentioned in subsections (1) and (2), shall have no vote: Provided that if the acting Chairman, or such other person acting as Chairman, has been appointed or elected from among the parties he shall retain his voting rights as representative.

(4) The period of office of the Chairman mentioned in subsection (1) shall not exceed three years: Provided that such a Chairman shall be eligible for reappointment for periods not exceeding three years at a time.

(5) The Chairman and, if necessary, an acting Chairman of a chamber at departmental level shall be appointed from among the parties in the relevant chamber or other persons and for such period or occasion and on such terms as may be agreed upon, and his service may be terminated by a resolution passed by a majority of votes on the employer side and a majority of votes on the employee side.

(6) A Chairman or an acting Chairman mentioned in subsection (5) shall have no vote: Provided that if such a Chairman or acting Chairman has been appointed from among the parties concerned he shall retain his voting rights as representative.

(7) If a Chairman or an acting Chairman in any chamber of the Council is not a member of such a chamber or is not employed in the Public Service, the chamber concerned shall determine his remuneration, the cost of which shall be shared equally by the relevant employer on the one hand, and the relevant admitted employee organizations together, on the other hand.

(a) van tyd tot tyd die omstandighede en behoeftes op die arbeidsterrein oorweeg en aanbevelings aan die verantwoordelike Minister doen in verband met arbeidsverhoudingereëlings vir die Staatsdiens soos in die een of ander wet vervat, vir sover dit werknemers betref; en

(b) die verantwoordelike Minister in verband met wetgewing en voorgestelde wetgewing, vir sover dit werknemers raak, adviseer voordat dit aan die Parlement voorgelê word.

(5) Elke kamer van die Raad laat werknemerorganisasies as lede toe, en beëindig sodanige lidmaatskap, ooreenkomstig die bepalings van hierdie Wet en die betrokke konstitusie.

(6) Elke kamer handel met enige ander aangeleentheid waarmee hy kragtens hierdie Wet of ingevolge sy konstitusie moet of kan handel.

(7) 'n Verslag oor die bedrywighede van elke kamer van die Raad op departementele vlak deur die betrokke departementshoof moet, na goedkeuring daarvan deur die betrokke kamer, jaarliks deur genoemde hoof aan die Voorsitter van die kamer op sentrale vlak voorgelê word, wat 'n jaarverslag oor die bedrywighede van die kamers van die Raad moet opstel en, na goedkeuring daarvan deur die kamer op sentrale vlak, aan die verantwoordelike Minister moet voorlê.

Voorsitters van kamers van Raad

8. (1) Die Voorsitter van die kamer op sentrale vlak word, behoudens die bepalings van subartikel (4) van hierdie artikel en artikel 26(4)*(a)*, aangestel, en sy dienste kan beëindig word, deur die verantwoordelike Minister en wel slegs ooreenkomstig 'n aanbeveling van die kamer, waaroor besluit word by 'n meerderheid van stemme aan werkgewerkant sowel as 'n meerderheid van stemme aan werknemerkant, bepaal deur geheime stemming op 'n vergadering wat vir die doel gehou word onder voorsitterskap van 'n waarnemende Voorsitter, verkies op genoemde vergadering deur die lede van die kamer uit eie geledere.

(2) As 'n Voorsitter in subartikel (1) bedoel om enige rede nie in staat is om sy pligte uit te voer nie, moet die verantwoordelike Minister, op 'n aanbeveling van die kamer, waarop ooreenkomstig die bepalings van subartikel (1) besluit is, 'n waarnemende Voorsitter aanstel vir die termyn van bedoelde ongeskiktheid, en die waarnemende Voorsitter het, gedurende dié termyn, al die bevoegdhede wat die Voorsitter ingevolge hierdie Wet of die konstitusie van die kamer het: Met dien verstande dat die partye kan ooreenkom dat iemand waarop hulle ooreengekom het, op 'n bepaalde vergadering voorsit.

(3) Die Voorsitter, waarnemende Voorsitter of ander persoon wat as Voorsitter optree, in subartikels (1) en (2) vermeld, beskik oor geen stemreg nie: Met dien verstande dat indien die waarnemende Voorsitter, of daardie ander persoon wat as Voorsitter optree, uit die geledere van die partye aangestel of gekies is, hy sy stemreg as verteenwoordiger behou.

(4) Die ampstermyn van die Voorsitter in subartikel (1) vermeld, mag nie drie jaar oorskry nie: Met dien verstande dat so 'n Voorsitter vir verdere termyne van hoogstens drie jaar op 'n keer weer aangestel kan word.

(5) Die Voorsitter en, indien nodig, 'n waarnemende Voorsitter van 'n kamer op departementele vlak word uit die partye in die betrokke kamer of ander persone aangestel, en wel vir die termyn of geleentheid en op die voorwaardes waarop ooreengekom word, en sy dienste kan beëindig word by besluit aangeneem by meerderheidstem aan die werkgewerkant sowel as meerderheidstem aan die werknemerkant.

(6) 'n Voorsitter of waarnemende Voorsitter in subartikel (5) vermeld, beskik oor geen stemreg nie: Met dien verstande dat indien so 'n Voorsitter of waarnemende Voorsitter uit die geledere van die betrokke partye aangestel is, hy sy stemreg as verteenwoordiger behou.

(7) Indien 'n Voorsitter of waarnemende Voorsitter in enige kamer van die Raad nie 'n lid van dié kamer is nie of nie in die Staatsdiens in diens is nie, moet die betrokke kamer sy besoldiging bepaal, waarvan die koste gelykop tussen die betrokke werkgewer, aan die een kant, en die betrokke toegelate werknemerorganisasies saam, aan die ander kant, gedra moet word.

Constitutions of chambers of Council

9. (1) The constitution of the chamber of the Council at central level shall, subject to the provisions of this Act, provide for the following matters:

(a) The admission of employee organizations and the recording of information in this regard;

(b) the appointment of the representatives and alternates to representatives of the parties admitted to the chamber;

(c) the determination, in terms of section 12(5), of the basis of the voting rights of the admitted employee organizations;

(d) the appointment, termination of service, duties and powers of the Registrar, Chairman, acting Chairman, secretary and other additional personnel and, where applicable, the determination of their salaries and other conditions of employment;

(e) the times when or the circumstances in which representatives of the employee organizations shall vacate their seats;

(f) the quorum of a meeting;

(g) the calling and conduct of meetings;

(h) the keeping of minutes of meetings;

(i) the procedure for dealing with disputes arising within or outside the chamber between the parties to the chamber, including mediation and voluntary arbitration;

(j) the establishment and functioning of committees;

(k) the keeping of proper accounting records and the auditing thereof at least once every calendar year by a registered public accountant and auditor, and the making available to the parties or their representatives of copies of such records and the auditor's report thereon;

(l) the purposes to which the funds of the chamber may be applied and the manner of dealing with such funds, including the investment thereof;

(m) the amendment of the constitution; and

(n) the winding up of the chamber.

(2) In addition to the matters referred to in subsection (1) the constitution may regulate those matters which, although not expressly referred to in this Act, are necessary for the exercising of the functions of the relevant chamber of the Council but the regulation of which is not contrary to the provisions of this Act or any other law.

(3) The constitution of the chamber at central level shall *mutatis mutandis* serve as the constitution of a chamber of the Council at departmental level until amended by a relevant chamber at the last-mentioned level: Provided that those amendments shall not be inconsistent with this Act and shall not amend such clauses as may be stipulated as compulsory in the said constitution.

(4) Each chamber of the Council shall make its constitution available to the parties concerned.

Admission of employee organizations to chambers of Council

10. (1) Admission of an employee organization to a chamber of the Council with a view to participating in the proceedings thereof shall be decided upon by such chamber in terms of subsections (3) and (4): Provided that if at any stage a chamber of the Council has no admitted employee organization as a member, the employer in such chamber shall, after consultation with the chamber at central level, decide on the admission of the first employee organization thereto.

(2) An employee organization that complies with the requirements specified in subsection (4) may apply, in the manner determined in the constitution of the relevant chamber of the Council, to the said chamber for admission thereto.

(3) *(a)* The relevant chamber of the Council shall consider each application on the basis of the requirements specified in subsection (4) and take a decision thereon.

(b) If an application of an employee organization for admission to a chamber of the Council in terms of this section has been refused, the organization concerned may within 90 days of the date on which the chamber decided on the application, appeal to the Industrial Court, which shall consider such application and take a

Konstitusies van kamers van Raad

9. (1) Die konstitusie van die kamer van die Raad op sentrale vlak moet, behoudens die bepalings van hierdie Wet, vir die volgende aangeleenthede voorsiening maak:

(a) Die toelating van werknemerorganisasies en die aantekening van inligting in hierdie verband;

(b) die aanstelling van die verteenwoordigers en plaasvervangers van verteenwoordigers van die partye wat tot die kamer toegelaat is;

(c) die bepaling, ingevolge artikel 12(5), van die grondslag van die stemreg van die toegelate werknemerorganisasies;

(d) die aanstelling, diensbeëindiging, pligte en bevoegdhede van die Registrateur, Voorsitter, waarnemende Voorsitter, sekretaris en ander addisionele personeel en, waar van toepassing, die bepaling van hul salarisse en ander diensvoorwaardes;

(e) die tye wanneer of die omstandighede waarin verteenwoordigers van die werknemerorganisasies hul setels moet ontruim;

(f) die kworum van 'n vergadering;

(g) die belê en hantering van vergaderings;

(h) die hou van notule van vergaderings;

(i) die prosedure vir die behandeling van geskille wat binne of buite die kamer tussen die partye van die kamer ontstaan, met inbegrip van bemiddeling en vrywillige arbitrasie;

(j) die instelling en funksionering van komitees;

(k) die byhou van behoorlike rekeningkundige aantekeninge en die ouditering daarvan minstens een maal elke kalenderjaar deur 'n geregistreerde openbare rekenmeester en ouditeur, en die beskikbaarstelling aan die partye of hul verteenwoordigers van afskrifte van dié aantekeninge en die ouditeursverslag daaroor;

(l) die doeleindes waarvoor die kamer se fondse aangewend kan word en die wyse waarop sodanige fondse gehanteer moet word, met inbegrip van die belegging daarvan;

(m) die wysiging van die konstitusie; en

(n) die likwidasie van die kamer.

(2) Benewens die aangeleenthede bedoel in subartikel (1), kan die konstitusie daardie aangeleenthede reël wat, alhoewel dit nie uitdruklik in hierdie Wet vermeld word nie, noodsaaklik is vir die verrigting van die funksies van die betrokke kamer van die Raad, maar waarvan die reëling nie in stryd is met die bepalings van hierdie Wet of enige ander wet nie.

(3) Die konstitusie van die kamer op sentrale vlak geld *mutatis mutandis* as die konstitusie van 'n kamer van die Raad op departementele vlak, totdat dit deur 'n betrokke kamer op laasgenoemde vlak gewysig word: Met dien verstande dat bedoelde wysigings nie teenstrydig met hierdie Wet mag wees nie en nie klousules mag wysig nie wat, na genoemde konstitusie bepaal, verpligtend is.

(4) Elke kamer van die Raad moet sy konstitusie aan die betrokke partye beskikbaar stel.

Toelating van werknemerorganisasies tot kamers van Raad

10. (1) Oor toelating van 'n werknemerorganisasie tot 'n kamer van die Raad met die oog op deelname aan die verrigtinge daarvan, word deur dié kamer beslis ingevolge subartikels (3) en (4): Met dien verstande dat indien 'n kamer van die Raad in enige stadium nie 'n toegelate werknemerorganisasie as lid het nie, die werkgewer in dié kamer, na oorlegpleging met die kamer op sentrale vlak, oor die toelating van die eerste werknemerorganisasie daartoe besluit.

(2) 'n Werknemerorganisasie wat aan die vereistes vermeld in subartikel (4) voldoen, kan op die wyse wat in die konstitusie van die betrokke kamer van die Raad bepaal word, by dié kamer aansoek doen om toelating daartoe.

(3) *(a)* Die betrokke kamer van die Raad moet elke aansoek oorweeg aan die hand van die vereistes vermeld in subartikel (4) en 'n besluit daaroor neem.

(b) Indien 'n aansoek van 'n werknemerorganisasie om toelating tot 'n kamer van die Raad ingevolge hierdie artikel geweier is, kan die betrokke organisasie binne 90 dae vanaf die datum waarop die kamer oor die aansoek beslis het, na die Nywerheidshof appelleer, wat dié aansoek moet oorweeg en 'n beslissing daaroor

decision thereon, or the parties concerned may, by agreement, refer the matter to arbitration.

(c) If a decision on an application is delayed for a period of more than 90 days, the chamber shall be deemed to have refused the application on the last day of such period.

(4) An employee organization shall be admitted to a chamber of the Council if—

(a) it is, according to the constitution of such chamber, sufficiently representative of employees whose interests are dealt with in such chamber, and that representation is confirmed by stop-orders by employees in favour of such organization which have already been implemented;

(b) it is an employee organization registered and recognized in terms of the provisions of this Act; and

(c) its constitution is consistent with this Act and does not contain provisions which are contrary to the provisions of any law.

(5) Membership of an employee organization of a chamber of the Council shall be terminated by such chamber—

(a) on receipt of a notice of termination of such membership from such organization;

(b) if such organization is dissolved or wound up in terms of its constitution;

(c) if such organization no longer complies with the requirements prescribed by subsection (4); or

(d) if such organization's contributions, if any, contemplated in section 15(5), or a contribution by it towards costs as contemplated in section 8(7), is more than three months in arrears or it contravenes or fails to comply with a provision of this Act: Provided that such organization—

(i) shall be afforded a reasonable opportunity to submit representations to such chamber before such membership is terminated; and

(ii) may, within 30 days of the date on which its membership was so terminated, appeal to the Industrial Court for the setting aside of the termination of its membership, in which case the said Court shall consider the appeal and give a decision thereon, or the parties concerned may, by agreement, refer the matter to arbitration.

Registration of employee organizations

11. (1) An employee organization shall, before applying for admission or recognition in terms of sections 10 and 17, respectively, apply to the Registrar for registration in terms of this Act as an employee organization active in the Public Service, irrespective of the fact that such organization may be registered in terms of the Labour Relations Act.

(2) An application for registration by an employee organization shall be submitted to the Registrar on a form prescribed by him and shall be accompanied by—

(a) the constitution of the employee organization;

(b) an indication of the number of employees who are members of the employee organization;

(c) the full names of the chief executive officer and office-bearers;

(d) the permanent street and postal address of its head office; and

(e) the telephone number and, if any, the telefax number of the head office.

(3) Any amendment to the constitution of a registered employee organization, as well as changes in its addresses and telephone and telefax numbers and in respect of its chief executive officer and office-bearers, shall be reported to the Registrar within one month of such amendment or change.

(4) A registered employee organization shall annually furnish the Registrar with information with regard to the number of employees who are members of such organization.

(5) The Registrar—

(a) shall register an employee organization which has complied with subsection (2) and shall thereafter forward to it a certificate of registration; or

moet gee, of kan die betrokke partye by ooreenkoms die aangeleentheid na arbitrasie verwys.

(c) Indien 'n besluit oor 'n aansoek vir 'n tydperk van meer as 90 dae vertraag is, word die kamer geag die aansoek op die laaste dag van genoemde tydperk te geweier het.

(4) 'n Werknemerorganisasie word tot 'n kamer van die Raad toegelaat indien—

(a) hy, volgens die konstitusie van dié kamer, voldoende verteenwoordigend is van werknemers wie se belange in dié kamer behandel word, en bedoelde verteenwoordiging bevestig word deur aftrekorders deur werknemers ten gunste van dié organisasie wat reeds in werking gestel is;

(b) hy 'n werknemerorganisasie is wat ingevolge hierdie Wet geregistreer en erken is; en

(c) sy konstitusie met hierdie Wet bestaanbaar is en nie bepalings bevat wat met die bepalings van enige wet strydig is nie.

(5) Lidmaatskap van 'n werknemerorganisasie van 'n kamer van die Raad word deur dié kamer beëindig—

(a) by ontvangs van 'n kennisgewing van beëindiging van die lidmaatskap van dié werknemerorganisasie;

(b) indien dié organisasie ingevolge sy konstitusie ontbind of gelikwideer word;

(c) indien dié organisasie nie meer aan die vereistes voorgeskryf by subartikel (4) voldoen nie; of

(d) indien dié organisasie se bydraes, indien daar is, beoog in artikel 15(5), of 'n bydrae tot koste deur hom soos beoog in artikel 8(7), meer as drie maande agterstallig is of hy 'n bepaling van hierdie Wet oortree of versuim om daaraan te voldoen: Met dien verstande dat dié organisasie —

(i) 'n redelike geleentheid gebied moet word om vertoë tot dié kamer te rig voordat dié lidmaatskap beëindig word; en

(ii) binne 30 dae vanaf die datum waarop sy lidmaatskap aldus beëindig is, na die Nywerheidshof kan appelleer vir die nietigverklaring van die beëindiging van sy lidmaatskap, in watter geval genoemde hof die appèl moet oorweeg en 'n beslissing daaroor moet gee, of die betrokke partye kan by ooreenkoms die aangeleentheid na arbitrasie verwys.

Registrasie van werknemerorganisasies

11. (1) 'n Werknemerorganisasie moet, voordat hy aansoek om toelating of erkenning ingevolge onderskeidelik artikels 10 en 17 doen, by die Registrateur aansoek doen om registrasie ingevolge hierdie Wet as 'n werknemerorganisasie wat in die Staatsdiens aktief is, ongeag die feit dat dié organisasie ingevolge die Wet op Arbeidsverhoudinge geregistreer mag wees.

(2) 'n Aansoek om registrasie deur 'n werknemerorganisasie word aan die Registrateur voorgelê op die vorm deur hom voorgeskryf en moet vergesel wees van—

(a) die konstitusie van die werknemerorganisasie;

(b) 'n aanduiding van die getal werknemers wat lede van die werknemerorganisasie is;

(c) die volle name van die hoof- uitvoerende beampte en ampsdraers;

(d) die permanente straat- en posadres van sy hoofkantoor; en

(e) die telefoonnommer en, indien daar is, die faksimilee-nommer van die hoofkantoor.

(3) 'n Wysiging aan die konstitusie van 'n geregistreerde werknemerorganisasie, asook veranderinge aan sy adresse en telefoon- en faksimilee-nommers en ten opsigte van sy hoof- uitvoerende beampte en ampsdraers, moet binne een maand vanaf sodanige wysiging of verandering aan die Registrateur meegedeel word.

(4) 'n Geregistreerde werknemerorganisasie moet die Registrateur jaarliks voorsien van inligting betreffende die getal werknemers wat lede van dié organisasie is.

(5) Die Registrateur—

(a) registreer 'n werknemerorganisasie wat aan subartikel (2) voldoen het en stuur daarna aan hom 'n registrasiesertifikaat; of

(b) may refuse to register an employee organization which has not complied with the provisions of subsection (2).

(6) The registration of an employee organization shall be cancelled by the Registrar—

(a) when the employee organization ceases to exist;

(b) when the employee organization no longer has any employees as members; or

(c) when the employee organization fails to comply with a requirement prescribed by subsection (3) or (4): Provided that the employee organization shall be given notice of the proposed cancellation and the reasons therefor, and that it shall be afforded the opportunity to comply with the said subsection concerned within 90 days of the date of such notice.

(7) An employee organization may, within 90 days of the date on which the Registrar notified it of the refusal of the application or the cancellation of the registration, appeal to the Industrial Court in terms of the provisions of this Act.

Meetings of chambers of Council

12. (1) A meeting of a chamber of the Council shall, at the request of a party in accordance with the constitution of such chamber, be held at such time and place as the Chairman of such chamber may determine and after such notification to the parties as may be prescribed by the constitution of the chamber.

(2) The quorum for a meeting of a chamber of the Council shall, subject to the provisions of section 5(4) and (5), be determined by the constitution of the relevant chamber.

(3) If the number of parties present at the time and place fixed for a meeting is insufficient to form a quorum, a meeting of the relevant chamber of the Council shall, upon such notification to the parties as may be prescribed in the constitution concerned, be held on a date not less than seven days thereafter, and at that meeting the parties present shall form a quorum.

(4) *(a)* Subject to section 5(4) and (5), the voting rights in each chamber of the Council shall at all times and in all circumstances be divided on an equal basis between the admitted employee organizations, collectively, on the one hand, and the employer on the other hand.

(b) The principle of parity of votes between the employer and employee sides shall be maintained, and the absence of employee organizations from meetings shall be governed, subject to the said principle, by the constitution of the relevant chamber of the Council.

(5) Subject to section 5(5), voting rights of an admitted employee organization in a chamber of the Council shall be determined by the constitution of such chamber, and on the basis of the number of members of such employee organization, as evidenced by operative stop-orders in favour of such organization or verified in such manner as may be prescribed by the constitution of such chamber, in proportion to the total number of members represented by all the employee organizations in such chamber: Provided that each such admitted organization shall have at least one vote: Provided further that in the case of negotiations regarding a particular matter contemplated in the proviso to section 5(5)*(a)*, the voting rights of an employee organization concerned shall be determined according to the number of its members who are affected by the matter, in proportion to the total number of members who are affected by the matter, of the employee organizations concerned together.

(6) Subject to section 5(5), a majority of votes of the employer side at a meeting of a chamber of the Council held in accordance with the constitution thereof, together with a majority of votes of the employee side at such a meeting, shall constitute a binding decision of such chamber, except in the case of a dispute as to an alleged unfair labour practice or any other dispute of right, in which case the dispute can only be settled by means of a written agreement between the parties to the dispute.

(7) A decision of a chamber of the Council as contemplated in subsection (6), in connection with a matter referred to in section 13(1), shall be regarded as an agreement by all the parties in such chamber.

(8) Meetings of the chambers of the Council shall be held in private.

(b) kan weier om 'n werknemerorganisasie te registreer wat nie aan die bepalings van subartikel (2) voldoen het nie.

(6) Die registrasie van 'n werknemerorganisasie word deur die Registrateur ingetrek—

(a) wanneer die werknemerorganisasie ophou om te bestaan;

(b) wanneer die werknemerorganisasie nie meer enige werknemers as lede het nie; of

(c) wanneer die werknemerorganisasie versuim om aan 'n vereiste voorgeskryf by subartikel (3) of (4) te voldoen:

Met dien verstande dat die werknemerorganisasie in kennis gestel moet word van die voorgestelde intrekking en die redes daarvoor, en dat hy die geleentheid gebied moet word om binne 90 dae vanaf die datum van bedoelde kennisgewing aan die betrokke genoemde subartikel te voldoen.

(7) 'n Werknemerorganisasie kan, binne 90 dae vanaf die datum waarop die Registrateur hom in kennis gestel het van die weiering van die aansoek of die intrekking van die registrasie, ingevolge die bepalings van hierdie Wet na die Nywerheidshof appelleer.

Vergaderings van kamers van Raad

12. (1) 'n Vergadering van 'n kamer van die Raad word op versoek van 'n party ooreenkomstig die konstitusie van dié kamer gehou op die tyd en plek wat die Voorsitter van dié kamer bepaal en na die kennisgewing aan die partye wat die konstitusie van die kamer voorskryf.

(2) Behoudens die bepalings van artikel 5(4) en (5) word die kworum vir 'n vergadering van 'n kamer van die Raad deur die konstitusie van die betrokke kamer bepaal.

(3) As die getal partye wat aanwesig is op die tyd en plek wat vir 'n vergadering bepaal is, onvoldoende is om 'n kworum uit te maak, moet 'n vergadering van die betrokke kamer van die Raad, na die kennisgewing aan die partye wat in die betrokke konstitusie voorgeskryf word, gehou word op 'n datum minstens sewe dae daarna, en op daardie vergadering maak die partye teenwoordig 'n kworum uit.

(4) *(a)* Behoudens artikel 5(4) en (5) word die stemreg in elke kamer van die Raad te alle tye en onder alle omstandighede op 'n gelyke basis verdeel tussen die toegelate werknemerorganisasies gesamentlik, aan die een kant, en die werkgewer aan die ander kant.

(b) Die beginsel van pariteit van stemreg tussen die werkgewer- en werknemerkant word gehandhaaf, en die afwesigheid van werknemerorganisasies van vergaderings word, onderworpe aan genoemde beginsel, deur die konstitusie van die betrokke kamer van die Raad gereël.

(5) Behoudens artikel 5(5) word stemreg van 'n toegelate werknemerorganisasie in 'n kamer van die Raad bepaal deur die konstitusie van dié kamer, en wel aan die hand van die getal lede van sodanige werknemerorganisasie, soos bewys deur werkende aftrekorders ten gunste van dié organisasie of geverifieer op 'n wyse deur die konstitusie van dié kamer voorgeskryf, in verhouding tot die totale getal lede verteenwoordig deur al die werknemerorganisasies in dié kamer: Met dien verstande dat elke sodanige toegelate organisasie minstens een stem het: Met dien verstande voorts dat in die geval van onderhandelinge oor 'n bepaalde aangeleentheid bedoel in die voorbehoudsbepaling by artikel 5(5)*(a)*, die stemreg van 'n betrokke werknemerorganisasie bepaal word aan die hand van die getal van sy lede wat deur die aangeleentheid geraak word, in verhouding tot die totale getal lede wat deur die aangeleentheid geraak word, van die betrokke werknemerorganisasies gesamentlik.

(6) Behoudens artikel 5(5) maak 'n meerderheid van stemme aan die werkgewerkant op 'n vergadering van 'n kamer van die Raad wat volgens die konstitusie daarvan gehou word, tesame met 'n meerderheid van stemme aan die werknemerkant op dié vergadering, 'n bindende besluit van dié kamer uit, behalwe in die geval van 'n geskil aangaande 'n beweerde onbillike arbeidspraktyk of 'n ander geskil van regte, in watter geval die geskil slegs deur middel van 'n geskrewe ooreenkoms tussen die partye by die geskil besleg kan word.

(7) 'n Besluit van 'n kamer van die Raad soos bedoel in subartikel (6), in verband met 'n aangeleentheid in artikel 13(1) bedoel, word beskou as 'n ooreenkoms deur al die partye in dié kamer.

(8) Vergaderings van die kamers van die Raad word agter geslote deure gehou.

Agreements in chambers of Council

13. (1) For the purposes of section 7(2) matters of mutual interest to the employer and employees represented in any chamber of the Council, shall be negotiable with a view to concluding an agreement as contemplated in section 12(7), on condition that such matters are within the powers of such employer.

(2) A dispute as to whether any particular matter is negotiable in terms of subsection (1), may be referred, within 14 days from the date on which the dispute arose, by either the employer concerned or any employee organization concerned to arbitration for resolution on an expedited basis, and the arbitrator's decision shall be binding.

(3) Any agreement in terms of section 12(7) shall be reduced to writing, shall be signed by the parties in favour of such agreement in the relevant chamber, shall, as from the date stipulated in the agreement, be binding on all the admitted employee organizations concerned, their members, the employer concerned and all other employees to whom it is made applicable by such employer, and shall be valid for the period stipulated in the agreement: Provided that if such an agreement or any part thereof cannot be given effect to unless authorized by an Act of Parliament to do so, such agreement or part thereof shall be suspended until such an Act has been passed.

(4) If a dispute as to the interpretation of any agreement cannot be settled within the relevant chamber of the Council, it shall as soon as possible, but not later than 60 days from the date on which the dispute arose or within such longer period as the parties concerned may agree, be referred to arbitration, in which case—

(a) section 21(2) to (13) and (15) shall apply *mutatis mutandis*; and

(b) the arbitration result shall be final and binding on the parties and the employees to whom the agreement applies.

(5) The existing provisions and measures with regard to any matter referred to in subsection (1) shall be deemed to constitute the contents of the first agreement thereon in the relevant chamber of the Council and shall be of force and effect until another agreement thereon has been negotiated in terms of the provisions of section 12(7) and subsection (3) of this section.

(6) Where a power, duty or function of the Commission, the Department of State Expenditure, any other department, a Minister or Administrator, a head of department or their delegates in terms of the Public Service Act or any other applicable law relates to a matter referred to in subsection (1), the Commission or any such department or person shall, in respect of such matter, only make a recommendation, give a direction or make a decision or amend existing provisions and measures, if any, in terms of an agreement negotiated on such a matter in the relevant chamber of the Council: Provided that the Commission or any such department or person may in terms of the provisions of the Public Service Act or any other applicable law recommend, direct or approve, in the case of a particular employee, a deviation from any such recommendation, direction or decision, provided an agreement or the collective bargaining relationship is not derogated from or annulled or the remuneration, service benefits or worker compensation of such employee are not reduced or he is not deprived of such remuneration, service benefits or worker compensation thereby.

(7) If agreement on a matter referred to in subsection (1) cannot be reached in the chamber of the Council at central level and a deadlock in negotiations is reached, the Commission or any department or person involved in negotiations at central level may, in respect of such a matter and notwithstanding subsection (6), make a recommendation, give a direction or make a decision in terms of the Public Service Act, the Commission for Administration Act or any other applicable law with regard to employees, which shall be the last offer made by the employer in the said chamber on the matter in question: Provided that such recommendation, direction or decision shall not have the effect of reducing existing remuneration, service benefits or worker compensation of employees or depriving them thereof.

Establishment of committees of chambers of Council

14. (1) Any chamber of the Council may in accordance with the provisions of this Act and the provisions of its constitution, in so far as the last-mentioned

Ooreenkomste in kamers van Raad

13. (1) By die toepassing van artikel 7(2) is aangeleenthede van onderlinge belang vir die werkgewer en werknemers wat in die een of ander kamer van die Raad verteenwoordig is, onderhandelbaar met die oog op die aangaan van 'n ooreenkoms soos bedoel in artikel 12(7), op voorwaarde dat sodanige aangeleenthede binne die bevoegdheid van dié werkgewer is.

(2) 'n Geskil oor die vraag of 'n bepaalde aangeleentheid ingevolge subartikel (1) onderhandelbaar is, kan binne 14 dae vanaf die datum van die ontstaan van die geskil deur óf die betrokke werkgewer óf 'n betrokke werknemerorganisasie na arbitrasie verwys word vir beslegting op 'n spoedeisende basis, en die arbiter se beslissing is bindend.

(3) 'n Ooreenkoms ingevolge artikel 12(7) moet op skrif gestel word, moet onderteken word deur die partye in die betrokke kamer wat ten gunste van dié ooreenkoms is, is vanaf die datum in die ooreenkoms bepaal, bindend vir al die betrokke toegelate werknemerorganisasies, hulle lede, die betrokke werkgewer en alle ander werknemers op wie dit deur dié werkgewer van toepassing gemaak word, en is geldig vir die tydperk in die ooreenkoms bepaal: Met dien verstande dat indien daar nie aan so 'n ooreenkoms of 'n gedeelte daarvan uitvoering gegee kan word nie tensy magtiging by 'n Wet van die Parlement verleen word om dit te doen, dié ooreenkoms of gedeelte daarvan opgeskort word totdat so 'n Wet aangeneem is.

(4) Indien 'n geskil oor die uitleg van 'n ooreenkoms nie in die betrokke kamer van die Raad besleg kan word nie, moet dit so gou doenlik, maar nie later nie as 60 dae vanaf die datum waarop die geskil ontstaan het of binne die langer tydperk waarop die betrokke partye mag ooreenkom, na arbitrasie verwys word, in watter geval—

(a) artikel 21(2) tot (13) en (15) *mutatis mutandis* van toepassing is; en

(b) die uitslag van die arbitrasie afdoende is en bindend is vir die partye en die werknemers op wie die ooreenkoms van toepassing is.

(5) Die bestaande bepalings en maatreëls betreffende 'n aangeleentheid in subartikel (1) vermeld, word geag die inhoud van die eerste ooreenkoms daaroor in die betrokke kamer van die Raad uit te maak en bly van krag totdat 'n ander ooreenkoms daaroor ingevolge die bepalings van artikel 12(7) en subartikel (3) van hierdie artikel tot stand gebring is.

(6) Waar 'n bevoegdheid, plig of funksie van die Kommissie, die Departement van Staatsbesteding, 'n ander departement, 'n Minister of Administrateur, 'n departementshoof of hul gedelegeerdes ingevolge die Staatsdienswet of enige ander toepaslike wet betrekking het op 'n aangeleentheid in subartikel (1) vermeld, moet die Kommissie of so 'n departement of persoon, ten opsigte van dié aangeleentheid, slegs 'n aanbeveling doen, 'n lasgewing gee of 'n besluit neem of bestaande bepalings en maatreëls, indien daar is, wysig ooreenkomstig 'n ooreenkoms wat oor sodanige aangeleentheid in die toepaslike kamer van die Raad tot stand gebring is: Met dien verstande dat die Kommissie of so 'n departement of persoon ingevolge die bepalings van die Staatsdienswet of enige ander toepaslike wet, in die geval van 'n bepaalde werknemer, 'n afwyking van so 'n aanbeveling, lasgewing of besluit kan aanbeveel, gelas of goedkeur, mits daardeur daar nie aan 'n ooreenkoms of aan die kollektiewe bedingingsverhouding afbreuk gedoen of dit ongedaan gemaak word nie of dié werknemer se besoldiging, diensvoordele of werkerkompensering nie verminder of hy nie sodanige besoldiging, diensvoordele of werkerkompensering ontneem word nie.

(7) Indien ooreenkoms oor 'n aangeleentheid in subartikel (1) vermeld, nie in die kamer van die Raad op sentrale vlak bereik kan word nie en 'n dooie punt in onderhandelinge bereik is, kan die Kommissie of 'n departement of persoon betrokke by onderhandelinge op sentrale vlak, ten opsigte van so 'n aangeleentheid en ondanks subartikel (6), ingevolge die Staatsdienswet, die Wet op die Kommissie vir Administrasie of enige ander toepaslike wet, ten opsigte van werknemers 'n aanbeveling doen, 'n lasgewing gee of 'n besluit neem, wat die laaste aanbod is wat die werkgewer in genoemde kamer oor die betrokke aangeleentheid gemaak het: Met dien verstande dat sodanige aanbeveling, lasgewing of besluit nie die uitwerking mag hê dat bestaande besoldiging, diensvoordele of werkerkompensering van werknemers verminder of hulle dit ontneem word nie.

Instelling van komitees van kamers van Raad

14. (1) 'n Kamer van die Raad kan ooreenkomstig die bepalings van hierdie Wet en die bepalings van sy konstitusie, vir sover laasgenoemde bepalings nie in

provisions are not in conflict with the first-mentioned, establish committees and may, subject to such conditions as it may determine, delegate any of its functions to any such committee.

(2) Any decision of a committee contemplated in subsection (1) may at any time be set aside or varied by the relevant chamber of the Council.

(3) Such a committee shall consist of an equal number of representatives on the employer side and on the employee side in the relevant chamber of the Council.

(4) The chairman of any such committee may be the Chairman or the acting Chairman of the relevant chamber of the Council or a person chosen by such chamber or the committee from among the members of the committee or otherwise, as the chamber of the Council may determine.

Administration of chambers of Council

15. (1) Each chamber of the Council shall acquire suitable accommodation and facilities and shall make provision for its administration in accordance with the provisions of this Act and its constitution.

(2) Each chamber of the Council shall appoint a part-time or full-time secretary, who may, with the approval of the relevant chamber, appoint additional part-time or full-time personnel for the administration of such chamber.

(3) Each chamber of the Council shall determine the salaries and other conditions of employment of its secretary and additional personnel, and may terminate their services.

(4) A Minister or head of department may at the request of a chamber of the Council—

(a) provide facilities and accommodation for the functioning and administration of such chamber;

(b) in terms of section 14(3) of the Public Service Act, place at its disposal for a particular service or for a stated period the required personnel for the administration of such chamber; and

(c) in terms of section 26 of the Public Service Act, direct an employee under his control temporarily to perform the duties of secretary or other duties necessary for the administration of such chamber.

(5) Where a chamber of the Council acquires suitable accommodation and facilities, other than those provided for in subsection 4*(a)*, or appoints a secretary or additional personnel who are not employees as provided for in subsection (4)*(b)* or *(c)*, the expenditure involved shall be shared equally between the employer on the one hand and the admitted employee organizations together on the other hand in the relevant chamber.

Winding-up of chambers of Council

16. (1) The constitution of a chamber of the Council may provide for the winding-up thereof.

(2) On completion of the winding-up of a chamber of the Council all records of such chamber shall be forwarded to the Director: State Archives for safe-keeping.

Recognition of employee organizations

17. (1) Subject to subsections (2) and (3), an employee organization representing employees in a department may apply for recognition to the head of department concerned in the manner prescribed by the Commission.

(2) The application for recognition in terms of subsection (1) shall be accompanied by—

(a) the constitution of the employee organization together with the full name of its chief executive officer, the permanent street and postal addresses, the telephone number and, if any, the telefax number of its head office;

(b) a list of employees of the relevant department who are members of the employee organization concerned, with an indication of the institutions where they are employed, the occupational classes to which they belong and their headquarters; and

(c) the registration certificate of the employee organization concerned.

stryd met eersgenoemde is nie, komitees instel en kan, onderworpe aan die voorwaardes wat hy bepaal, enigeen van sy werksaamhede aan enige so 'n komitee oordra.

(2) 'n Beslissing van 'n komitee bedoel in subartikel (1), kan te eniger tyd deur die betrokke kamer van die Raad tersyde gestel of verander word.

(3) So 'n komitee moet uit gelyke getalle verteenwoordigers aan die werkgewer- en werknemerkant in die betrokke kamer van die Raad bestaan.

(4) Die voorsitter van enige sodanige komitee kan die Voorsitter of die waarnemende Voorsitter van die betrokke kamer van die Raad wees of 'n persoon deur dié kamer of die komitee uit lede van die komitee of andersins gekies, soos ook al deur die kamer van die Raad bepaal.

Administrasie van kamers van Raad

15. (1) Elke kamer van die Raad moet gepaste akkommodasie en fasiliteite bekom en voorsiening maak vir sy administrasie ooreenkomstig die bepalings van hierdie Wet en sy konstitusie.

(2) Elke kamer van die Raad moet 'n deeltydse of heeltydse sekretaris aanstel, wat, met die goedkeuring van die betrokke kamer, bykomende deeltydse of heeltydse personeel vir die administrasie van dié kamer kan aanstel.

(3) Elke kamer van die Raad bepaal die salarisse en ander diensvoorwaardes van sy sekretaris en bykomende personeel en kan hul dienste beëindig.

(4) 'n Minister of departementshoof kan op versoek van 'n kamer van die Raad—

(a) fasiliteite en akkommodasie vir die funksionering en administrasie van dié kamer voorsien;

(b) ingevolge artikel 14(3) van die Staatsdienswet, die nodige personeel vir die administrasie van dié kamer, vir 'n besondere diens of vir 'n bepaalde tydperk, tot sy beskikking stel; en

(c) ingevolge artikel 26 van die Staatsdienswet 'n werknemer onder sy beheer gelas om tydelik die pligte van sekretaris of ander pligte wat vir die administrasie van dié kamer noodsaaklik is, te verrig.

(5) Waar 'n kamer van die Raad ander gepaste akkommodasie en fasiliteite bekom as dié waarvoor in subartikel (4)*(a)* voorsiening gemaak word, of 'n sekretaris of bykomende personeel aanstel wat nie werknemers is vir wie in subartikel (4)*(b)* of *(c)* voorsiening gemaak word nie, moet die betrokke uitgawes gelykop verdeel word tussen die werkgewer aan die een kant en die toegelate werknemerorganisasies saam aan die ander kant in die betrokke kamer.

Likwidasie van kamers van Raad

16. (1) Die konstitusie van 'n kamer van die Raad kan voorsiening maak vir die likwidasie daarvan.

(2) By die voltooiing van die likwidasie van 'n kamer van die Raad moet alle stukke van dié kamer aan die Direkteur: Staatsargiewe vir veilige bewaring gestuur word.

Erkenning van werknemerorganisasies

17. (1) Behoudens subartikels (2) en (3) kan 'n werknemerorganisasie wat werknemers in 'n departement verteenwoordig, by die betrokke departementshoof om erkenning aansoek doen op die wyse deur die Kommissie voorgeskryf.

(2) Die aansoek om erkenning ingevolge subartikel (1) moet vergesel wees van—

(a) die konstitusie van die werknemerorganisasie tesame met die volle name van sy hoof- uitvoerende beampte, die permanente straat- en posadres, die telefoonnommer en, indien daar is, die faksimileenommer van sy hoofkantoor;

(b) 'n lys van werknemers van die betrokke departement wat lede van die betrokke werknemerorganisasie is, met 'n aanduiding van die instellings waar hulle in diens is, die beroepsklasse waartoe hulle behoort en hul hoofkwartiere; en

(c) die registrasiesertifikaat van die betrokke werknemerorganisasie.

(3) An employee organization shall be recognized by the relevant head of department—

(a) if it is sufficiently representative of employees in the department concerned, or of a defined interest group of such employees;

(b) if it has a constitution which is consistent with this Act and does not contain provisions which are contrary to the provisions of any law; and

(c) if it has complied with the provisions of subsection (2).

(4) *(a)* The relevant head of department shall consider each application of an employee organization on the basis of the requirements set out in subsection (3) and take a decision thereon.

(b) If the application of an employee organization for recognition is refused it may appeal, within 90 days of the date on which the head of department notified the employee organization in writing of his decision, to the Industrial Court, which shall decide the appeal by either confirming the decision or giving such other decision as in its opinion the head of department ought to have given, or the parties concerned may, by agreement, refer the matter to arbitration.

(c) If the head of department has not, within a period of 90 days of the date of the submission to him of the application in the required manner, advised such organization of his decision, he shall, for the purposes of paragraph *(b)*, be deemed to have refused the application on the last day of the said period.

(5) Upon the recognition of an employee organization under this section—

(a) it shall, in addition to any rights conferred on it by section 4(8), (10) and (11)—

(i) be entitled to represent its members with regard to grievances, disciplinary matters and other matters agreed upon with the employer at departmental level; and

(ii) have the right to be consulted by the employer at departmental level on matters agreed upon between them; and

(b) the employer at departmental level may negotiate with such organization on matters of mutual interest within the power of the employer at such level: Provided that agreements reached as a result thereof, excluding agreements in regard to the recognition of such organization in terms of this section, shall not be enforceable unless approved by the relevant chamber: Provided further that such recognized employee organization shall have no legal remedy on the ground that such an agreement is not approved by the relevant chamber.

(6) Notwithstanding the provisions of subsections (1) to (5) and (7), recognition of an employee organization as contemplated in the said subsections, including the effect, conditions and termination of such recognition, may also be negotiated between the head of department and the employee organization concerned, in so far as it is within the limits of the power of such head of department as contemplated in the said subsections and the other applicable provisions of this Act.

(7) Recognition of an employee organization shall be terminated if—

(a) it is dissolved or wound up in terms of its constitution;

(b) it is no longer regarded by the head of department concerned as sufficiently representative of employees in the department concerned, or of a particular interest group of such employees; or

(c) its registration has been cancelled in terms of the provisions of this Act: Provided that in the case of an appeal against the cancellation of its registration in terms of section 11(7), its recognition shall not be terminated pending the decision of such appeal.

(8) In the case of the termination of the recognition of an employee organization in terms of paragraph *(b)* of subsection (7) or in terms of an agreement contemplated in subsection (6), the head of department shall notify such organization in writing thereof, and such organization may within a period of 90 days of the date of that notice of termination appeal to the Industrial Court, which shall decide the appeal by confirming the termination or giving such other decision as in its opinion the head of department ought to have given, or the parties concerned may, by agreement, refer the matter to arbitration.

(3) 'n Werknemerorganisasie word deur die betrokke departementshoof erken—

(a) indien hy voldoende verteenwoordigend van werknemers in die betrokke departement of van 'n afgebakende belangegroep van sodanige werknemers is;

(b) indien hy oor 'n konstitusie beskik wat met hierdie Wet bestaanbaar is en nie bepalings bevat wat met die bepalings van enige wet strydig is nie; en

(c) indien hy aan die bepalings van subartikel (2) voldoen het.

(4) *(a)* Die betrokke departementshoof oorweeg elke aansoek van 'n werknemerorganisasie op die grondslag van die vereistes in subartikel (3) uiteengesit en gee 'n beslissing daaroor.

(b) Indien die aansoek van 'n werknemerorganisasie om erkenning geweier word, kan hy binne 90 dae vanaf die datum waarop die departementshoof die werknemerorganisasie skriftelik van sy beslissing in kennis gestel het, na die Nywerheidshof appelleer, wat die appèl beslis deur óf die beslissing te bevestig óf die ander beslissing te gee wat, volgens sy mening, deur die departementshoof gegee moes gewees het, of kan die betrokke partye by ooreenkoms die aangeleentheid na arbitrasie verwys.

(c) Indien die departementshoof nie binne 'n tydperk van 90 dae vanaf die datum waarop die aansoek op die voorgeskrewe wyse aan hom voorgelê is, dié organisasie van sy besluit in kennis gestel het nie, word hy, by die toepassing van paragraaf *(b)*, geag die aansoek te geweier het op die laaste dag van genoemde tydperk.

(5) By erkenning van 'n werknemerorganisasie kragtens hierdie artikel—

(a) het hy, benewens die regte by artikel 4(8), (10) en (11) aan hom verleen—

(i) die reg om sy lede ten opsigte van griewe, dissiplinêre aangeleenthede en ander aangeleenthede waarop met die werkgewer op departementele vlak ooreengekom is, te verteenwoordig; en

(ii) die reg om deur die werkgewer op departementele vlak geraadpleeg te word oor aangeleenthede waarop hulle ooreengekom het; en

(b) kan die werkgewer op departementele vlak met so 'n organisasie onderhandel oor aangeleenthede van onderlinge belang binne die bevoegdheid van die werkgewer op dié vlak: Met dien verstande dat ooreenkomste as gevolg daarvan gesluit, uitgesonderd ooreenkomste met betrekking tot die erkenning van dié organisasie ingevolge hierdie artikel, nie afdwingbaar is nie tensy dit deur die betrokke kamer goedgekeur is: Met dien verstande voorts dat so 'n erkende werknemerorganisasie geen regsmiddel het op grond daarvan dat sodanige ooreenkoms nie deur die betrokke kamer goedgekeur word nie.

(6) Ondanks die bepalings van subartikels (1) tot (5) en (7) kan oor die erkenning van 'n werknemerorganisasie soos bedoel in genoemde subartikels, met inbegrip van die uitwerking, voorwaardes en beëindiging van sodanige erkenning, ook onderhandel word tussen die departementshoof en die betrokke werknemerorganisasie, vir sover dit binne die perke van die bevoegdheid van sodanige departementshoof is, soos bedoel in genoemde subartikels en die ander toepaslike bepalings van hierdie Wet.

(7) Erkenning van 'n werknemerorganisasie word beëindig indien—

(a) hy ontbind of ingevolge sy konstitusie gelikwideer word;

(b) hy nie meer deur die betrokke departementshoof as voldoende verteenwoordigend van werknemers in die betrokke departement, of van 'n bepaalde belangegroep van sodanige werknemers, beskou word nie; of

(c) sy registrasie ingevolge die bepalings van hierdie Wet ingetrek is: Met dien verstande dat in die geval van 'n appèl teen die intrekking van sy registrasie ingevolge artikel 11(7), sy erkenning nie beëindig word nie hangende die beslissing oor dié appèl.

(8) In die geval van die beëindiging van die erkenning van 'n werknemerorganisasie ingevolge paragraaf *(b)* van subartikel (7) of ingevolge 'n ooreenkoms bedoel in subartikel (6), moet die departementshoof dié organisasie skriftelik daarvan in kennis stel, en kan dié organisasie binne 'n tydperk van 90 dae vanaf die datum van die kennisgewing van sodanige beëindiging, na die Nywerheidshof appelleer, wat die appèl beslis deur die beëindiging te bekragtig of die ander beslissing te gee wat, volgens sy mening, die departementshoof moes gegee het, of kan die betrokke partye by ooreenkoms die aangeleentheid na arbitrasie verwys.

Conciliation Boards

18. (1) If an employee has submitted representations to the head of department concerned in regard to any dispute of right and is still aggrieved after the reply of the head of department thereto, or the head of department fails to reply thereto within 20 days of receipt thereof, the employee or an employee organization of which he is a member, acting on his behalf with his approval, may declare a dispute, and at the request of such employee or organization and on submission by him or it to such head, of the completed form prescribed by the Commission, a conciliation board shall be established by such head.

(2) The prescribed form referred to in subsection (1) shall—

(a) be completed by either the employee concerned or on his behalf by an employee organization of which he is a member or a person of his choice; and

(b) contain a description of the issue or issues in dispute: Provided that the parties to the dispute may at any time agree to redefine the issue or issues in dispute.

(3) The head of department shall establish the conciliation board in conjunction with the aggrieved employee or the employee organization representing him, and convene a meeting of the board at the headquarters of the employee within 10 days from the date of receipt of the form contemplated in subsections (1) and (2): Provided that the parties to the conciliation board may agree to alter the date, time or venue of the meeting of the conciliation board.

(4) A conciliation board shall consist of not more than three persons nominated by the employee concerned or by the employee organization on his behalf, and an equal number of persons nominated by the head of department.

(5) The Chairman of the conciliation board shall be appointed by the parties concerned from among themselves or otherwise and on such terms as may be agreed upon: Provided that if agreement cannot be reached, the head of department shall, within two working days from the date of the meeting contemplated in subsection (3), request the Department of Manpower to appoint, within five days from receiving that request, a Chairman for the conciliation board: Provided further that if the Department of Manpower is as employer involved in the conciliation board the request to appoint a Chairman shall be addressed to the Commission instead.

(6) The head of department concerned shall provide a conciliation board established in terms of subsection (3) with such secretarial and clerical assistance as he may deem necessary for the effectual performance of the functions of the conciliation board: Provided that the parties may agree to provide their own secretarial and clerical assistance.

(7) The conciliation board shall endeavour to settle the dispute referred to it within 30 days from the date of the appointment of its Chairman in terms of subsection (5), or within such further period as may from time to time be agreed upon by the parties involved in the conciliation board.

(8) A settlement reached by the parties shall be reduced to writing, and such written agreement shall be binding on the parties to it.

(9) The settlement or other outcome of the deliberations of the conciliation board shall be noted by the Chairman on the form contemplated in subsection (1), of which he shall cause each of the parties concerned to be provided with a copy.

(10) *(a)* An employee who or the employee organization which in terms of subsection (1) has declared a dispute, requested that a conciliation board be established and submitted the completed prescribed form, may apply, in the case of an unfair labour practice dispute, to the Industrial Court in terms of this Act, or, in the case of any other dispute of right, to any other court for a decision on the dispute if—

(i) a meeting of a conciliation board is not convened as contemplated in subsection (3);

(ii) the head of department concerned fails to request the appointment of a chairman in terms of subsection (5);

(iii) where applicable, the Department of Manpower or the Commission

Versoeningsrade

18. (1) Indien 'n werknemer vertoë betreffende 'n geskil van regte aan die betrokke departementshoof voorgelê het en steeds gegrief is na die antwoord van die departementshoof daarop, of die departementshoof in gebreke bly om binne 20 dae na ontvangs daarvan daarop te antwoord, kan die werknemer of 'n werknemerorganisasie waarvan hy lid is en wat, met sy goedkeuring, namens hom optree, 'n geskil verklaar, en op versoek van dié werknemer of organisasie en by die voorlegging deur hom aan dié hoof, van die ingevulde vorm deur die Kommissie voorgeskryf, moet 'n versoeningsraad deur dié hoof ingestel word.

(2) Die voorgeskrewe vorm in subartikel (1) vermeld, moet—

(a) deur óf die betrokke werknemer óf namens hom deur 'n werknemerorganisasie waarvan hy lid is, óf 'n persoon van sy keuse, ingevul word; en

(b) 'n beskrywing van die geskilpunt of geskilpunte bevat: Met dien verstande dat die partye by die geskil te eniger tyd kan ooreenkom om die geskilpunt of geskilpunte te heromskryf.

(3) Die departementshoof moet die versoeningsraad in oorleg met die gegriefde werknemer of die werknemerorganisasie wat hom verteenwoordig, instel, en binne 10 dae vanaf die datum van ontvangs van die vorm bedoel in subartikels (1) en (2) 'n vergadering van die raad by die hoofkwartier van die werknemer belê: Met dien verstande dat die partye by die versoeningsraad kan ooreenkom om die datum, tyd of plek van die vergadering van die versoeningsraad te verander.

(4) 'n Versoeningsraad bestaan uit hoogstens drie persone benoem deur die betrokke werknemer of deur die werknemerorganisasie namens hom, en 'n gelyke getal persone deur die departementshoof benoem.

(5) Die Voorsitter van die versoeningsraad word deur die betrokke partye aangestel uit eie geledere of andersins en op die voorwaardes waarop ooreengekom word: Met dien verstande dat indien ooreenkoms nie bereik kan word nie, die departementshoof binne twee werksdae vanaf die datum van die vergadering bedoel in subartikel (3) die Departement van Mannekrag moet versoek om, binne vyf dae vanaf ontvangs van bedoelde versoek, 'n Voorsitter vir die versoeningsraad aan te stel: Met dien verstande voorts dat indien die Departement van Mannekrag as werkgewer by die versoeningsraad betrokke is, die versoek vir die aanstelling van 'n Voorsitter as alternatief tot die Kommissie gerig moet word.

(6) Die betrokke departementshoof voorsien 'n versoeningsraad ingevolge subartikel (3) ingestel, van die sekretariële en klerklike hulp wat hy nodig ag vir die doeltreffende verrigting van die werksaamhede van die versoeningsraad: Met dien verstande dat die partye kan ooreenkom om hul eie sekretariële en klerklike hulp te voorsien.

(7) Die versoeningsraad moet poog om die geskil wat na hom verwys is, te besleg binne 30 dae vanaf die datum van die aanstelling van sy Voorsitter ingevolge subartikel (5), of binne die verdere tydperk waarop die partye betrokke by die versoeningsraad van tyd tot tyd mag ooreenkom.

(8) 'n Skikking deur die partye bereik, word op skrif gestel, en sodanige skriftelike ooreenkoms is bindend vir die partye daarby.

(9) Die skikking of ander uitslag van die beraadslagings van die versoeningsraad word deur die Voorsitter aangeteken op die vorm bedoel in subartikel (1), waarvan hy die betrokke partye elkeen van 'n afskrif moet laat voorsien.

(10) *(a)* 'n Werknemer of die werknemerorganisasie wat ingevolge subartikel (1) 'n geskil verklaar het, versoek het dat 'n versoeningsraad ingestel word en die ingevulde voorgeskrewe vorm voorgelê het, kan, in die geval van 'n geskil oor 'n onbillike arbeidspraktyk, by die Nywerheidshof ingevolge hierdie Wet, of, in die geval van 'n ander geskil van regte, by enige ander hof, om 'n beslissing oor die geskil aansoek doen indien—

(i) 'n vergadering van 'n versoeningsraad nie belê word nie soos bedoel in subartikel (3);

(ii) die betrokke departementshoof in gebreke bly om die aanstelling van 'n voorsitter ingevolge subartikel (5) te versoek;

(iii) waar van toepassing, die Departement van Mannekrag of die Kom-

fails to appoint a chairman of the conciliation board in terms of subsection (5);

(iv) the parties involved in the conciliation board have failed to agree to extend the period of office of the conciliation board in terms of subsection (7) until a settlement is reached;

(v) the conciliation board does not succeed in settling the dispute within the period contemplated in subsection (7); or

(vi) the parties to the dispute agree that they will not be able to settle the dispute and submit written proof thereof to the relevant court.

(b) A dispute shall be deemed not to be settled by a conciliation board if any of the circumstances referred to in paragraph *(a)* have occurred.

(c) An application may be made in terms of paragraph *(a)* to the Industrial Court or other court without it being necessary to make use of or exhaust any other procedures in terms of any other law or the common law: Provided that a party which so makes an application to a court shall observe the rules of such court with regard to the referral and adjudication of disputes.

(d) The Industrial Court or such other court may determine the application.

(11) *(a)* No conciliation board shall be established unless the application is made within 180 days from the date on which the reasons for the dispute became known to the employee, or such later date upon which the parties concerned may agree or which is fixed by the head of department on good cause shown for the late lodging of such application.

(b) If the head of department refuses to fix such a later date he shall notify the party who lodged the application in writing thereof, and such party may within a period of 90 days of the date of such notice appeal to the Industrial Court, which shall consider such application and give such decision thereon as it may deem fit, or the parties concerned may, by agreement, refer the matter to arbitration.

(12) A conciliation board shall be deemed to have been discharged upon the expiry of the period contemplated in subsection (7) or if a settlement is reached in terms of this section.

(13) The provisions of this section shall not apply to a dispute in which a head of department is the aggrieved employee.

Right to strike or lock-out

19. (1) Subject to the provisions of this section, employees, excluding those rendering essential services, shall have the right to strike, and the employer shall, except in relation to employees engaged in essential services, have the right to a lock-out: Provided that no employee or other person shall instigate a strike or incite any employee to take part in or to continue a strike, or take part in a strike or in the continuation of a strike, and no employer shall instigate a lock-out or incite any employer to take part in or to continue a lock-out, or take part in a lock-out or in the continuation of a lock-out—

(a) during the period of currency of any agreement at central or departmental level or any determination or award which in terms of this Act is binding on the employees or employers who are or would be involved in the strike or lock-out and any provision of which deals with the matter giving rise to the strike or lock-out;

(b) in the case of the absence of an agreement on a matter within the power of a particular chamber of the Council, unless—

(i) the matter giving rise to the strike or lock-out has been referred by either an admitted employee organization or the employer to the relevant chamber of the Council and has been considered by such chamber, and a deadlock has been declared in writing in accordance with the constitution of the said chamber; or

(ii) such matter was submitted by either such an organization or the employer to the relevant chamber and a period of 30 days, reckoned

missie in gebreke bly om 'n voorsitter van die versoeningsraad ingevolge subartikel (5) aan te stel;

(iv) die partye betrokke by die versoeningsraad nie daarin slaag nie om ooreen te kom om die dienstermyn van die versoeningsraad ingevolge subartikel (7) te verleng totdat 'n skikking bereik word;

(v) die versoeningsraad nie daarin slaag om die geskil binne die tydperk bedoel in subartikel (7) te besleg nie; of

(vi) die partye by die geskil ooreenkom dat hulle nie in staat sal wees om die geskil te besleg nie en skriftelike bewys daarvan aan die betrokke hof voorlê.

(b) 'n Geskil word geag nie deur 'n versoeningsraad besleg te wees nie indien enige van die omstandighede in paragraaf *(a)* vermeld, voorgekom het.

(c) 'n Aansoek kan ingevolge paragraaf *(a)* by die Nywerheidshof of ander hof gedoen word sonder dat dit nodig is om gebruik te maak van ander prosedures ingevolge 'n ander wet of die gemene reg, of dit uit te put: Met dien verstande dat 'n party wat so 'n aansoek by 'n hof doen, steeds die reëls van so 'n hof in verband met die verwysing en beregting van geskille moet nakom.

(d) Die Nywerheidshof of sodanige ander hof kan oor die aansoek beslis.

(11) *(a)* Geen versoeningsraad word ingestel nie tensy aansoek gedoen word binne 180 dae vanaf die datum waarop die gronde vir die geskil aan die werknemer bekend geraak het, of die later datum waarop die betrokke partye mag ooreenkom of wat die departementshoof by die aanvoer van gegronde rede vir die laat indiening van sodanige aansoek bepaal.

(b) Indien die departementshoof weier om so 'n later datum te bepaal, moet hy die party wat die aansoek ingedien het, skriftelik daarvan in kennis stel, en dié party kan binne 'n tydperk van 90 dae vanaf die datum van dié kennisgewing na die Nywerheidshof appelleer, wat sodanige aansoek oorweeg en die beslissing daaroor gee wat hy goedvind, of die betrokke partye kan by ooreenkoms die aangeleentheid na arbitrasie verwys.

(12) 'n Versoeningsraad word geag ontslaan te wees by verstryking van die tydperk bedoel in subartikel (7), of indien 'n skikking ingevolge hierdie artikel bereik is.

(13) Die bepalings van hierdie artikel is nie van toepassing nie op 'n geskil waar die departementshoof die gegriefde werknemer is.

Reg om te staak of uit te sluit

19. (1) Behoudens die bepalings van hierdie artikel het werknemers, uitgesonderd diegene wat noodsaaklike dienste lewer, die reg om te staak, en het die werkgewer, behalwe met betrekking tot werknemers in diens by noodsaaklike dienste, die reg tot uitsluiting: Met dien verstande dat geen werknemer of ander persoon 'n staking mag aanstig of enige werknemer mag aanhits om aan 'n staking deel te neem of dit voort te sit nie, of aan 'n staking of aan die voortsetting van 'n staking mag deelneem nie, en geen werkgewer 'n uitsluiting mag aanstig of enige werkgewer mag aanhits om aan 'n uitsluiting deel te neem of dit voort te sit nie, of aan 'n uitsluiting of aan die voortsetting van 'n uitsluiting mag deelneem nie—

(a) gedurende die tydperk van geldigheid van enige ooreenkoms op sentrale of departementele vlak of enige vasstelling of toekenning wat ingevolge hierdie Wet bindend is vir die werknemers of werkgewers wat by die staking of uitsluiting betrokke is of sal wees en waarvan die een of ander bepaling die aangeleentheid behandel wat aanleiding tot die staking of uitsluiting gee;

(b) in die geval van die afwesigheid van 'n ooreenkoms rakende 'n aangeleentheid binne die bevoegdheid van 'n bepaalde kamer van die Raad, tensy—

(i) die aangeleentheid wat tot die staking of uitsluiting aanleiding gee deur óf 'n toegelate werknemerorganisasie óf die werkgewer na die betrokke kamer van die Raad verwys en deur dié kamer oorweeg is, en 'n dooie punt skriftelik verklaar is ooreenkomstig die konstitusie van genoemde kamer; of

(ii) dié aangeleentheid deur óf so 'n organisasie óf die werkgewer aan die betrokke kamer voorgelê is en 'n tydperk van 30 dae, bereken vanaf die datum waarop dit aldus voorgelê is, of die langer tydperk

from the date on which it was so submitted, or such longer period as may have been agreed upon in the said chamber, has expired, whichever event occurs first;

(c) if it has been agreed to refer the matter to arbitration; or

(d) if provision is made in this Act for dealing with the matter concerned by means of litigation.

(2) No employee shall in pursuance of any combination, agreement or understanding, whether expressed or not, with any number of persons who are or have been employed by the same employer or by different employers, commit or take part in committing, and no employee or other person shall incite, instigate, command, aid, advise, encourage or procure any employee to commit or to take part in committing, any act or omission contemplated in paragraph *(a)* or *(b)* of the definition of "strike", if such act or omission is committed or is intended to be committed for any purpose other than a purpose referred to in paragraph (ii) of the said definition.

(3) No person who is or has been an employer shall commit, and no employer or other person shall incite, instigate, command, aid, advise, encourage or procure any employer or other person to commit any act contemplated in paragraph *(a)* of the definition of "lock-out", if such act is committed or is intended to be committed for any purpose other than a purpose referred to in the said definition.

(4) No employee organization and no office-bearer, official or member of such an organization shall call or take part in any strike by members of the said organization unless—

(a) the majority of the members of such organization who are involved in the matter giving rise to the strike in the particular department or departments in which the strike is called or the taking part in the strike takes place, have voted by secret ballot in favour of such action and the circumstances contemplated in subsection (1)*(b)* are present; and

(b) written notice of at least 10 days has been given to the particular employer or employers concerned of the result of the ballot referred to in paragraph *(a)*, as well as of the date of commencement of such a strike.

(5) An employer or an employer organization shall give written notice of at least 10 days either to the employees concerned, if they are not members of an employee organization, or to the employee organization or organizations concerned of his or its intention to call a lock-out, indicating the date of commencement of such lock-out.

(6) *(a)* A court of law, including the Industrial Court, shall not grant an interdict or any other order to restrain any person, employee organization or employer from instigating, inciting or participating in a strike or lock-out, unless 48 hours' notice of the relevant application has been given to the respondent by the applicant: Provided that the court concerned may permit a shorter period than the said period of 48 hours if—

(i) the applicant has given notice to the respondent of the applicant's intention to apply for the issuing of an interdict or other order;

(ii) the respondent is given a reasonable opportunity to be heard before a decision regarding that application is taken; and

(iii) the applicant has shown good cause why a shorter period than the said period of 48 hours should be permitted:

Provided further that if at least 10 days prior to the commencement of a proposed strike or lock-out, notice of such proposed strike or lock-out has been given to the applicant in the prescribed manner, the applicant shall give at least five days' notice to the respondent of an application for an interdict or other order.

(b) The said requirement of 48 hours' notice shall not apply in respect of essential services contemplated in section 20(1).

(7) No employee shall be remunerated for the period of his participation in any

waarop in genoemde kamer ooreengekom mag gewees het, verstryk het,

na gelang van watter gebeurtenis die eerste plaasvind;

(c) indien daar ooreengekom is om die aangeleentheid na arbitrasie te verwys; of

(d) indien daar in hierdie Wet voorsiening is vir die hantering van die betrokke aangeleentheid deur middel van litigasie.

(2) Geen werknemer mag na aanleiding van 'n samespanning, ooreenkoms of verstandhouding, hetsy uitdruklik of nie, met enige getal persone wat in diens is of was by dieselfde werkgewer of by verskillende werkgewers, 'n handeling of versuim beoog in paragraaf *(a)* of *(b)* van die omskrywing van "staking" verrig of deelneem aan die verrigting van so 'n handeling of versuim nie, en geen werknemer of ander persoon mag enige werknemer aanhits, aanstig, beveel, help, adviseer, aanmoedig of verkry om so 'n handeling of versuim te verrig of om aan die verrigting van so 'n handeling of versuim deel te neem nie, indien daardie handeling of versuim verrig word of bedoel is om verrig te word met 'n ander doel as 'n doel in paragraaf (ii) van genoemde omskrywing bedoel.

(3) Geen persoon wat 'n werkgewer is of was, mag 'n handeling beoog in paragraaf *(a)* van die omskrywing van "uitsluiting" verrig, en geen werkgewer of ander persoon mag 'n werkgewer of ander persoon aanhits, aanstig, beveel, help, adviseer, aanmoedig of verkry om so 'n handeling te verrig nie, indien daardie handeling verrig word of bedoel is om verrig te word met 'n ander doel as 'n doel in genoemde omskrywing bedoel.

(4) Geen werknemerorganisasie en geen ampsdraer, amptenaar of lid van so 'n organisasie mag 'n staking deur lede van dié organisasie uitroep of daaraan deelneem nie tensy—

(a) die meerderheid van die lede van sodanige organisasie betrokke by die aangeleentheid wat aanleiding gee tot die staking in die bepaalde departement of departemente waarin die staking uitgeroep word of die deelname aan die staking plaasvind, deur middel van geheime stemming ten gunste van sodanige optrede gestem het, en die omstandighede beoog in subartikel 1*(b)* aanwesig is; en

(b) skriftelike kennis van ten minste 10 dae aan die bepaalde betrokke werkgewer of werkgewers gegee is van die uitslag van die stemming in paragraaf *(a)* vermeld, sowel as van die aanvangsdatum van sodanige staking.

(5) 'n Werkgewer of 'n werkgewerorganisasie moet ten minste 10 dae skriftelike kennis gee óf aan die betrokke werknemers, indien hulle nie lede van 'n werknemerorganisasie is nie, óf aan die betrokke werknemerorganisasie of -organisasies van sy voorneme om 'n uitsluiting uit te roep, tesame met 'n aanduiding van die aanvangsdatum van dié uitsluiting.

(6) *(a)* 'n Geregshof, met inbegrip van die Nywerheidshof, reik nie 'n interdik of enige ander bevel uit nie om enige persoon, werknemerorganisasie of werkgewer daarvan te weerhou om 'n staking of uitsluiting aan te stig of aan te hits of daaraan deel te neem, tensy 48 uur kennis van die tersaaklike aansoek aan die respondent deur die aansoeker gegee is: Met dien verstande dat die betrokke hof 'n korter tydperk as genoemde tydperk van 48 uur kan toelaat indien—

(i) die aansoeker die respondent kennis gegee het van die aansoeker se voorneme om aansoek om die uitreiking van 'n interdik of ander bevel te doen;

(ii) die respondent 'n redelike geleentheid gegun word om aangehoor te word voordat 'n beslissing oor daardie aansoek gegee word; en

(iii) die aansoeker goeie gronde aangevoer het waarom 'n korter tydperk as genoemde tydperk van 48 uur toegestaan behoort te word:

Met dien verstande voorts dat indien daar minstens 10 dae voor die aanvang van 'n voorgenome staking of uitsluiting, op die voorgeskrewe wyse kennis aan die aansoeker van sodanige voorgenome staking of uitsluiting gegee is, die aansoeker minstens vyf dae kennis aan die respondent van 'n aansoek om 'n interdik of ander bevel moet gee.

(b) Genoemde vereiste van 48 uur kennisgewing is nie van toepassing nie ten opsigte van noodsaaklike dienste bedoel in artikel 20(1).

(7) Geen werknemer word vergoed nie vir die tydperk van sy deelname aan 'n

strike or any other work stoppage which is not a strike, or for the duration of any lawful lock-out.

(8) No civil proceedings shall be brought in any court against any employee, employer, employee organization or employer organization or against any member, office-bearer or official of any such organization in respect of any breach of contract or any breach of a statutory duty or any delict (other than defamation) committed by that employee, employer or organization, or by that member, office-bearer or official on behalf of that organization, in furtherance of a strike or lock-out: Provided that that indemnity shall not apply to any act committed in furtherance of any strike or lock-out in which, or in the continuance of which, any employee, employer or other person is by this section forbidden to take part, or to any act the commission of which is a criminal offence.

(9) Subject to the provisions of subsection (8), any member, office-bearer or official of an employee organization, employer organization or any other employer or employee federation or any person who interferes with the contractual relationship between an employer and an employee resulting in the breach of the contract in question, shall be liable in delict.

(10) *(a)* Except as provided by subsection (7), no employer shall, for a period of 30 days from the commencement of a strike, penalize or discharge an employee on account of his participation in such a strike if the requirements of this section in regard thereto have been complied with and such a strike is not conducted in an unfair manner.

(b) If the strike is during the period referred to in paragraph *(a)* conducted in an unfair manner or is continued after the said period, the employer concerned may discharge or otherwise penalize an employee involved in the strike.

(c) For the purposes of the discharge of an employee in terms of paragraph *(b)* the provisions of subsection (11) shall *mutatis mutandis* apply.

(11) *(a)* If employees participate in any strike in contravention of this section, the head of department shall by means of a notice give them an ultimatum to return to work within one day or such longer period as the head of department at his sole discretion may determine, and if they fail to do so, he shall by means of a further notice, instead of the normal disciplinary procedure or action, afford them the opportunity of providing him, within three working days, with a written explanation for not performing their normal duties.

(b) A notice referred to in paragraph *(a)* may be made by means of verbal communication, a letter, publication thereof in any manner or the affixing thereof at the employees' fixed place of work or, if they do not have a fixed place of work, at the place where they sign on or report for duty.

(c) Upon the expiry of the period of three working days referred to in paragraph *(a)*, the head of department shall take into account any written explanations so made, and may thereafter immediately terminate the services of any such employees at his sole discretion, and notwithstanding the provisions of section 16(1) and (4) of the Public Service Act.

(12) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

Essential services

20. (1) Essential services are services the interruption of which could cause serious hardship to the whole or a part of the community or could endanger the life, safety or health of the members or some of the members of the community, and include—

(a) provision of water, power and sanitation;
(b) regulation and control of air traffic;
(c) emergency health services, and provision of emergency health facilities, to the community or a part thereof;
(d) fire-fighting services;

staking of 'n ander werkstopsetting wat nie 'n staking is nie, of vir die duur van enige wettige uitsluiting.

(8) Geen siviele geding mag in enige geregshof ingestel word nie teen enige werknemer, werkgewer, werknemerorganisasie of werkgewerorganisasie of teen enige lid, ampsdraer of amptenaar van so 'n organisasie ten opsigte van kontrakbreuk, verbreking van 'n statutêre verpligting of onregmatige daad (behalwe laster) gepleeg deur daardie werknemer, werkgewer of organisasie, of deur daardie lid, ampsdraer of amptenaar namens daardie organisasie, ter bevordering van 'n staking of uitsluiting: Met dien verstande dat bedoelde vrywaring nie van toepassing is nie op enige handeling verrig ter bevordering van 'n staking of uitsluiting waaraan, of aan die voortsetting waarvan, enige werknemer, werkgewer of ander persoon by hierdie artikel verbied word om deel te neem, of op enige handeling waarvan die pleeg 'n kriminele oortreding is.

(9) Behoudens die bepalings van subartikel (8) is enige lid, ampsdraer of amptenaar van 'n werknemerorganisasie, werkgewerorganisasie of enige werkgewer of werknemerfederasie of enige ander persoon wat inbreuk maak op die kontraktuele verhouding tussen 'n werkgewer en 'n werknemer wat die verbreking van die betrokke kontrak tot gevolg het, deliktueel aanspreeklik.

(10) *(a)* Behalwe soos by subartikel (7) bepaal, mag geen werkgewer vir 'n tydperk van 30 dae vanaf die aanvang van 'n staking 'n werknemer penaliseer of ontslaan vanweë sy deelname aan dié staking nie, indien die bepalings van hierdie artikel ten opsigte daarvan nagekom is en dié staking nie op 'n onbillike wyse uitgevoer word nie.

(b) Indien 'n staking gedurende die tydperk bedoel in paragraaf *(a)* op 'n onbillike wyse uitgevoer word of na genoemde tydperk voortgesit word, kan die betrokke werkgewer 'n betrokke werknemer ontslaan of anders penaliseer.

(c) Vir die doeleindes van die ontslag van 'n werknemer ingevolge paragraaf *(b)* is die bepalings van subartikel (11) *mutatis mutandis* van toepassing.

(11) *(a)* Indien werknemers aan 'n staking in stryd met hierdie artikel deelneem, moet die departementshoof deur middel van 'n kennisgewing aan hulle 'n ultimatum rig om binne een dag of die langer tydperk wat die departementshoof na eie goeddunke bepaal, terug te keer werk toe, en indien hulle versuim om dit te doen, moet hy deur middel van 'n verdere kennisgewing, in plaas van die gewone dissiplinêre prosedures of optredes, sodanige werknemers die geleentheid bied om binne drie werksdae 'n skriftelike verduideliking aan hom te verskaf waarom hulle nie hul normale pligte verrig nie.

(b) 'n Kennisgewing in paragraaf *(a)* vermeld, kan geskied deur middel van mondelinge kommunikasie, 'n brief, publikasie daarvan op enige wyse of die aanbring daarvan by die werknemers se vaste werkplek of, indien hulle nie 'n vaste werkplek het nie, by die plek waar hulle vir diens aanteken of hulle daarvoor aanmeld.

(c) By verstryking van die tydperk van drie werksdae in paragraaf *(a)* vermeld, neem die departementshoof alle geskrewe verduidelikings aldus verskaf, in ag, en kan hy daarna, ondanks die bepalings van artikel 16(1) en (4) van die Staatsdienswet, onmiddellik die dienste van enige sodanige werknemers na eie goeddunke beëindig.

(12) Iemand wat die bepalings van hierdie artikel oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R2 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sodanige gevangenisstraf sonder die keuse van 'n boete of met sodanige boete sowel as sodanige gevangenisstraf.

Noodsaaklike dienste

20. (1) Noodsaaklike dienste is dienste waarvan die onderbreking ernstige ontbering kan veroorsaak vir die hele of 'n gedeelte van die gemeenskap, of die lewe, veiligheid of gesondheid van die lede of sommige lede van die gemeenskap in gevaar kan stel, en ook —

(a) voorsiening van water, krag en sanitasie;

(b) regulering en beheer van lugverkeer;

(c) nood-gesondheidsdienste, en voorsiening van nood-gesondheidsfasiliteite, aan die gemeenskap of 'n gedeelte daarvan;

(d) brandbestrydingsdienste;

(e) key-point computer services;
(f) services essential for the functioning of the courts;
(g) nursing services;
(h) medical and paramedical services;
(i) services by employees in the management echelon;
(j) services by employees in the South African Defence Force, the South African Police and the Department of Correctional Services;
(k) services by employees responsible for the payment of social pensions;
(l) any service declared by the Industrial Court to be an essential service;
(m) services which the employer and employees or employee organizations agree to be essential services, as far as they are concerned; and
(n) support services essential to the rendering of any services contemplated in this subsection.

(2) If a dispute arises with regard to whether an employee is rendering an essential service as contemplated in subsection (1), such a dispute may within 14 days from the date on which the dispute arose, be referred to arbitration by any party to the dispute, for resolution on an expedited basis, and the arbitrator's decision shall be binding.

Compulsory arbitration

21. (1) A dispute of interest which relates to employees who are employed in an essential service and which cannot be settled by the relevant parties in a chamber of the Council by means of negotiation shall—

(a) in the case of a dispute at central level that will have financial implications for the employer, or a dispute at departmental level concerning a matter within the power of a chamber at that level, be referred to arbitration in accordance with the provisions of this section; and
(b) in the case of a dispute at central level concerning a matter that will not have financial implications for the employer, be referred to the Industrial Court for a decision or, by agreement between the parties, to arbitration in accordance with the provisions of this section.

(2) Referral to arbitration contemplated in subsection (1) shall only take place by the lodging of a request for arbitration by either the relevant admitted employee organizations referred to in section 5(5) or the relevant employer in a chamber of the Council concerned, decided on beforehand by a majority of votes on the employee side, as contemplated in section 12(5), at a meeting of the particular chamber of the Council held in accordance with the constitution thereof, or by a majority of votes on the employer side at such a meeting.

(3) Arbitration shall be conducted by a single arbitrator, or by an even number of arbitrators and an umpire, selected from a panel of arbitrators to be utilized by all the chambers of the Council and compiled by the chamber of the Council at central level.

(4) If a chamber of the Council has decided that the arbitration shall be conducted by a single arbitrator, a person in favour of whose appointment a majority of votes on the employee side and a majority of votes on the employer side have been polled, shall be appointed arbitrator from the panel referred to in subsection (3).

(5) If a chamber of the Council has decided that the arbitration shall be conducted by an even number of arbitrators and an umpire, one half of the number of arbitrators shall be appointed by the representatives on the employee side from the panel referred to in subsection (3), and one half by the representatives on the employer side from the said panel, while the person from the said panel in favour of whose appointment a majority of votes on the employee side and a majority of votes on the employer side have been polled, shall be appointed umpire.

(6) If more than one arbitrator has been appointed—

(a) the umpire shall preside at all meetings of the arbitrators at which he is present;

(e) sleutelpunt-rekenaardienste;
(f) dienste noodsaaklik vir die funksionering van die howe;
(g) verpleegdienste;
(h) mediese en paramediese dienste;
(i) dienste deur werknemers in die bestuurskader;
(j) dienste deur werknemers in die Suid-Afrikaanse Weermag, die Suid-Afrikaanse Polisie en die Departement van Korrektiewe Dienste;
(k) dienste deur werknemers verantwoordelik vir die uitbetaling van maatskaplike pensioene;
(l) enige diens ten opsigte waarvan die Nywerheidshof verklaar het dat dit 'n noodsaaklike diens is;
(m) dienste ten opsigte waarvan die werkgewer en werknemers of werknemerorganisasies ooreenkom dat dit noodsaaklike dienste is, vir sover dit hulle betref; en
(n) ondersteuningsdienste wat noodsaaklik is by die lewering van dienste beoog in hierdie subartikel.

(2) Indien 'n geskil ontstaan oor die vraag of 'n werknemer 'n noodsaaklike diens soos bedoel in subartikel (1) lewer, kan dié geskil binne 14 dae vanaf die datum van die ontstaan van die geskil deur enige party by die geskil na arbitrasie verwys word vir beslegting op 'n spoedeisende basis, en die arbiter se beslissing is bindend.

Verpligte arbitrasie

21. (1) 'n Geskil van belange wat betrekking het op werknemers wat benut word in 'n noodsaaklike diens en wat nie deur die betrokke partye in 'n kamer van die Raad deur middel van onderhandelinge besleg kan word nie, word —

(a) in die geval van 'n geskil op sentrale vlak wat finansiële implikasies vir die werkgewer sal hê, of 'n geskil op departementele vlak rakende 'n aangeleentheid binne die bevoegdheid van 'n kamer op daardie vlak, na arbitrasie verwys ooreenkomstig die bepalings van hierdie artikel; en
(b) in die geval van 'n geskil op sentrale vlak rakende 'n aangeleentheid wat nie finansiële implikasies vir die werkgewer sal hê nie, na die Nywerheidshof vir 'n beslissing verwys of, by ooreenkoms tussen die partye, na arbitrasie ooreenkomstig die bepalings van hierdie artikel.

(2) Verwysing na arbitrasie bedoel in subartikel (1), geskied slegs deur die indiening van 'n versoek om arbitrasie deur óf die betrokke toegelate werknemerorganisasies in artikel 5(5) bedoel, óf die betrokke werkgewer in 'n betrokke kamer van die Raad, waarop vooraf besluit is by wyse van 'n meerderheidstem aan die werknemerkant, soos bedoel in artikel 12(5), op 'n vergadering van die betrokke kamer van die Raad wat volgens die konstitusie daarvan gehou word, of by wyse van 'n meerderheidstem aan die werkgewerkant op so 'n vergadering.

(3) Arbitrasie word onderneem deur 'n enkele arbiter, of deur 'n gelyke getal arbiters en 'n skeidsregter, verkies uit 'n paneel van arbiters wat deur alle kamers van die Raad benut moet word en wat deur die kamer van die Raad op sentrale vlak saamgestel moet word.

(4) As 'n kamer van die Raad besluit het dat die arbitrasie deur 'n enkele arbiter onderneem moet word, moet 'n persoon ten gunste van wie se aanstelling 'n meerderheid van stemme aan die werknemerkant en 'n meerderheid van stemme aan die werkgewerkant uitgebring is, as arbiter aangestel word uit die paneel in subartikel (3) vermeld.

(5) As 'n kamer van die Raad besluit het dat die arbitrasie deur 'n gelyke getal arbiters en 'n skeidsregter onderneem moet word, moet die helfte van die getal arbiters deur die verteenwoordigers aan die werknemerkant uit die paneel in subartikel (3) vermeld en die ander helfte deur die verteenwoordigers aan die werkgewerkant uit genoemde paneel aangestel word, en moet die persoon uit genoemde paneel ten gunste van wie se aanstelling 'n meerderheid van stemme aan die werknemerkant en 'n meerderheid van stemme aan die werkgewerkant uitgebring is, as skeidsregter aangestel word.

(6) Indien meer as een arbiter aangestel is—

(a) moet die skeidsregter voorsit op alle vergaderings van die arbiters waarop hy teenwoordig is;

(b) the decision of the majority of the arbitrators shall be the decision of the arbitrators; and

(c) the umpire shall, in the case of an equality of votes, have a casting vote.

(7) The relevant chamber of the Council shall determine the terms of reference of an arbitrator, or arbitrators and umpire, appointed in terms of subsection (4) or (5).

(8) If a decision or appointment referred to in subsection (4) or (5) has not been made within 21 days from the date of the lodging of the request in terms of subsection (2), the arbitration shall be conducted by the Industrial Court within the terms of reference determined by the relevant chamber of the Council.

(9) Arbitration contemplated in subsection (1) shall be finalized within 30 days from the date on which an arbitrator, or arbitrators and umpire, were appointed by the relevant chamber of the Council in terms of subsection (4) or (5): Provided that that period may be extended by agreement between the parties, or for a reasonable period by the arbitrator, or arbitrators and umpire.

(10) The arbitrator, or arbitrators and umpire, or the Industrial Court shall make an award which shall indicate which party's point of view is acceptable or what compromise can be reached between the various parties' points of view, or may decide, if circumstances justify it, that sufficient negotiations or endeavours to settle the dispute have not taken place in the relevant chamber of the Council, and shall then, within 30 days of the date of referral of the matter by the relevant chamber, refer it back to such chamber for final consideration.

(11) An award shall deal only with the subject-matter of the dispute, and with matters reasonably incidental to the settlement of the dispute.

(12) If any dispute which has been referred to arbitration in terms of this section is settled by a decision of the relevant chamber of the Council in terms of section 12 before an award has been made and the arbitrator has been informed in writing that arbitration is no longer desired, the arbitration proceedings shall cease.

(13) A copy of the award by the arbitrator, or arbitrators and umpire, or the Industrial Court shall be furnished to each party in the chamber of the Council concerned.

(14) *(a)* In the case of arbitration contemplated in paragraph *(a)* of subsection (1) regarding a dispute at central level concerning a matter that will have financial implications for the employer, the arbitrator, or arbitrators and umpire, or the Industrial Court, as the case may be, shall make a report and finding which shall be forwarded to the Secretary to Parliament, who shall submit it to the joint committee with regard to financial matters, which shall, as soon as is practicable, submit the report and finding, together with a report by it thereon, to Parliament for its decision thereon during the current or next ordinary session of Parliament.

(b) In the case of the referral of a dispute to the Industrial Court or to arbitration in terms of paragraph *(b)* of subsection (1), the decision of the Industrial Court or the award of the arbitrator, or arbitrators and umpire, shall be binding on all the parties concerned.

(c) In the case of arbitration contemplated in paragraph *(a)* of subsection (1) regarding a dispute at departmental level—

(i) concerning a matter that will have financial implications for the employer, the arbitrator, or arbitrators and umpire, or the Industrial Court, as the case may be, shall make an award, which shall be binding on all the parties concerned and given effect to by them, unless insufficient funds have been appropriated for the department concerned for giving effect to the award during the financial year in question, in which case such department shall request that such funds be appropriated during the following financial year; and

(ii) concerning a matter that will not have financial implications for the employer, the arbitrator, or arbitrators and umpire, or the Industrial Court, as the case may be, shall make an award, which shall be binding on all the parties and given effect to by them.

(15) If the dispute has been referred to arbitration in terms of subsection (1) the following provisions with regard to the costs of arbitration shall apply:

(b) is die beslissing van die meerderheid van die arbiters die beslissing van die arbiters; en

(c) het die skeidsregter, in die geval van 'n staking van stemme, 'n beslissende stem.

(7) Die betrokke kamer van die Raad bepaal die opdrag aan die arbiter, of arbiters en skeidsregter, ingevolge subartikel (4) of (5) aangestel.

(8) Indien 'n besluit of aanstelling in subartikel (4) of (5) vermeld, nie geneem of gedoen is nie binne 21 dae vanaf die datum van die indiening van die versoek ingevolge subartikel (2), moet die arbitrasie deur die Nywerheidshof onderneem word binne die opdrag wat die betrokke kamer van die Raad bepaal het.

(9) Arbitrasie in subartikel (1) bedoel, moet afgehandel word binne 30 dae vanaf die datum waarop die arbiter, of arbiters en skeidsregter, ingevolge subartikel (4) of (5) deur die betrokke kamer van die Raad aangestel is: Met dien verstande dat bedoelde tydperk deur ooreenkoms tussen die partye, of vir 'n redelike tydperk deur die arbiter, of arbiters en skeidsregter, verleng kan word.

(10) Die arbiter, of arbiters en skeidsregter, of die Nywerheidshof moet 'n toekenning doen wat aandui watter party se standpunt aanvaarbaar is of watter kompromie tussen die verskillende partye se standpunte aangegaan kan word, of kan besluit, indien omstandighede dit regverdig, dat voldoende onderhandelinge of pogings tot beslegting van die geskil nie in die betrokke kamer van die Raad plaasgevind het nie, en moet dan die aangeleentheid binne 30 dae vanaf die datum van verwysing daarvan deur die betrokke kamer, na sodanige kamer terugverwys vir finale oorweging.

(11) 'n Toekenning mag slegs handel oor die onderwerp van die geskil en oor aangeleenthede wat redelikerwys met die beslegting van die geskil in verband staan.

(12) As 'n geskil wat ingevolge hierdie artikel na arbitrasie verwys is, geskik word by wyse van 'n besluit van die betrokke kamer van die Raad ingevolge artikel 12 voordat 'n toekenning gedoen word en die arbiter skriftelik in kennis gestel is dat arbitrasie nie meer verlang word nie, word die arbitrasieverrigtinge gestaak.

(13) 'n Afskrif van die toekenning van die arbiter, of arbiters en skeidsregter, of die Nywerheidshof moet aan elke party in die betrokke kamer van die Raad voorsien word.

(14) *(a)* In die geval van arbitrasie bedoel in paragraaf *(a)* van subartikel (1) in verband met 'n geskil op sentrale vlak rakende 'n aangeleentheid wat finansiële implikasies vir die werkgewer sal hê, moet die arbiter, of arbiters en skeidsregter, of die Nywerheidshof, na gelang van die geval, 'n verslag en bevinding uitbring, wat gestuur moet word aan die Sekretaris van die Parlement, wat dit moet voorlê aan die gesamentlike komitee ten opsigte van finansiële aangeleenthede, wat die verslag en bevinding, saam met 'n verslag van hom daaroor, so spoedig moontlik aan die Parlement moet voorlê vir sy beslissing daaroor gedurende die huidige of volgende gewone sessie van die Parlement.

(b) In die geval van die verwysing van 'n geskil na die Nywerheidshof of na arbitrasie ingevolge paragraaf *(b)* van subartikel (1), is die beslissing van die Nywerheidshof of die toekenning van die arbiter, of arbiters en skeidsregter, bindend vir al die betrokke partye.

(c) In die geval van arbitrasie bedoel in paragraaf *(a)* van subartikel (1) in verband met 'n geskil op departementele vlak—

(i) rakende 'n aangeleentheid wat finansiële implikasies vir die werkgewer sal hê, moet die arbiter, of arbiters en skeidsregter, of die Nywerheidshof, na gelang van die geval, 'n toekenning doen, wat bindend vir al die betrokke partye is en deur hulle uitgevoer moet word, tensy onvoldoende fondse vir die uitvoering van die toekenning gedurende die betrokke boekjaar vir die betrokke departement bewillig is, in watter geval genoemde departement moet versoek dat sodanige fondse gedurende die volgende boekjaar bewillig word; en

(ii) rakende 'n aangeleentheid wat nie finansiële implikasies vir die werkgewer sal hê nie, moet die arbiter, of arbiters en skeidsregter, of die Nywerheidshof, na gelang van die geval, 'n toekenning doen, wat bindend vir al die partye is en deur hulle uitgevoer moet word.

(15) Indien die geskil ingevolge subartikel (1) na arbitrasie verwys is, is die volgende bepalings met betrekking tot die koste van arbitrasie van toepassing:

(a) If only one arbitrator has been appointed, one half of his fees shall be paid by the employee organizations involved in the arbitration in the relevant chamber of the Council and one half by the employer concerned;

(b) if more than one arbitrator has been appointed, the employee organizations involved and the employer concerned shall, respectively, pay the fees of the arbitrator or arbitrators appointed by them;

(c) if an umpire has been appointed, one half of his fees shall be paid by the employee organizations involved and one half by the employer concerned; or

(d) if the arbitration is conducted by the Industrial Court, one half of the prescribed fees shall be paid by the employee organizations involved and one half by the employer concerned.

(16) Notwithstanding the provisions of subsection (15) the employer shall pay the costs if a report and finding are made in terms of subsection 14*(a)* and Parliament does not approve of it in whole or in part, or if the funds requested in terms of subsection (14)*(c)*(i) are not appropriated in whole or in part.

Powers and functions of Industrial Court

22. (1) *(a)* Subject to the provisions of this Act, the Industrial Court shall, in addition to any functions it may have in terms of any other law, have the functions conferred upon or assigned to it under this Act, and the rules and procedure applicable in respect of it under the Labour Relations Act shall *mutatis mutandis* apply in respect of the performance of its functions under this Act.

(b) For the purposes of this Act, the Rules Board established by section 17(22) of the Labour Relations Act may make additional rules, which shall not be in conflict with the provisions of this Act.

(2) The functions of the Industrial Court in terms of this Act shall be—

(a) to grant urgent interim relief until an order has been made by it in terms of section 23(9);

(b) to consider and give a decision on any application made to it for an order under section 23(9);

(c) to make determinations in terms of section 24;

(d) to decide appeals in terms of sections 10(3)*(b)*, 10(5)*(d)*(ii), 11(7), 17(4)*(b)*, 17(8) and 18(11)*(b)*;

(e) to adjudicate disputes referred to it in terms of sections 18(10), 21(1)*(b)* and subsections (5) and (6)*(a)* of this section;

(f) to make awards in terms of sections 21(10) and 21(14)*(c)*;

(g) to grant an interdict in terms of section 19(6);

(h) to make an order in terms of subsections (3) and (4);

(i) to conduct arbitration in terms of section 21(8);

(j) to make a report and finding in terms of section 21(14)*(a)* and forward it to the Secretary to Parliament; and

(k) to deal with any other matter which it is required or permitted to deal with under this Act.

(3) The Industrial Court shall not make any order as to costs in respect of any proceedings brought before it, save on the ground of unreasonableness or frivolity on the part of a party to a relevant dispute.

(4) Any order as to costs in terms of subsection (3) may also be made against an employee organization, employer organization, office-bearer or official acting on behalf of or in any manner assisting any person.

(5) In the event of a dispute of right not being—

(a) resolved by a chamber of the Council;

(b) settled by a conciliation board; or

(c) settled by the parties contemplated in section 23(3),

any party to the dispute may, in the case of an unfair labour practice, approach the Industrial Court or, in the case of any other dispute of right, any other court for adjudication of the dispute.

(a) As slegs een arbiter aangestel is, moet die helfte van sy gelde deur die werknemerorganisasies betrokke by die arbitrasie in die betrokke kamer van die Raad en die ander helfte deur die betrokke werkgewer betaal word;

(b) as meer as een arbiter aangestel is, moet die betrokke werknemerorganisasies en die betrokke werkgewer onderskeidelik die gelde van die arbiter of arbiters deur hulle aangestel, betaal;

(c) as 'n skeidsregter aangestel is, moet die helfte van sy gelde deur die betrokke werknemerorganisasies en die ander helfte deur die betrokke werkgewer betaal word; of

(d) as die arbitrasie deur die Nywerheidshof onderneem word, moet die helfte van die voorgeskrewe gelde deur die betrokke werknemerorganisasies en die ander helfte deur die betrokke werkgewer betaal word.

(16) Ondanks die bepalings van subartikel (15) moet die werkgewer die koste betaal indien 'n verslag en bevinding ingevolge subartikel (14)*(a)* uitgebring word en die Parlement dit nie in die geheel of gedeeltelik goedkeur nie, of as die fondse ingevolge subartikel (14)*(c)*(i) versoek, nie in die geheel of gedeeltelik bewillig word nie.

Bevoegdhede en werksaamhede van Nywerheidshof

22. (1) *(a)* Behoudens die bepalings van hierdie Wet het die Nywerheidshof, benewens werksaamhede wat hy ingevolge 'n ander wet het, die werksaamhede wat by hierdie wet aan hom verleen of opgedra word, en is die reëls en prosedure wat kragtens die Wet op Arbeidsverhoudinge ten opsigte van hom van toepassing is, *mutatis mutandis* van toepassing ten opsigte van die verrigting van sy werksaamhede kragtens hierdie Wet.

(b) Vir die doeleindes van hierdie Wet kan die Reëlsraad ingestel by artikel 17(22) van die Wet op Arbeidsverhoudinge, nuwe reëls uitvaardig, wat nie met die bepalings van hierdie Wet strydig is nie.

(2) Die werksaamhede van die Nywerheidshof ingevolge hierdie Wet is—

(a) om dringende tussentydse regshulp te verleen totdat 'n bevel deur hom ingevolge artikel 23(9) uitgevaardig is;

(b) om oorweging te skenk aan, en 'n beslissing te gee oor, 'n aansoek by hom gedoen om 'n bevel kragtens artikel 23(9);

(c) om vasstellings ingevolge artikel 24 te doen;

(d) om appèlle ingevolge artikels 10(3)*(b)*, 10(5)*(d)*(ii), 11(7), 17(4)*(b)*, 17(8) en 18(11)*(b)* te beslis;

(e) om geskille wat ingevolge artikels 18(10), 21(1)*(b)* en subartikels (5) en (6)*(a)* van hierdie artikel na hom verwys is, te bereg;

(f) om toekennings ingevolge artikels 21(10) en 21(14)*(c)* te doen;

(g) om 'n interdik ingevolge artikel 19(6) uit te reik;

(h) om 'n bevel ingevolge subartikels (3) en (4) uit te vaardig;

(i) om arbitrasie ingevolge artikel 21(8) te onderneem;

(j) om ingevolge artikel 21(14)*(a)* 'n verslag en bevinding uit te bring en aan die Sekretaris van die Parlement te stuur; en

(k) om met enige ander aangeleentheid te handel waarmee hy kragtens hierdie Wet moet of kan handel.

(3) Die Nywerheidshof vaardig nie 'n bevel uit nie met betrekking tot koste ten opsigte van enige verrigtinge wat voor hom ingestel is, behalwe op grond van onredelikheid of beuselagtigheid van die kant van 'n party by 'n tersaaklike geskil.

(4) 'n Bevel insake koste ingevolge subartikel (3) kan ook uitgevaardig word teen 'n werknemerorganisasie, werkgewerorganisasie, ampsdraer of amptenaar wat namens die een of ander persoon optree of hom op enige wyse bystaan.

(5) In die geval waar 'n geskil van regte nie—

(a) deur 'n kamer van die Raad bygelê word nie;

(b) deur 'n versoeningsraad besleg word nie; of

(c) deur die partye bedoel in artikel 23(3) besleg word nie,

kan enige party by die geskil, in die geval van 'n onbillike arbeidspraktyk, die Nywerheidshof of, in die geval van enige ander geskil van regte, enige ander hof om die beregting van die geskil nader.

(6) *(a)* Subject to subsection (5), a court, including the Industrial Court, which has been approached in terms of the said subsection shall adjudicate such dispute.

(b) Subject to the provisions of this Act, any such court may be so approached without it being necessary to make use of or to exhaust any other procedures in terms of any other law or the common law: Provided that a party which so approaches a court shall observe the rules of such court with regard to the referral and adjudication of disputes.

Power of Industrial Court in regard to reinstatement of employees, restoration of terms and conditions of employment, and unfair labour practices

23. (1) In this section and section 24 "dispute" means a dispute about an alleged unfair labour practice.

(2) Any party to a dispute—

(a) who has under section 18(1) applied that the dispute be referred to a conciliation board; or

(b) who, where the dispute has arisen between the employer and an admitted employee organization, whether inside or outside a chamber of the Council, has requested the Chairman of the chamber concerned to take steps to resolve the dispute in terms of the constitution of such chamber,

may within 10 days of the date of such referral or request apply by means of an affidavit to the Industrial Court for an order under subsection (9).

(3) Any employee organization, other than an admitted employee organization, which or employer who alleges that an unfair labour practice has been committed against it or him by the other party, or any employer who alleges that an unfair labour practice has been committed by an employee against him, may apply by means of an affidavit to the Industrial Court for an order under subsection (9): Provided that—

(a) the applicant shall satisfy the court that it or he has taken steps to settle the dispute between it or him and the other party; and

(b) such application shall be made within 10 days of the date on which such other party was in writing notified of the dispute and requested that arrangements be made for the settlement of the dispute.

(4) Notwithstanding subsection (2), any party to a dispute involving a head of department and his employer may apply directly to the Industrial Court for an order under subsection (9).

(5) Whenever an application for an order is made in terms of subsection (2), (3) or (4) the applicant shall at the same time furnish proof to the satisfaction of the Industrial Court that a copy of the application has been sent by registered post or delivered by hand to the other party or parties to the dispute.

(6) The party or parties referred to in subsection (5) may within 14 days of the date on which the application was posted or delivered by hand or such further period or periods as the Industrial Court may from time to time either before or after the expiry of any such period fix, submit an affidavit sent by registered post or delivered by hand to the Industrial Court in regard thereto, and shall simultaneously send by registered post or deliver by hand to the applicant a copy thereof, and the applicant may within 10 days of the date on which the affidavit was posted or delivered, or such further period or periods as the Industrial Court may from time to time fix, by means of an affidavit reply thereto.

(7) Any party to any proceedings in the Industrial Court may present his case in person or may be represented by—

(a) any person admitted as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979);

(b) any person admitted as an advocate under the Admission of Advocates Act, 1964 (Act No. 74 of 1964);

(c) any member, office-bearer or official of any employee organization or employer organization of which he is a member or in respect of which he is eligible for membership; or

(d) any other employee or person whom the Industrial Court may in its discretion approve.

(8) Unless the Industrial Court on good cause shown decides otherwise, no order may be made under subsection (9) if the relevant application under subsection (2), (3) or (4) was not made within 30 days of the date on which notice

(6) *(a)* Behoudens subartikel (5) moet 'n hof, met inbegrip van die Nywerheidshof, wat ingevolge genoemde subartikel genader is, die geskil bereg.

(b) Behoudens die bepalings van hierdie Wet kan enige so 'n hof aldus genader word sonder dat dit nodig is om gebruik te maak van ander prosedures ingevolge 'n ander wet of die gemene reg, of dit uit te put: Met dien verstande dat 'n party wat 'n hof aldus nader, steeds die reëls van so 'n hof in verband met die verwysing en beregting van geskille moet nakom.

Bevoegdheid van Nywerheidshof betreffende herstel in diens van werknemers, herstel van bedinge en voorwaardes van diens, en onbillike arbeidspraktyke

23. (1) In hierdie artikel en artikel 24 beteken "geskil" 'n geskil aangaande 'n beweerde onbillike arbeidspraktyk.

(2) Enige party by 'n geskil—

(a) wat kragtens artikel 18(1) aansoek gedoen het dat die geskil na 'n versoeningsraad verwys word; of

(b) wat, waar die geskil tussen die werkgewer en 'n toegelate werknemerorganisasie ontstaan het, hetsy binne of buite 'n kamer van die Raad, die Voorsitter van die betrokke kamer versoek het om stappe te doen om die geskil ingevolge die konstitusie van dié kamer op te los,

kan binne 10 dae vanaf die datum van sodanige verwysing of versoek by wyse van 'n beëdigde verklaring by die Nywerheidshof aansoek doen om 'n bevel kragtens subartikel (9).

(3) Enige werknemerorganisasie, behalwe 'n toegelate werknemerorganisasie, of werkgewer wat beweer dat 'n onbillike arbeidspraktyk deur die ander party teen hom gepleeg is, of enige werkgewer wat beweer dat 'n onbillike arbeidspraktyk deur 'n werknemer teen hom gepleeg is, kan by wyse van 'n beëdigde verklaring by die Nywerheidshof om 'n bevel kragtens subartikel (9) aansoek doen: Met dien verstande dat —

(a) die aansoeker die hof moet oortuig dat hy stappe gedoen het om die geskil tussen hom en die ander party te besleg; en

(b) sodanige aansoek gedoen moet word binne 10 dae vanaf die datum waarop sodanige ander party skriftelik van die geskil in kennis gestel is en versoek is dat reëlings vir die beslegting van die geskil getref word.

(4) Ondanks subartikel (2) kan enige party by 'n geskil waarby 'n departementshoof en sy werkgewer betrokke is, direk by die Nywerheidshof om 'n bevel kragtens subartikel (9) aansoek doen.

(5) Wanneer 'n aansoek om 'n bevel ingevolge subartikel (2), (3) of (4) gedoen word, moet die aansoeker tegelykertyd bewys ten genoeë van die Nywerheidshof lewer dat 'n afskrif van die aansoek per geregistreerde pos gestuur of per hand afgelewer is aan die ander party of partye by die geskil.

(6) Die party of partye in subartikel (5) vermeld, kan binne 14 dae vanaf die datum waarop die aansoek gepos of per hand afgelewer is of die verdere tydperk of tydperke wat die Nywerheidshof van tyd tot tyd óf voor óf na verstryking van so 'n tydperk vasstel, 'n beëdigde verklaring daaromtrent, wat per geregistreerde pos gestuur of per hand afgelewer is, aan die Nywerheidshof voorlê, en moet terselfdertyd 'n afskrif daarvan per geregistreerde pos stuur of per hand aflewer aan die aansoeker, en die aansoeker kan binne 10 dae vanaf die datum waarop die beëdigde verklaring gepos of afgelewer is, of die verdere tydperk of tydperke wat die Nywerheidshof van tyd tot tyd bepaal, by wyse van 'n beëdigde verklaring daarop antwoord.

(7) Enige party by verrigtinge in die Nywerheidshof kan sy saak self voordra of kan verteenwoordig word deur—

(a) 'n persoon toegelaat as 'n prokureur kragtens die Wet op Prokureurs, 1979 (Wet No. 53 van 1979);

(b) 'n persoon toegelaat as 'n advokaat kragtens die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964);

(c) 'n lid, ampsdraer of amptenaar van enige werknemerorganisasie of werkgewerorganisasie waarvan hy lid is of kan word; of

(d) 'n ander werknemer of persoon wat die Nywerheidshof na eie goeddunke goedkeur.

(8) Tensy die Nywerheidshof by bewys van gegronde rede anders besluit, word geen bevel kragtens subartikel (9) uitgevaardig nie indien die betrokke aansoek kragtens subartikel (2), (3) of (4) nie gedoen is nie binne 30 dae vanaf die datum waarop kennis van die beweerde onbillike arbeidspraktyk aan die

was given of the alleged unfair labour practice to the other party to the dispute in question, or, if no such notice was given, of the date on which the alleged unfair labour practice became known to the aggrieved party.

(9) After considering—

(a) whether the applicant has complied with the relevant provisions of this section;

(b) the facts set out in the application and the affidavits contemplated in subsection (6);

(c) any oral representations or evidence allowed by the Industrial Court;

(d) whether the applicant has in good faith endeavoured to settle the dispute by agreement or otherwise; and

(e) whether it is expedient to grant an order in terms of this section,

the Industrial Court may make such order as it deems reasonable in the circumstances: Provided that no party may be ordered to pay damages of whatever nature and the Industrial Court may at any time, on an application of any party to the dispute, in respect of which the provisions of subsections (5) and (6) shall apply, withdraw or vary any such order.

(10) When making an order under subsection (9) the Industrial Court shall fix the date from which the order shall operate and may make it retrospective to a date not earlier than that on which the alleged unfair labour practice was introduced.

(11) An order made by the Industrial Court under subsection (9) shall, unless it is withdrawn sooner, remain operative—

(a) until the dispute has been settled by the conciliation board concerned or the relevant chamber of the Council or the parties referred to in subsection (3) or, if it is referred to the Industrial Court for determination, by such a determination in terms of section 24(4); or

(b) until the Chairman of the conciliation board concerned, or the relevant chamber of the Council or any of the parties referred to in subsection (3), informs the Industrial Court that the conciliation board or the chamber of the Council or the said parties have failed to settle the dispute and have decided not to refer the dispute to the Industrial Court for a determination in terms of section 24(4),

whichever event occurs first: Provided that no such order shall remain operative for longer than 90 days from the date of commencement thereof fixed by the Industrial Court under subsection (10), unless the Industrial Court, taking into consideration the steps taken by the parties to settle the dispute, of its own motion or on application extends that period by a period or from time to time by a period not exceeding 30 days at a time.

(12) If an order is made not to suspend or terminate the employment of any employee or, if such suspension or termination has already occurred, to rescind the suspension or to reinstate an employee, an employer who pays to an employee the remuneration and service benefits which would have been due to the employee in respect of his normal hours of work had his employment not been suspended or terminated or such lesser remuneration and service benefits as the Industrial Court may determine, taking cognizance of any remuneration and service benefits to which the employee has in the meantime become entitled by virtue of work performed by such employee, shall be deemed to have complied with the order.

(13) If the Industrial Court or the Labour Appeal Court confirms the suspension or termination or the decision or proposal which gave rise to the dispute, any employer who, as contemplated in subsection (12), has paid any remuneration and service benefits to an employee in satisfaction of an order made under subsection (9) in respect of the same matter, shall be entitled to recover the remuneration and service benefits so paid from the employee by civil proceedings.

(14) The Industrial Court may refuse to grant an application made in terms of subsection (2), (3) or (4), but may permit the applicant to make use of any documents on which that application was based, in applying again to the Industrial Court for an order under subsection (9).

ander party by die betrokke geskil gegee is, of, indien geen sodanige kennis gegee is nie, vanaf die datum waarop die beweerde onbillike arbeidspraktyk aan die gegriefde party bekend geraak het.

(9) Na oorweging—

(a) daarvan of die aansoeker aan die tersaaklike bepalings van hierdie artikel voldoen het;

(b) van die feite uiteengesit in die aansoek en die beëdigde verklarings bedoel in subartikel (6);

(c) van enige mondelinge vertoë of getuienis deur die Nywerheidshof toegelaat;

(d) daarvan of die aansoeker te goeder trou gepoog het om die geskil by ooreenkoms of andersins te besleg; en

(e) daarvan of dit raadsaam is om 'n bevel ingevolge hierdie artikel toe te staan,

kan die Nywerheidshof die bevel uitvaardig wat hy in die omstandighede redelik ag: Met dien verstande dat geen party beveel kan word om skadevergoeding van enige aard te betaal nie en die Nywerheidshof te eniger tyd, op 'n aansoek van 'n party by die geskil, ten opsigte waarvan die bepalings van subartikels (5) en (6) van toepassing is, so 'n bevel kan terugtrek of wysig.

(10) Wanneer die Nywerheidshof 'n bevel kragtens subartikel (9) uitvaardig, bepaal hy 'n datum van wanneer af die bevel van krag word en kan hy dit terugwerkend maak tot 'n datum nie vroeër nie as dié waarop die beweerde onbillike arbeidspraktyk ingevoer is.

(11) 'n Bevel deur die Nywerheidshof kragtens subartikel (9) uitgevaardig, bly, tensy dit eerder teruggetrek word, van krag—

(a) totdat die geskil deur die betrokke versoeningsraad of die betrokke kamer van die Raad of die partye in subartikel (3) vermeld of, as dit na die Nywerheidshof vir vasstelling verwys word, deur sodanige vasstelling ingevolge artikel 24(4), besleg is; of

(b) totdat die Voorsitter van die betrokke versoeningsraad, of die betrokke kamer van die Raad of enige van die partye in subartikel (3) vermeld, die Nywerheidshof meedeel dat die versoeningsraad of die kamer van die Raad of genoemde partye nie daarin geslaag het om die geskil te besleg nie en besluit het om nie die geskil na die Nywerheidshof vir 'n vasstelling ingevolge artikel 24(4) te verwys nie,

na gelang van watter gebeurtenis die eerste plaasvind: Met dien verstande dat geen sodanige bevel van krag bly nie vir langer as 90 dae vanaf die datum van inwerkingtreding daarvan deur die Nywerheidshof kragtens subartikel (10) bepaal, tensy die Nywerheidshof met inagneming van die stappe wat die partye tot beslegting van die geskil gedoen het, uit eie beweging of op aansoek daardie tydperk verleng met 'n tydperk of van tyd tot tyd met 'n tydperk van nie langer as 30 dae op 'n keer nie.

(12) Indien 'n bevel uitgevaardig word om nie 'n werknemer te skors of sy diens te beëindig nie of, indien sodanige skorsing of diensbeëindiging reeds plaasgevind het, om die skorsing van die werknemer op te hef of hom in diens te herstel, word 'n werkgewer wat 'n werknemer die besoldiging en diensvoordele betaal wat die werknemer verskuldig sou gewees het ten opsigte van sy normale werkure as sy diens nie geskors of beëindig was nie of die kleiner besoldiging en diensvoordele wat die Nywerheidshof bepaal met inagneming van enige besoldiging en diensvoordele waarop die werknemer intussen geregtig geword het uit hoofde van diens wat so 'n werknemer gelewer het, geag uitvoering aan die bevel te gegee het.

(13) Indien die Nywerheidshof of die Arbeidsappèlhof die skorsing of beëindiging of die besluit of voorstel wat tot die geskil aanleiding gegee het, bekragtig, is 'n werkgewer wat, soos beoog in subartikel (12), enige besoldiging en diensvoordele aan 'n werknemer betaal het ter voldoening aan 'n bevel wat kragtens subartikel (9) uitgevaardig is ten opsigte van dieselfde aangeleentheid, geregtig om die besoldiging en diensvoordele aldus betaal, deur 'n siviele geding op die werknemer te verhaal.

(14) Die Nywerheidshof kan weier om 'n aansoek ingevolge subartikel (2), (3) of (4) gedoen, toe te staan, maar kan die aansoeker toelaat om gebruik te maak van enige stukke waarop daardie aansoek gegrond was, indien hy weer by die Nywerheidshof om 'n bevel kragtens subartikel (9) aansoek doen.

Determinations by Industrial Court

24. (1) The Industrial Court shall not determine a dispute unless—

(a) in the case of a dispute contemplated in section 18(1), such dispute has been referred for conciliation to a conciliation board;

(b) in the case of a dispute contemplated in section 23(2)*(b)*, the necessary steps have been taken to resolve such dispute in accordance with the constitution of the relevant chamber of the Council; or

(c) in the case of a dispute contemplated in section 23(3), the necessary steps have been taken to settle such dispute between the parties concerned.

(2) If a dispute—

(a) contemplated in paragraph *(a)* of subsection (1) has been referred to a conciliation board and that board has failed to settle the dispute within the period of 30 days, or within the further period referred to in section 18(7), any party to the dispute may as soon as possible after the expiration of the said period, or the said further period or periods, but not later than 90 days from the date on which that period, or that further period or those further periods, as the case may be, have lapsed;

(b) contemplated in paragraph *(b)* of subsection (1) could not be resolved in accordance with the provisions of the constitution of the relevant chamber of the Council, any party to the dispute may, within 90 days of the date on which such chamber indicated that it could not resolve the dispute; or

(c) contemplated in paragraph *(c)* of subsection (1) could not be settled between the parties concerned, any party to the dispute may, within 90 days of the date on which the aggrieved party in writing notified the other party of the dispute and requested that arrangements be made for the settlement of the dispute,

refer the dispute to the Industrial Court for determination, and the Industrial Court may condone the late lodging of such referral, but only on good cause shown.

(3) Notwithstanding subsection (1), the Industrial Court may determine a dispute referred to it by a head of department as aggrieved employee or by his employer as aggrieved party, if referral takes place within 90 days from the date on which the alleged unfair labour practice became known, or within such longer period as the Industrial Court may allow on good cause shown.

(4) The Industrial Court shall as soon as possible after receipt of the referral in terms of subsection (2) or (3) determine the dispute on such terms as it may deem reasonable, including the ordering of reinstatement or compensation or both reinstatement and compensation, and the dispute so determined may include any alleged unfair labour practice which is substantially contemplated by the referral to the Industrial Court in terms of subsection (2) or (3) or by the description of the issue or issues before the conciliation board as finally defined in terms of section 18(2)*(b)*: Provided that—

(a) different dates may be fixed in respect of different provisions of the determination; and

(b) no provision of a determination shall be made binding from a date earlier than six months prior to the date on which the determination is made, or from a date earlier than the date upon which, in the opinion of the Industrial Court, the dispute came into existence, whichever date is the later.

(5) Notwithstanding the provisions of subsections (1) and (2), the relevant chamber of the Council or, in the case of a conciliation board, or a dispute contemplated in section 23(3), the parties to the dispute may agree to report to the Industrial Court that they are satisfied that they will not be able to settle the dispute, and on receipt of such a report, the Industrial Court shall as soon as possible determine the dispute in terms of subsection (4).

(6) The provisions of section 23(7) shall apply *mutatis mutandis* to the parties to the dispute at proceedings before the Industrial Court in pursuance of the provisions of this section.

Vasstellings deur Nywerheidshof

24. (1) Die Nywerheidshof stel nie 'n geskil vas nie tensy—

(a) in die geval van 'n geskil bedoel in artikel 18(1), dié geskil na 'n versoeningsraad vir versoening verwys is;

(b) in die geval van 'n geskil bedoel in artikel 23(2)*(b)*, die nodige stappe gedoen is om die geskil ooreenkomstig die konstitusie van die betrokke kamer van die Raad te besleg; of

(c) in die geval van 'n geskil bedoel in artikel 23(3), die nodige stappe gedoen is om die geskil tussen die betrokke partye te besleg.

(2) Indien 'n geskil—

(a) bedoel in paragraaf *(a)* van subartikel (1) na 'n versoeningsraad verwys is en daardie raad nie daarin geslaag het om die geskil binne die tydperk van 30 dae, of binne die verdere tydperk bedoel in artikel 18(7), te besleg nie, kan enige party by die geskil so spoedig moontlik na die verstryking van genoemde tydperk of genoemde verdere tydperk of tydperke, maar nie later nie as 90 dae van die datum waarop daardie tydperk of daardie verdere tydperk of tydperke, na gelang van die geval, verstryk;

(b) bedoel in paragraaf *(b)* van subartikel (1) nie ooreenkomstig die bepalings van die konstitusie van die betrokke kamer van die Raad opgelos kon word nie, kan enige party by die geskil, binne 90 dae vanaf die datum waarop die kamer aangedui het dat hy nie die geskil kon oplos nie; of

(c) bedoel in paragraaf *(c)* van subartikel (1), nie tussen die betrokke partye besleg kon word nie, kan enige party by die geskil binne 90 dae vanaf die datum waarop die gegriefde party die ander party skriftelik van die geskil in kennis gestel het en versoek het dat reëlings vir die beslegting van die geskil getref word,

die geskil na die Nywerheidshof vir 'n vasstelling verwys, en die Nywerheidshof kan die laat indiening van sodanige verwysing kondoneer, maar slegs by aanvoering van gegronde rede.

(3) Ondanks subartikel (1) kan die Nywerheidshof 'n geskil wat na hom verwys is deur 'n departementshoof as gegriefde werknemer of deur sy werkgewer as gegriefde party, vasstel, indien die verwysing plaasvind binne 90 dae vanaf die datum waarop die beweerde onbillike arbeidspraktyk bekend geraak het, of binne die langer tydperk wat die Nywerheidshof by die aanvoer van gegronde rede toelaat.

(4) Die Nywerheidshof moet die geskil so spoedig moontlik na ontvangs van die verwysing ingevolge subartikel (2) of (3) vasstel op die voorwaardes wat hy redelik ag, met inbegrip van die uitreiking van 'n bevel vir herindiensstelling of skadevergoeding of sowel herindiensstelling as skadevergoeding, en die geskil aldus vasgestel, kan insluit enige beweerde onbillike arbeidspraktyk wat wesenlik beoog is deur die verwysing na die Nywerheidshof ingevolge subartikel (2) of (3), of deur die beskrywing van die geskilpunt of geskilpunte voor die versoeningsraad soos uiteindelik omskryf ingevolge artikel 18(2)*(b)*: Met dien verstande dat—

(a) verskillende datums ten opsigte van verskillende bepalings van die vasstelling bepaal kan word; en

(b) geen bepaling van 'n vasstelling bindend gemaak word nie vanaf 'n datum vroeër as ses maande voor die datum waarop die vasstelling gemaak word, of vanaf 'n datum vroeër as die datum waarop na die mening van die Nywerheidshof die geskil ontstaan het, na gelang van watter datum die jongste is.

(5) Ondanks die bepalings van subartikels (1) en (2) kan die betrokke kamer van die Raad of, in die geval van 'n versoeningsraad, of 'n geskil bedoel in artikel 23(3), die partye by die geskil ooreenkom om aan die Nywerheidshof verslag te doen dat hulle oortuig is dat hulle nie in staat sal wees om die geskil te besleg nie, en by ontvangs van so 'n verslag moet die Nywerheidshof so spoedig moontlik die geskil ingevolge subartikel (4) vasstel.

(6) Die bepalings van artikel 23(7) is *mutatis mutandis* van toepassing op die partye by die geskil by verrigtinge voor die Nywerheidshof ingevolge die bepalings van hierdie artikel.

Jurisdiction of Labour Appeal Court, and appeals to Appellate Division

25. (1) The provisions of the Labour Relations Act in relation to the Labour Appeal Court shall *mutatis mutandis* apply to decisions, orders or determinations of the Industrial Court in terms of this Act and to reservations of questions of law for decision by the Labour Appeal Court.

(2) The provisions of section 17C of the Labour Relations Act shall also apply to decisions and orders of the Labour Appeal Court for the purposes of this Act.

Transitional provisions

26. (1) The employer shall within 90 days of the date of commencement of this Act establish the various chambers of the Council.

(2) For the purposes of subsection (1), a founding meeting shall, after reasonable notice to the employee organizations referred to in subsection (5) or (6), be held in respect of each chamber of the Council contemplated, and the employer shall appoint a Chairman to preside at such meeting, but such a Chairman shall have no vote.

(3) At a founding meeting of a chamber of the Council the voting rights of an employee organization in that chamber shall be determined on the basis of the number of members of such an employee organization as evidenced by operative stop-orders in favour of such organization, in proportion to the total number of such members represented by all the employee organizations in such chamber, while the employer in the said chamber shall have a number of votes equal to that of all such employee organizations together, and decisions at the said meeting shall be taken by way of a majority of votes on the employer side as well as a majority of votes on the employee side, determined by means of a secret ballot.

(4) At a meeting contemplated in subsection (2)—

(a) the chamber of the Council at central level shall—

(i) in terms of section 8(1) make a recommendation to the responsible Minister regarding the appointment of the first Chairman of the said chamber; and

(ii) in terms of section 9(1) decide on the initial constitution of the said chamber; and

(b) a chamber of the Council at departmental level shall, in terms of section 8(5), appoint the first Chairman and, if necessary, acting Chairman of such a chamber.

(5) Subject to section 10(5), admitted employee organizations in the chamber of the Council at central level shall, for not less than 12 months from the date of the founding meeting of the chamber, and in addition to any other employee organizations admitted in terms of section 10 to the said chamber, be those employee organizations recognized on the day prior to the date of commencement of this Act in terms of the regulations made under the Public Service Act, as well as those other employee organizations which were participants in the negotiation process to effect the labour relations arrangements provided for in this Act.

(6) Subject to section 10(5), admitted employee organizations in the chambers of the Council at departmental level shall, for not less than 12 months from the date of the founding meeting of the relevant chamber, and in addition to any other employee organizations admitted in terms of section 10 to the relevant chambers, be those employee organizations in the departments concerned that, on the date of commencement of this Act, are in possession of stop-order facilities.

(7) Notwithstanding the provisions of section 13(5) and (6), the Commission or any relevant department or person may, after the commencement of this Act, but prior to the convening of a first meeting of a chamber of the Council in terms of its constitution, with a view to negotiating on the matters referred to in section 13(1), make recommendations, give directions or take decisions regarding adjustments of such matters: Provided that, notwithstanding the provisions of section 4(6)*(a)* of the Public Service Act, such recommendations, directions or decisions shall not reduce any remuneration or service benefits of employees or deprive them thereof.

Jurisdiksie van Arbeidsappèlhof, en appèlle na Appèlhof

25. (1) Die bepalings van die Wet op Arbeidsverhoudinge met betrekking tot die Arbeidsappèlhof is *mutatis mutandis* van toepassing op beslissings, bevele of vasstellings van die Nywerheidshof ingevolge hierdie Wet en op die voorbehoud van regsvrae vir beslissing deur die Arbeidsappèlhof.

(2) Die bepalings van artikel 17C van die Wet op Arbeidsverhoudinge is ook van toepassing op beslissings en bevele van die Arbeidsappèlhof vir die doeleindes van hierdie Wet.

Oorgangsbepalings

26. (1) Die werkgewer moet binne 90 dae vanaf die datum van die inwerkingtreding van hierdie Wet die onderskeie kamers van die Raad instel.

(2) Vir die doeleindes van subartikel (1) moet 'n stigtingsvergadering na redelike kennisgewing aan die werknemerorganisasies bedoel in subartikel (5) of (6), gehou word ten opsigte van elke beoogde kamer van die Raad, en die werkgewer moet 'n Voorsitter aanwys om op sodanige vergadering voor te sit, maar so 'n Voorsitter het geen stemreg nie.

(3) By 'n stigtingsvergadering van 'n kamer van die Raad moet die stemreg van 'n werknemerorganisasie in daardie kamer bepaal word aan die hand van die getal lede van sodanige werknemerorganisasie soos bewys word deur werkende aftrekorders ten gunste van dié organisasie, in verhouding tot die totale getal sodanige lede verteenwoordig deur al die werknemerorganisasies in dié kamer, terwyl die werkgewer in genoemde kamer 'n getal stemme het gelyk aan dié van alle sodanige werknemerorganisasies saam, en besluite op genoemde vergadering moet met 'n meerderheid van stemme aan die werkgewerkant sowel as 'n meerderheid van stemme aan die werknemerkant geneem word, bepaal deur geheime stemming.

(4) Op 'n vergadering bedoel in subartikel (2)—

(a) moet die kamer van die Raad op sentrale vlak—

(i) ingevolge artikel 8(1) 'n aanbeveling doen aan die verantwoordelike Minister betreffende die aanstelling van die eerste Voorsitter van genoemde kamer; en

(ii) ingevolge artikel 9(1) oor die eerste konstitusie van genoemde kamer besluit; en

(b) moet 'n kamer van die Raad op departementele vlak, ingevolge artikel 8(5), die eerste Voorsitter en, indien nodig, waarnemende Voorsitter van sodanige kamer aanwys.

(5) Behoudens artikel 10(5) is die toegelate werknemerorganisasies in die kamer van die Raad op sentrale vlak vir minstens 12 maande vanaf die datum van die stigtingsvergadering van die kamer, en bo en behalwe enige ander werknemerorganisasies ingevolge artikel 10 tot genoemde kamer toegelaat, daardie werknemerorganisasies wat ingevolge die regulasies uitgevaardig kragtens die Staatsdienswet, erken was op die dag voor die datum van inwerkingtreding van hierdie Wet, asook daardie ander werknemerorganisasies wat deelnemers was aan die onderhandelingsproses om die arbeidsverhoudingereëlings te bewerkstellig waarvoor in hierdie Wet voorsiening gemaak word.

(6) Behoudens artikel 10(5) is die toegelate werknemerorganisasies in die kamers van die Raad op departementele vlak, vir minstens 12 maande vanaf die datum van die stigtingsvergadering van die betrokke kamer, en bo en behalwe enige ander werknemerorganisasies ingevolge artikel 10 tot die betrokke kamers toegelaat, daardie werknemerorganisasies in die betrokke departemente wat, op die datum van inwerkingtreding van hierdie Wet, in besit van aftrekorderfasiliteite is.

(7) Ondanks die bepalings van artikel 13(5) en (6) kan die Kommissie of enige toepaslike departement of persoon, na die inwerkingtreding van hierdie Wet, maar voordat 'n eerste vergadering van 'n kamer van die Raad ingevolge sy konstitusie belê is met die oog daarop om oor aangeleenthede in artikel 13(1) vermeld te onderhandel, aanbevelings doen, lasgewings gee of besluite neem ten opsigte van aanpassings van sodanige aangeleenthede: Met dien verstande dat ondanks die bepalings van artikel 4(6)*(a)* van die Staatsdienswet, sodanige aanbevelings, lasgewings of besluite nie enige besoldiging of diensvoordele van werknemers mag verminder of hulle dit ontneem nie.

(8) *(a)* An employee organization which on the date of commencement of this Act enjoys recognition in terms of section 33(1)*(b)* of the Public Service Act, shall retain its existing facilities with regard to stop-orders for as long as it remains admitted to the chamber of the Council at central level.

(b) Other employee organizations contemplated in subsections (5) and (6) and employee organizations referred to in paragraph *(a)* whose admission is terminated, shall retain existing stop-order facilities in those departments where they remain recognized.

Amendment of Act 111 of 1984

27. (1) Subject to the provisions of subsection (2), the Public Service Act, 1984, is hereby amended to the extent set out in the Schedule.

(2) Anything done under a provision of the Public Service Act, 1984, prior to the amendment thereof by subsection (1), shall remain in force as if such amendment had not been made.

Short title and commencement

28. This Act shall be called the Public Service Labour Relations Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(8) *(a)* 'n Werknemerorganisasie wat op die datum van inwerkingtreding van hierdie Wet erkenning ingevolge artikel 33(1)*(b)* van die Staatsdienswet geniet, behou sy bestaande fasiliteite ten opsigte van aftrekorders vir so lank as wat hy toegelaat bly tot die kamer van die Raad op sentrale vlak.

(b) Ander werknemerorganisasies bedoel in subartikels (5) en (6) en werknemerorganisasies in paragraaf *(a)* vermeld wie se toelating beëindig word, behou bestaande aftrekorderfasiliteite in daardie departemente waar hulle erken bly.

Wysiging van Wet 111 van 1984

27. (1) Behoudens die bepalings van subartikel (2) word die Staatsdienswet, 1984, hierby gewysig in die mate in die Bylae uiteengesit.

(2) Enigiets wat gedoen is kragtens 'n bepaling van die Staatsdienswet, 1984, voor die wysiging daarvan deur subartikel (1), bly van krag asof dié wysiging nie aangebring is nie.

Kort titel en inwerkingtreding

28. Hierdie Wet heet die Wet op Arbeidsverhoudinge vir die Staatsdiens, 1993, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

SCHEDULE

(Amendments to Public Service Act, 1984, by section 27)

1. The amendment of section 1 by—
   (a) the insertion after the definition of "Administrator" of the following definition:
   "'agreement' means an agreement as defined in section 1 of the Public Service Labour Relations Act;";
   (b) the insertion after the definition of "calender month" of the following definition:
   "'central level' means the central level as defined in section 1 of the Public Service Labour Relations Act;";
   (c) the insertion after the definition of "Commission for Administration Act" of the following definition:
   "'Council' means the Public Service Bargaining Council as defined in section 1 of the Public Service Labour Relations Act;";
   (d) the insertion after the definition of "employee" of the following definition:
   "'employer' means employer as defined in section 1 of the Public Service Labour Relations Act;";
   (e) the insertion after the definition of "prescribed" of the following definition:
   "'Public Service Labour Relations Act' means the Public Service Labour Relations Act, 1993;".
2. The amendment of section 4—
   (a) by the substitution in paragraph *(a)* of subsection (6) for the words following upon subparagraph (ii) of the following words:
   "but the aforesaid provisions do not preclude the Commission from withdrawing or varying at any time, subject to the provisions of **[subsection]** subsections (7), (8) and (9)*(b)* and section 28, any recommendation regarding the employment or conditions of service of persons, even if service benefits are thereby reduced or persons deprived of service benefits.";
   (b) by the addition of the following subsections:
   "(8) Where a power, duty or function of the Commission, the Department of State Expenditure, any other department, a Minister or Administrator, a head of department or their delegates under this Act or any other applicable law relates to a matter of mutual interest as contemplated in section 13(1) of the Public Service Labour Relations Act, they shall, in respect of such a matter and in terms of the provisions of section 13(6) of the said Act, only make a recommendation, give a direction or take a decision or amend existing provisions and measures, if any, in terms of an agreement negotiated on such a matter in the relevant chamber of the Council.
   (9) Notwithstanding subsection (8)—
   (a) the Commission, or any department or person mentioned in subsection (8), may deal with the case of an individual in terms of the provisions of this Act or any other applicable law by making a recommendation, giving a direction or taking a decision, provided that where such a recommendation, direction or decision constitutes a deviation from an agreement on a matter of mutual interest as contemplated in section 13(1) of the Public Service Labour Relations Act, it shall not derogate from or annul such an agreement or the collective bargaining relationship, or reduce the individual's remuneration, service benefits or worker compensation, or deprive such individual of his remuneration, service benefits or worker compensation, except in accordance with the provisions of section 28; or

BYLAE

(Wysigings van Staatsdienswet, 1984, deur artikel 27)

1. Die wysiging van artikel 1 deur—
   (a) na die omskrywing van "Minister" die volgende omskrywing in te voeg:
   "'ooreenkoms' 'n ooreenkoms soos omskryf in artikel 1 van die Wet op Arbeidsverhoudinge vir die Staatsdiens;";
   (b) na die omskrywing van "oorplasing" die volgende omskrywing in te voeg:
   "'Raad' die Staatsdiensbedingingsraad soos omskryf in artikel 1 van die Wet op Arbeidsverhoudinge vir die Staatsdiens;";
   (c) na die omskrywing van "salarisreeks" die volgende omskrywing in te voeg:
   "'sentrale vlak' die sentrale vlak soos omskryf in artikel 1 van die Wet op Arbeidsverhoudinge vir die Staatsdiens;";
   (d) na die omskrywing van "voorgeskryf" die volgende omskrywing in te voeg:
   "'werkgewer' werkgewer soos omskryf in artikel 1 van die Wet op Arbeidsverhoudinge vir die Staatsdiens;";
   (e) na die omskrywing van "werknemer" die volgende omskrywing in te voeg:
   "'Wet op Arbeidsverhoudinge vir die Staatsdiens' die Wet op Arbeidsverhoudinge vir die Staatsdiens, 1993;".
2. Die wysiging van artikel 4—
   (a) deur in paragraaf *(a)* van subartikel (6) die woorde wat op subparagraaf (ii) volg, deur die volgende woorde te vervang:
   "maar die voorgaande bepalings belet nie die Kommissie om te eniger tyd, behoudens die bepalings van **[subartikel]** subartikels (7), (8) en (9)*(b)* en artikel 28, enige aanbeveling betreffende die indiensneming of diensvoorwaardes van persone terug te trek of te wysig nie, al word diensvoordele daardeur verminder of al word persone daardeur diensvoordele ontneem.";
   (b) deur die volgende subartikels by te voeg:
   "(8) Waar 'n bevoegdheid, plig of funksie van die Kommissie, die Departement van Staatsbesteding, 'n ander departement, 'n Minister of Administrateur, 'n departementshoof of hul gedelegeerdes ingevolge hierdie Wet of enige ander toepaslike wet betrekking het op 'n aangeleentheid van onderlinge belang soos in artikel 13(1) van die Wet op Arbeidsverhoudinge vir die Staatsdiens bedoel, moet hulle ingevolge die bepalings van artikel 13(6) van genoemde Wet en ten opsigte van genoemde aangeleentheid slegs 'n aanbeveling doen, 'n lasgewing gee of 'n besluit neem of bestaande bepalings en maatreëls, indien daar is, wysig ooreenkomstig 'n ooreenkoms wat oor sodanige aangeleentheid in die toepaslike kamer van die Raad tot stand gebring is.
   (9) Ondanks subartikel (8)—
   (a) kan die Kommissie, of 'n departement of persoon in subartikel (8) vermeld, met die geval van 'n individu handel ingevolge die bepalings van hierdie Wet of enige ander toepaslike Wet deur die doen van 'n aanbeveling, die gee van 'n lasgewing of die neem van 'n besluit, met dien verstande dat waar so 'n aanbeveling, lasgewing of besluit 'n afwyking behels van 'n ooreenkoms oor 'n aangeleentheid van onderlinge belang soos in artikel 13(1) van die Wet op Arbeidsverhoudinge vir die Staatsdiens bedoel, dit nie afbreuk aan sodanige ooreenkoms of aan die kollektiewe bedingingsverhouding mag doen of dit ongedaan mag maak nie, of die individu se besoldiging, diensvoordele of werkerkompensering mag verminder, of sodanige individu sy besoldiging, diensvoordele of werkerkompensering mag ontneem nie, behalwe as dit ooreenkomstig die bepalings van artikel 28 geskied; of

(b) the Commission or any department or person involved in negotiations within the chamber of the Council at central level may, in terms of section 13(7) of the Public Service Labour Relations Act, implement the last offer on a specific matter made by the employer in the said chamber if a deadlock in negotiations is reached, by making a recommendation, giving a direction or taking a decision in terms of the provisions of this Act, the Commission for Administration Act or any other applicable law, provided such recommendation, direction or decision does not have the effect of reducing existing remuneration, service benefits or worker compensation, except in accordance with the provisions of section 28.".

3. The amendment of section 16 by—
   (a) the substitution for subsection (1) of the following subsection:
   "(1) *(a)* Subject to the provisions of paragraph *(b)* and subsection (6) of this section and section 19(11) of the Public Service Labour Relations Act, the power to discharge an officer or employee is vested in the Minister or Administrator, who may delegate that power to an officer.
   (b) In the case of an officer holding a post in the A division, the Commission shall first make a recommendation for his discharge, except in the case of a termination of service under section 19(11)*(c)* of the Public Service Labour Relations Act.";
   (b) the addition to subsection (3) of the following paragraph:
   "*(c)* If the services of an officer is terminated under section 19(11)*(c)* of the Public Service Labour Relations Act, he is deemed to have been discharged under subsection (2)*(e)*.".
4. The amendment of section 20 by the addition of the following subsection:
   "(10) The provisions of subsections (1) to (9) do not apply to a case contemplated in section 19(11) of the Public Service Labour Relations Act.".
5. The repeal of section 33.
6. The repeal of paragraphs *(k)* and *(l)* of subsection (1) of section 35.

(b) kan die Kommissie of 'n departement of persoon betrokke by onderhandelinge in die kamer van die Raad op sentrale vlak, ingevolge artikel 13(7) van die Wet op Arbeidsverhoudinge vir die Staatsdiens die laaste aanbod wat die werkgewer oor 'n bepaalde aangeleentheid in genoemde kamer gemaak het, implementeer indien 'n dooie punt in onderhandelinge bereik is, deur ingevolge die bepalings van hierdie Wet, die Wet op die Kommissie vir Administrasie of enige ander toepaslike wet 'n aanbeveling te doen, 'n lasgewing te gee of 'n besluit te neem, mits sodanige aanbeveling, lasgewing of besluit nie die uitwerking het dat dit bestaande besoldiging, diensvoordele of werkerkompensering verminder nie, behalwe ooreenkomstig die bepalings van artikel 28.".

3. Die wysiging van artikel 16 deur—

(a) subartikel (1) deur die volgende subartikel te vervang:

"(1) *(a)* Behoudens die bepalings van paragraaf *(b)* en subartikel (6) van hierdie artikel en artikel 19(11) van die Wet op Arbeidsverhoudinge vir die Staatsdiens, berus die bevoegdheid om 'n beampte of werknemer te ontslaan by die Minister of Administrateur, wat dié bevoegdheid aan 'n beampte kan delegeer.

(b) In die geval van 'n beampte wat 'n pos in die A-afdeling beklee, moet die Kommissie eers sy ontslag aanbeveel, behalwe in die geval van 'n beëindiging van diens kragtens artikel 19(11)*(c)* van die Wet op Arbeidsverhoudinge vir die Staatsdiens.";

(b) die volgende paragraaf by subartikel (3) te voeg:

"*(c)* Indien 'n beampte se dienste kragtens artikel 19(11)*(c)* van die Wet op Arbeidsverhoudinge vir die Staatsdiens beëindig word, word hy geag kragtens subartikel (2)*(e)* ontslaan te wees.".

4. Die wysiging van artikel 20 deur die volgende subartikel by te voeg:

"(10) Die bepalings van subartikels (1) tot (9) is nie van toepassing nie op 'n geval bedoel in artikel 19(11) van die Wet op Arbeidsverhoudinge vir die Staatsdiens.".

5. Die herroeping van artikel 33.

6. Die herroeping van paragrawe *(k)* en *(l)* van subartikel (1) van artikel 35.

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