THE BANKING ASSOCIATION SOUTH AFRICA

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: LABOUR RELATIONS AMENDMENT BILL, 2025

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
1.	**Clause 21** 140A. Special provisions related to postponement of arbitrations If a commissioner finds that a request for the postponement of a hearing was frivolous or vexatious, or could reasonably have been avoided, the commissioner may charge the responsible party a postponement fee.	**Labour Relations Act 66 of 1995 ("LRA")** Section 140A	Clarification is required regarding: (a) how this amendment will operate in circumstances where postponements arise due to Commissioner unavailability or administrative issues at the CCMA; and (b) the criteria to be used in charging a reasonable postponement fee. It is submitted that the amendments provide more detail in order to negate procedural issues which may arise.	BASA proposes that section 140A be amended as follows: 140A (1) - If a commissioner finds that a request for the postponement of a hearing was frivolous or vexatious, or could reasonably have been avoided, the commissioner may charge the responsible party a postponement fee, having regard to the criteria set out by the Commission from time to time. (2) The commissioner must determine the amount, manner of payment and time period for payment. (3) No postponement fee shall apply where the postponement is attributable to the Commission.
2.	**Clause 33** Amends section 33 to preclude employees on probation from accessing the unfair dismissal protections of the LRA	**LRA** Section 188	A person is no less an employee simply because they might be on probation and precluding this category of employee from the full suite of unfair dismissal protections for misconduct or incapacity and might be construed as unduly harsh and unfairly discriminatory. BASA therefore proposes that section 188(4) be deleted.	It is recommended that the proposed section 188(4) be completely removed.

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
3.	**Clause 34** (13) The council, accredited agency or the Commission must appoint an arbitrator on receipt of a request by the employee or employer, as contemplated by subsection (11) and on receipt of payment by the employer of the prescribed fee which must be made within seven days of the request	**LRA** Section 188A	This amendment may be problematic in practice, particularly where the employer disputes that a disclosure qualifies as a protected disclosure. Consideration should be given to whether the referring party should be responsible for the payment of the prescribed fee.	BASA proposes that section 188A (13) be amended to read as follows: 188A(13)(a) - The council, accredited agency or the Commission must appoint an arbitrator on receipt of a request by the employee or employer, as contemplated by subsection (11), subject to the payment of the prescribed fee by the referring party, within seven days of the request. BASA further proposes that a new provision be included as section 188A(13)(b) 188A(13)(b) - Where there is a dispute as to whether the disclosure constitutes a protected disclosure as contemplated in subsection (11), the referring party must pay the fee upfront and the process continues if the disclosure is found to be a protected disclosure, failing which, the fee is forfeited to the CCMA.
4.	**Clause 36** (11A) An employee who is dismissed for a reason contemplated in section 187(d), (e) or (f) may elect to refer the dispute either to arbitration or to the Labour Court. (11B) If, in the course of an	**LRA** Section 191	Section 11A – Dismissals contemplated in section 187(d), (e) and (f) typically raise complex factual and legal issues, including questions of constitutional rights, protected disclosures, discrimination, and public interest considerations. These matters often require extensive evidentiary analysis, legal argument, and the application of binding precedent, which fall more appropriately within the expertise and institutional role of the Labour Court. Retaining jurisdiction in the Labour Court promotes legal certainty, consistency in jurisprudence, and safeguards the development of	BASA proposes that section 191(11A) be amended as follows: 191(11A) - An employee who is dismissed for a reason contemplated in section 187(d), (e) or (f) must refer the dispute to the Labour Court or may dispute to arbitration by only where agreement between the parties exists. BASA further proposes that section 191(11B) be deleted.

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	arbitration referred to the Commission in terms of subsection (5)(a), it becomes apparent that the dispute concerns a matter dealt with in section 187(d), (e) or CO, the Commission or a commissioner may proceed, despite there being no referral in terms of subsection (11A), to determine the dispute after taking into account - (a) the complexity of the questions of law and fact raised in the matter; (b) the public interest; (c) speedy dispute resolution: and (d) the submissions of the parties.		coherent labour law principles. BASA therefore proposes the amendments as reflected in the next column. 11B(d) – Based on our comments regarding section 11A, BASA proposes that section 11B be deleted. Should the proposal not be accepted, Clarification is requested regarding the nature and scope of such submissions. The wording is vague and it is unclear whether parties are expected to address only jurisdictional considerations or whether the merits of the dispute must be set out. Clear guidance would assist in ensuring consistency.	
5.	**Clause 40** Addition of (1) An employee who has referred a dispute about the fairness of a	**LRA** Section 196	It is uncertain whether the referral of a legality dispute takes away an employee's right to challenge their dismissal before the CCMA or bargaining council, especially considering that the CCMA cannot determine legality as it is confined	BASA proposes the following wording for the proposed new section 196(1) and section 196(1)

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	dismissal in terms of this Chapter may not also bring a claim, arising from the same facts, in respect of the unlawfulness of that dismissal. (2) An employee who has brought a claim about the unlawfulness of a dismissal may not also refer a dispute, arising from the same facts, in respect of the fairness of that dismissal in terms of this Chapter.		to substantive and procedural fairness determinations. Further clarity in this regard is required. In addition, since disputes for unlawful dismissal and unfair dismissal are brought in different fora, how will this be monitored and enforced? The disclosure requirement could be achieved through a new proposed subsection 3 by allowing for the relevant CCMA referral form to be enhanced in order to include a mandatory disclosure field. An applicant in the Labour Court should also declare under oath whether any other dispute arising from the dismissal has been referred to the CCMA. Failure to disclose should result in the automatic dismissal of a second claim with costs.	196(1) - An employee who has referred a dispute concerning the fairness of a dismissal in terms of this Chapter may not pursue a claim arising from the same facts in respect of the unlawfulness of that dismissal in the same forum. (2) - An employee who has instituted proceedings in respect of the unlawfulness of a dismissal may also refer a dispute concerning the fairness of that dismissal in terms of this Chapter, provided that: (a) the issues to be determined are distinct; and (b) any duplication of proceedings is avoided. BASA further proposes that a new subsection 196(3) be added: (3) An employee is required to disclose if he/she has referred both a claim for the unfairness and unlawfulness of a dismissal.
6.	**Clause 46** Inserts schedule 11 introducing an expanded definition of employee and related protections	**LRA** Schedule 11	It is not clear: a) why the definition only affords employees in this category rights related to freedom of association and collective bargaining and strikes and not the full suite of protections, especially related to unfair dismissals. This results in employees in this category still not being	BASA proposes the following amendments to the wording of Schedule 11: Schedules 11(2) Presumption For the purposes of this Schedule, an individual is only considered an employee if he/she demonstrates the following:

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
			afforded the job security that comes with protection against unfair dismissals. b) what the test is for when the employer will be considered an employer or a client or customer. This leaves room for employers to argue that they are customers of the employee's services rather than employers. c) what counts as "terms set by the employer" and what "on behalf of" means in ordinary contracting chains. In terms of the definition, there is a presumption of employment unless the employer can rebut the presumption on the criteria mentioned in the section. The burden of proof is weighted against the employer and could prove administratively burdensome for employers who use many specialised contractors. Whilst Schedule 11 allows unions to represent these workers, most South African trade unions are currently structured around physical workplaces. The amendment does not provide clear mechanisms for how organisational rights work when the workplace being catered for by the definition is digital like an app or a roaming vehicle. The proposed revised wording of schedule 11(2), which places the burden of proof on the individual to prove that he/she is an	(a) the person is subject to the control and direction of the employer in connection with the performance of the work or provision of the services; (b) the person is part of the organisation of the employer; and (c) the person perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer. BASA further submits that the wording of the portions which restricts the protections of this category of employees to only freedom of association, collective bargaining, strikes and lock outs and related unfair dismissal protections should be reconsidered to extend access to unfair dismissal and unfair labour practice protections.

Rosebank Link, 6th Floor
173 Oxford Road, Rosebank 2196
Tel +27 11 645 6700
www.banking.org.za

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
			employee, will lend more certainty to the proposed definition of employee as it will require the individual to demonstrate that the he/she is not conducting a profession, undertaking a business for which the employer is a client or customer.	