

PART D: INDUSTRIAL ACTION: STRIKES AND LOCKOUTS

16. Constitutional context

- (1) The right to engage in collective bargaining and the right of workers and employers to take industrial action is constitutionally protected. The right to engage in collective bargaining is a right that trade unions, employers and employers' organisations share. Workers have the right to strike and the Constitutional Court has held that the right to engage in collective bargaining implicitly recognises the employer's right to exercise some economic power, which may include the right to lockout.
- (2) Like all rights, the right to engage in collective bargaining (including the recourse by employers to exercise economic power) and the right to strike may be limited by legislation provided that the limitation is reasonable and justifiable. The limitations imposed on the right to strike and lockout seek to make a strike or lockout the last resort or unnecessary because of other judicial or arbitral remedies or to protect society from strikes in essential services, the interruption of which may affect the health and safety of the population.
- (3) It is in this context that the right to strike and the recourse to lockout must be understood. Unlike most other rights in the Bill of Rights, the right to strike and the right to lockout is a right to cause economic harm.
- (4) However, prolonged and violent strikes have a serious detrimental effect on the strikers, the families of the strikers, the small businesses that provide services in the community to those strikers, the employer, the economy and community.
- (5) Workers exercising the right to strike or the right to protest action and employers exercising the recourse to a lockout must therefore recognise the constitutional rights of others⁴.

⁴ Constitutional rights include:

i. Section 12(1) 'Everyone has the right to freedom and security of the person, which includes the right- ... (c) to be free from all forms of violence from either public or private sources.' This refers to the right of people not to be threatened with or subjected to violence.

ii. Section 16 'Everyone has the right to freedom of expression ... (that) does not extend to (b) incitement of imminent violence; or (c) advocacy of hatred ...' Refers to the right to express oneself during industrial action, but not in a manner that incites violence or constitutes hate speech.

17. Disputes in respect of which industrial action may be exercised

Disputes of right, mutual interest and those involving socio-economic interests

- (1) The Act distinguishes between three kinds of dispute: disputes of right; disputes of mutual interest; and disputes involving the socio-economic interests of workers:
 - (a) A dispute of right is a dispute that the Act or other employment laws require to be settled by arbitration or adjudication. An example of a dispute of right is a dispute arising from a contravention of a collective agreement or an employment law such as unfair dismissal, unfair discrimination, and underpayment of wages. It can be described as a dispute concerning existing rights.
 - (b) A dispute of mutual interest on the other hand is a dispute concerning employment or labour relations that cannot be resolved through enforcing existing rights. It can be described as a dispute to create new rights. A dispute of mutual interest is the legitimate scope of a collective bargaining agreement and the matters which may legitimately form the subject of a protected strike or lockout.
 - (c) A dispute involving the socio-economic interests of workers, permits protest action in matters that extend beyond matters that form the subject matter of collective agreements. These disputes though must be distinguished from purely political strikes which the Act does not afford any protection.
- (2) The distinction between a rights and a mutual interest dispute can be demonstrated by a few examples:
 - (a) If an employer pays an employee less than the rate of pay stipulated in a collective agreement or the amount stipulated in an employment law, a

iii. Section 17 'Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.' This refers to the right of workers to demonstrate and picket in a peaceful and unarmed manner.

iv. Section 18 'Everyone has the right to freedom of association.' This refers to the right of a worker to participate or not to participate in the strike or lockout.

v. Section 25 'No one may be deprived of property except in terms of a law of general application'. This refers to the right not to be threatened with or subjected to damage of property.

vi. Section 23(1) 'Everyone has the right to fair labour practices.' Refers to the right not to be penalised for engaging in a protected strike or lockout.

dispute over the underpayment is a dispute of right that may be referred to the CCMA, a bargaining council or the Labour Court for adjudication.

(b) A dispute of interest on the other hand is a dispute over a demand that the employees or employer has no legal right to, such as a demand for an increase in wages or a change in hours of work. These kinds of dispute can only be resolved by agreement, which may be induced by a threat or the exercise of a strike or lockout. There are two exceptions – disputes of interest in essential services must be referred to arbitration; and the parties to a dispute of interest may by agreement refer the dispute to arbitration. The following are examples of a dispute of interest:

- (i) A dispute over what next year's wages are going to be;
- (ii) A dispute over a new collective agreement or the renewal of an expired agreement;
- (iii) A dispute over shorter working hours or higher overtime rates of pay;
- (iv) A dispute over the introduction of a new shift system.

(3) The distinction between a dispute of mutual interest and a dispute of interest is important because as a rule, the Act limits the right to strike to matters of mutual interest. There are two exceptions. A dispute over organisational rights or a proposed retrenchment in some circumstances may either be determined, on the one hand by the CCMA (organisational rights) or the Labour Court (retrenchment disputes) or, on the other hand, by the exercise of the right to strike. For example, if a registered trade union does not have sufficient or majority representativeness (depending on the nature of the organisational right), it has no statutory right to those organisational rights but the Act specifically permits a trade union to strike—i.e. the creation of a new right, in this case granting a minority trade union an organisational right by collective agreement rather than by operation of statute.

What disputes may form the subject matter of a strike or lockout

(4) Apart from the two exceptions relating to organisational rights and retrenchment in certain circumstances, the dispute must be one of mutual interest. Accordingly, rights disputes (other than the two exceptions) do not constitute matter that can form the subject matter of a protected strike or lockout.

- (5) Not all mutual interest disputes however may form the subject matter of a protected strike or lockout. The Act limits the right to strike and recourse to lockout in respect of the following:
- (a) In breach of a peace clause in a collective agreement;
 - (b) If the trade union and employer or employers' organisation have agreed to refer the dispute to arbitration;
 - (c) If the employees, trade union, employer or employers organisation make an unlawful demand. An unlawful demand for example is a demand by workers that an employer dismiss a fellow employee. That would be unlawful because it would require the employer to contravene the fair dismissal provisions in the Act. Another example is the demand by an employer that employees work longer overtime hours than permitted in the BCEA.

18. Conciliation of mutual interest disputes

- (1) Section 64(1) of the Act requires all disputes of mutual interest that may result in a strike or a lockout to be referred to conciliation. There is one exception – the unilateral change to terms and conditions of employment if an employee or a trade union gives notice not to introduce the alteration or, if introduced, to restore the original terms and conditions.
- (2) The trade union and employer parties to a mutual interest dispute must attend the conciliation meetings convened by the CCMA or the bargaining council with jurisdiction.
- (3) The primary object of the conciliation is to try to resolve the dispute without resort to industrial action. The parties must in good faith endeavour to settle the dispute, failing which, the commissioner or conciliator must propose alternative means to do so, such as arbitration, including advisory arbitration.
- (4) If the parties fail to settle the dispute or agree on an alternative method to resolve it, a secondary object of conciliation is to-
 - (a) to record the demands in respect of which the workers, trade union, employer or employers' organisation intend to take industrial action;
 - (b) to agree on the following:
 - (i) the need for maintenance or minimum services, if necessary;

- (ii) the lines of communication between the conciliator (or facilitator if there is one), the union, the employer and the police; and
- (iii) Strike and picketing rules.

19. Ballot of members

- (1) The Act does not require the conduct of a ballot as requirement for a protected strike or lockout. Section 67(7) of the Act states quite explicitly that the failure by a registered trade union or registered employer organisation to conduct a ballot may not give rise to any litigation that will affect the legality and the protected status of a strike.
- (2) The obligation to ballot flows instead from the constitution of a registered trade union or employers' organisation. The constitutional obligation flows from the requirement in section 95(5) (p) of the Act that a trade union or employers' organisation that seeks registration must provide in its constitution for the conduct of a ballot before the calling of a strike or lockout. That ballot must be a secret ballot.
- (3) Registered trade unions and employers' organisations are obliged to comply with their constitutions even though the failure to do so does not have the consequence of invalidating the protected status of the strike or lockout..

20. Notice of the commencement of the strike or lockout

- (1) The notice of the commencement of a strike or lockout must be in writing and given at least 48 hours after the issue of a certificate of outcome or the expiry of thirty days in the case of private employers and seven days in case of the state as employer.
- (2) Since the object of notice is to allow the other party to put its house in order and limit the negative consequences of industrial action to loss of production on the part of employers and the loss of income on the part of employees, the parties should agree to a notice period, notwithstanding the minimum periods set out in the Act, that is of sufficient duration to allow the employer to shut down its plant or services without damage to property and to allow the employees to make the necessary arrangements to face a period of no income..
- (3) The notice must include –

- (a) the date and time when the strike or lockout is to commence;
 - (b) the demands which the other party is being required to meet, which demands may not be different to those on which the parties deadlocked.
- (4) The notice does not have to include the following information:
- (a) Which employees are to go on strike;
 - (b) In which division of the employer's workplace the strike is going to be called.
- (5) If a strike or lockout does not commence on the date stated in the notice, the trade union or employers' organisation should issue a further notice stating the date and time of commencement if it intends to strike or lockout unless there is an agreement, that should not be unreasonably withheld, to extend or shorten the notice to allow for further negotiations.
- (6) The failure to issue a further notice, or strike or lockout after a notice is issued in terms of 19(5) herein, may lead to an inference that the trade union or employers' organisation has waived or abandoned its right to strike or lockout.

21. Who may strike

- (1) Any employee, including employees who are not members of the union calling the strike, may join a protected strike. There are only two exceptions:
- (a) Essential service workers or any agreed minimum services within an essential service;
 - (b) Maintenance service workers
- (2) If a service has been declared an essential service by the Essential Service Committee in terms of section 71 of the Act, the trade unions in that service and the employers can conclude a minimum services agreement on the particular categories within that service and number of employees to perform that service during the strike. If a minimum services agreement is not concluded, the Essential Services Committee may determine such minimum services under section 72(2) of the Act. Employees within agreed or determined minimum services are not permitted to strike.
- (3) A trade union and employer may enter into a maintenance service agreement in order to avoid material physical damage to the working area, plant or machinery arising from a strike. If there is no agreement, the employer may apply to the

Essential Services Committee for a determination. Employees falling within such a determination are not permitted to strike. Depending on whether the all or a substantial number of employees are prohibited from striking as a result, the committee may refer the dispute to arbitration.

22. Strikes or lockouts in respect of employees residing on employer premises

- (1) Employees residing in accommodation provided by their employer are entitled to exercise their fundamental rights including their freedom of association not only at the workplace but also in their living quarters⁵.
- (2) During a protected and peaceful strike or lockout, the employer, at the request of the employee, should not discontinue payment in kind in respect of accommodation, the provision of food and other basic amenities of life such as the provision of water and heating. The parties may regulate this by way of a collective agreement as provided for in section 34(1)(b) of the Basic Conditions of Employment Act (BCEA) and which may include provisions for the employer to recover such payment in kind by way of deductions from an employee's wages after the industrial action.
- (3) The employer may recover the monetary value of the payment in kind made at the request of the employee during the strike or lockout from the employee in terms of the BCEA and Act.
- (4) Freedom of association in the context of employees residing at their place of work, means –
 - (a) the right of an employee to choose either –
 - (i) to strike or not to strike; or
 - (ii) to participate or not to participate in a collective decision to resist a lockout;
 - (b) that every employee must respect the right of other employees –

⁵ The ILO Workers' Housing Recommendation 115 of 1961.

- (i) to strike or not to strike;
 - (ii) to participate or not to participate in a collective decision to resist a lockout;
 - (c) to work or not to work during the strike or lockout;
 - (d) the right of every employee not to be interfered with, threatened with or intimidated when entering or exiting the workplace, commuting to and from the workplace, in their living quarters (if provided by the employer) or their homes or within their communities.
- (5) Every employee must respect the right to freedom of movement in particular –
- (a) the right of management to enter and exit its premises;
 - (b) the right of non-striking workers to enter and exit the workplace and their living quarters and to use public transport;
 - (c) the right of third parties to enter and exit the employer's premises and do business with the employer;
 - (d) an employer's right to continue and maintain production, subject to the restrictions on replacement labour contained in section 76 of the Act;.
- (6) All parties must take all reasonable steps to ensure that their employees and members comply with (4) and (5) above.
- (7) Nothing in this clause restricts a lawful and peaceful picket on the employer's premises in accordance with section 69 of the Act and Part E: Picketing.

23. Peace and stability and communication during a strike or a lockout

- (1) In accordance with the guideline that the parties should develop rules regulating peaceful and protected industrial action, which includes picketing, those rules, depending on the circumstances, may include the establishment of a peace and stability committee made up of union officials, shop stewards, employer representatives, the conciliator or facilitator, a person representing the private security company and a person appointed by the South African Police Services in accordance with the Accord.
- (2) At the very least, the rules should include the following:

- (a) The trade union, employer or employers' organisation should identify persons and alternates with whom the parties can communicate during a strike or lockout and provide each other with contact details.
- (b) The contact details of the trade union and employer representatives should be forwarded to the conciliator or facilitator in order that the conciliator or facilitator is able to re-institute negotiations during the course of the strike or lockout.
- (c) The employer should then request the South African Police Services to appoint a police officer in accordance with the Accord with whom the trade union and employer representatives can liaise during the currency of the strike and to provide that person with the contact details of the employer and trade union representatives and those of the conciliator or facilitator.
- (d) If there is a significant private security presence, the employer should ensure that a person with authority in the private security company is identified as a representative and that that person's contact details are forwarded to the trade union, the conciliator or facilitator and the South African Police Services.

PART E: PICKETING

24. Introduction

- (1) This Part of the Code is intended to provide practical guidance on picketing in support of any protected strike or in opposition to any lockout. It is intended to be a guide to those who may be contemplating, organising or taking part in a picket and for those who as employers or employees or members of the general public that may be affected by it.
- (2) Section 17 of the Constitution recognises the right to assemble, to demonstrate, to picket and to present petitions. This constitutional right can only be exercised peacefully and unarmed. Section 69 of the Act seeks to give effect to this right in respect of a picket in support of a protected strike or a lockout.
- (3) Any person interpreting or applying the Act in respect of any picket must take this Part of the Code into account. This is the effect of section 203 of the Act. This applies to employers and their employer organisations, employees and their trade

unions, the Commission, Labour Court, the Labour Appeal Court, private security services and the South African Police Services.(include supporters and landlord)

- (4) This Part of the Code does not apply to all pickets and demonstrations in which employees and trade unions may engage. It applies only to pickets held in terms of section 69 of this Act. That section has four elements:
- (a) The picket must be authorised by a registered trade union;
 - (b) Only members and supporters of the trade union may participate in the picket;
 - (c) The purpose of the picket must be to peacefully demonstrate in support of any protected strike or in opposition to any lockout;
 - (d) The picket may only be held in a public place outside the premises of the employer or, with the permission of the employer, inside its premises. The permission of the employer may be overruled by the CCMA, if the permission is unreasonably denied. The factors to be taken into account to determine whether permission is unreasonably denied are set out in clause 29 of this Code.
- (5) If the picket complies with these four elements then the ordinary laws regulating the right of assembly do not apply. These laws include the common law, municipal by-laws and the Regulation of Gatherings Act, 205 of 1993.
- (6) A picket conducted by an unregistered trade union or for purposes other than to demonstrate in support of a protected strike or a lockout is not protected by section 69 of the Act. The lawfulness of that picket or demonstration will depend on compliance with the ordinary laws regulating public gatherings referred to in sub-clause (5).

25. Authorisation

- (1) A picket contemplated in section 69 of the Act must be authorised by a registered trade union.
- (2) The authorisation must be made in accordance with the trade union's constitution. That means that there must either be a resolution authorising the picket or a resolution permitting a trade union official to authorise a picket in terms of section 69(1). It should be formal and in writing.

- (3) A copy of the resolution authorising the picket ought to be served on the employer before the commencement of the picket.
- (4) The authorisation applies only to its members and its supporters.

26. Purpose of the picket

- (1) The purpose of the picket is to peacefully encourage non-striking employees and members of the public to oppose a lockout or to support strikers involved in a protected strike. The nature of that support can vary. It may be to peacefully encourage employees not to work during the strike or lockout. It may be to peacefully dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer.
- (2) The strike must be a protected strike. In normal cases, employees picket at their own place of work or other designated areas as agreed by the parties, or provided for by the CCMA in support of their strike against their own employer. Cases do arise, however, where employees picket at their own place of work in support of a strike between another employer and its employees. This is what is contemplated in section 66 of the Act as a "secondary strike". In this case, in order to be protected, the picket must further satisfy the requirements of a lawful secondary strike in terms of section 66. This is because the definition of "secondary strike" in the section includes "conduct in contemplation or furtherance of a strike". A picket is "conduct in contemplation or furtherance of a strike."
- (3) The requirements for a protected secondary strike are-
 - (a) the strike that is to be supported by the secondary strike must itself be a protected strike;
 - (b) the employer of the employees taking part in the secondary strike must have received written notice of the proposed picket at least 7 days prior to its commencement; and
 - (c) the nature and extent of the secondary strike must be reasonable in relation to the possible direct or indirect affect that the secondary strike may have on the business of the primary employer.

- (4) If a picket is in support of an unprotected strike, the picket is not protected by section 69 of the Act.
- (5) Pickets may be held in opposition to a lockout. Section 69(1) does not distinguish between protected and unprotected lockouts. This means that a picket may be held in opposition to both a protected and an unprotected lockout.

27. No picketing unless rules agreed or determined

No picket in support of a protected strike or in opposition to a lockout may take place unless rules have been agreed or determined by the CCMA in terms of section 65(9) of the Act.

28. Agreed picketing rules

- (1) A registered trade union and employer or employer organisation should seek to conclude a collective agreement on standing picketing rules to regulate pickets in support of a protected strike or in opposition to a lockout.
- (2) The following matters should be considered in such a collective agreement –
 - (a) the nature of the authorisation and its service upon the employer;
 - (b) the notice of the commencement of the picket including the place, time and the extent of the picket;
 - (c) the nature of the conduct in the picket;
 - (d) the number of picketers and their location;
 - (e) the modes of communication between marshals and employers and any other relevant parties;
 - (f) the conduct of the pickets on the employer's premises; and
 - (g) this code of good practice and the Default Picketing Rules annexed to this Code.
- (3) If the parties to a dispute giving rise to a protected strike or lockout have not concluded a collective agreement regulating pickets, the parties must endeavor to agree picketing rules before the commencement of the protected strike or lockout taking into account the factors referred to in sub-item (2). The trade union or employer may request the Commission to facilitate such an agreement in terms of section 69(4) of the Act.

29. Default picketing rules

- (1) If there is no collective agreement on picketing rules or no picketing rules agreed during the conciliation process, the Commission must determine picketing rules in accordance with the Default Picketing Rules determined in terms of section 69(9) of the Act.
- (2) In terms of section 69(9)(b) of the Act, rules determined under clause (1) are binding on the trade union, its members and supporters, and the employer.

30. Pickets on employer premises or in other designated areas

- (1) A picket may take place on the employer's premises or other designated area with the permission of the employer. The permission may not be unreasonably withheld. In order to determine whether the decision of the employer to withhold the permission is reasonable, the factors, which should be taken into account, include-
 - (a) the nature of the workplace e.g. a shop, a factory, a mine etc;
 - (b) the particular situation of the workplace e.g. distance from place to which public has access, living accommodation situated on employer premises, etc;
 - (c) the number of employees taking part in the picket inside the employer's premises;
 - (d) the potential for violence and other unlawful acts;
 - (e) the areas designated for the picket;
 - (f) time and duration of the picket;
 - (g) the proposed movement of persons participating in the picket;
 - (h) the proposals by the trade union to exercise control over the picket; and
 - (i) the conduct of the picketers.

31. Dissemination of picketing rules

Employers, employer organisations and trade unions must take measures to disseminate the picketing rules which may include measures-

- (a) placing the rules on notice boards; and

(b) distributing copies of the rules to employees and private security officers.

32. Conduct in the picket

- (1) Although the picket may be held in any place to which the public has access, the picket may not interfere with the constitutional rights of other persons.
- (2) The trade union must-
 - (a) appoint convenors and marshals to monitor and control the picket as set out in the picketing rules;
 - (b) provide the convenors, marshals with the agreed or determined picketing rules; and
 - (c) take measures to ensure that the convenors, marshals and picketers understand those rules.
- (3) The picketers must conduct themselves in a peaceful, unarmed and lawful manner. They may –
 - (a) carry placards;
 - (b) chant slogans; and
 - (c) sing and dance.
- (4) Picketers may not –
 - (a) forcefully prevent or intimidate suppliers, clients and customers of the employer, members of the public, employees who are not on strike and replacement workers from entering or leaving the premises of the employer;
 - (b) commit any unlawful action, such as intimidating, coercing, threatening or assaulting any person or causing or threatening to cause any damage to any property whether belonging to the employer or not;
 - (c) incite violence;
 - (d) wear masks; or
 - (e) have any dangerous weapons or objects in their possession.

33. Peace obligation and the role of police

(1) It is not the function of the police to take a view of the merits of a particular strike or lockout. Their role is to uphold the law and keep the peace. The law does, however, give the police the power to take measures that may be reasonably necessary to ensure that a strike and picket remains peaceful, unarmed and orderly. In exercising these measures –

(a) the police may only intervene with any person/s who –

- (i) the police reasonably believe is in possession of a firearm or dangerous weapon;
- (ii) displays a firearm or dangerous weapon;
- (iii) has committed or threatens to commit an assault or damage to property;
- (iv) intimidates or threatens any person entering or leaving the employer's property;
- (v) unlawfully prevents the employer or another person from conducting their business or from working or not working;
- (vi) blocks any vehicle or person from entering or leaving the employer's premises;
- (vii) breaks into or enters the employer's property without the employer's permission;
- (viii) threatens or commits an act of public violence; or
- (ix) commits any action prohibited by a court order.

(b) the police may only disperse a picket or gathering if –

- (i) there is reasonable cause to believe that persons involved in the picket or gathering may engage in any of the crimes referred to in (a) above; or
- (ii) the picket or gathering has been interdicted under a court order and the court orders the police to enforce court order;
- (iii) persons involved in the picket or gathering commits or threatens to commit an act of public violence;

- (2) In the context of the constitutional right to picket peacefully and unarmed and applying the factors listed in section 3(2) of the Dangerous Weapons Act, 15 of 2013 to determine whether a person intends to use the object as a dangerous weapon, a dangerous weapon is any object that could be used to injure or threaten a person or damage property. In the context of a picket there is no other justifiable use for the possession or display of such an object. Cultural implements carried by picketers must clearly not be carried or used in a manner intended to intimidate or cause harm.
- (3) Fundamental to promoting peaceful industrial action and peaceful lockouts, is implementing the principle of seeking to resolve disputes as to the conduct of participants through negotiations.
- (4) The police have no responsibility to enforce the Act or any picketing rules. They have no responsibility to enforce the terms of a court order interdicting a strike or a picket unless ordered to do so by a court. The police may, however, assist the sheriff in serving a court order if the police think that there may be a breach of the peace.
- (5) Members of the police assigned to monitor strikes, lockouts and pickets should where necessary conduct a threat analysis-
 - (a) should adopt a non-threatening presence;
 - (b) be sensitive to the potential presence of persons with disabilities and to consider their safety and security when acting to disperse any picket or gathering;
 - (c) should use minimum force and non-lethal equipment such as shields, rubber bullets, water cannons, stun grenades and tear gas⁶;
 - (d) should take into account that the use of that equipment can result in serious injury and even death;
 - (e) may only use that equipment –
 - (i) after non-violent means have failed;

(ii) to the extent necessary, subject to prevailing circumstances and in compliance with the law and all police regulations; and

(iii) in a proportional and lawful manner.

34. Peace obligation and role of private security

- (1) The role of private security is to protect the property of the employer and client and ensure the safety of persons on the property. Private security officers have no right to intervene in a strike or a picket or to enforce the Act or any picketing rules made under them.
- (2) A private security officer does not have the powers of the police but may arrest in terms of section 42 of the Criminal Procedure Act, 51 of 1977 just as any other private person may do, a person participating in the picket or gathering –
 - (a) who commits a Schedule 1 offence in the officer's presence or the officer reasonably suspects the person of doing so such as public violence, malicious injury to property and assault when a dangerous wound is inflicted;
 - (b) who the officer reasonably believes to have committed an offence and is escaping from or being freshly pursued by a person who the officer reasonably believes has the authority to arrest;
 - (c) who the officer sees engaged in a fight;
 - (d) if authorised by the employer, any person committing an offence on the employer's property.
- (3) A private security officer may pursue a person referred to in (a) above.
- (4) Any person arrested by a security officer in these circumstances must be brought as soon as possible to a police station.
- (5) Every employer that contracts with a private security company must ensure that –
 - (a) the company is registered as a security service provider in terms of the Private Security Industry Regulation Act, 56 of 2001;
 - (b) it complies with the legislation and codes of conduct relating to the private security industry and the requirements of the Private Security Regulatory Authority;

- (c) its security officers tasked with protecting property of the employer during the course of industrial action are adequately trained in crowd management and the provisions of this Code in order to ensure that they act appropriately if conflict escalates during the course of industrial action.

35. General rights, obligations and immunity

- (1) A person who takes part in a picket protected in terms of the Act does not commit a delict or a breach of contract. This means that the employer may not sue a person or a union for damages caused by a picket held in compliance with section 69 of the Act and the applicable picketing rules.
- (2) The employer may not take disciplinary action against an employee for participating in a picket in compliance with section 69 of the Act and the applicable picketing rules. If an employee's conduct during a picket constitutes misconduct the employer may take disciplinary action in accordance with the Act.

ANNEXURE A**GOOD FAITH DECLARATION**

In the negotiations between:

[Name of union or unions]

and

[Name of employer, employers or employers' organisation]

on

[Short description of the matters for negotiation⁷]

I, ...[name], [capacity] of the [name of entity] declare that-

- 1 I will engage in the negotiations with [name of entity on the other side] in good faith with the sincere intention of concluding a collective agreement if possible.
- 2 I will adhere to the principles of good faith bargaining contained in the Code on Collective Bargaining and Industrial Action.
- 3 I will treat the negotiators representing the [*name of the other entity on the other side*] with respect and conduct the negotiations in a rational, constructive and courteous manner.

⁷ Such as: 'Wage Agreement for 2016/17' or 'Employer's restructuring proposal dated'.

- 4 I will not deliberately delay negotiations by failing to respond quickly to communications, to agree dates and times for negotiation meetings, to attend negotiating meetings, and to attending meetings without a mandate.
- 5 I will, accordingly, ensure to the best of my ability that I and the other members of our negotiating team –
 - 5.1 will attend agreed negotiating and conciliation meetings and, if for good reason we are unable to do so, I will ensure that reasonable notice of our non-attendance is given to avoid wasteful expenditure and inconvenience.;
 - 5.2 are properly mandated when we attend negotiation and conciliations meetings.
- 6 I will faithfully communicate any proposals or counterproposals arising from negotiations to our [*members/mandating structures/board/executive committee*]
- 7 I will not conduct myself in any way that may constitute conduct that undermines the negotiations.

Signed on [date] at [place]

[Name and contact details]

ANNEXURE B

DEFAULT PICKETING RULES⁸

1 PARTIES TO THE dispute

1.1 The parties to the dispute giving rise to the strike/lockout⁹ are:¹⁰

.....[name]

.....[name]

2 BINDING NATURE

2.1 These Rules are binding on the parties to the dispute and their officers, officials, members and supporters.

2.2 Nothing in these Rules prevents the parties to the dispute agreeing to their own rules to replace or amend these Rules.

2.3 These Rules must be interpreted in accordance with-

2.3.1 sections 17, 18 and 23 of the Constitution;

2.3.2 section 69 of the Labour Relations Act, 66 of 1995 (Act);

2.3.3 The Code of Good Practice: Picketing (Code)

2.4 Where these Rules are silent, the relevant provisions of the Act and the Code apply.

3 PURPOSE OF THE PICKET

3.1 The only purpose of the picket is to approach and peacefully seek to persuade the following persons to support the strike or oppose the lockout by temporarily withholding their services from, supplying goods and materials to, or working for the employer/s:

3.1.1 service providers, clients and customers of the employer;

3.1.2 members of the public; and

⁸ Picketing may only take place in terms of s69. Gatherings related to unprotected strikes are subject to the provisions of the Regulation of Gatherings Act.

⁹ Delete whichever is not applicable unless both a strike and a lockout are in place.

¹⁰ Commissioner to fill in the names of the parties to the dispute giving rise to the strike.

3.1.3 employees who are not on strike (other than essential or minimum service employees) and replacement workers.

4 LOCATION OF PICKET AND NUMBER OF PICKETERS¹¹

- 4.1 A picket may *only* be held at the places designated in Annexure A.
- 4.2 Only members and supporters of the strike may take part in the picket.
- 4.3 A picket at any designated location may not exceed the maximum number of members or supporters determined by the Commissioner in that Annexure.

5 DURATION AND TIME OF PICKET

- 5.1 The picket may only commence at or after the commencement of the strike or lockout.
- 5.2 The picket may only take place during daylight hours.¹²

6 NATURE AND CONDUCT OF PICKET

- 6.1 Picketers must at all times conduct themselves in a peaceful, unarmed and lawful manner and not interfere with the constitutional rights of other persons
- 6.2 Subject to clause 6.3, picketers may for the purposes of the picket –
 - 6.2.1 carry placards;
 - 6.2.2 hand out pamphlets;
 - 6.2.3 chant slogans, sing and dance;
 - 6.2.4 be addressed by union officials and supporters; and
 - 6.2.5 wear trade union t-shirts, hats, caps, badges and other paraphernalia.
 - 6.2.6 approach and peacefully engage suppliers, clients, customers, employees (other than essential or minimum service employees)

¹¹ The Commissioner must determine the location of the pickets and the number of picketers in each designated location in accordance with section 69(5) and (6) of the LRA, clauses XX of the Code and any relevant court decision.

¹² The Commissioner may amend this rule if the employer works night shift or the picket is rendered ineffective because the employer has arranged for its suppliers, customers and clients to enter the premises at night.

and replacement workers not to enter the premises and support the strike or oppose the lockout.

- 6.3 Any limitations on the activities listed in clause 6.2 in respect of specific locations are detailed in Annexure A.¹³
- 6.4 Picketers may not –
- 6.4.1 In performing the activities contemplated in clause 6.3 use hate or defamatory speech or incite violence;
 - 6.4.2 forcefully prevent or appear to prevent suppliers, clients and customers of the employer, members of the public, employees who are not on strike and replacement workers from entering or leaving the premises or any part of the premises of the employer;
 - 6.4.3 commit any unlawful action, such as intimidating, coercing, threatening or assaulting any person or causing or threatening to cause any damage to any property whether belonging to the employer or not;
 - 6.4.4 wear masks; or
 - 6.4.5 have any dangerous weapons or objects in their possession.
- 6.5 For the purposes of these Rules, dangerous objects or weapons includes any object that could be used to injure or threaten a person or damage property. In the context of a picket there is no other justifiable use for the possession or display of such an object, in particular any of the following objects:
- 6.5.1 Knives, spears, pangas, bush knives or any similar object;
 - 6.5.2 Sticks and knobkieries¹⁴ whether made of metal or wood;
 - 6.5.3 Whips and sjamboks;
 - 6.5.4 Bricks, stones or any similar object that can be thrown or propelled in a manner that can cause injury or damage to property;
 - 6.5.5 Any inflammable substance;

¹³ The Commissioner may, for example, limit the activity of a picket in a shopping mall or business complex to carrying placards and handing out pamphlets.

¹⁴ To be discussed further.

6.5.6 Any liquid, foam or similar substance that can be sprayed or extruded to cause injury or damage to property.

7 CONTROL OF PICKETS

- 7.1 Union officials and managers are accountable and should be available to resolve problems may the need arise.
- 7.2 The name and contact details of the Commissioner responsible for the conciliation of the dispute giving rise to the strike or lockout and these Rules is set out in Annexure B.
- 7.3 The names and contact details of the trade union convenor/s of the picket and the employer representative/s are listed in Annexure B¹⁵.
- 7.4 The convenor/s of the picket is responsible for overseeing the picket and ensuring that the picket complies with the rules.
- 7.5 The trade union must appoint one marshal for every ten picketers to monitor and control the picket at each designated location. The full names and contact details of the marshals are listed in Annexure B.
- 7.6 The convenors, marshals and employer representatives must be present from the start to the end of the picket each day.
- 7.7 The convenor, the marshals and the employer representative must-
- 7.7.1 at all times during the picket have a copy of these Rules in their possession;
- 7.7.2 wear the armbands or vests described in Annexure B to identify themselves as convenors or marshals¹⁶; and
- 7.7.3 be present from the start to the end of each day of the picket.
- 7.8 The names and telephone numbers of the convenor and marshals must be set out in Annexure B.
- 7.9 Any change to a convenor, employer representative and marshal must be sent by a text message to the persons listed in Annexure B.

¹⁵ The Commissioner must list the names and contact details of the convenor/s and employer representative/s in Annexure B.

¹⁶ The Commissioner to describe the armbands or vests identifying the members or officials as convenors and marshals.

- 7.10 The trade union must ensure that its members and supporters who participate in a picket wear the identification described in Annexure B.¹⁷
- 7.11 The trade union must train its convenors and marshals on the Code and the Rules and their responsibilities to ensure a lawful and peaceful picket.

8 EMPLOYER CONDUCT

- 8.1 The employer or any person in authority at the workplace or acting on the employer's behalf may not –
- 8.1.1 in any way hinder or obstruct the lawful and peaceful conduct of the picket;
 - 8.1.2 undermine any employee's right to lawfully and peacefully participate in the picket or discipline or threaten to discipline any employee for peacefully and lawfully doing so;
 - 8.1.3 engage in or permit conduct which is provocative or may incite conflict; or
 - 8.1.4 carry a dangerous weapon of any kind while in contact with the picketers.
 - 8.1.5 use hate or defamatory speech or incite violence
- 8.2 The employer must ensure that any private security company employed by the employer complies with the requirements relating to such companies under the Code of Good Practice on Collective Bargaining and Industrial Action.
- 8.3 The employer must ensure reasonable access to toilet facilities and drinking water to persons participating in a picket

9 PICKETING ON EMPLOYER'S PREMISES OR IN OTHER DESIGNATED AREAS

- 9.1 If picketing is to take place on the employer's premises or other designated areas, the employer must, where applicable provide the trade

¹⁷ The Commissioner to describe the T-shirts, hats, badges or other forms of identification of participants in the picket in Annexure B.

union with written confirmation of the health and safety rules to be observed before, during and after the picket.

9.2 Participants in a picket on the employer's premises or in any other designated area must, in addition to the requirements set out in clauses 6 and 7 above –

9.2.1 remain within the designated picketing area(s);

9.2.2 observe the health and safety rules and regulations applicable in the workplace;

9.2.3 refrain from causing any damage to property or allowing any damage to be caused; and

9.2.4 leave the premises and the facilities in the condition in which they found it.

10 FAILURE TO COMPLY WITH THESE RULES

10.1 Any person may refer a dispute concerning the interpretation or application of these Rules to the Commissioner responsible for the conciliation of the dispute giving rise to the strike or lockout and these Rules.

10.2 The Labour Court may suspend a picket at one or more designated locations if these Rules have not been complied with in terms of section 69(12)(c) of the Act.

11 DISPUTE RESOLUTION

11.1 Any dispute about the interpretation or application of these Rules or any alleged breach thereof shall be dealt with in accordance with section 69(8), (9), (10) and (11) of the Act or section 158(1)(g) of the Act. This does not affect any other right that any person may have in terms of the Act or any other law.

11.2 It is recorded that the employer, the union and persons taking part in the picket are subject to the protections and provisions set out in section 67 of the Act.

12 POLICE INVOLVEMENT

- 12.1 These Rules do not affect the right of any person to ask the South African Police Service or any security organisation responsible for maintaining safety and security at or near the workplace to investigate or deal with any unlawful conduct or alleged unlawful conduct.
- 12.2 If this happens, the employer and the union undertake to cooperate with the police or security organisation in the performance of their duties and the union undertakes to do everything possible to ensure that its members and supporters will do the same.

13 TERMINATION

These Rules will remain in effect until the settlement of the dispute, the termination of the strike, termination of the picket by the union or until it is terminated or reviewed by mutual agreement, whichever may come first.

ANNEXURE 1**DESCRIPTION OF PLACE OR PLACES FOR THE PICKET****Addresses and location/s of pickets and number of picketers****Address/es or location of the picket**

1.

2.

Physical location of pickets at each address¹⁸

.....	[number of pickets]	[limitation of activity]
-------	---------------------	--------------------------

.....	[number of pickets]	[limitation of activity]
-------	---------------------	--------------------------

Duration and times of pickets - Date/s and times that pickets may be held at each address and physical location

Address /physical location	times of pickets (hours during which pickets may be held at each address and physical location)
----------------------------	---

1.

2.

¹⁸ The physical location may be described in words or drawn or both. So for example the location may be described as 5 metres from the entrance to the employers premises on XX road and extend no more than 2 metres onto the pavement – accompanied with a drawing to that effect.

ANNEXURE 2

NAMES AND DETAILS OF PARTICIPANTS

Commissioner

1. [Name, email address and mobile telephone number]

Convenor

[Name, designation of status¹⁹, email address and mobile telephone number]

Employer representative

[Name of person appointed in terms of clause 8.1, designation of status, email address and mobile telephone number]

Marshalls

[Name, work number and mobile telephone number]

[Name, work number and mobile telephone number]

[Name, work number and mobile telephone number]

[Name, work number and mobile telephone number]

¹⁹ Whether a trade union official, shop steward or member. If a shop steward or member, then the employee's work number must be included]

ACCORD
ON
COLLECTIVE BARGAINING AND INDUSTRIAL ACTION

Preamble

Recognising the constitutional rights-

- the freedom and security of individuals
- the freedom to assemble peacefully and unarmed,
- the freedom of association
- to strike and
- to engage in collective bargaining,

Recognising the constitutional obligations on the State to respect, protect, promote and fulfill those rights

Recognising the principles stated in the Ekurhuleni Declaration on 4 November 2014, the parties to this Accord affirm-

- that the constitutional right to strike and the statutory right to lockout must be peaceful, free of intimidation and violence, including violence and intimidation that may be associated with police action
- strike action by workers and trade unions is a legitimate exercise of power to pursue demands
- prolonged strike action has the potential to cause serious harm not only to strikers and their employers but also to others inside and outside the workplace

The Parties and signatories to this Accord commit themselves and their members to this Accord.

Parties to the Accord

1. NEDLAC constituencies

2. The trade union parties to the Accord are:
 - 2.1. The trade union federations that are represented on the National Economic Development Labour Advisory Council (NEDLAC);
 - 2.2. The trade unions and the members of such trade unions that are members of those federations;
 - 2.3. The trade unions and their members that do not belong to any of those federations that have signed this Accord.

3. The employer parties to the Accord are:
 - 3.1. The federations of employer associations that are represented on NEDLAC;
 - 3.2. The employer associations of those federations;
 - 3.3. The employer associations and members of those associations that are not members of those federations that have signed this Accord; and
 - 3.4. Any employers that are not members of those associations, that have signed this Accord

4. The Government
 - 4.1. The Government in so far as it is directly or through its agencies and institutions required to implement this Accord.
 - 4.2. The State, in its capacity as employer at national, provincial and local level, and as employer in State Owned Enterprises.

5. Agencies
 - 5.1. Commissioner for Conciliation Mediation and Arbitration;
 - 5.2. Bargaining Councils;
 - 5.3. Sector Education and Training Authorities;
 - 5.4. The National Skills Authority;
 - 5.5. The Private Security Industry Regulatory Authority.

6. Other Private Sector Organisations and Institutions;
 - 6.1. The federations of private security companies;
 - 6.2. Private security companies that have signed the Accord; and
 - 6.3 Trade unions in the private security industry.

All parties to this Accord commit:

7. In the case of violence, intimidation, and the threat of harm to person or property associated with industrial action, to build capacity; expedite processes and assign sufficient and senior staff to the resolution of issues.

Employer and trade union undertakings

8. The employer and trade union parties to the Accord and their members undertake-
 - 8.1. to abide by and implement the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing;
 - 8.2. to abide by the terms of collective agreements;
 - 8.3. to mutually respect all parties and to uphold the principles of good faith bargaining and the law;
 - 8.4. that during the course of negotiations, dispute resolution processes and strike or lockout action make public statements calling on all members that they must always act in compliance with this Code and in a law abiding and peaceful manner.
 - 8.5. to secure that their negotiators undergo the training contemplated in the Code of Collective Bargaining and Industrial Action including refresher training at regular intervals;
 - 8.6. to secure that any bargaining council to which they belong signs the Accord;
 - 8.7. encourage parties to only contract with security companies that abide by the Accord and Code of Good Practice on Collective Bargaining, Industrial Action and Picketing ;
 - 8.8. to only make lawful requests of employees of private security companies;
 - 8.9. to refrain from acting in a manner that makes any conflict worse, and;
 - 8.10. to monitor and evaluate, together with government and under the auspices of NEDLAC, whether the commitments made here are effective

in promoting the principles contained in the Preamble.

Employer and trade union declaration against violence, loss of life or harm to persons and property

9. The trade union and employer parties to the Accord and their members hereby-
- 9.1. declare that the resort to violence, intimidation, loss of life or threat of harm to persons and property under all circumstances and more particularly during strikes, lockouts, pickets and protest action is intolerable;
 - 9.2. undertake to take all necessary measures to prevent violence, intimidation and damage to property and, if it does occur, to take all the steps necessary to discourage such conduct and to comply with a court order interdicting the violence, intimidation or damage to property;
 - 9.3. declare that they are committed to adhering to the provisions of the Code of Good Practice Collective Bargaining and Industrial Action and the related declaration on good faith bargaining.

Role of Public Order Policing in strikes, lockouts, pickets and protest action

10. SAPS, in relation to Public Order Policing undertakes-

- 10.1. to comply with the Code of Collective Bargaining and Industrial Action and the Code of Good Practice on Picketing in so far as those Codes apply to it and to take the necessary steps to ensure that its members do so;
- 10.2. to ensure sufficient capacity and that its members assigned to monitor strikes, lockouts, pickets and protest action are trained in public order policing and those Codes;
- 10.3. that its presence at strikes, lockouts, pickets and protest action is minimal and unobtrusive unless there is good cause for it to be otherwise;
- 10.4. that its members will refrain from acting in a manner that escalates the conflict and will only use minimum force and make use of non-lethal weapons to prevent or respond to breaches of the Codes;
- 10.5. to ensure monitoring and engagement with employees and employers participating in a strike, lockout, picket or protest action.

- 10.6. to investigate and submit for prosecution any perpetrators of violence, intimidation or damage to property on an expedited basis.

Role of private security companies

11. The private security companies that are bound by the Accord undertake-

- 11.1. to comply with the Code of Collective Bargaining, Industrial Action and Picketing in so far as those Codes apply to them and to take the necessary steps to ensure that their employees do so;
- 11.2. to ensure that its security officers tasked with protecting property during industrial action are adequately trained in crowd management and the Code of Collective Bargaining and Industrial Action in order to ensure that they act appropriately if conflict escalates during the course of industrial action;
- 11.3. that the presence of its security officers at strikes, lockouts, pickets and protest action does not escalate conflict and is minimal and unobtrusive unless there is good cause for it to be otherwise; and
- 11.4. that its security officers are only armed with non-lethal weapons to prevent or respond to breaches of the Code.

Role of the CCMA and Bargaining Councils

12. The CCMA and bargaining councils undertake to provide-

- 12.1. dispute resolution and prevention services contemplated in giving effect to the Code of Collective Bargaining and Industrial Action and the Code of Good Practice on Picketing;
- 12.2. training of negotiators in accordance with that Code based on the materials provided by the CCMA and adapted for the sector by that Council;
- 12.3. workplace capacity building programs and services to trade union and employer representatives as may be provided for in terms of its existing policies and procedures;
- 12.4. services to support the establishment of workplace participatory structures where parties have agreed to the establishment of such structures.

Role of Department of Higher Education and Training (DHET) National Skills Fund (NSF) and Sector Education and Training Authorities (SETAs)

13. The DHET, NSF, SETAs undertake to facilitate and make funding available for the training of negotiators in their respective sectors. This training should be developed by the CCMA and appropriately adapted for a sector by that SETA.

Signed by:

Date:

DEPARTMENT OF LABOUR

NO. R. 1397

19 DECEMBER 2018

LABOUR RELATIONS AMENDMENT ACT, 2018

GUIDELINES ISSUED IN TERMS OF SECTION 95(9)

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby under section 95(9) of the Labour Relations Amendment Act, 2018 (Act No. 8 of 2018) and after consulting NEDLAC, issue the guidelines in the Schedule hereto.



M N OLIPHANT, MP
MINISTER OF
LABOUR

12/12/2018

GUIDELINES ON BALLOTING FOR STRIKES OR LOCKOUTS ISSUED IN TERMS OF SECTION 95 (9) OF THE LRA

1. These guidelines are published in terms of section 95 (9) of the Labour Relations Act (Act 6 of 1995) ("LRA").
2. In terms of section 95 (5) (q) of the LRA, the constitution of every trade union or employers' organisation must provide that trade union or employers' organisation, before calling a strike or lock-out, must conduct a ballot of members in respect of whom it intends to call the strike or lock-out.
3. Section 95(5)(p) provides that a member of a trade union or employers' organisation may not be disciplined or have their membership terminated for a failure or refusal to participate in a strike or lock-out if no ballot was held or, if a ballot was held, a majority of members did not vote in favour of a strike or lock-out.
4. Section 95 (9) provides that a ballot includes any system of voting by the members of a trade union or employers' organisation that is recorded and is in secret.
5. A trade union that has obtained organisational rights in terms of section 12 of the LRA is entitled to conduct a ballot of its members at the employers' premises, subject to such conditions as time and place that are reasonable and necessary to safe guard life or property or to prevent undue disruption of work in terms of section 19 of the LRA. Trade unions that are parties to bargaining councils in respect of all workplaces within the registered scope of the Council have this right, regardless of their level of representativeness within a particular workplace.

6. A trade union that does not have the right of access to a workplace in terms of section 12 of the LRA or a collective agreement may nevertheless request an employer to permit a ballot on its premises.
7. Unless stipulated in a collective agreement, there is no requirement for a trade union to obtain the consent of the employer to hold a ballot.
8. A ballot must be conducted in accordance with the provisions of this Act and the constitution of the trade union or employers' organisation.
9. The following are indicative of the procedures that should be followed when conducting a secret ballot:

Notice

- 9.1. Reasonable notice must be given to members of the holding of a ballot. Notice may be given to employees by direct communication, including emails or SMSes, or by the display of notices at the workplace and at trade union offices. While there is no fixed standard, a period of three days would generally be considered to be reasonable notice.
- 9.2. The notice must specify the time and the place of the ballot.

Ballot papers

- 9.3. The question that is the subject of the ballot must be clearly phrased, and must be consistent with the terms of the dispute referral.
- 9.4. Ballot papers must be prepared in accordance with any applicable union or employer organisation's Constitutional provisions.
- 9.5. Ballots must not contain any information that would make it possible to identify voters.

Voter's roll

- 9.6. A ballot must be conducted in terms of a voters' roll of those members who are in good standing in terms of the union's constitution that the union proposes to call on strike. The voters' roll may be derived from the union's membership records or from the employer's records. The voters' roll identifies which members are entitled to vote and must be marked to ensure that members vote once only.
- 9.7. In the case of an electronic ballot conducted by email or SMS, the voters' roll must reflect the email address or mobile phone number of the members concerned and must be scrutinized and conducted by the CCMA or any independent organisations. The CCMA or any independent organisation must keep the records of balloting for three months and thereafter submit to the trade union for record keeping.
- 9.8. In the case of a postal ballot, the voters' roll must reflect the postal addresses of the members and the CCMA or any independent organisation must keep the postal ballots for three months and thereafter submit to the trade union for record keeping
- 9.9. A trade union may elect to ballot members outside of the bargaining unit in respect of which it proposes to call a strike or to ballot non-members within the bargaining unit. However, those ballots must be conducted and recorded separately from the ballot of members in respect of whom the trade union proposes to call on strike.

Scrutineers and observers

- 9.10. A union may employ independent scrutineers to conduct or observe the ballot. However, there is no obligation to do so, unless provided for in a collective agreement or the trade union's constitution. In all the ballots there will be a scrutineer.

- 9.11. There is no requirement on a trade union to permit employer observers at a ballot, unless s provided for in a recognition or other collective agreement.

Balloting and counting

- 9.12. The union must provide ballot boxes for a secret ballot. Members listed on the voters' roll must receive a ballot paper and be able to mark it and place it in an unmarked ballot box without their vote being observed by any other person.
- 9.13. Ballots may be counted at the voting place, at a union office or at another place determined by the Independent Scrutineer. Where the ballot boxes are transported to another place, they must be sealed.

Records of ballot

- 9.14. Records of voting must be retained for a period of three years. These records include the voters' rolls, ballots in sealed ballot boxes or other containers and any documents used to calculate the outcome of the ballot.
- 9.15. In the case of electronic ballots, appropriate records must be retained.

Transitional provisions

10. Section 19 (1) of the Labour Relations Amendment Act, 2018 requires the Registrar of Labour Relations, within 180 days of the Act coming into effect, to
-
- 10.1. consult with the national office bearers of trade unions and employers' organisations which have constitutions that do not provide for the conducting of a secret ballot before calling a strike or lockout;
- 10.2. issue a directive to those trade unions and employers' organisations as to the period within which their constitutions must be amended to ensure compliance with the requirement for conducting a secret ballot.

11. In terms of section 19 (2) of the Labour Relations Amendment Act, 2018, until such time as a trade union or employers' organisation complies with the directive to change its constitution, it must conduct a secret ballot of its members before calling a strike or lockout, as the case may be.

12. A model clause to achieve compliance with the requirement to hold a secret ballot before engaging in a strike or lockout is attached as Annexure A.

ANNEXURE ONE**DRAFT CLAUSE FOR TRADE UNION/EMPLOYERS' ORGANISATION
CONSTITUTIONS ABOUT SECRET BALLOTS IN RESPECT OF STRIKES OR
LOCKOUTS****Ballots about a strike/ lockout**

- 1 Despite any other provision in this Constitution –
 - 1.1 a strike/lockout may only be called in terms of this Constitution after a secret ballot has been conducted of those members in respect of whom the strike/lockout is called;
 - 1.2 a member shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike/lockout if –
 - 1.2.1 a secret ballot was not held about the strike/lockout;
 - 1.2.2 a secret ballot was held, but a majority of the members who voted did not vote in favour of the strike/lockout.
- 2 The documentary or electronic record of a ballot about a strike/lockout must be retained for three years from the date of the ballot.

WARNING!!!

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The Government Printing Works would like to warn members of the public against an organised syndicate(s) scamming unsuspecting members of the public and claiming to act on behalf of the Government Printing Works.

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Government Printing Works condemns such illegal activities and encourages service providers to confirm the legitimacy of purchase orders with GPW SCM, prior to processing and delivery of goods.

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Anna-Marie du Toit (012) 748-6292 (Anna-Marie.DuToit@gpw.gov.za) and

Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065