

22 April 2022

PROPOSED WORKPLAN FOR LABOUR LAW REFORM 2022

1. In order to facilitate the commencement of this process, it is important to develop a workplan to deal with proposals made by the social partners, in the following order –
 - 1.1. proposals in respect of which there will probably be consensus – table 1;
 - 1.2. proposals that may require a fair or reasonable amount of debate and discussion – table 2; and
 - 1.3. proposals which probably require lengthy debate – table 3.
2. In the circumstances, this document re-arranges the issues identified in the matrix, to develop a workplan to deal with the issues in the order in which they have been identified above. This document is a proposal, for discussion at the next meeting.
3. **PROPOSALS IN WHICH THERE MAY BE CONSENSUS**

TABLE 1

No	Proposal	Initiated by	Anticipated impact	Meeting
Proposals in respect of which there may be consensus				
1	LRA – Labour Court <ul style="list-style-type: none">• allow Labour Court judges to act in the Labour Appeal Court and other related amendments to streamline processes in the Labour Court	Govt	<ul style="list-style-type: none">• improve adjudication of labour disputes	1 st Meeting
2	LRA – Registration <ul style="list-style-type: none">• change regulation of federations and employer organisations to clarify compliance and enable non-compliant organisations to be	Govt	<ul style="list-style-type: none">• more orderly regulation of labour market institutions	1 st Meeting

No	Proposal	Initiated by	Anticipated impact	Meeting
	removed from the Register			
3	<p>LRA – Bargaining Councils –</p> <ul style="list-style-type: none"> • S32A(2)(a): extend funding agreements of bargaining councils for 36 months • S32A: include “agreements covering terms and conditions of employment” 	<p>Govt</p> <p>Business</p>	<ul style="list-style-type: none"> • improve management for bargaining councils 	1 st Meeting
4	<p>LRA Bargaining Councils –</p> <ul style="list-style-type: none"> • S32(3)(d): Minister to be given power to regulate on bargaining council exemption procedures 	Govt	<ul style="list-style-type: none"> • Improve bargaining council processes 	1 st Meeting
5	<p>LRA Strikes – minimum service provisions –</p> <ul style="list-style-type: none"> • Deletion of S 72(5) & (6) regulating minimum service provisions during strikes 	Govt	<ul style="list-style-type: none"> • encourages minimum service agreements which would apply during strikes 	1 st Meeting
6	<p>LRA Strikes –</p> <ul style="list-style-type: none"> • changes to Minister’s regulation making and delegation powers to be clarified to avoid bottlenecks and remove anomalies. This includes rules concerning retention of electronic records of ballots, regulation of federations and employer 	Govt	<ul style="list-style-type: none"> • modernisation and clarification of strike processes • clarification of the Minister’s powers 	2 nd Meeting

No	Proposal	Initiated by	Anticipated impact	Meeting
7	<p>LRA Retrenchment –</p> <ul style="list-style-type: none"> • S 189A(6) – Minister’s power to make rules i.r.o facilitations to be shifted to CCMA 	Govt	<ul style="list-style-type: none"> • more responsive rule • consistency with current regulatory architecture and principle of subsidiarity 	2 nd meeting
8	<p>LRA disputes –</p> <ul style="list-style-type: none"> • S 188A – appointment of an arbitrator to hold in house inquiry should not require agreement and related amendments to discourage unnecessary and/or frivolous disputes • Stricter screening process for disputes declared 	Govt Business	<ul style="list-style-type: none"> • avoids duplication of hearings (internal and external) • promotes speedier resolution of disputes and reduces pressure on CCMA • Ensuring better regulation of disputes? 	2 nd Meeting
9	<p>LRA – Remedies –</p> <ul style="list-style-type: none"> • S 195 - limiting employees to either statutory compensation or contractual damages 	Govt Business	<ul style="list-style-type: none"> • avoid forum shopping and duplication of disputes 	2 nd Meeting
10	<p>LRA – Dismissals –</p> <ul style="list-style-type: none"> • new provision – High Paid Employees 	Govt Business	<ul style="list-style-type: none"> • less onerous to employers to dismiss high paid senior employees • they are able to protect themselves contractually 	2 nd Meeting
11	<p>BCEA – Family Responsibility Leave</p> <ul style="list-style-type: none"> • S27 – Extend leave to include care of sick parents 	Labour	<ul style="list-style-type: none"> • improve basic conditions of employment 	2 nd Meeting

TABLE 2

No	Proposal	Initiated by	Anticipated impact	Meeting
Proposals that may require a fair amount of debate and discussion				
1	LRA Dismissals – <ul style="list-style-type: none"> simplification of procedural fairness limitation of compensation for procedurally unfair dismissal 	Govt	<ul style="list-style-type: none"> expedite internal procedures prevent technical disputes over procedure reduce caseload of CCMA & BCs over procedure 	3 rd Meeting
2	Severance Pay – BCEA + UIF <ul style="list-style-type: none"> unemployment Insurance to supplement severance pay and to ensure alignment 	Govt	<ul style="list-style-type: none"> workers to get severance pay when business folds 	3 rd Meeting
3	Definition of Employee – all statutes – <ul style="list-style-type: none"> review of definition of employee in all labour statutes to ensure coverage of atypical workers and non-standard employment contracts 	Labour	<ul style="list-style-type: none"> increase worker rights 	4 th Meeting
4	OHSA – 2 proposals – <ul style="list-style-type: none"> Incorporating the right to refuse to do dangerous work Enabling provision to regulate future pandemics 	Labour	<ul style="list-style-type: none"> alignment with the Mine Health and Safety Act remove the need to rely on the Disaster Management Act 	5 th Meeting

TABLE 3

Law	Proposal	Initiated by	Anticipated impact	Meeting
Proposals which may require lengthy debate and discussion				
1	<p>LRA Dismissals</p> <ul style="list-style-type: none"> • qualifying period - 6 - 12 months to a year for dismissal protection without excluding protection i.r.o automatically unfair dismissals • possibly limiting the qualifying period to certain categories of businesses 	<p>Govt Business</p> <p>Business</p>	<ul style="list-style-type: none"> • reduce the risk attached to hiring new employees • encourage employment of new entrants into the labour market 	6 th + 7 th Meeting
2	<p>LRA – ULP definition –</p> <ul style="list-style-type: none"> • ULP definition to be refined to only include: <ul style="list-style-type: none"> ○ unreasonable periods of suspension ○ unreasonable delays in disciplinary procedure, ○ occupational detriment protections linked to Protected Disclosure Act ○ probation and qualifying period abuses 	Govt	<ul style="list-style-type: none"> • reduction of ULP litigation • encourage the use of collective bargaining for such issues 	8 th Meeting
3	<p>LRA Retrenchments –</p> <ul style="list-style-type: none"> • Tightening of S 189 and extension of 120 day period for facilitation in S 189A • Relaxation of S 189A for 24 months 	<p>Labour</p> <p>Business</p>	<ul style="list-style-type: none"> • making retrenchments more difficult • reorganisation of the economy, save businesses and jobs 	9 th Meeting
4	<p>LRA – TES –</p> <ul style="list-style-type: none"> • S 198 A – D - deeming provisions for non-standard 	Business		10 th Meeting

Law	Proposal	Initiated by	Anticipated impact	Meeting
	work to be increased from 3 to 12 months		<ul style="list-style-type: none"> increased flexibility for non-standard employment contracts 	
5	<p>LRA provisions – Small business –</p> <ul style="list-style-type: none"> S 189 - Code of Good Practice to regulate dismissal of employees of small business. Once enacted, small businesses would be excluded from Section 189 	Govt	<ul style="list-style-type: none"> enables and encourages job creation and small business sustainability 	11 th + 12 th Meeting
6	<p>LRA Strikes –</p> <ul style="list-style-type: none"> Further restrictions on the right to use replacement labour 	Labour	<ul style="list-style-type: none"> more effective strike action and shift in balance of power 	13 th Meeting
6.1	<p>LRA Strikes – Protest Action</p> <ul style="list-style-type: none"> Deletion of S 177 	Business	<ul style="list-style-type: none"> Superfluous, such protest action can still occur outside of S 77 	14 th Meeting
7	<p>BCEA – Severance Pay</p> <ul style="list-style-type: none"> Increase in severance pay 	Labour	<ul style="list-style-type: none"> improve benefits for retrenched workers 	14 th Meeting
8	<p>BCEA – Severance Pay</p> <ul style="list-style-type: none"> Urgent exemptions to severance pay provisions to prevent businesses from closing 	Business	<ul style="list-style-type: none"> business continuity for businesses in distress 	14 th Meeting

FOR CONSIDERATION