

(c) the representatives of any employers who are not members of any employers' organization concerned shall be either office-bearers or officials of any registered employers' organization, or employers in the undertaking, industry, trade or occupation concerned;

(d) at least one half of the number of representatives of the employee parties to the dispute and one half of the number of representatives of the employer parties to the dispute shall be employees and employers respectively in the undertaking, industry, trade or occupation concerned;

(e) for the purposes of sub-paragraph (d),

(i) any member, office-bearer or official of a trade union concerned shall, if appointed as a representative of the employee parties to the dispute, be deemed to be an employee;

(ii) any member, office-bearer or official of an employers' organization concerned and any person employed as a manager or in any other supervisory capacity by an employer concerned (whether or not that employer is a member of an employers' organization concerned) shall, if appointed as a representative of the employer parties to the dispute, be deemed to be an employer;

(iii) a member of a local authority which is a party to the dispute shall, if appointed as a representative of the employer parties to the dispute, be deemed to be an employer.

(f) Notwithstanding the foregoing provisions, whenever a conciliation board is appointed to consider a dispute in a local government undertaking, the employee and employer parties to the dispute may appoint any persons as representatives provided that paragraphs (d) and (e) of this proviso shall apply.

(5) If any of the parties to the dispute who are entitled in terms of a determination by the Minister under sub-section (2) to appoint a representative to the board fail to do so within thirty days of such determination or within such lesser period or such further period or periods as the Minister may from time to time fix, either before or after the expiry of any such period, the Minister may himself appoint such representative.

Secretarial 38. The Secretary for Labour shall provide and clerical every conciliation board with such secretarial and assistance clerical assistance as he may deem necessary for the for con- effectual exercise of the functions of the board. ciliation board

Procedure of conciliation boards. 39. The provisions of section twenty-six subsections (1) to (7) and sub-sections (9) and (11) of section twenty-seven and sub-sections (1) to (3) and (6) of section twenty-eight shall, mutatis mutandis, apply in respect of conciliation boards.

Subpoenaing and examination of witnesses of conciliation board. 40. (1) In the performance of its functions a conciliation board shall have all the powers conferred upon an industrial council by section thirty and the provisions of section thirteen, as applied by the first-mentioned section, shall, mutatis mutandis, apply to the exercise of those powers by a board.

(2) Any amounts paid under sub-section (8) of section thirteen, as applied to witnesses appearing before the board shall be paid out of public moneys.

Expenses of conciliation board. 41. Any allowances paid to members of a conciliation board in accordance with regulations, and such other expenses incurred in connection with the proceedings of the board as are approved by the Secretary for Labour before or after their incurrence, shall be defrayed out of public moneys.

Report by conciliation board. 42. A conciliation board shall submit to the Minister, within a period of one month from the date the Minister approved of the establishment thereof or such further period as the Minister may from time to time fix, a report of its deliberations, setting forth -

- (a) whether it has settled the dispute, and if so, the terms of the settlement;
- (b) whether it desires any agreement arrived at to be declared binding under section forty-eight, and if so, indicating upon which employees, employers, trade unions and employers' organizations and in respect of which areas it desires it so to be declared binding;
- (c) whether it has failed to settle the dispute, and if so, whether it is satisfied that further deliberations will not result in a settlement;
- (d) whether it has decided, in terms of section forty-five, that the dispute shall be referred to an arbitrator or to arbitrators and an umpire.

Discharge of conciliation board. 43. (1) The Minister may discharge a conciliation board if he is satisfied that it has completed its deliberations, or that further deliberations will not serve any purpose.

(2) Notwithstanding the fact that a conciliation board has been discharged, the Minister may, at the request of the parties who were represented on the board, approve of the correction of an omission or error or the clarification of any provision in any agreement arrived at by the board prior to its discharge, if in his opinion the correction or clarification is necessary and does not materially alter the agreement.

(3) From the date of approval of such correction or clarification, the agreement as corrected

or clarified shall be deemed to be the agreement arrived at by the board, and if a notice in regard to such agreement had been published in the Gazette in terms of section forty-eight before such correction or clarification was made, the Minister shall cause to be published in the Gazette a further notice setting forth the terms of such correction or clarification.

Mediation

44. (1) If any industrial council or conciliation board applies to the Minister for the appointment of a mediator in respect of any dispute which is being considered by that council or board, or if the Minister is of opinion that the appointment of a mediator will aid in the settlement of a dispute by any industrial council or conciliation board, he may appoint a person to be mediator in respect of that dispute.

(2) A mediator so appointed shall be entitled to attend and preside at the meetings of the council or board at which the dispute is being considered, but shall not be entitled to vote thereat.

(3) A mediator so appointed shall confer with the council or board, conduct such enquiries and investigations as he may deem necessary, endeavour to bring about a settlement of the dispute and make a report to the Minister as to the results of his mediation and for those purposes shall have all the powers of a chairman of a conciliation board.

(4) Such expenses in connection with mediation, including the payment of a fee to the mediator, as are approved by the Secretary for Labour before or after their incurrence shall be defrayed out of public moneys.

Voluntary arbitration

45. (1) Subject to the provisions of section forty-six, an industrial council or a conciliation board may decide, that any dispute which has been under consideration by that council or board shall be referred to arbitration in accordance with the provisions of this section, and may further decide whether the arbitration shall be conducted by a single arbitrator, or by an even number of arbitrators and an umpire, or by the tribunal.

(2) Whenever an industrial council or a conciliation board has decided that an arbitration shall be conducted by an even number of arbitrators, an umpire shall also be appointed.

(3) If the industrial council or conciliation board has decided that the arbitration shall be conducted by a single arbitrator, that person shall be appointed arbitrator in favour of whose appointment a majority of all the representatives of the employees on the council or board and a majority of all the representatives of the employers on the council or board have voted.

(4) If the industrial council or conciliation board has decided that the arbitration shall be conducted by an even number of arbitrators and an umpire, half the number of arbitrators shall be appointed by the representatives of the employees on the council or board, and half by the representatives of the employers on the

council or board, and that person shall be appointed umpire in favour of whose appointment a majority of all the representatives of the employees on the council or board and a majority of all the representatives of the employers on the council or board have voted.

(5) A majority of all the representatives of the employees and a majority of all the representatives of the employers may each appoint one or two assessors to assist the arbitrator or the arbitrators and umpire, as the case may be, in an advisory capacity; and the omission of the representatives of the employees to exercise the right conferred upon them by this subsection shall not affect the right conferred by this subsection upon the representatives of the employers, and vice versa.

(6) Whenever an arbitrator, umpire or assessor has been appointed in terms of this section, the secretary of the industrial council or conciliation board concerned shall notify the Minister of the name of the person so appointed.

(7) If more arbitrators than one have been appointed, the decision of the majority of the arbitrators shall be the decision of the arbitrators; and if a majority of the arbitrators are not agreed on any point, the umpire shall give the decision on that point.

(8) If an industrial council or conciliation board has decided that a dispute shall be referred to arbitration and that the arbitration shall be conducted by a single arbitrator or by an even number of arbitrators and an umpire, and within thirty days of the last-mentioned decision or within such lesser period or such further period or periods as the Minister may from time to time fix, either before or after the expiry of any such period, the arbitrator or arbitrators and umpire have not been appointed, the said decision shall lapse and the arbitration shall be conducted by the tribunal.

(9) Any party to the dispute shall be entitled -

- (a) if he is an individual, to present his case at the arbitration proceedings in person or to be represented at those proceedings by any other individual who is a party to the dispute or by one or more members, office-bearers or officials of a trade union or employers' organization which is a party to the dispute, or if it is a trade union or employers' organization, to be represented by one or more of its members, office-bearers or officials or by one or more members, office-bearers or officials of any other trade union or employers' organization which is a party to the dispute; or
- (b) if the dispute has been considered by a conciliation board, to be presented at those proceedings by any person who was a member of that board; or
- (c) if all the other parties to the dispute consent, to be represented at those proceedings by one or

more legal practitioners or by one or more members, office-bearers or officials of any trade union or employers' organization which is not a party to the dispute;

and any party which is represented in any manner referred to in paragraph (c) or which has consented to any other party being represented in any such manner; shall be deemed to have consented to every other party being represented in any such manner.

(10-) The arbitrator or the arbitrators and the umpire, as the case may be, shall in the performance of his or their functions have all the powers conferred upon an industrial council by section thirty, and the provisions of section thirteen, as applied by the first-mentioned section, shall, mutatis mutandis, apply to the exercise of those powers by the arbitrator or the arbitrators and umpire, as the case may be.

(11) The arbitrator, arbitrators, umpire or tribunal as the case may be, shall forward a copy of his or their award and of any report in connection therewith to the Minister and to the parties concerned; and the Minister may publish the whole of the award or report, or any portion thereof or extracts therefrom, and any of the parties concerned may publish the whole of the award or report, or such portions thereof or extracts therefrom as the Minister may approve.

(12) An award shall deal only with the subject matter of the dispute as defined by the industrial council or conciliation board concerned; and with matters reasonably incidental to the settlement of the dispute: Provided that -

(i) the award may include provisions relating to other matters if the council or board concerned (or the parties who were represented on the board in the case of a conciliation board which has been discharged) agrees or agree to such other matters, being dealt with in the award;

(ii) no award shall contain a provision such as is referred to in paragraph (y) of sub-section (1) of section twenty-four unless the council or board concerned by unanimous vote of all the members (or the parties who were represented on the board in the case of a conciliation board which has been discharged) agrees or agree to such provision.

(13) The provisions of this section shall apply to the reference to arbitration of any matter which has been the subject of a dispute which the industrial council or conciliation board concerned has not succeeded in settling.

Compulsory
arbitra-
tion

46. (1) For the purposes of this section the term 'employer referred to in sub-section (1)' shall mean -

(a) any local authority; or

52/ (b)

- (b) any employer other than a local authority, who within the area of a local authority provides light, power, water, sanitation or a fire extinguishing service; or
- (c) any employer engaged in an activity and area to which the provisions of this section have been applied under sub-section (7); or
- (d) any registered employers' organization of which an employer referred to in paragraph (a), (b) or (c) is a member,

and the term "employee referred to in subsection (1)" shall mean -

- (a) any employee employed by a local authority; or
- (f) any employee employed by an employer referred to in paragraph (b) in connection with the provision of any service referred to in that paragraph; or
- (g) any employee employed by an employer referred to in paragraph (c) in connection with the activities and in the area specified in the relevant notice under sub-section (8); or
- (h) any registered trade union of which an employee referred to in paragraphs (e), (f) or (g) is a member.

(2) Whenever an industrial council or a conciliation board which has had under consideration a dispute in which the parties are one or more employers referred to in sub-section (1) and one or more employees referred to in sub-section (1) -

- (a) has failed to settle the dispute within a period of thirty days reckoned from the date on which the dispute was referred to the industrial council or the date on which the conciliation board was established, as the case may be, or such further period or periods as the Minister may fix, either before or after the expiry of any such period; or
- (b) before the expiry of that period or further period or periods has resolved that further deliberations will not result in the settlement of the dispute,

it shall report accordingly to the Minister and the dispute shall be referred to arbitration in accordance with the provisions of this section.

(3) When a dispute is to be referred to arbitration under the provisions of sub-section (2) -

- (a) the council or board, as the case may be, shall within fourteen days after the expiry of the last of the periods referred to in paragraph (a) of that sub-section, or within fourteen days of the date of the resolution referred to in paragraph (b) of that sub-section, or within such further period or periods as the Minister

may fix either before or after the expiry of any such period, decide whether the arbitration is to be conducted by a single arbitrator, or an even number of arbitrators and an umpire, or by the tribunal; and

- (b) if the council or board has decided that the arbitration is to be conducted by a single arbitrator, or by an even number of arbitrators and an umpire, the arbitrator or the arbitrators and the umpire shall be appointed within a period of fourteen days after such decision or such further period or periods as the Minister may fix either before or after the expiration of any such period.

(4) If the decision referred to in paragraph (a) of sub-section (3) has not been taken, or the appointments referred to in paragraph (b) of that sub-section have not been made, before the expiry of the period within which such decision must be taken or such appointments made in terms of the relevant paragraph, the arbitration shall be conducted by the tribunal.

(5) The provisions of sub-sections (2), (3), (4), (5), (6), (7), (9), (10), (11) and (12) of section forty-five shall, mutatis mutandis, apply to arbitration and the making of appointments under this section.

(6) (a) Notwithstanding anything contained in this section whenever there is no industrial council having jurisdiction in regard to a dispute referred to sub-section (2), the parties to the dispute may agree to report to the Minister that they are satisfied that any conciliation board which may be established will not be able to settle the dispute.

(b) Upon receipt of a report referred to in paragraph (a), the Minister may, if he deems it expedient to do so and if he is satisfied that a conciliation board would have been appointed if application had been made under section thirty-five -

(i) determine that the provisions of this section shall apply as though a conciliation board had been so appointed and had reported to him that it had failed to settle the dispute;

(ii) if the dispute concerns a matter referred to in sub-section (7) of section thirty-five issue the order which he would have been entitled to issue under sub-section (8) of that section had a conciliation board been established.

(c) The provisions of sub-sections (9) to (13) of section thirty-five shall mutatis mutandis apply to any order issued under sub-paragraph (ii) of paragraph (b).

(7) (a) The Minister may from time to time by notice in the Gazette notify his intention of applying in an area specified in such notice the provisions of

this section to such activities connected with -

- (i) the processing, supply and distribution of any perishable food-stuffs;
 - (ii) the supply and distribution of petrol and other fuels;
 - (iii) the supply of goods and services to hospitals and similar institutions; or
 - (iv) the maintenance of other supplies or services which he considers to be essential to the life of the community.
- (b) A notice published in terms of paragraph (a) shall invite any person having objection to such application to lodge that objection with the Secretary for Labour with thirty days in the manner prescribed by regulation.
- (c) After considering any objection lodged in terms of paragraph (b) and after consultation with the tribunal the Minister may by notice in the Gazette and as from a date specified in such notice apply the provisions of this section to the whole or any portion of the activities and in the whole or any portion of the area specified in the notice published in terms of paragraph (a).

(d) Any notice published in terms of sub-section (c) may in like manner be amended or withdrawn.

Costs of arbitration

47. (1) The costs of any arbitration proceedings under section forty-five or forty-six shall be paid in accordance with the provisions of this section.

(2) If the dispute has been under the consideration of an industrial council, the costs including the fees prescribed by regulation if the arbitration is conducted by the tribunal shall be paid from the contributions referred to in paragraph (q) of sub-section (1) of section twenty-four: Provided that if the Minister has provided any secretarial or clerical assistance, the cost thereof shall be paid from public moneys.

(3) If the dispute has been under the consideration of a conciliation board, the following provisions shall apply: -

- (a) If only one arbitrator has been appointed, one-half of his remuneration shall be paid by the employees and trade unions which are parties to the dispute (in this section called the employees) and one-half by the employers and employers' organizations which are parties to the dispute (in this section called the employers).
- (b) If more arbitrators than one have been appointed, the employees and the employers shall, respectively, pay the remuneration of the arbitrator or arbitrators appointed by them.

55/ (c) If

- (c) If an umpire has been appointed, one-half of his remuneration shall be paid by the employees and one-half by the employers.
- (d) If the arbitration is conducted by the tribunal one-half of the fees prescribed by regulation shall be paid by the employees and one-half by the employers.
- (e) One-half of all other costs of the arbitration, including the payments (if any) made to witnesses, shall be paid by the employees and one-half by the employers: Provided that the cost of any secretarial or clerical assistance provided by the Minister shall be paid from public moneys: Provided further, that any costs incurred directly by the employees or employers shall, unless the employees and the employers have otherwise agreed, be paid by the employees or employers, as the case may be.

(4) The portion of the costs of arbitration which in terms of sub-section (3) is payable by the employees and that portion which is payable by the employers shall, respectively, be paid by the several employees or by the several employers in the proportions agreed upon by them or, failing agreement, in the proportions determined by the arbitrator, arbitrators or umpire or the tribunal, as the case may be.

Putting
into
force
of
agreements

48. (1) Whenever an industrial council transmits to the Minister any agreement such as is referred to in section twenty-four, entered into between any or all of the parties to the council the Minister may, if he deems it expedient to do so, at the request of the council made either at the time of such transmission or at any time thereafter -

- (a) by notice in the Gazette declare that from a date and for a period fixed by him in that notice, all the provisions of the agreement, as set forth in that notice, shall be binding upon the employers who and the employers' organizations and trade unions which entered into the agreement and upon the employers and employees who are members of those organizations and unions; and
- (b) in a notice published under paragraph (a) or by notice in the Gazette at any time thereafter declare that from a date and for a period fixed by him in that notice all the provisions of the agreement, or such provisions thereof as he may specify shall be binding upon all employers and employees other than those referred to in any relevant notice published under paragraph (a), who are engaged or employed in the undertaking, industry, trade or occupation to which the agreement relates, in the area or any specified portion of the area in respect of which the council is registered.

(2) (a) An industrial council referred to in sub-section (1) may make a request to the Minister to publish a notice under paragraph (b) of that sub-

section either at the same time as it makes a request to publish a notice under paragraph (a) or at any time thereafter, but shall not be obliged to make such a request.

(b) A notice shall not be published under paragraph (b) of sub-section (1) unless the Minister is satisfied that the parties to the agreement are sufficiently representative of the employers and employees engaged or employed in the undertaking, industry, trade or occupation to which the agreement relates in the area in which the agreement has in terms of such notices been made binding on such employers and employees.

(3) If the Minister is of opinion that any object of an agreement which has been or is the subject of a request for a declaration under sub-section (1), is being or may be defeated in any area by the employment in the undertaking, industry, trade or occupation concerned at rates of remuneration and under conditions of employment other than those specified in the agreement of persons not included in the definition of the expression 'employee' in section one, he may after consultation with the industrial council concerned, if he deems it expedient to do so, in any notice published under sub-section (1), or by a further notice published in the Gazette, declare that in an area and from a date and for a period fixed by him in that notice all the provisions of the agreement or such provisions thereof as he may specify in the notice shall, mutatis mutandis, apply in respect of such persons and thereupon all the provisions, or the provisions so specified, shall be binding upon every employer of any such person and upon all such persons.

(4) Whenever the Minister has published a notice under paragraph (a) or (b) of sub-section (1), or under sub-section (3) he may, at the request of the industrial council concerned, or in the case of a notice under sub-section (3) after consultation with the industrial council concerned, and if he deems it expedient to do so, by notice in the Gazette -

- (a) extend the period fixed in such notice by such further period as he may fix in the new notice; or
- (b) if the period fixed in such notice has expired, declare that the provisions of such notice shall be effective from a date and for a further period fixed by him in the new notice:
Provided that the Minister shall not publish a notice under this sub-section in respect of a notice published under paragraph (b) of sub-section (1) unless he is satisfied that the parties to the agreement are still sufficiently representative of the employers and employees in the undertaking, industry, trade or occupation and in the area concerned.

(5) The Minister may, after consultation with the industrial council concerned and if he deems it expedient to do so, by notice in the Gazette and with effect from a date fixed by him in that notice withdraw any notice published under sub-section (1), (3) or (4).

(6) Whenever any agreement in respect of which a notice has been published under sub-section (1), (3) or (4) is amended, amplified or replaced by a further agreement, the provisions of this section shall apply in respect of such further agreement.

(7) In any notice published by the Minister under sub-section (1), (3) or (4) relating to any agreement which contains provisions on any of the matters referred to in paragraph (p) of sub-section (1) of section twenty-four, he may declare that from a date and for the period fixed by him in that notice those provisions shall be binding upon any such principals, contractors or other persons as are referred to in that paragraph.

(8) In this section, **in sub-section (2) of section thirty-four and in section fifty to fifty-nine, sixty-one, sixty-two, sixty-six, sixty-eight, seventy-one, seventy-four and seventy-five**, any reference, express or implied, to an employee shall be construed so as to include any person in respect of whom any provisions of an agreement have been applied under sub-section (3) or (4) of this section, and any reference to an agreement shall be construed so as to include any provisions so applied.

(9) The fact that an agreement entered into by an industrial council has not been declared binding by a notice such as is referred to in paragraph (a) of sub-section (1) shall not prejudice any claim which any person may have in law against any other person for any alleged breach of such agreement.

(10) The provisions of this section shall, mutatis mutandis, apply to any agreement transmitted by, or request made by a conciliation board: Provided that the board, and after the board has been discharged the parties who were represented on the board, shall, for the purposes of any request or consultation such as is referred to in sub-sections (1), (2), (4) and (5) be deemed to be the industrial council concerned.

(11) (a) Notwithstanding anything to the contrary in this section contained whenever the Minister is of opinion that the accumulated funds of an industrial council exceed an amount necessary to provide for the administrative expenditure of such council he may, after consultation with the council, direct that contributions payable in terms of any provision in an agreement such as is referred to in paragraph (q) of sub-section (1) of section twenty-four, be reduced to such amounts as he may determine. The Minister when issuing such a direction shall publish in the Gazette a notice amending in accordance with his direction the relevant provisions of the agreement and fix a date as from which such amendment shall become binding. As from that date and to the extent set out in such notice the agreement shall be deemed to have been amended in accordance with the provisions of this section.

(b) The Minister may by similar notice cancel or amend any notice published in terms of this sub-section.

(12) Whenever the question whether the parties to an agreement are sufficiently representative of employers and employees falls to be determined under this section, the Minister -

- (a) shall take into consideration only those members of any trade union or employers' organization concerned who were in good financial standing at the date on which the relevant agreement was signed by the parties thereto, or for the purposes of the proviso to sub-section (4), the date on which the relevant request was made;
- (b) may, having regard to the nature of the undertaking, industry, trade or occupation and the location of the area in respect of which the question is being considered regard the parties as sufficiently representative in respect of the whole of such area, notwithstanding the fact that a trade union or employers' organization which is a party to the agreement may have no members in part of that area; and
- (c) may, notwithstanding the fact that the trade unions which are parties to the agreement are not registered in respect of the interests of all classes of persons employed in the undertaking, industry, trade or occupation concerned, or, if so registered, have no members belonging to certain classes of such persons, regard the parties to the agreement as sufficiently representative of the undertaking, industry, trade or occupation, provided the employers represented by the parties to the agreement have in their employ persons belonging to all such classes.

**Effect
of arbi-
tration
awards**

49. (1) Any award made by an arbitrator, arbitrators or umpire appointed under section forty-five or forty-six or by the tribunal shall be final and binding upon the employees and employers who, and the trade unions and employers' organizations which, are parties to the dispute and upon the employees and employers who are members of those unions or organizations.

(2) (a) At any time after an award has been made, the Minister may at the request of the parties to the dispute which gave rise to the award, or at the request of the tribunal (whether or not the tribunal made the award) approve of the correction of an omission or error or the clarification of any provision in the award if in his opinion the correction or clarification is necessary and does not materially alter the award.

(b) From the date of approval of such correction or clarification the award as corrected or clarified shall be deemed to be the award made by the arbitrator or arbitrators, umpire or tribunal, as the case may be, and if a notice in respect of such award had been published in the Gazette in terms of any provision of section forty-eight as applied by sub-section (9) of this section prior to the date of such correction or clarification, the Minister shall cause

to be published in the Gazette a further notice setting out the terms of such correction or clarification.

(3) The arbitrator, arbitrators, or umpire or the tribunal, as the case may be, shall fix the date from which the award or any portion thereof shall be binding, which date may be the date on which the award is given or an earlier or a later date, as to them may seem equitable: Provided that -

- (a) an award shall not be binding from a date earlier than six months prior to the date on which the award is made, or from a date earlier than the date upon which in the opinion of the arbitrator, arbitrators, umpire or tribunal, as the case may be, the dispute came into existence; and
- (b) an award may provide for the award to employees of the cash equivalent of any or all of the benefits to which such employees will become entitled under the award in respect of any period prior to the date on which such award is made.

(4) An award, other than an award made prior to the commencement of this Act, shall be binding until superseded by a further award or until the Minister causes to be published in the Gazette a notice declaring that it has been superseded by any other wage regulating measure specified in such notice, or until it ceases to be binding in terms of sub-section (8).

(5) At any time, not being earlier than fifteen months from the date on which an award was made, other than an award made prior to the commencement of this Act, any party to the dispute which gave rise to the award may give to the other parties notice of its intention not to be bound further by the terms thereof. Such notice shall be in writing and a copy thereof shall be delivered to the Secretary for Labour.

(6) Any party giving notice in terms of sub-section (5) and any party receiving or entitled to receive such notice may within thirty days of the date of such notice make application to the Minister under section thirty-five for the establishment of a conciliation board.

(7) (a) The provisions of this sub-section shall apply only if the award to which a notice in terms of sub-section (5) refers was the result of arbitration proceedings under section forty-six or under paragraph (d) of this sub-section; and if there is no industrial council having jurisdiction in respect of the matter in dispute.

(b) Any party receiving or entitled to receive a notice in terms of sub-section (5) may within a period of thirty days from the date of such notice request the Minister in the manner prescribed by regulation to refer the matter to the tribunal: Provided that no such party may make a request under this sub-section and an application such as is referred to in sub-section (6).

(c) A request under paragraph (b) shall be in writing and copies shall be furnished to the other parties to the dispute which gave rise to the award.

(d) If no application for the establishment of a conciliation board has been made in terms of sub-section (6), or if such an application has been made and refused or if no conciliation board has been established within two months of the date of such application, the Minister shall, if he has received a request in terms of paragraph (b) refer the matter to the tribunal for arbitration and the provisions of sub-sections (9), (11) and (12) of section forty-five shall mutatis mutandis apply to such arbitration.

(8) If no application for the establishment of a conciliation board has been made in terms of sub-section (6), or if such an application has been made and refused or if no conciliation board has been established within two months of the date of such application, and if the matter has not been referred to the tribunal in terms of paragraph (d) of sub-section (7), the award which was the subject of the relevant notice under sub-section (5), if it has not previously ceased to be binding in terms of sub-section (4), shall cease to be binding upon expiry of a period of three months from the date of such notice.

(9) The provisions of paragraph (b) of sub-section (1), paragraph (b) of sub-section (2) and of sub-sections (3), (4), (5), (7) (8) and (12) of section forty-eight shall mutatis mutandis apply to an award referred to in sub-section (1) of this section: Provided that for the purposes of the said provisions, the parties to the dispute which gave rise to the award shall be regarded as the industrial council or as the parties to the agreement, as the case may be.

Miscellaneous provisions in regard to agreements and awards

50. (1) Any agreement entered into by an industrial council or conciliation board, and any award made under section forty-five or forty-six, which is binding or which has been declared to be binding under section forty-eight upon the members of any employers' organization or trade union shall be binding upon every employer and employee who was a member of such organization or union at the date on which the agreement was entered into or the award made or who became a member thereafter during the whole of the period during which such agreement or award is binding on the members of such organization or union, whether or not he continues to be a member of such organization or union: Provided that in the case of an employer or employee who became a member of such organization or union after the said date the agreement or award shall, subject to the provisions of paragraph (b) of sub-section (1) of section forty-eight, be binding from the date on which he became a member.

(2) Any agreement entered into by a conciliation board and any award made under section forty-five or forty-six may, in addition to dealing with any matters referred to in section twenty-four

which formed the subject of the dispute which gave rise to the agreement or the award -

- (a) in the case of an award, provide for the administration thereof by the industrial council which submitted the dispute to arbitration;
- (b) in the case of an agreement, or an award to which the provisions of paragraph (a) are not applicable, provide for the administration of the whole or any portion thereof by a body constituted in such manner as may be specified in the agreement or award : Provided that all members of such body shall be white persons;
- (c) define the powers, duties and functions of a body appointed in terms of paragraph (b);
- (d) provide for the payment of contributions by employers and employees towards the expenses of administration of the agreement or award or the attainment of the objects thereof;
- (e) provide for the dissolution of any such body and for all matters necessary for or incidental to such dissolution; and
- (f) provide for any other matter which the Minister may deem necessary.

(3) Any body established in pursuance of a provision made under paragraph (b) of sub-section (1) may, subject to the approval of the Secretary for Labour make rules relating to the calling and conduct of meetings of such body, the quorum for and procedure at such meetings, the keeping of minutes of the proceedings at such meetings, the keeping and audit of accounts of income and expenditure and the maintenance of records of the activities of such body and such other matters as may be specified in the relevant agreement or award or determined by the said Secretary and upon the publication of such rules by notice in the Gazette, such body shall under a name to be determined by the said Secretary and specified in the notice, become a body corporate capable of suing and being sued in its corporate name, of acquiring, holding and alienating movable or immovable property and of performing all such acts as may be necessary for or incidental to the effective performance of its functions.

(4) The inspector defined by regulation or an officer nominated by him shall be entitled to attend any meeting of any body appointed in pursuance of a provision made under paragraph (b) of sub-section (1), and to take part in the proceedings, but without the power to vote thereat, and such inspector shall be notified in writing by such body or any person authorized by it to do so, of the date, place and time of and the business to be discussed at every meeting of that body not less than four days before the date of the meeting in the case of ordinary meetings and, in the case of special meetings, in sufficient time to enable the inspector or the officer nominated by him to attend.

Exemptions
and the
exclusion
of Native
Area.

51. (1) Whenever in relation to an agreement which has been transmitted to the Minister by a conciliation board and has been made binding in terms of section forty-eight, or an award which in terms of section forty-nine or of section forty-eight as applied by sub-section (9) of section forty-nine is binding, the Minister is of opinion that -

- (a) the conditions of employment of any person or class of persons to whom such agreement or award applies are substantially not less favourable to them than the condition of employment prescribed by that agreement or award; or
- (b) any person suffers from physical disability such as old age, or chronic sickness or infirmity, and is capable of doing only part of the work required of an able-bodied person; or
- (c) special circumstances exist which justify, in the interests of any person, or class of persons an exemption of that person or class of persons under this section,

he may, if he deems it expedient to do so, grant exemption from all or any of the provisions of the agreement or award concerned to or in respect of that person or class of persons, for such period and subject to such conditions as he may determine.

(2) The Minister may, in his discretion, from time to time by writing under his hand delegate the powers conferred upon him by sub-section (1) to any officer and withdraw any such delegation.

(3) The powers conferred on the Minister by sub-section (1) may mutatis mutandis be exercised by an industrial council or any committee to which such powers have been delegated in terms of section twenty-five, in respect of any agreement entered into by parties to the council and which has been declared binding under section forty-eight.

(4) The terms of an exemption granted under sub-section (1) or (3) shall be incorporated in a licence of exemption, signed by an officer or the secretary of the council or committee concerned, as the case may be, and a copy thereof shall be transmitted to such person or persons as the officer or the secretary, as the case may be, considers necessary: Provided that in lieu of such licence, the Minister may authorize the publication in the Gazette of a notice setting out the terms of such exemption, and from a date specified in such notice the exemption shall be binding on the persons, or class of persons specified therein for the period so specified.

(5) Any person who feels aggrieved by any decision of a committee -

(a) under sub-section (3) on an application for exemption; or

(b) under sub-section (8) to withdraw any exemption,

may appeal at any time to the council from that decision, and the council may after considering any reasons which

may be submitted by the committee for its decision, confirm that decision or give such other decision as in its opinion the committee ought to have given.

(6) Any person, who feels aggrieved by any decision of a council -

- (a) under sub-section (3) on an application for exemption; or
- (b) under sub-section (8) to withdraw any exemption ; or
- (c) on an appeal by him under sub-section (5),

may appeal at any time to the Minister from that decision, and the Minister may, after considering any reasons which may be submitted by the council for its decision, confirm that decision or give such other decision as in his opinion the council ought to have given: Provided that -

- (i) no trade union or employers' organization which is a party to the council and no member of such union or organization, shall have a right of appeal under this sub-section save in respect of an application for exemption from a provision included in the agreement in terms of paragraph (y) of sub-section (1) of section twenty-four;
- (ii) the council shall furnish the Minister with its reasons for refusing any application referred to in paragraph (i) of this proviso.

(7) The period in respect of which any exemption granted under this section is authorized may date from a date prior to that on which the exemption is granted and any exemption granted to an employee under this section shall be deemed to exempt any employer who employs such employee from the relevant provisions of the said agreement to the extent specified in the licence or notice of exemption and any condition specified in any licence issued under this section shall be binding upon the person to whom it has been issued and, if that person is an employee, upon every person who employs him.

(8) Any exemption granted -

- (a) by the Minister or by an officer to whom powers have been delegated under sub-section (2), or in pursuance of a decision of the Minister under sub-section (5), may at any time be withdrawn by the Minister at his discretion; or
- (b) by an officer to whom powers have been so delegated may at any time be withdrawn by that officer or by any other officer to whom powers have been so delegated; or
- (c) by an industrial council, or in pursuance of a decision of a council under sub-section (5),

other than an exemption granted in pursuance of a decision of the Minister under sub-section (6), may at any time be withdrawn by that council; or

(d) by a committee of a council, other than an exemption granted in pursuance of a decision of the Minister under sub-section (6) or in pursuance of a decision of a council under sub-section (5), may at any time be withdrawn by that committee or by any other committee to which in terms of section twenty-five the power conferred by sub-section (3) has been delegated.

(9) For the purposes of this section, 'class of persons' includes such group or section or type of person as may be specified or defined in the certificate of exemption and in the making of any such specification or definition any method of differentiation or discrimination based on age, sex, experience, length of employment or type of work or type or class of premises on or in which work is performed, or any other method which is deemed to be advisable may be applied.

(10) Whenever the Minister considers that it will be in the interest of persons residing within any native area that any agreement or award that is binding or has been declared binding under section forty-eight or forty-nine should not be operative within that area or in respect of any particular class of work in that area, he may, in his discretion, at any time, after consultation with the industrial council or conciliation board concerned, or if the board has been discharged, with the parties who were represented on the board, by notice in the Gazette exclude that area or that particular class of work in that area from the operation of that agreement or award for such period and subject to such conditions as he may think fit.

Provisions of agreement, award or licence of exemption cannot be varied by agreement or be waived. 52. As printed in present Act.

Failure to observe provisions of agreement, award or licence of exemption 53. As printed in the present Act with the addition of the following new sub-section (3) and re-numbering of present sub-sections (3) to (6) :-

3. If the person convicted was an employee and the offence consisted of the contravention of or failure to comply with the provision of any such agreement award or licence relating to the giving of notice upon termination of employment and such agreement, award or licence provides for the payment by an employee of an amount in lieu of notice, the court convicting him shall enquire into and determine the amount to be paid, and the amount so determined is in sections fifty-four and fifty-six referred to as the amount to be paid.

Order to pay specified officer amount under-paid or to be paid. 54. As printed in present Act.

Disposal of amounts paid to specified officer 55. As printed in present Act with the addition of the following new sub-section (2) and consequential re-numbering of remaining sub-sections:-

(2) Whenever an order is made under section fifty-four against an employee the court making the order shall direct that so much of the amount which in terms of the order is paid to the specified officer as the court, having regard to the circumstances, under which the contravention or failure occurred, deems equitable, shall be paid to the employer in respect of whom the contravention or failure occurred.

Right of employees and employer to recover by civil proceedings: How far affected by Act. 56. As printed in present Act.

Records to be kept by employers, principals and contractors. 57. As printed with the addition of the following new sub-section (7):-

(7) Any person who feels aggrieved by any decision of an inspector under sub-section (2), may appeal at any time within sixty days thereafter, to the Minister who may confirm the inspector's decision or give such other decision as in his opinion the inspector ought to have given; and the decision of the Minister shall for the purpose of this Act be deemed to be the decision of the inspector.

Notices to be posted by employer 58. As printed in present Act.

Registration of employers 59. As printed in present Act, with sub-section (2) amended as follows:-

(2) On receipt of the statement referred to in paragraph (a-) of sub-section (1), the inspector shall issue to the employer a certificate of registration in the form prescribed by regulation: Provided that no such certificate shall be issued to an employer -

(a) against whom an order has been made under section fifty-four of the Industrial Conciliation Act, 1937 (Act No. 36 of 1937) or under section fifty-four of this Act unless on the date of the receipt of the said statement all amounts which, subject to any extension or variation in terms of sub-section (2) of those sections, he

is required by that order to pay to the specified officer on or before that date, have been so paid; or

(b) whose certificate of registration has been cancelled -

(i) in terms of sub-section (3) of section fifty-four of the Industrial Conciliation Act 1937, (Act No. 36 of 1937); or

(ii) in terms of sub-section (3) of section twenty-eight of the Wage Act, 1937 (Act No. 44 of 1937) if such certificate was issued in terms of sub-section (2) of that section and the Wage Determination applicable to him has been superseded by an agreement or award binding on him in terms of this Act;

unless on the date of the receipt of the said statement the amount involved has been paid in full to the specified officer.

Appoint-
ment of
inspectors

60. As printed in present Act.

Powers of
inspectors

61. As printed in present Act.

Appoint-
ment and
powers of
designated
agents of
industrial
councils

62. As printed in present Act.

Registrat-
tion and
regulation
of private
registry
offices.

63. As printed in present Act with the following amendments:-

Sub-section (2):- Insert the words 'and subject to such conditions' after the word 'labour' in the fourth line.

Sub-section (5) :- Insert the words "from time to time" after the words 'by regulation' in the third line, and the words 'and according to the class or of business' after the words 'any particular area' in the same line.

Functions
of Industr-
ial tribu-
nal.

64. (1) There is hereby established a tribunal to be known as the Industrial Tribunal (hereinafter referred to as the tribunal) which shall consist of five members to be appointed by the Minister of whom -

(a) one shall be a person with the qualifications required for admission as an advocate of the Supreme Court of South Africa, who shall be the chairman of the tribunal; and

(b) the remaining members shall be appointed from amongst persons to be nominated on such a basis

and in accordance with such a procedure as the Minister may determine. -

- (i) by the United Municipal Executive of South Africa;
- (ii) by such trade unions as the Minister may from time to time designate which are registered in respect of employees engaged in local government undertaking;
- (iii) by such organizations representing employers as the Minister may from time to time designate for the purpose;
- (iv) by such organizations representing employees (other than employees engaged in local government undertaking) as the Minister may from time to time designate for the purpose.

(2) Whenever the appointment of a member of the tribunal referred to in paragraph (b) of sub-section (1) become necessary the Minister shall cause the bodies referred to in that paragraph which are concerned in the appointment to be called upon, by notice in writing, to nominate, on the basis and in accordance with the procedure determined by the Minister, so many persons as may be specified in the notice from amongst whom the appointment may be made and to advise the Minister in writing within a period so specified, of the names and addresses of the persons so nominated.

(3) Every appointment of a member of the tribunal shall be notified in the Gazette.

(4) The members of the tribunal shall hold office for a period of five years: Provided that the Minister may, if he is satisfied that good grounds exist for doing so, at any time, and in the case of members referred to in paragraph (b) of sub-section (1), after consultation with or at the request of the body or bodies which nominated such member, declare the appointment of any member to be terminated.

(5) Any casual vacancy that occurs on the tribunal shall be filled by the appointment of another member in accordance with the procedure prescribed in sub-section (1) and any person so appointed shall hold office for the unexpired portion of the period of office of his predecessor.

(6) The tribunal shall consist of two divisions one of which shall consist of -

- (a) the chairman and the members appointed in terms of sub-paragraph (i) and (ii) of paragraph (b) of sub-section (1);
- (b) the chairman and the members appointed in terms of sub-paragraphs (iii) and (iv) of paragraph (b) of sub-section (1).

(7) The Minister may appoint -

(a) any person to be temporary chairman of the tribunal; and

(b) any person to be a temporary member of the tribunal,

while the chairman or any other member of the tribunal, as the case may be, is unable for any reason to carry out his duties. The provisions of sub-section (1) shall mutatis mutandis apply to any such appointment unless the Minister is of opinion that the circumstances make it impracticable or unnecessary to comply with the provisions of that sub-section.

(8) The members (including any temporary members) of the tribunal shall be appointed at such rates of remuneration and upon such other conditions as the Minister may, in consultation with the Minister of Finance, from time to time determine.

(9) No proceedings of the tribunal shall be invalid by reason only of the fact that a vacancy existed in its membership or that the appointment of any member or temporary member was defective for any reason, or that any member or temporary member was not present during the whole or any part of the proceedings.

(10) A division of the tribunal may decide that any investigation shall be carried out by any member or members of the division.

(11) The chairman shall determine which division shall deal with any matter falling within the functions of the tribunal.

(12) The decision of a majority of the members of a division shall for the purpose of this Act be deemed to be the decision of the tribunal.

(13) The tribunal and any member carrying out any investigation in terms of sub-section (10) shall, in the performance of its or his functions, have all the powers conferred upon an industrial council by section thirty and the provisions of section thirteen as applied by the first-mentioned section, shall, mutatis mutandis, apply to the exercise of those powers by the tribunal or member as the case may be.

(14) (a) At the request of the parties concerned in any matter which is being considered by the tribunal, the Minister may appoint not more than two assessor members, one representing employers and one representing employees who in his opinion have special knowledge of the said matter. Before making any such appointment the Minister shall consult the said parties. Assessor members appointed under this sub-section shall have all the powers and functions of members of the tribunal whenever the tribunal is dealing with any matter in respect of which they were appointed but shall not be entitled to vote.

(b) Assessor members shall be entitled to such allowances as may be prescribed.

(15) Whenever in the exercise of its functions the tribunal deems it advisable to submit a question of

law to the Appellate Division of the Supreme Court it may state such question in the form of a special case, Due notice of the intention to state a special case shall be given to the parties (if any) in the matter which gave rise to the decision to state a special case. The question so stated may be argued before the said court which shall give such decision and make such order as to costs as it thinks right.

(16) The tribunal may, subject to the requirements of any relevant regulation, make rules regulating its procedure, the manner in which representations may be submitted to it, the representation of parties whenever evidence or argument is heard and generally relating to all matters necessary or incidental to the exercise of its powers and the performance of its functions, and may withdraw or vary any such rules.

Prohibition of strike or lock-out in certain circumstances

65. (1) No employee or other person shall take part in a strike or in the continuation of a strike, and no employer or other person shall take part in a lock-out or in the continuation of a lock-out -

(a) during the period of the currency of any agreement or award which, in terms of section forty-eight or forty-nine, is binding upon the employee, employer or other person concerned, and any provision of which deals with the matter giving occasion for the strike or lock-out; or

(b) during the period of one year reckoned from the date on which any determination made in terms of the Wage Act, 1937 (Act No. 44 of 1937) is binding upon the employee, employer or other person concerned and any provision of which deals with the matter giving occasion for the strike or lock-out; or

(c) if the employees concerned are engaged in any activities in any area to which the provisions of section forty-six apply;

(d) when neither paragraph (a), paragraph (b) nor paragraph (c) apply -

(i) if there is an industrial council having jurisdiction, unless the matter giving occasion for the strike or lock-out has been considered by that council and until -

(aa) the council has reported thereon to the Minister in writing; or

(bb) a period of thirty days reckoned from the date on which the matter was submitted to the council, or such longer period as the council may fix has expired, whichever event occurs first; or

(ii) if there is no such council, unless application has been made under section thirty-five for the establishment of a conciliation board for the consideration

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