

ALTERNATIVE DISPUTE RESOLUTION BILL (CADR BILL)

To establish an independent Commission for Alternative Dispute Resolution; to provide for its powers, functions, and administration; to provide for the prevention and resolution of disputes arising between employers and employees; to promote and facilitate harmonious relationships among employers, employees, trade unions, and employers' organisations; to establish a Governing Board of the Commission; to provide for the registration and regulation of trade unions, employers' organisations, and federations of trade unions and employers' organisations; to give effect to Articles 12 and 95, and any other relevant provisions, of the Namibian Constitution; to consolidate and amend the WADR Act; and to provide for matters incidental thereto.

TABLE OF CONTENTS

PART I

1. Interpretation (definitions)

PART II

The Commission

2. Establishment of the Commission
3. Jurisdiction
4. Objects of the Commission
5. Functions of the Commission
6. Powers of the Commission
7. Governing Board
8. Composition of the Governing Board
9. Committees of the Governing Board
10. Alternative Dispute Resolution Committee
11. Meetings of the Board
12. Fiduciary duties of the Governing Board
13. Disqualification from appointment as member of the Governing Board
14. Vacation of office by a member of the Governing Board

PART III


Administration of the Commission

15. Appointment of the Executive Commissioner
16. Term of office of the Executive Commissioner
17. Disqualification from appointment as the Executive Commissioner
18. Termination of appointment of the Executive Commissioner
19. Appointment of Commissioners
20. Funds of the Commission
21. Financial year and budget
22. Accounts and audits
23. Annual report
24. Exemptions from payment of income tax
25. Abolition of the Commission

PART IV

Registration and regulation of trade unions and employer's organisations

26. Requirements of registration
27. Constitution of trade union or employers' organisation

- 
- 28. Amendment to constitution of a registered trade union or a registered employers' organisation
 - 29. Effect of registration of trade union or employers' organisation
 - 30. Rights of registered trade unions and registered employers' organisations
 - 31. Obligations of registered trade unions and registered employers' organisations
 - 32. Failure to comply with obligations under this Part
 - 33. Failure to comply with constitution or election requirements
 - 34. Winding up of trade union or employers' organisation
 - 35. Appeals from decisions of the Commission

PART V

Recognition and organisational rights of registered trade unions


- 36. Recognition as exclusive bargaining agent of employees
- 37. Trade union access to the premises of the employer
- 38. Deduction of trade union dues
- 39. Workplace union representatives



PART VI


Prevention and Resolution of Disputes

- 40. Resolving disputes through conciliation by the Commission

- 
- 41. Consequences of failing to attend conciliation
 - 42. Dispute of National Interest
 - 43. General provision of arbitration
 - 44. Resolving disputes by arbitration through the Commission
 - 45. Making settlement agreement an arbitration award
 - 46. Effect of arbitration award
 - 47. Seal of the Commission
 - 48. Variation and rescission of awards
 - 49. Enforcement of awards
 - 50. Appeals or reviews of arbitration awards and rulings

PART VII

Strikes and Lockouts

- 
- 51. Right to strike or lockout
 - 52. Prohibition of certain strikes and lockouts
 - 53. Strikes and lockouts in compliance with this Part
 - 54. Disputes in a designated essential service
 - 55. Urgent interdicts

PART VIII

General provisions

56. Dismissal arising from collective termination or redundancy

PART IX

Miscellaneous provisions

57. Confidentiality
58. Limitation of liabilities
59. Conflict of interest
60. Offenses and Penalties
61. Regulations
62. Short title and commencement

PART X

Transitional provisions

1. General preservation of rights, duties, regulations, notices and other instruments
2. Pending disputes

PART I

PRELIMINARY PROVISIONS

BE IT ENACTED by the Parliament as follows:

1. Interpretation (definitions)

“Arbitration” means arbitration proceedings conducted before the commission established in terms of section 2 of this Act;

“Arbitrator” means a commissioner appointed as such in terms of section 18 of this Act;

“Collective agreement” means a written agreement concerning the terms and conditions of employment or any other matter of mutual interest, concluded by -

(a) one or more registered trade unions on the one hand, and

(b) on the other hand -

(i) one or more employers;

(ii) one or more registered employers' organisations; or

(iii) one or more employers and one or more registered employers' organisations in terms of Part V of this Act;

“Commission” means the Commission for Alternative Dispute Resolution (CADR) in terms of section 2 of this Act.

“Committee for Dispute Prevention and Resolution” means the Committee established in terms of section 19 of this Act;

“Conciliation” means a voluntary process facilitated by the Commissioner where parties to a labour dispute of interest are brought to attempt to reach a mutually acceptable settlement in terms of Part VI of this Act.

“Conciliator” means a commissioner designated to facilitate resolution of dispute between parties in terms of section 40 of this Act;

“Dispute” means any disagreement between an employer or an employers’ organisation on the one hand, and an employee or a trade union on the other hand, which disagreement relates to a labour matter or any other dispute which is not criminal in nature.

“Dispute of interest” means any dispute referred to in terms of section 40 of this Act. It concerns a proposal for new or changed conditions of employment but does not include a dispute that this Act or any other Act requires to be resolved by -

- (a) adjudication in the Labour Court or other court of law; or
- (b) arbitration;

“Dispute of national interest” means a dispute referred to in section 41A of this Act. It is a dispute that significantly impacts a critical national industry and has potential to disrupt the national economy, public order, or requires government intervention.

“Dispute of right” means a dispute referred to in section 43 of this Act. It concerns itself with disagreement regarding interpretation or application of the existing legal rights, obligations, or entitlements. It involves claims based on the law, collective agreements, or employment contracts.

“Effective date” means the date on which this Act, or any relevant provision of it, came into operation.

“Employers’ organisation” means any number of employers associated together for the principal purpose of regulating relations between those employers and their employees or the employees’ trade unions;

“Employee” means an employee defined in terms of section 1 of the Labour Act, 2007 (Act 11 of 2007);

“Employer” means an employer defined in terms of the Labour Act, 2007 (Act 11 of 2007) as amended;

“Employer’s premises” means any premises under the control of an employer where work is done or employees are accommodated;

“Essential service” means a service defined in terms of section 77 of the Labour Act, 2007 (Act 11 of 2007) as amended;

“Executive Commissioner” means the Accounting Officer of the Commission appointed in terms of section 13 of this Act;

“Federation” means a group of registered employers’ organisations or registered trade unions established for the principal purpose of regulating relations between employers and employees in terms of Part IV of this Act.

“*Fee*” means fees clearly regulated under CADR Act, 2026 (Act 1 of 2026) and the CADR Rules and Regulations.

“*Independent contractor*” means the independent contractor defined in terms of section 1 of the Labour Act, 2007 (Act 11 of 2007);

“*Labour Court*” means the court referred to in section 115 of the Labour Act;

“*Labour Act*” refers to the Labour Act, 2007 (Act No. 11 of 2007);

“*Legal practitioner*” means an individual admitted to practice as a legal practitioner in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“*Lockout*” means a total or partial refusal by one or more employers to allow their employees to work, if the refusal is to compel those employees or employees of any other employer to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

“*Minister*” means the Minister responsible for Labour;

“*Ministry*” means the Ministry responsible for Labour;

“*Office space*” means the physical premises of the commission and any agreed conducive office, room, or facilities including virtual forum during mediation, conciliation, and arbitration process in terms of Part IIIV of this Act.

“Office-bearer” in relation to a trade union or employers’ organisation, means an individual, other than an official, who holds any office in that trade union or employers’ organisation and includes a member of a committee of that trade union or employers’ organisation;

“Official” in relation to a trade union or an employers’ organisation, means a person employed as a secretary, assistant secretary or any similar capacity, whether or not in a full-time capacity;

“Pending” means that a matter has been referred to the Labour Commissioner, or filed with the Labour Court, as the case may be, and has been issued a case number in terms of the laws governing the operation of the Office, or that court as contemplated in Part VIII of this Act.

“Premises” includes any building or structure, or part of it of which is used to perform the function of the commission in terms of this Act;

“Prescribed” means prescribed by regulation, policy, guidelines or rules in terms of this Act;

“Public holiday” means any public holiday referred to in or declared under the Public Holidays Act, 1990 (Act No. 26 of 1990);

“Register of commissioners” means an official record or database maintained by the Commission which lists all persons accredited, appointed, or authorised to act as commissioners in prevention and resolution dispute through the commission or anywhere else.

“Registered trade union” includes one or more trade unions acting jointly, or a federation of trade unions.

“Registered employers’ organisation” includes one or more employers acting jointly, or a federation of employers’ organisation.

“Seal” means a physical or digital mark, imprinted on a document, that signifies the document's authenticity and that it was officially issued by the commission referred to in section 46 of this Act.

“Settlement agreement” means a written agreement in settlement of a dispute between parties to the commission referred to in section 44 of this Act;

“Staff member” means an individual referred to in section 6(g) of this Act;

“State” includes a regional council, local authority or anybody created by law over which the State or Government of the Republic of Namibia has some control because of shares held in or funds made available to that body.

“Strike” means a total or partial stoppage, disruption or retardation of work by employees if the stoppage, disruption or retardation is to compel their employer, any other employer or an employers’ organisation to which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest referred to in section 51 of Part V of this Act;

“*This Act*” it refers to the Alternative Dispute Resolution Act, 2026 (Act 1 of 2026) including any rules, regulations, or guidelines made under it;

“*Trade union*” means an association of employees whose principal purpose is to regulate relations between employees and their employers as contemplated in Part IV of this Act;

“*Workplace*” it means the place or places where the employee(s) of an employer work(s).

PART II

THE COMMISSION

2. Establishment of the Commission

(1) There is hereby established a body to be known as the Commission for Alternative Dispute Resolution.

(2) Subject to the provisions of this Act, the Commission shall be independent and not subject to the control of any person or body, including, but not limited to, any statutory body, the Government, any political entity, employer or employee, trade union, or employers’ organisation.

(3) The Commission shall be a juristic person capable of suing and be sued.

3. Jurisdiction

(1) The commission shall have jurisdiction in Namibia.

4. Objects of the Commission

(1) To establish a comprehensive alternative dispute prevention and resolution mechanism.

(2) To promote fair labour practices; prevent and resolve disputes; promote effective bargaining and workplace relations; to educate and train workers, trade unions; employers and employer's organisation, any interested party about labour law; and to conduct research and advise on dispute prevention and resolution, and policy development.

5. Functions of the Commission

(1) register disputes from employees and employers over contravention; the application; interpretation; or enforcement of this Act and to take appropriate action;

(a) facilitate or give advice to prevent dispute from arising;

(b) through conciliation to resolve disputes referred to the Commission in terms of this Act or any other law;

(c) arbitrate a dispute that has been referred to the Commission if the dispute remains unresolved after mediation; and –

i) where the dispute requires arbitration; or

ii) the parties to the dispute have agreed to have the dispute resolved through arbitration.

(d) compile and publish the annual report on the activities of the Commission and submit such report, through the Minister, to the National Assembly;

(e) issue arbitration award; ruling; or any order made by a commissioner in terms of this Act;

(f) award costs in frivolous and vexatious disputes;

(g) make rules to regulate its meetings and proceedings;

(h) regulate the practice and procedure for process to resolve a dispute through conciliation or arbitration proceedings;

(i) Conciliate and arbitrate a dispute referred to the Commission by the Labour Court to be determined through conciliation or arbitration in terms of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Commission may –

(a) upon request, provide employees, trade unions, federations of trade unions, employers, employers' organisations, and federations of employers' organisations with information, advice, and training relating to the prevention and settlement of disputes, as may be prescribed;

(b) offer to resolve a dispute that has not been referred to the Commission through mediation;

(c) monitor and/or oversee any election or an approval process of a trade union or employers' organisation if –

(i) required to do so by the Labour Court, or

(ii) at the request of the trade union or employers' organisation concerned;

(d) to prepare, update and issue directives; instructions; rules; guidance notes and manuals and any other incidental documents for mandatory use in the in relation to the prevention and resolution of labour disputes, in terms of this Act.

(3) The Commission may make rules, regulations and directives guiding mediation, conciliation and arbitration and incidental matters thereto.

(4) The Commission shall perform any other functions and may exercise any other powers conferred in it in terms of this Act and any other law.

- (5) Implementation of the rules, regulations, and directives referred to in subsection (3) above is subject to same being published in the *Government Gazette*.

6. Powers of the Commission

- (1) The Commission shall have the power to:

- (a) subpoena witnesses during conciliation meetings and arbitration proceedings, and documents or any items, directives to resolve disputes; issue arbitration awards, rulings or any order made by a commissioner in terms of this Act;
- (b) issue orders of contempt in relations to conciliation meetings and arbitration proceedings;
- (c) impose penalties for non-compliance with its decisions;
- (d) make rules governing its proceedings and operations;
- (e) enforcement and compliance;
- (f) award costs in frivolous and vexatious cases;
- (g) recruit, discipline, and dismiss the commission staff members;
- (h) make rules; to regulate the proceedings at its meetings; and at the meetings of any committee of the Commission;
- (i) regulate the practice and procedure for process to resolve a dispute through conciliation meetings or arbitration proceedings;

(2) Notwithstanding the generality of subsection (1), the Commission may –

- a) upon request, provide an employee and a trade union, federation of trade unions; and an employer, or employers' organisation with information, advice and training relating to the prevention and settlement of a dispute, as may be prescribed;
- b) in writing, offer the parties to a dispute that has not been referred to it to mediate the dispute;
- c) monitor and/or oversee any election or an approval process of a trade union or employers' organisation if -
 - i) required to do so by the Labour Court, or
 - ii) at the request of the trade union or employers' organisation concerned;
- d) issue directives; instructions; rules; guidance notes and manuals and any other incidental documents for mandatory use in relation to the prevention and resolution of labour disputes, in terms of this Act.
- e) conduct and publish research on labour-related topics;
- f) supervise ballots for union and employer organisations;

(4) The Commission shall perform any other functions and may exercise any other powers conferred in it in terms of this Act and any other law.

7. Governing Board

(1) The Commission will be governed by the Governing Board which shall be responsible for the direction of the affairs of the Commission and whose acts are acts of the Commission.

(2) Notwithstanding the generality of subsection (1), the Governing Board shall give policy direction to the Commission.

8. Composition of the Governing Board

(1) The Commission shall consist of the following members appointed by the Minister of which:

(a) two (2) representatives of the Government;

(b) two (2) persons nominated by the federation of trade unions with majority members;

(c) two (2) persons nominated by the federation of employers' organisations with majority members;

(d) Four (4) persons appointed, through an independent application process, by the Minister as may be prescribed;

(e) the Executive Commissioner as *ex-officio* without a right to vote.

(2) The Minister shall by notice in the *Gazette* invite employers' federation and the federation of trade unions with majority membership to nominate persons as

members of the Commission under subsection 1(b) and 1(c), and to submit such nominations to the Minister within the period stipulated in such notice.

(3) If the employers' organisations or federation of trade unions fail to submit the nominations within the period contemplated in subsection (2), the Minister may, subject to the provisions of subsection 1(b) and 1(c), appoint any person as a member of the Commission and any person so appointed shall be deemed to have been appointed in terms of the relevant provisions.

(4) Eligibility of members of the Governing Board –

(a) must be fit and proper persons;

(b) not disqualified from being appointed as members in terms of section 12 of the Act; and

(c) suitably qualified, experienced and knowledgeable in the field of labour law; finance; economics, human resource management; and governance.

(5) The Minister shall appoint a Chairperson from members referred to in terms of section 1(d), who is a Namibian national with requisite knowledge and understanding of Labour Law.

(6) The Minister shall appoint a Deputy - Chairperson of the Commission who shall exercise the powers and perform the duties and functions in the absence of the Chairperson and shall, exercise such other powers and perform such other duties and functions as may be determined by the Governing Board from time-to-time.

- (7) If both the Chairperson and the Deputy Chairperson are absent from a meeting of the Governing Board, the Chairperson shall designate an Acting Chairperson from amongst the members present.
- (8) The Governing Board shall assign a Secretary from amongst the Commission's staff members.
- (9) The Minister shall publish the names, dates and period of appointment of the members of the Commission by notice in the Gazette.

9. Committees of the Governing Board

- (1) The Governing Board may from time-to-time establish committees as necessary to assist and advise it in exercising its power and performance of its duties.
- (2) Perform any function the Governing Board may delegate to such Committee.
- (3) A committee established under subsection 1 must consist of its one member and such person(s) as the Governing Board may determine and such Committee may with the approval of the Governing Board co-opt person(s) with special expertise to advise in the performance of its functions, but such co-opted person is not entitled to voting.
- (4) The decision made by such Committee shall be regarded as recommendation(s) to the Governing Board.

(5) The Governing Board must determine the remuneration and allowances, and any other terms and conditions of appointment of committee members referred to in subsection (1).

(6) The Governing Board may at any time vary or set-aside a decision of a committee.

(7) The Governing Board may dissolve any committee.

10. Alternative Dispute Resolution Committee

Subject to the approval by the Governing Board, this committee shall be responsible for determining the qualifications, appointment, fitness, and removal of Commissioners from the register of commissioners subject to Commissioners Code of Conduct.

11. Meetings of the Board

(1) The first meeting of the Governing Board must be held at such time and place as the Minister may determine, and subsequent meetings of the Governing Board may be held at such time and place as the Governing Board or the chairperson may determine, but in no case less than once every three (3) months.

(2) The chairperson or a majority of the members may at any time, convene a special meeting of the Governing Board.

(3) The majority of the members constitute a quorum at a meeting of the Governing Board.

(4) The chairperson must cause reasonable notice of every meeting of the Governing Board to be given to the members.

(5) The decision of a majority of the members present and voting at a meeting of the Governing Board constitutes a decision of the Governing Board. In the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

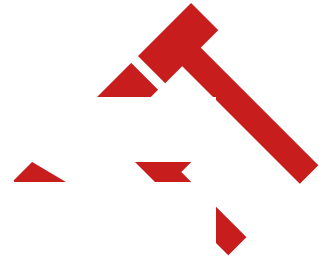
(6) A decision of the Governing Board or an act performed under the authority of the Governing Board is not invalid only by reason of -

(a) a vacancy on the Governing Board; or

(b) the fact that a person not entitled to sit as a member of the Governing Board was in attendance when the decision was taken or act authorised, if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at such meeting.

(7) Subject to the provisions of this Act, the Governing Board may regulate its procedures and the procedures that must be followed when a meeting of the Governing Board is convened.

(8) The Governing Board must cause minutes to be kept of the proceedings at its meetings and the meetings of its committees.



12. Fiduciary duties of the Governing Board

(1) The fiduciary duties of the Governing Board are -

(a) to exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Commission; and

(b) to act with fidelity, honesty, integrity and in the best interest of the Commission when -

(i) assisting, advising or recommending to the Minister; and

(ii) performing other powers and functions under this Act.

(2) A member of the Governing Board may not –



(a) act in a way that is inconsistent with the powers and functions of the Governing Board in terms of this Act; or

(b) use his or her position or privileges, or confidential information obtained in the course of his or her functions as a member, for personal

gain or to improperly benefit another person.

13. Disqualification from appointment as member of the Governing Board

(1) A person shall not be disqualified from being appointed as member of the Governing Board if that person has been convicted, prior to the date of that person's appointment of a crime involving fraud and/or dishonesty.

(2) A person who is convicted of an offence involving fraud and/or dishonesty while holding office in an organisation or federation shall cease to hold office at the time of conviction; and

(3) one who is not fit and proper shall not be appointed to the Governing Board of the Commission.

14. Vacation of office by a member of the Governing Board

(1) The office of a member of the Governing Board becomes vacant if the member -

(a) becomes subject to any of the disqualifications referred to in section 13 of this Act;

(b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;

(c) has been absent from three (3) consecutive meetings of the Governing Board without leave of the Chairperson of the Governing Board; or

(d) is removed from office in terms of subsection (2).

(2) The Minister may remove a member from the Governing Board, if -

(a) the member has been found to be physically or mentally incapable of performing his or her functions efficiently, and a medical doctor has issued a certificate to that effect;

(b) the member is found guilty of misconduct to the detriment of the objectives of the Commission;

(c) the member is not, for whatever reason, effectively and efficiently performing the functions of the Governing Board as a member; or

(d) the member is found guilty of misconduct by a board, tribunal, court of law or any other forum constituted for the purpose of adjudicating on matters of discipline or conduct.

(3) Vacation of the office in terms of subsection (1) and (2) is subject to a member being afforded a reasonable opportunity to be heard or make representations.

PART III

ADMINISTRATION OF THE COMMISSION

15. Appointment of the Executive Commissioner

(1) There shall be an Executive Commissioner of the Commission, who is the head and accounting officer of the Commission.

(2) The Governing Board shall appoint the Executive Commissioner of the Commission.

(3) In appointing the Executive Commissioner, the Governing Board shall select a person who –

(a) is fit and proper;

(b) possess knowledge in labour dispute resolution and industrial relations and relevant experience with the functions of the Commission; and

(c) has not been convicted of any offence involving fraud and/or dishonesty.

(4) The Executive Commissioner shall be subject to the directions and control of the Governing Board and shall –

(a) perform any functions that may be –

(i) conferred on the Executive Commissioner under this Act, and

(ii) delegated and/or assigned to the Executive Commissioner by the Governing Board;

(b) manage and direct the activities of the Commission; and

(c) supervise the staff of the Commission.

(4) The Executive Commissioner may, in consultation with the Commission and in writing, delegate any of his or her functions or the functions of the Commission to a senior staff member of the Commission.

16. Term of office of the Executive Commissioner

(1) The term of office of the Executive Commissioner shall be 5 years. The Commission may renew the term for a further period of 5 years.

(2) The Executive Commissioner's term of office shall not exceed two (2) consecutive terms.

(3) If the Executive Commissioner is temporarily unable to perform his or her duties, the Governing Board may designate a senior staff of the Commission to temporarily act as Executive Commissioner, and such person must exercise the powers and perform the duties of the Executive Commissioner during that period.

17. Disqualification from appointment as the Executive Commissioner

A person shall not hold office if that person has been convicted, prior to the date of that person's appointment of a crime involving fraud and/or dishonesty.

18. Termination of appointment of the Executive Commissioner

(1) The Executive Commissioner may resign by giving ninety (90) days written notice to the Governing Board.

(2) The Governing Board may remove the Executive Commissioner from office for

—
(a) a guilty finding of a serious misconduct;

(b) incapacity;

(c) a material violation of the Commission's Code of Conduct of which he or she is being found guilty; or

(d) being absent from three (3) consecutive meetings of the Governing Board without good cause or prior permission from the chairperson.

(3) A vacancy in the office of Executive Commissioner exists whenever —

(a) the Executive Commissioner reaches the age of 65;

(b) the Executive Commissioner's resignation takes effect;

(c) the Governing Board removes the Executive Commissioner from office in terms of section 18 (2) of this Act; and

(d) the Executive Commissioner dies or upon declaration of presumed death by a court of law.

(4) The Governing Board must appoint an Executive Commissioner in accordance with the provisions of section 15 of this Act as soon as practicable after the office of the Executive Commissioner becomes vacant.

19. Appointment of Commissioners

(1) The Governing Board shall appoint Commissioners on the recommendation of the Executive Commissioner and shall appoint as many Commissioners as many adequately qualified persons it deems necessary to perform the functions of Commissioners in terms of this Act or any other law.

(2) The Executive Commissioner -

(a) may designate Commissioner(s) on either full-time or a part-time basis.

(3) Any reference in this Act to a Commissioner must be interpreted also to include a Senior Commissioner, unless otherwise indicated.

(4) The Governing Board may, for good cause shown through a recommendation of the Alternative Dispute Resolution Committee, withdraw the appointment of any Commissioner appointed in terms of this Act.

(5) The terms of office shall cease when a Commissioner reaches the age of 65;

20. Funds of the Commission

(1) The funds of the Commission consist of such monies as may be –

- a) moneys that the Minister, with the agreement of the Minister of Finance, must allocate to the Commission from public funds at the commencement of this Act;
- b) appropriated by Parliament for the purposes of the Commission;
- c) fees charged for specific services rendered in terms of this Act as prescribed from time-to-time;
- d) investment income and proceeds from disposable assets of the Commission;
- e) loans extended to the Commission with prior approval of the Minister in consultation with Minister responsible for finance; and
- e) given to the Commission by way of grants, donations, and bequests made to the Commission from whatever source in Namibia or outside Namibia, which the Executive Commissioner may accept, with the approval of the Governing Board.

21. Financial year and budget

(1) The financial year of the Commission begins on 1 April of each year and ends on 31 March of the following year, except the first financial year which begins on the day this Act commences.

(2) The Commission may not incur expenses except in accordance with the approved strategic plan, annual plan, and the budget by the Governing Board.

(3) The Commission must in each financial year draw-up a budget for the next financial year and submit it through the Governing Board to Minister for approval.

22. Accounts and audits

(1) Subject to the approval of the Governing Board, the Commission shall open and maintain one or more designated bank accounts in the name of the Commission at banking institutions registered within the Republic of Namibia.

(2) the Commission must keep and maintain comprehensive records of all financial transactions for every financial year relating to the Commission's activities.

(3) the accounts, statements, and records of the Commission must be annually audited no later than seven (7) months after the financial year end by –

(i) the Auditor-General of the Republic of Namibia; or

(ii) A recognised independent audit firm appointed by the Governing Board with consent from Auditor-General.

23. Annual report

(1) The Commission must within six (6) months after the end of each financial year, submit to the Governing Board a comprehensive annual report on the operation of the Commission.

2) The Minister must table the Commission's annual report in Parliament.

24. Exemptions from payment of income tax

The Commission is not subject to pay income tax, duty, or levy imposed under any law on the income of the Commission.

25. Abolition of the Commission

The Commission may not be subject to abolition except by or under the authority of an Act of Parliament.

PART IV

REGISTRATION AND REGULATION OF TRADE UNIONS AND EMPLOYER'S ORGANISATIONS

26. Requirements for registration

(1) Any trade union or employers' organisation that has adopted a constitution that complies with section 27 may apply to the Commission for registration, by submitting to the Commission –

- (a) the prescribed form duly completed; and
- (b) three (3) copies of its constitution, each duly certified by its chairperson and secretary as a true and correct copy of the constitution.
- (c) in the case of a trade union, a list of at least ten employees with their signatures and contact details who are desirous to forming such

association duly signed by the chairperson and secretary; and

(d) in the case of an employer's organization, a list of at least ten employers with their signatures and contact details who are desirous to forming such association duly signed by the chairperson and secretary.

(2) The Commission may require further information in support of an application.

(3) The Commission must -

(a) consider the application and any further information provided by the applicant; and

(b) if the constitution of the applicant meets the requirements for registration set out in section 27 of this Act, register the applicant by issuing the prescribed certificate of registration.

(4) If the Commission refuses to register the applicant, the Commission must give written notice of that decision and the reasons for such refusal.

(5) The Commission may, by regulation, prescribe further requirements or conditions to be satisfied before registration under this Part.

27. Constitution of trade union or employers' organisation

(1) A trade union or employers' organisation that intends to register under section 27 of this Act must adopt a constitution that meets the requirements

set out in this section.

(2) The constitution of a trade union or employers' organisation that intends to register under this Act must -

(a) state the name of that trade union or employers' organisation, provided that name must not be similar to any registered trade union or employers' organisation;

(b) declare its objects;

(c) clearly describe the industry in the case of a trade union or industries in the case of an employers' organization or a federation in its scope;

(d) prescribe the qualifications for admission to its membership;

(e) provide for membership fees and the method for determining membership fees and other payments by members;

(f) establish the circumstances and prescribe the procedure for the termination of membership, which must include -

(i) an opportunity for the member to be heard; and

(ii) a right of appeal;

(g) prescribe that -

- (i) a member in good standing is a member who is not more than three (3) months in arrears with the payment of any fees due in terms of the constitution;
- (ii) only a member in good standing may nominate candidates for any office or vote or be voted for in an election of an office bearer or official; and
- (iii) no person who has been convicted of offences of which fraud and dishonesty are elements and for which that person has been sentenced to imprisonment without an option of a fine may stand for election as an office-bearer;

(h) prescribe -

- (i) the functions of its officials and office bearers;
- (ii) the procedure for the appointment or election of officials and office-bearers;
- (iii) the terms of appointment of its officials and office-bearers; and
- (iv) the circumstances and manner in which officials and

office-bearers may be removed from office;

(i) in the case of a trade union, prescribe the procedure for nomination and election of -

(i) workplace union representatives; and

(ii) health and safety representatives;

(j) prescribe -

(i) that there must be at least one (1) general meeting of members every two (2) years;

(ii) that general meetings of members must be open to all members; and

(iii) the procedure for convening and conducting meetings of members and meetings of office bearers, including the quorum for meetings and the manner in which minutes are to be kept;

(k) establish the manner in which ballots are to be conducted;

(l) provide for the banking and investment of funds;

(m) establish the purposes for which funds may be used;

(n) provide that no payment may be made to an official or employee without the prior approval of its Governing Board granted under the hand of its chairperson except for their salaries and the expenses incurred by them in the course of their duties;

(o) provide for the acquisition and control of property;

(p) determine the date for the end of its financial year;

(q) prescribe a procedure for affiliation, or amalgamation, with another trade union or employers' organisation, as the case may be;

(r) prescribe a procedure for changing the constitution; and

(s) prescribe a procedure by which it may be wound up.

(3) A constitution of a trade union or employers' organisation must not -

(a) conflict with -

(i) the fundamental human rights and freedoms set out in Chapter 3 of the Namibian Constitution;

(ii) any other law;

(b) hinder the attainment of the objects of any law; or

(c) evade any obligation imposed by any law.

(4) The Commission may -

(a) notify any trade union or employers' organisation in writing that, the Commission has reason to believe that its constitution does not comply with or contravenes subsection (2) or (3); and

(b) in that notice, invite the trade union or employers' organisation to make representations to the Commission or to redraft its constitution in order to meet the requirements of subsections (2) or (3).

(5) After considering any representations or amended constitution submitted in terms of subsection (4)(b), the Commission may -

(a) inform the party that the constitution meets the requirements of subsections (2) and (3); or

(b) inform the party that the constitution does not meet the requirements of subsections (2) and (3).

28. Amendment to constitution of a registered trade union or a registered employers' organisation

(1) Any change to the constitution of a registered trade union or registered

employers' organisation takes effect only when the Commission approves the change in terms of this section.

(2) A trade union or employers' organisation may apply for the approval of a change to its constitution by submitting to the Commission -

- (a) the prescribed form duly completed;
- (b) the prescribed number of copies of the resolution containing the wording of the change; and
- (c) a certificate signed by the chairperson stating that the resolution was passed in accordance with the constitution.

(3) The Commission may require further information in support of the application.

(4) The Commission must -

- (a) consider the application and any further information supplied by the applicant; and
- (b) if satisfied that the amendments meet the requirements contemplated in this section, approve the change by issuing -
 - (i) the prescribed certificate approving the change; or

- (ii) if it is a change of name, a new certificate of registration reflecting the new name.

- (5) If the Commission refuses to approve a change, it must give written notice of its decision and the reasons for the refusal.

29. Effect of registration of trade union or employers' organisation

- (1) A registered trade union or employers' organisation is a juristic person.
- (2) A member, office bearer or official of a registered trade union or employers' organisation is not personally liable for any liability or obligation incurred in good faith by that union or organisation only because of being a member, office bearer or official.

30. Rights of registered trade unions and registered employers' organisations

- (1) Subject to any provision of this Act to the contrary, a registered trade union has the right -
 - (a) to bring a case on behalf of its members and to represent its members in any proceedings brought in terms of this Act;
 - (b) of access to an employer's premises in terms of section 37;
 - (c) to have union fees deducted on its behalf in terms of this Act;

- (d) to form federations with other registered trade unions;
- (e) to affiliate to and participate in the activities of federations formed with other trade unions;
- (f) to affiliate to and participate in the activities of any international workers' organisation and, subject to any laws governing exchange control -
 - (i) to make contributions to such an organisation; and
 - (ii) to receive financial assistance from such an organisation;
- (g) in the case of a trade union recognised as an exclusive bargaining agent in terms of section 36 of this Act, to negotiate the terms of, and enter into, a collective agreement with an employer or a registered employers' organisation; and
- (h) to report to the Commission any dispute which has arisen between any employer and that employer's employees who are members of the trade union.

(2) Subject to any provision of this Act to the contrary, a registered employers' organisation has the right –

- (a) to bring a case on behalf of its members and to represent its members in any proceedings brought in terms of this Act;

- (b) to form federations with other registered employers' organisations;
- (c) to affiliate to and participate in the activities of federations formed with other employers' organisations; and
- (d) to affiliate to and participate in the activities of any international employers' organisation and, subject to any laws governing exchange control -
 - (i) to make contributions to such an organisation; and
 - (ii) to receive financial assistance from such an organisation.

31. Obligations of registered trade unions and registered employers' organisations

(1) Every registered trade union and every registered employer's organisation must -

- (a) maintain a register of members in the prescribed form;
- (b) Submit to the Commission proof that it has conducted a Congress or General Meeting of members as required by its constitution and in accordance with this Act.
- (c) keep proper books of account;

(d) prepare at the end of each financial year -

(i) a statement of income and expenditure for that year; and

(ii) a balance sheet showing its financial position at the end of that year;

(e) cause its books of account to be audited and a report to be prepared at least once a year by a public accountant and auditor registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) or an auditor approved by the Commission;

(f) within six (6) months after the end of its financial year -

(i) make the statement of income and expenditure and the balance sheet referred to in subsection (c) and the unqualified audit report referred to in paragraph (d) available to members; and

(ii) submit an annual return in the prescribed form to the Commission; and

(iii) submit a register of members in the prescribed form to the Commission

(g) submit the statement of income and expenditure and balance sheet referred to in paragraph (c) and the audit report referred to in paragraph

(d) to a meeting or meetings of members or their representatives in terms of its constitution; and

(h) In the case of a registered trade union or employers' organisation that is a member of a federation, pay membership fees prescribed by the federation's constitution.

32. Failure to comply with obligations under this Part

(1) The Commission must notify any registered trade union or employers' organisation in writing that the Commission has reason to believe that the trade union or employers' organisation is not complying with its obligations under this Part.

(2) A notice referred to in subsection (1) must give the trade union or employers' organisation an opportunity to make representations in writing within thirty (30) days of receipt of notice to the Commission.

(3) After considering any representations made in terms of subsection (2), the Commission may issue a compliance order, which may include required steps to rectify the failure to comply.

(4) If a trade union or employers' organisation fails to comply with a compliance order issued in terms of subsection (3), the Commission may -

(a) cancel its registration; or

- (b) apply to the Labour Court for an order to compel the union or organisation to comply with the order.

33. Failure to comply with constitution or election requirements

(1) If a registered trade union or registered employers' organisation or federation fails to comply with any provision of its constitution, a member of a registered trade union or of a registered employers' organisation or an affiliate of a federation may apply to the Commission in accordance with Part IIIV for an order -

- (a) directing the registered trade union, registered employers' organisation or federation and its officials and office bearers to comply with such provision to the extent indicated in the order;
- (b) canceling its registration; or
- (c) for such further relief as the Commission may deem necessary.

(2) If a violation or material irregularity occurs in connection with an election held in terms of the constitution, rules or by-laws of a registered trade union or registered employers' organisation or if any person affects or attempts to affect the outcome of an election by unlawful means, the Commission in any case, a member of the registered trade union, in the case of a trade union, or a member of the registered employers' organisation, in the case of a registered employers' organisation, an affiliate in the case of a federation, may apply to the Labour Court for an order -

- (a) declaring such election to be null and void;
- (b) directing the holding of a further election as specified;
- (c) providing for interim arrangements in relation to the affairs of the trade union or employers' organisation pending the outcome of any further election; or

- (d) for such further relief as the Court may deem necessary.

(3) The applicant shall also have the right to apply to the Labour Court for an interdict pending the outcome of the application pursuant to subsection 1 and 2.

34. Winding up of trade union or employers' organisation

(1) The Labour Court may order a trade union or employers' organisation to be wound-up if –

- (a) the union or organisation has resolved to wind-up its affairs and has applied to the Court for an order giving effect to that resolution;
- (b) the Commission or any member of the union or organisation has applied to the Court for its winding-up and the Court is satisfied that, for some reason(s) which cannot be remedied, it is unable to continue functioning;

- (c) a person has applied for its winding-up because it is insolvent.
- (2) If the reason for the winding-up is insolvency -

- (a) the Insolvency Act, 1936 (Act No. Act 24 of 1936) applies; but
- (b) any reference in that Act to the court must be interpreted as referring to the Labour Court.

35. Appeals from decisions of the Commission

Any party aggrieved by a decision of the Commission made under this Part may appeal to the Labour Court against that decision.

PART V

RECOGNITION AND ORGANISATIONAL RIGHTS OF REGISTERED TRADE UNIONS

36. Recognition as exclusive bargaining agent of employees

(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit is entitled to recognition as the exclusive bargaining agent of the employees in that bargaining unit for the purpose of negotiating a collective agreement on any matter of mutual interest.

(2) An employer or employers' organisation must not recognise a trade union

as an exclusive bargaining agent in terms of this Act unless -

(a) the trade union -

(i) is registered in terms of this Act; and

(ii) represents the majority of the employees in the bargaining unit; or

(b) a commissioner, in terms of subsection (9), declares the trade union to be so recognised.

(3) A registered trade union may seek recognition as an exclusive bargaining agent of an appropriate bargaining unit by delivering a request, accompanied by evidence of majority consisting of authorisation or membership cards, in the prescribed form, to -

(a) an employer to recognise it as the exclusive bargaining agent of a bargaining unit consisting of its employees or some of its employees; or

(b) an employers' organisation to recognise it as the exclusive bargaining agent of a bargaining unit consisting of the employees of its members.

(4) The trade union concerned must submit to the Commission -

- (a) a copy of its request in terms of subsection (3);
- (b) proof that the request has been served on the employer; and
- (c) if requested by the Commission, proof that the trade union represents the majority of the employees within the bargaining unit, which proof might be obtained by -
 - (i) membership; or
 - (ii) any other manner mutually agreed between the trade union and the employer or employers' organisation.

(5) Within 30 days after the receipt of the request, the employer or the employers' organisation must notify the trade union in the prescribed form either -

- (a) that it recognises the trade union as the exclusive bargaining agent of the employees in the bargaining unit -
 - (i) proposed by the trade union; or
 - (ii) agreed to by the trade union and the employer; or
- (b) that it refuses to recognise the trade union because it disputes -
 - (i) the appropriateness of the proposed bargaining unit; or

- (ii) whether the trade union represents the majority of the employees in the proposed bargaining unit.

(6) If the employer or the employers' organisation -

- (a) fails within 30 days to respond to a request, as required under subsection (5); or
- (b) refuses to recognise the trade union in terms of subsection (5)(b), the trade union may refer its dispute in the prescribed form to the Commission as a dispute.

(7) When referring a dispute in terms of subsection (6), the registered trade union must satisfy the Commission that a copy of the notice of the dispute has been served on all other parties to the dispute.

(8) If a dispute has been referred to the Commission, the Executive Commissioner must designate the dispute to a commissioner to attempt to resolve the dispute through arbitration.

(9) If a commissioner referred to in subsection (8) is satisfied that the trade union represents the majority of the employees in the agreed bargaining unit, or a bargaining unit that the commissioner considers to be appropriate, the commissioner may make an order declaring the union to be recognised as the exclusive bargaining agent of the employees in the agreed or appropriate bargaining unit.

(10) In determining the appropriateness of a bargaining unit for the purposes of subsection (9), the Commissioner must -


- (a) take the organisational structure of the employer into account; and
- (b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(11) If an employer or employers' organisation has recognised a registered trade union as an exclusive bargaining agent and the trade union no longer represents the majority of the employees in the bargaining unit, the employer or employers' organisation must -

- (a) give the trade union notice in the prescribed form to acquire a majority within three months; and
- (b) withdraw recognition from that trade union if it fails to acquire that majority at the expiry of the three (3) month period.

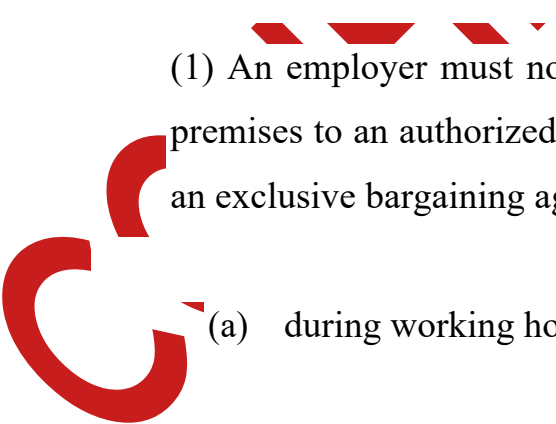
(12) If there is a dispute concerning the withdrawal of recognition under subsection (11), any party to the dispute may refer the dispute in writing to the Commission.

(13) In any dispute contemplated in subsection (12), subsections (7) to (10) apply with the necessary changes, and the arbitrator has the power to make any appropriate order including -

- 
- (a) declaring that the trade union represents a majority of the employees in the bargaining unit;
 - (b) giving the trade union a further opportunity to acquire a majority;
 - (c) altering the bargaining unit; or
 - (d) withdrawing recognition of the trade union as the exclusive bargaining agent of the employees in the bargaining unit.

(14) A registered trade union which has been recognised as an exclusive bargaining agent in respect of the bargaining unit in question has a duty to represent, for the purposes stated in subsection (1), the interests of every employee falling in that bargaining unit, whether or not the employees are members of that trade union.

37. Trade union access to the premises of the employer



(1) An employer must not unreasonably refuse access to the employer's premises to an authorized representative of a trade union that is recognised as an exclusive bargaining agent under section 64 -

- (a) during working hours -
 - (i) to recruit members; or

(ii) to perform any function in terms of a collective agreement, the union's constitution or this Act.

(b) outside of working hours, to hold meetings with members.

(2) An employer must not unreasonably refuse an authorized representative of a registered trade union access to the employer's premises, outside of working hours -

(a) to recruit members;

(b) to hold a meeting with members; or

(c) to perform any union functions in terms of a collective agreement, the union's constitution or this Act.

(3) An employer may require proof that an individual claiming to be the authorized representative of a trade union is -

◀(a) an official or office-bearer of that trade union; or

(b) duly authorized to represent the union.

(4) The rights conferred by subsection (1) are subject to any conditions that are reasonable, taking into account the effective performance of the employer's operations.

38. Deduction of trade union dues

(1) An employer must deduct a fee due to a registered trade union from an employee's remuneration if the trade union is recognised as an exclusive bargaining agent by the employer, and if -

- (a) the employee has authorized the deduction in writing; or
- (b) subject to subsection (4) and (5), a provision in a collective agreement has authorized the deduction.

(2) An employer may deduct a fee due to any other registered trade union from an employee's remuneration if the employee -

- (a) is a member of the registered trade union; and
- (b) has authorized the deduction in writing.

(3) A provision in a collective agreement contemplated in subsection (1)(b) is valid until the earlier of -

- (a) the date three (3) years after the provision takes effect; or
- (b) the date on which the majority of the employees subject to the agreement vote in favour of invalidating the provision in a ballot conducted by the Commission in terms of subsection (4).

(c) The Commission may, on good cause shown, conduct a ballot contemplated in subsection (3)(b) if 25% of the employees subject to the agreement request to the Commission to conduct a ballot to determine whether the majority of the employees are in favour of invalidating the provision.

(d) In a ballot conducted in terms of subsection (4), if -

(i) the majority do not vote in favour of invalidating the provision, no further ballot may be conducted before the expiry of the provision in terms of subsection (3)(a); or

(ii) the majority vote in favour of invalidating the provision, no new collective agreement containing such a provision is valid for a period of a year after the ballot unless another ballot has been conducted by the Labour Commissioner; and

(iii) a majority of the employees to be covered by the agreement vote in favour of such a provision.

(4) An employer must stop deducting a fee due to a registered trade union within one calendar month of being notified in writing that the employee concerned has withdrawn the authorisation referred to in subsection (2)(a).

(5) An employer who has deducted fees in terms of this section -

- (a) may retain as a collection fee an amount not exceeding 5% of the total amount deducted; and
- (b) must pay the remaining money deducted to the trade union within seven (7) days of the end of the month in which the deductions were made, together with a statement reflecting the names of the employees, the amounts deducted and the date of the deduction.

39. Workplace union representatives

(1) In the absence of any recognised trade union, in any workplace, employees who are members of a registered trade union are entitled to elect from among themselves –

- (a) one workplace union representative, if there are more than five (5) members;
- (b) two (2) representatives, if there are more than 25 members;
- (c) three (3) representatives, if there are more than 50 members; or
- (d) if there are more than 100 members –
 - (i) four (4) representatives for the first 100 members; and
 - (ii) an additional representative for every additional 100 members.

(2) Whenever it is necessary to conduct an election for a workplace union representative -

(a) the election must be conducted in the prescribed manner; and

(b) the employer must provide any facilities that are reasonably necessary for the purposes of conducting the election.

(3) A workplace union representative holds office for two (2) years, and may stand for re- election.

(4) The functions of a workplace union representative are –

(a) to make representations to the employer of the employees who elected the representative concerning -

(i) any matter relating to terms and conditions of those employees' employment; and

(ii) any dismissal of employees arising from the reduction of the workforce as a result of the re-organisation or transfer of the business or the discontinuance or reduction of the business for economic or technological reasons;

(b) to represent any employee in respect of whom the representative was elected in any disciplinary or dismissal proceedings against that employee; and

- (c) perform any other function that may be provided for in a collective agreement.

(5) The employer must grant each workplace union representative –

- (a) reasonable time off during working hours without loss of pay in order to perform the functions of that office; and
- (b) reasonable leave of absence to attend meetings or training courses of a registered trade union provided that payment for the leave of absence lies in the employer's discretion.

PART VI

PREVENTION AND RESOLUTION OF DISPUTES

40. Resolving disputes through conciliation by the Commission

(1) The Executive Commissioner may, from persons appointed by the Governing Board as commissioners in terms of section 19, designate a commissioner to attempt to resolve by conciliation, any dispute of interest referred to the Commission in terms of this Act.

(2) A commissioner who is not in full-time employment of the Commission

must be paid fees and allowances at a rate determined by the Governing Board.

(3) The fees and allowances determined under subsection (2) may differ in respect of different categories of Commissioners as determined by the Governing Board.

(4) Any party to a dispute may refer the dispute in the prescribed form to the Commission.

(3) The party who refers the dispute must satisfy the Commission that -

(a) the parties have exhausted internal remedies in an attempt to resolve the dispute, and

(b) a copy of the referral has been served on all other parties to the dispute.

(4) Subject to subsection 3 (a) and (b) the Commission must –

(c) set down a conciliation meeting to take place not later than fourteen (14) days upon receipt of the referral; and

(d) give the parties at least seven (7) days' notice of the conciliation date.

(5) Non-compliance with sub-section (3) (a) and (b) may result in the referral being rejected for non-compliance.

(6) Subject to the provisions of sub-section (4), the commissioner referred to in subsection (1) must attempt to resolve the dispute through conciliation within -

- (a) thirty (30) days after the first conciliation meeting, however, the parties may agree to extend the thirty (30) days period on written notice to the Executive Commissioner for such extension, not exceeding ten (10) days.

(7) Subject to the rules established in terms of this Act, the commissioner -

- (a) shall determine how the conciliation is to be conducted; and
- (b) may require that as many meeting(s) be held within the period contemplated in subsection 6 (a) as deemed necessary.

(8) In any conciliation meeting, a party to a dispute may appear in person or be represented, only by -

- (a) a duly authorized and mandated member, office bearer, or official of that party's registered trade union or registered employer's organisation;

- (b) if the party is an employee, a co-employee; or

- (c) if the party is a juristic person, a director, member or employee of that juristic person, but a person who is a legal practitioner must not appear on behalf of a party except in the circumstances referred to in

subsection (9).

(9) A Commissioner may permit -

(a) a legal practitioner or a candidate legal practitioner to represent a party to a dispute in a conciliation meeting if -

(i) the parties to the dispute agree; or

(ii) at the request of a party to a dispute, the commissioner is satisfied that -

(aa) the dispute is of such complexity that it is appropriate for a party to be represented by a legal practitioner; and

(bb) the other party to the dispute will not be prejudiced; or

(b) any other individual to represent a party to a dispute in conciliation meeting if -

(i) the parties to the dispute agree; or

(ii) at the request of a party to a dispute, the conciliator is, subject to subsection(10), satisfied that -

(aa) representation by that individual will facilitate the effective resolution of the dispute or the attainment of the objectives of this Act;

(bb) the individual meets the prescribed requirements; and

(cc) the other party to the dispute will not be prejudiced.

(10) In deciding whether to permit representation of a party in terms of subsection (9), the Commissioner must take into account applicable guidelines issued in terms of this Act.

(11) A commissioner must issue a certificate that a dispute is unresolved if –

(a) the commissioner believes that there is no prospect of settlement; or

(b) the period contemplated in subsection 6(a) has lapsed.

(12) A commissioner referred to in terms of subsection (1) remains seized with the dispute and may continue to conciliate after the issuance of the certificate of unresolved dispute and during any industrial action, until the dispute is resolved.

(13) A commissioner referred to in terms of this Part may -

(a) subpoena any person to attend a conciliation meeting if he or she considers that, that person's attendance will assist in the resolution of the dispute;

- (b) question any person about any matter relevant to the dispute.
- (c) A person who, without lawful excuse, fails to comply with a subpoena issued in terms of subsection (14)(a) or refuses to answer any question put to that person by a commissioner in terms of subsection (14)(b) commits an offence and is liable to a fine not exceeding N\$10 000, or to imprisonment for a period not exceeding two (2) years or to both such a fine and imprisonment.

41. Consequences of failing to attend conciliation

- (1) If a dispute is referred in terms of section 51 (1) (a), then subsection (3) of that section applies to any failure to attend a conciliation meeting.
- (2) In respect of any other dispute referred in terms of this Act, the conciliator of the dispute may dismiss the matter if the party who referred the dispute fails to attend a conciliation meeting.
- (3) The Commission may reverse a decision made by a commissioner in terms of subsection (2) if –

- (a) application is made in the prescribed form and manner; and
- (b) the commissioner is satisfied that there were good grounds for failing to attend the conciliation meeting.

42. Disputes affecting the national interest

(1) If the Minister considers it in the national interest, the Minister may -

(a) request the Executive Commissioner to appoint a commissioner(s) to conciliate any dispute, or potential dispute, between employers and their organisations on the one hand and employees and their unions on the other hand.

43. General provision of arbitration

(1) There are established, as contemplated in Article 12(1)(a) of the Namibian Constitution, arbitration tribunals for the purpose of resolving disputes.

(2) The Commission shall have the jurisdiction to -

(a) hear and determine any dispute or any other matter arising from the interpretation, implementation or application of this Act; and

(b) make any order which it is empowered to make in terms of any provision of this Act.

(3) The Governing Board may, subject to such prescribed terms and conditions, appoint fit and proper persons who may or may not be staff members of the Commission to perform the duties and functions or to exercise the powers conferred on commissioners in terms of this Act.

(4) The Executive Commissioner may, from persons appointed by the Governing Board as commissioners in terms of subsection (3), designate one

or more commissioners to constitute an arbitration tribunal to hear and determine the disputes.

(5) Despite any provision to the contrary in any relevant law of the Republic of Namibia, a commissioner must be independent and impartial in the performance of his or her duties in terms of this Act.

(6) A commissioner who is not in full-time employment of the Commission may be paid fees and allowances at a rate determined by the Governing Board.

(7) The fees and allowances referred under subsection (6) may differ in respect of different categories of commissioners as determined by the Governing Board.

44. Resolving disputes by arbitration through the Commission

(1) Unless the collective agreement provides for referral of disputes to private arbitration, any party who seeks a remedy for any dispute must refer the dispute in the prescribed form to the Commission.

(2) A party may refer a dispute in terms of subsection (1) only –

(a) in the case of an alleged unfair dismissal, within three (3) months after all internal remedies have been exhausted.

(b) in any other case, within six (6) months after internal remedies have been exhausted.

(3) The party who refers the dispute in terms of subsection (1) must satisfy the Commission that a copy of the referral has been served on all other parties to the dispute.

(4) Subject to subsection (3), the Commission must –

(a) give the parties at least seven 14 days' notice of the arbitration date;

(b) determine the place, date and time of the arbitration hearing; and

(c) inform the parties to the dispute of the details contemplated in subsection (c).

(5) Unless the dispute has already been mediated, the commissioner must attempt to resolve the dispute before commencement of the arbitration proceeding.

(6) Subject to any rules promulgated in terms of this Act, the commissioner -

(a) may conduct the arbitration in the manner that the commissioner deems appropriate in order to determine the dispute fairly and quickly; and

(b) must deal with the substantial merits of the dispute with the minimum of legal formalities.

(7) A Commissioner referred to in this Part may -

(a) subpoena any person to attend an arbitration hearing or subpoena any person to disclose any evidence if the Commissioner considers that the person's attendance or disclosed evidence will assist in the resolution of the dispute;

(b) administer an oath or accept an affirmation from any individual called to give evidence; and

(c) question any individual about any matter relevant to the dispute.

(8) A person who, without lawful excuse, fails to comply with a *subpoena* issued in terms of subsection (7)(a) or refuses to answer any question put to that person by a commissioner in terms of subsection (7)(c) commits an offence and is liable to a fine not exceeding N\$20 000, or to imprisonment for a period not exceeding two (2) years or to both such a fine and imprisonment.

(9) Subject to the discretion of the commissioner as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the commissioner.

(10) If the parties to the dispute consent, the Commissioner may suspend the arbitration proceedings and attempt to resolve the dispute through mediation at any stage of the proceedings.

(11) In any arbitration proceedings a party to a dispute should appear in person or be represented only by -

- (a) a duly authorized and mandated office bearer or official of that party's registered trade union or of a registered employers' organisation;
- (b) a co-employee, if the party is an employee; or
- (c) A director or employee of that person, if the party is a juristic person.

(12) Notwithstanding subsection (11), a Commissioner may permit -

(a) a legal practitioner or candidate legal practitioner to represent a party to a dispute in arbitration proceedings if -

(i) the parties to the dispute agree; or

(ii) at the request of a party to a dispute, the arbitrator is satisfied that

-

(aa) the dispute is of such complexity that it is appropriate for a party to be represented by a legal practitioner; and

(bb) the other party to the dispute will not be prejudiced; or

(b) any other individual to represent a party to a dispute in arbitration proceedings at the request of a party to a dispute, if the Commissioner is,

subject to subsection (13), satisfied that -

- (i) representation by that individual will facilitate the effective resolution of the dispute or the attainment of the objectives of this Act;
- (ii) the individual meets prescribed requirements; and
- (iii) the other party to the dispute will not be prejudiced.

(13) In deciding whether to permit representation of a party in terms of subsection 12 (b) the Commissioner must take into account applicable Code of Good Practice or Guidelines issued in terms of this Act.

(14) If a party, duly notified fails to appear in person or represented at the arbitration hearing, and that party –

(a) had referred the dispute to the Commission, the commissioner may dismiss the matter; or

◀(b) is the respondent in the dispute referred to the Commission, the commissioner may –

- (i) continue with the arbitration proceedings in default of that party; or
- (ii) on good cause shown, adjourn the arbitration proceedings to a later date.

(15) The Commissioner may make any appropriate arbitration award, ruling or order including -

- (a) an interdict;
- (b) an order directing the performance of any act that will remedy a wrong;
- (c) a declaratory order;
- (d) an order of reinstatement of an employee;
- (e) an award of compensation;
- (f) an order for re-employment;
- (g) subject to subsection (16), an order for costs.

(16) A Commissioner may include an order for costs in the arbitration award, ruling or order only if a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner -

- (a) by proceeding with or defending the dispute; or
- (b) during the proceedings.

(17) In making an award, the arbitrator must take into account any Code of

Good Practice or Guidelines that have been issued in terms of this Act.

(18) Within 30 days of the conclusion of the arbitration proceedings, the Commission must issue an award giving concise reasons and signed by the commissioner, however -

- (a) Non-compliance of subsection (18) does not render the arbitration award a nullity.

45. Making settlement agreement an arbitration award

The Commission may, by agreement between parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Commission in terms of section 44 (1), an arbitration award.

46. Effect of arbitration award

(1) The award shall be final, binding, and enforceable unless appealed under Section 50 of this Act.

(2) An arbitration award issued by the commission is binding and it must be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.

(3) If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of the Prescribed Rates of Interest Act, 1975 (Act No. 55 of 1975) unless the award provides

otherwise.

(4) An arbitration award may only be enforced in terms of subsections (1) and (2) upon bearing the seal of the Commission contemplated in section 47.

47. Seal of the Commission

The Commission for use as occasion may require shall have an official seal of a design prescribed by the Minister by proclamation in the Government Gazette.

48. Variation and rescission of awards

(1) A Commissioner who has made an award, ruling or order in terms of section 44 may vary or rescind the award, ruling or order at the Commissioner's instance, within 30 days after issuance of the award, or on the application of any party made within 30 days after receipt of the award, if -

(a) it was erroneously sought or erroneously made in the absence of any party affected by that award;

(b) it is ambiguous or contains an obvious error or omission, but only to the extent of that ambiguity, error or omission; or

(c) it was made as a result of a mistake common to the parties to the proceeding

49. Enforcement of awards

(1) A party to an arbitration award, ruling or order made in terms of section 44, may apply to the Commission in the prescribed form requesting the Commission to enforce the award in compliance with any Guidelines issued in terms of this Act.

50. Appeals or reviews of arbitration awards and rulings

(1) A party to a dispute may appeal to the Labour Court against a Commissioner's arbitration award or ruling made in terms of section 44 of this Act -

(a) on any question of law alone; or

(b) in the case of an award in a dispute initially referred to the Commission in terms of section 44 on a question of fact; law or both.

(2) A party to a dispute who wishes to appeal against a commissioner's award or ruling in terms of subsection (1) must note an appeal in accordance with the Rules of the Labour Court, within 30 days after the award or ruling has been served on the party.

(3) The Labour Court may condone the late noting of an appeal on good cause shown.

(4) A party to a dispute who alleges a defect in any arbitration proceedings in terms of this Part may apply to the Labour Court for an order reviewing and setting aside the award or ruling -

- (a) within 30 days after the award was served on the party, unless the alleged defect involves corruption; or
- (b) if the alleged defect involves corruption, within six (6) weeks after the date that the applicant discovers the corruption.

(5) A defect referred to in subsection (4) means -

(a) that the Commissioner -

(i) erred in relation to the duties of a Commissioner;

(ii) committed a gross irregularity in the conduct of the arbitration proceedings; or

(iii) exceeded the commissioner's power.

(b) that the award or ruling has been improperly obtained.

(6) When an appeal is noted in terms of subsection (1), or an application for review is made in terms of subsection (4), the appeal or application operates to suspend any part of the award or ruling.

(7) If the award or ruling is set aside, the Labour Court may –

- (a) in the case of an appeal, determine the dispute in the manner it considers appropriate;
- (b) remit it back to the commissioner or direct that a new commissioner be designated; or
- (c) make any order it considers appropriate about the procedures to be followed to determine the dispute.

(8) When an appeal is noted in terms of subsection (1), or an application for review is made in terms of subsection (4) and the appeal or review involves the interpretation, implementation or application of this Act, the Minister may intervene in the proceedings on behalf of the State if the Minister considers it necessary for the effective administration of this Act.

PART VII

STRIKES AND LOCKOUTS

51. Right to strike or lockout

(1) Subject to section 52, every party to a dispute of interest has the right to strike or lockout if -

- (a) the dispute has been referred in the prescribed form to the Commission for conciliation in accordance with section 40;

(b) the party has attended the conciliation meetings convened by the Commissioner;

(c) the dispute remains unresolved at the end of -

(i) a period of 30 days from the date of the referral;

(ii) the longer period determined in terms of subsection (3)(a), if it is applicable; or

(iii) the shorter period determined in terms of subsection (3)(b), if it is applicable;

(d) after the end of the applicable period contemplated in subsection (c), the party has given 48 hours' notice, in the prescribed form, of the commencement of the strike or lockout to the Commission and the other party or parties to the dispute; and

(e) the strike or lockout conforms to -

(i) any agreed rules regulating the conduct of the strike or lockout; or

(ii) any rules determined by the Commissioner in terms of subsection (2).

(2) If a dispute referred in terms of subsection (1) cannot be resolved, a Commissioner referred to in section 40 to conciliate the dispute must -

- (a) attempt to reach an agreement on rules to regulate the conduct of the strike or lockout; and
 - (b) if the parties do not reach such an agreement, determine rules in accordance with any guidelines or Code of Good Practice published by the Minister in the Gazette in terms of this Act.
- (3) If the Commission refers a dispute for conciliation and –
- (a) the party who referred the dispute in terms of subsection (1)(a) fails to attend the first meeting, the period contemplated in subsection (1)(c)(i) in respect of that party is extended to the date that is 30 days thereafter; or
 - (b) the other parties to the dispute do not attend the first meeting, the period contemplated in subsection (1)(c)(i) is shortened, and ends on the date of the first meeting.
- (4) An employer is not obliged to remunerate an employee for services that the employee does not render during a strike or lockout over a dispute of

interest in compliance with this section.

52. Prohibition of certain strikes and lockouts

(1) A person must not take part in a strike or a lockout if -

- (a) section 51 has not been complied with;

- (b) the dispute is one that a party has the right to refer to arbitration or to adjudication in terms of this Act;
- (c) the parties to the dispute have agreed to refer the dispute to arbitration;
- (d) the issue in dispute is governed by an arbitration award, ruling or a court order;
- (e) the dispute is between parties engaged in an essential service designated in terms of section 55; or
- (f) a Collective Agreement prohibits strikes or lockouts.




53. Strikes and lockouts in compliance with this Part

(1) By taking part in a strike or a lockout in compliance with this Chapter, a person does not commit a delict or a breach of contract.

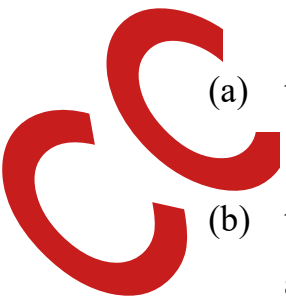
(2) Despite any other law, an employee or member or official of a registered trade union may, in furtherance of a strike in compliance with this Part, hold a picket at or near the place of employment for the purpose of peacefully -

- (a) communicating information; and
- (b) persuading any individual not to work.

(3) Despite the provisions of any contract of employment or collective agreement, an employer must not -

- 
- 
- (a) require or permit employee who is not participating in a strike that is in compliance with this Part or whom the employer has not locked-out to perform the work of a striking or locked-out employee, unless the work is necessary to prevent any danger to the life, personal safety or health of any individual;
 - (b) hire any person, for the direct or indirect purpose, in whole or in part, of performing the work of a striking or locked-out employee; or
 - (c) an employer must not advantage, or promise to advantage, in whatever form, an employee or a person already in employment or seeking employment in exchange for that person not participating in a strike that is in compliance with this chapter.
- 

(4) An employee is entitled to resume employment within three (3) days of the date -

- 
- (a) that the strike or lockout ended; or
 - (b) that the employee became aware or could reasonably have become aware of the end of the strike or lockout; unless the employee has been dismissed for a valid and fair reason.

- (5) An employer must not institute civil legal proceedings against any other person for participating in a strike or a lockout in compliance with this Part, unless those proceedings concern an act that constitutes defamation or a criminal offence.

54. Disputes in a designated essential service

- (1) Any party to a dispute of interest, who is prohibited in terms of section 52 from participating in a strike or a lockout because that party is engaged in an essential service designated in terms of the Labour Act may refer the dispute to the Commission.
- (2) The party who refers the dispute must satisfy the Commission that a copy of the notice of the dispute has been served on all other parties to the dispute.
- (3) The Commission may designate the dispute to a commissioner to arbitrate the dispute in terms of this Part VI of this Act.
- (4) A dispute referred in terms of subsection (1) must be resolved within thirty (30) days.

55. Urgent interdicts

- (1) The Labour Court must not grant an urgent order interdicting a strike, picket or lockout that is not in compliance with this Part, unless -
- (a) the applicant has given to the respondent at least 48 hours written notice of its intention to apply for an interdict excluding weekends and public holidays, and copies of all relevant documents;

- (b) the applicant has served a copy of the notice and the application on the Commission; and
 - (c) the respondent has been given a reasonable opportunity to be heard before a decision is made.
- (2) The Labour Court may request a police report relating to the incident which gave rise to an order to be sought in terms of subsection (1) before making such order.

PART VIII

GENERAL PROVISIONS

56. Dismissal arising from collective termination or redundancy

(1) If an employer intends to dismiss employees on account of re-organisation or transfer of the business or the discontinuance or reduction of the business for economic or technological reasons, the employer must at least four (4) weeks before the intended dismissals are to take place issue a written notice of intended dismissals to any trade union recognised as the exclusive bargaining agent in respect of the employees or in the absence of recognition, to the workplace representatives elected in terms of section 39 of this Act or to the affected employees, with a copy to the Commission.

(2) The notice must include an invitation to commence negotiations over the intended dismissals and must be accompanied by all relevant information, including, but not limited to -

- (a) the number of employees likely to be affected and the job categories in which they are employed;
- (b) the reason(s) for the proposed dismissals;
- (c) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
- (d) the proposed method for selecting which employees to dismiss;
- (e) the time when, or the period during which, the dismissal is intended to take effect;
- (f) a list of all employees presently employed, according to their names, job category, date of hire and date of assignment to current job category;
- (g) any assistance that the employer proposes to offer to the employees likely to be dismissed;
- (h) the number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months (if any);

(i) the possibility of the future re-employment of the employees who are dismissed; and

(j) the severance pay and other benefits proposed upon dismissal.

(3) In the absence of a recognised trade union or elected workplace representatives, the affected employees may elect a representative for the purpose of negotiations.

(4) When disclosing information in terms of subsection (2), an employer is not required to disclose information if –

(a) it is legally privileged;

(b) any law or court order prohibits the employer from disclosing it; or

(c) it is confidential and, if disclosed, might cause substantial harm to the employer.

(5) The employer must negotiate in good faith with the recognised trade union or in the absence of such recognition, the elected workplace representatives or the representatives of affected employees on the following-

(a) alternatives to dismissals;

(b) the criteria for selecting the employees for dismissal;

(c) how to minimise the dismissals;

(d) the conditions on which the dismissals are to take place;

(e) how to avert or minimise the adverse effects of the dismissals; and

(f) amount of severance pay in excess of the minimum amount required under section 35 of the Labour Act, 2007 (Act 11 of 2007)

(g) right of an employee to be recalled to employment in the event that the employer intends to hire employees with comparable qualifications including -

(i) time period to assert recall rights;

(ii) priority for recall; and

(iii) wages and seniority of recalled employees.

(6) Within seven (7) working days after the conclusion of their negotiations, the parties must report the outcome to the Executive Commissioner on the prescribed form.

(7) If the parties did not reach an agreement, either party may refer a dispute within seven (7) working days referred to subsection (6) to conciliation on the prescribed form, failure which the referral will lapse.

(8) The Executive Commissioner must appoint a conciliator within three (3) days of the referral of dispute to assist the parties to resolve their dispute. The parties must appear at a specified place, date and time before a conciliator designated by the Executive Commissioner to assist them to resolve the dispute for an additional period up to four (4) weeks.

(9) The additional period of four (4) weeks referred to in subsection (8) above commences from the date of referral of the dispute.

(10) Within the aforesaid four (4) weeks, the conciliator may convene additional meetings as may be necessary.

(11) Upon the conclusion of the conciliation proceeding, a conciliator must issue a report to the Executive Commissioner on its outcome and provide copies to the parties.

(12) The employer must select the employees to be dismissed according to selection criteria –

(a) that have been agreed to by the parties; or

(b) if no criteria have been agreed, criteria that are fair and objective.

(13) During the periods referred to in subsections (1) to (10) -

(a) subsection 2 and 5 continues to apply to the employer, with the necessary

changes; and

(b) the employer may not dismiss employees in terms of this section, unless the dispute has been settled or otherwise disposed of in terms of this section.

(14) If there is a disguised transfer or continuance of an employer's operation which employs or employed employees who are to be dismissed or were dismissed in terms of this section, the employees or their collective bargaining agent have the right to apply to the Commission for appropriate relief, including an order:

- (a) directing the restoration of the operation;
- (b) directing the reinstatement of the employees; or
- (c) awarding lost and future earnings.

(15) Within seven (7) working days after the conclusion of retrenchment, the employer must report the outcome to the commission on the prescribed form.

(16) Nothing contained in this section prevents an employee from referring a dispute of unfair dismissal or failure to bargain in good faith to the Commission in respect of the employee's dismissal.

(17) For the purposes of subsection (14), "disguised transfer or continuance of an employers' operation" includes any practice or situation whereby -

- (a) after dismissing employees on grounds of re-organisation, the employer either rehires some of or all of the same employees or hires new employees on less favourable terms and conditions of employment; or
- (b) an employer who runs or operates any business purports to have gone out of business or to have discontinued all or part of its business operations, when in fact those business operations are continued under another name or form or carried out at another location, without the employer disclosing the full facts to the affected employees or their collective bargaining agent.

(18) In a case of a large-scale dismissal of ten (10) or more employees, the Commission may investigate and request further information prescribed in the Code of Good Practices or Guidelines issued in terms of this Act.

(19) An employer who contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$20 000, or to imprisonment for a period not exceeding two (2) years or to both the fine and imprisonment.

PART VIII

MISCELLANEOUS PROVISIONS

57. Confidentiality

- (1) A member of the Governing Board, the Executive Commissioner, or any other staff member of the Commission shall not disclose to any person

information, knowledge or document that he or she or one of the officers acquired on a confidential basis or without prejudice in the performance of his or her functions.

(2) Any person performing a function in terms of this Act, whether or not that person is employed by the Commission, must not disclose any confidential information acquired in the course of performing that function unless the disclosure is –

(a) permitted or required in terms of this Act, any other law or order of court;

(b) made with the consent of –

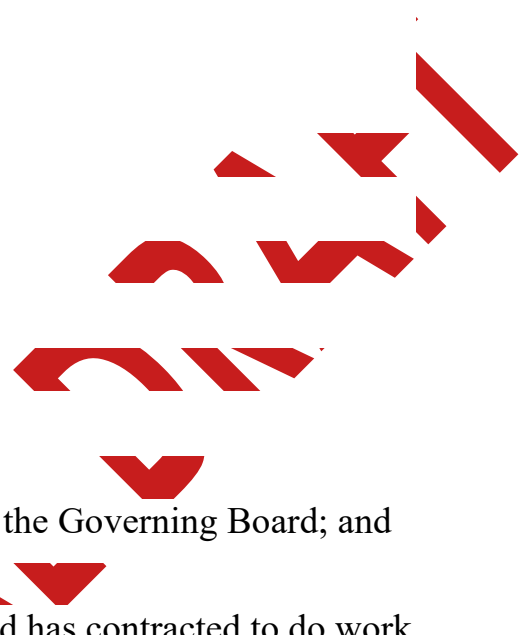
(i) any person concerned; or


(ii) the Executive Commissioner, if he or she is satisfied that the information is of a general nature and the disclosure is in the public interest.

(3) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding N\$30 000, or to imprisonment for a period not exceeding three (3) years, or to both the fine and imprisonment.

58. Limitation of liabilities

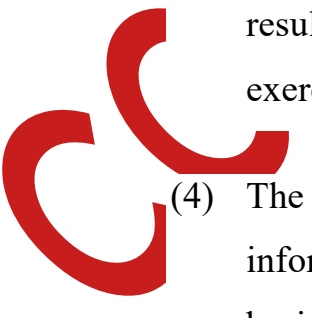
(1) In this section, "the Commission" means-

- 
- (a) the Governing Board;
 - (b) a member of the Governing Board;
 - (c) the Executive Commissioner;
 - (d) a Commissioner;
 - (e) a staff member of the Commission;
 - (f) a member of any committee established by the Governing Board; and
 - (g) any person with whom the Governing Board has contracted to do work for, or in association with whom it performs a function of the Commission.



(2) A Commissioner or other officers of the Commission shall not be held liable for a loss suffered by any person as a result of an act performed or omitted in good faith in the performance of his or her functions.

(3) The Commission is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.



(4) The Commission may not disclose to any person or in any court any information, knowledge, or document that it acquired on a confidential basis or without prejudice in the course of performing its functions except on the order of a court.

59. Conflict of interest

- (1) No person enlisted under section 59 (1) shall engage in any activity, transaction, or relationship that gives rise to a conflict of interest or has the potential to impair THEIR objectivity, independence, or ability to act in the best interests of the Commission.
- (2) Any actual, perceived, or potential conflict of interest must be disclosed immediately and in full. Failure to disclose such conflicts or acting in a manner contrary to this provision may result in disciplinary action, removal from office, or other legal consequences as provided for under the Commission's Code of Conduct.

60. Offenses and Penalties

- (1) A person who commits or omits to do any of the acts provided under this subsection, shall be in contempt of the Commission –
 - (a) if, after having been summoned to appear before a commissioner, the person, without good cause, fails to appear at the place, date and time stated in the documents summoning such person;
 - (b) if, after having appeared in response to being summoned, the person fails to remain in attendance until excused by a commissioner;
 - (c) by refusing to take an oath or to make an affirmation as a witness when required to do so by a commissioner;

(d) by refusing to answer any question fully or to the best of the person's knowledge and belief, subject to any law entitling such person to refuse to do so;

(e) if the person, without good cause, fails to produce any book, document or subject specified in the documents summoning such person;

(f) if the person willfully hinders a commissioner in performing any function conferred on the Commissioner by or in terms of any law;

(g) if the person insults, disparages or undermines a commissioner, or prejudices or improperly influences proceedings or improperly anticipates the decision of the Commissioner;

(h) by willfully interrupting the conciliation or arbitration proceedings, or behaving in a disobedient or any other manner during the conciliation or arbitration proceedings; or

(i) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

(2) A person found to be in contempt of the commission in terms of subsection (2) commits an offence and is liable to a fine not exceeding N\$ 10 000.00 or to imprisonment for a term not exceeding two years, or to both.

- (3) A person who obstructs or improperly influences a Commissioner in the performance of his or her functions under this act or attempts to do so, commits an offence and is liable to a fine not exceeding N\$ 20 000.00 or to imprisonment for a term not exceeding two (2) years, or to both.
- (4) Failure to comply with a directive of the Commission shall be an offense punishable by a fine not exceeding N\$ 20 000 or imprisonment for a term not exceeding 2 years, or both to such a fine and imprisonment.
- (5) Any person who obstructs the Commission in the exercise of its powers shall be liable to similar penalties in subsection (3).

61. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act.

62. Short title and commencement

(1) This Act shall be cited as the Commission for Alternative Dispute Resolution Act, 2026 (Act 1 of 2026)

(2) This Act shall come into force on such date as may be appointed by the Minister by notice in the Gazette.

PART VIII

TRANSITIONAL PROVISIONS

1. General preservation of rights, duties, regulations, notices and other instruments

(1) An individual who, immediately before the effective date of this Act, held a valid appointment by the Minister as Labour Commissioner in terms of section 120 of the Labour Act, 2007 (Act 11 of 2007), continues to be the Executive Commissioner in terms of this Act from the effective date, as if that person had been appointed by the Governing Board in terms of section 15 subject to –

(a) any conditions attached to that individual's appointment in terms of the Labour Act; and

(b) this Act.

(2) An individual who, immediately before the effective date, held a valid appointment by the Minister as a Conciliator and Arbitrator in terms of section 82 and 85 of the Labour Act, continues to be a Commissioner in terms of this Act from its effective date, subject to -

(a) any conditions attached to that individual's appointment in terms of the Labour Act; and

(b) this Act.

(3) An individual who, immediately before the effective date, held a valid

appointment by the Executive Director as a staff member under the Office of the Labour Commissioner in terms of the Public Service Act, 1995 (Act 13 of 1995), continues to be a staff in terms of this Act from the effective date, as if that person had been appointed by the Commission in terms of this Act.

(4) A form determined for use in terms of the Labour Act and in use immediately before the effective date, is an acceptable form for a comparable purpose contemplated in this Act, as if it had been prescribed in terms of this Act as from the effective date until a new form is determined.

(5) A notice given by any person to another person in terms of the Labour Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the Labour Act.

2. Pending disputes

(1) In this item, 'pending' means that a matter has been referred to the Labour Commissioner, or filed with the Labour Court, as the case may be, and has been issued a case number in terms of the laws governing the operation of the Office of the Labour Commissioner, or that court.

(2) A dispute that -

(a) arose in terms of circumstances that occurred before the effective date; and

- (b) could have been referred to the Labour Commissioner, or before the Labour Court, in terms of any provision of the Labour Act, but
- (c) was not pending before the Labour Commissioner, or the Labour Court, as the case may be, on the effective date, must be referred in terms of this Act.

(3) A matter that, immediately before the effective date, was pending before the Labour Commissioner, or the Labour Court, in terms of any relevant provision of the Labour Act, must be concluded in terms of Labour Act, as amended.

(4) Any appeal or review allowed from a matter described in subsection (3), must be proceeded with and be finalised in terms of the Labour Act, as amended.

(5) A document that, before the effective date, had been served in terms of the Labour Act must be regarded as having been satisfactorily served for the purposes of this Act.

(6) An order of the Labour Commissioner or Labour Court, issued in terms of the Labour Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.