

REPUBLIC OF SOUTH AFRICA

**LABOUR RELATIONS AMENDMENT
BILL**

*(As introduced in the National Assembly (proposed section 75 Bill))
(Bill and prior notice of its introduction published in Government Gazette No 38180 of 5
November 2014)
(The English text is the official text of the bill)*

(Ian Ollis, MP)

[PMB1 – 2015]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Labour Relations Act, 1995, so as to provide for the accountability of trade unions in the event of violence, destruction to property and intimidation by union members during a protected strike; to empower the Labour Court to declare the cessation of a protected strike or to refer the protected strike for arbitration in the event of riot damage; and to provide for matters connected therewith.

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

Insertion of section 68A in Act 66 of 1995

1. The following section is hereby inserted in the Labour Relations Act, 1995 (hereinafter referred to as the principal Act), after section 68:

"Duty to limit harm caused by collective action"

68A. (1) When a trade union has expressly or tacitly, facilitated, called, endorsed, supported or ratified a strike or collective action, such trade union has a duty to take reasonable steps to prevent, repair or remedy injury to persons and loss or damage to property, including the property of an organ of state, caused by or arising out of acts or omissions constituting a delict, breach of contract or crime perpetrated in contemplation or furtherance of a strike or other collective action.

(2) If the trade union has not complied with subsection (1) and as a result there was loss or damage suffered by any person including an organ of state or injury to a person, such person or organ of state may institute civil claim action against the trade union.

(3) Upon proof of non-compliance with subsection (1), the Labour Court may –

(a) issue an interdictory or mandatory order, which may include one or more directives to secure compliance with that subsection;

(b) make an award of damages, including punitive damages for breach of the duty; or

- (c) declare that, as from a given date —
 - (i) the strike will cease to be a protected strike as contemplated in section 67; or
 - (ii) the issue in dispute is one that is required to be referred to arbitration in terms of section 74 as though it were a dispute in an essential service.”.

Amendment of section 158 of Act 66 of 1995, as amended by section 44 of Act 42 of 1996 and section 36 of Act 12 of 2002

- 2. Section 158 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1)(a) for subparagraphs (vi) and (vii) of paragraph (a) of the following subparagraphs, respectively:
 - “(vi) an award of damages in any circumstances contemplated in this Act; **[and]**
 - (vii) an order for costs; and”; and
 - (b) by the addition in subsection (1)(a) of the following subparagraph:
 - “(viii) an order or declaration made in terms of section 68A(3);”.

Short title and commencement

- 3. This Act is called the Labour Relations Amendment Act, 2014 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LABOUR RELATIONS AMENDMENT BILL OF 2014

1. SUMMARY

The purpose of the Labour Relations Amendment Bill, 2014 is to amend the Labour Relations Act, 1995 (Act No. 66 of 1995) so as to provide for the accountability of trade unions in the event of violence, destruction to property and intimidation by union members during a protected strike; to empower the Labour Court to declare the cessation of a protected strike or to refer the protected strike for arbitration in the event of riot damage; and, to provide for matters connected therewith.

2. BACKGROUND

- 2.1 Recent concerns around labour relations in South Africa have largely centred on the level of strike action, and specifically the escalation in levels of violence associated with strikes, which is costly to owners of property and businesses and threatens the personal safety of persons subjected to the conduct of participants in violent strike action.
- 2.2 In the previous financial year, the total number of strikes went up from 99 to 114 with over 50% of recorded strike action being characterised as unprotected and often subject to incidences of violence and destruction of property.
- 2.3 This is of concern if consideration is given to the fact that the incidences of recorded strike action in South Africa exhibits an upward trend, rising from 51 cases in 2009, 74 cases in 2010, measuring a slight decline to 67 in 2011, and sharply rising in 2012 to 99 cases and 114 industrial incidents in 2013. Considering the atmosphere of industrial relations in the first half of 2014, the upward movement in incidence of recorded strike action is likely to continue.
- 2.4 Statistics from recent protest action in the metal and engineering sector show that in the first two weeks of the strike, 246 cases of intimidation, 50 violent “incidents” and 85 cases of vandalism were recorded.
- 2.5 Although the Act recognises the right to lawful strike action, a proper balance must be struck between the right of workers to engage in legal strike action and minimising the incidence of violent protest resulting in malicious damage to property or injury to persons. Adjustments need to be made within the system of labour relations in order to find this balance.

- 2.6 Though the Regulation of Gatherings Act 1993 (Act No. 205 of 1993) imposes restrictions and prohibitions upon gatherings and demonstrations that cause “riot damage” to third parties, the current provisions within the legislation fail to address instances where damage caused – to persons and property by strikers in the course of promoting the objects of the strike – does not necessarily occur within the structures of a gathering or demonstration.
- 2.7 Indeed, harm caused by strikers often occurs underhandedly at strike-breakers’ homes and as strike participants move to and from strike locations – violence and damage to persons and property therefore occurring outside the formal strictures of a sanctioned strike or gathering, yet acting in furtherance of union-supported collective action.
- 2.8 This Bill thus seeks to provide a statutory duty on trade unions to take reasonable steps to prevent harm to persons and property within the Act.

3. PROVISIONS OF THE BILL

3.1 Clause 1 (Insertion of section 68A)

Clause 1 inserts section 68A to provide that trade unions, their officials and officebearers have a duty to take reasonable steps to prevent harm to persons and property, including the property of an organ of state, arising out of acts and omissions constituting a delict or breach of contract committed in contemplation or furtherance of collective action supported by a trade union. This clause further imposes an onus of proof on registered trade unions to demonstrate that the steps taken by them in this regard were reasonable where collective action supported by them resulted in harm against persons or property. This clause also seeks to give the Labour Court jurisdiction to lift the protections given to lawful strikes falling foul of these substantive provisions, thereby empowering employers to dismiss or otherwise discipline “legal” strikers, and to award damages against the trade union in question.

3.2 Clause 2 (Amendment of section 158 of Act 66 of 1995)

Clause 2 is a consequential amendment following clause 1. This clause amends section 158 of the Act by empowering the Labour Court to make the order contemplated in clause 1.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. CONSTITUTIONAL IMPLICATIONS

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 As this is an ordinary Bill not affecting the provinces, it is proposed that the Bill be dealt with in accordance with the procedure established by section 75 of the Constitution.
- 6.2 It is further proposed that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.