

Chapter 5

Centralised collective bargaining

The Act promotes centralised collective bargaining by providing for bargaining councils and statutory councils



Centralised collective bargaining occurs when employers in a sector get together and bargain with one or more unions representing the employees of those employers. Centralised collective bargaining can also occur at the level of a group of companies or at the national or regional level of a company.

How does the Act promote centralised collective bargaining?

The Act provides for three options:

Collective agreements

Employers and a trade union (or trade unions acting jointly) can negotiate a collective agreement, providing for joint negotiations. An example is the agreement between the Chamber of Mines and the National Union of Mineworkers. The terms and conditions of the collective agreement will apply only to the parties to the agreement and their members.

Bargaining councils

Bargaining Councils may negotiate agreements on a range of issues, including wages and conditions of work, benefits, training schemes, and disciplinary and grievance procedures.

Bargaining Council agreements may be extended to all employers and employees in the council's registered scope of representivity, as long as certain requirements are met. However, the minister may extend agreements even if these requirements are not met, if the minister believes that collective bargaining will be undermined if the agreement is not extended.

Unions which are party to a bargaining council have organisational rights in all workplaces in that sector.

Establishment of a bargaining council

To establish a bargaining council for a sector and an area, both the unions and the employers' organisations must be sufficiently representative of the sector and area. 'Sufficiently representative' is not defined in the Act. It could be determined by factors such as:

- the degree of union and employer organisation in the sector and area of the proposed council;
- the nature of the sector;
- the number of employees employed by members of the employers' organisation; and
- the ability of the unions and employers' organisations to represent the different interests of employers and employees to be covered by the proposed council.

If the employers employ the majority of a sector's workforce and the union, or unions, have organised a majority of the workforce, they should be considered sufficiently representative to establish a bargaining council. The sector must be acceptable to NEDLAC.

Enforcement of collective agreements by bargaining councils

Designated agents of bargaining councils can monitor and enforce compliance with any collective agreement concluded in the bargaining council by -

- issuing compliance orders;
- publishing the contents of collective agreements; and
- following up complaints and conducting investigations.

If a dispute about compliance remains unresolved, a council may refer the dispute to final and binding arbitration. An arbitrator may order the person to pay the amount owing; impose a fine; or confirm, vary, or set aside the compliance order.

The minister has published a notice that sets out the maximum fines that may be imposed by an arbitrator for a breach of a collective agreement.

Statutory councils

A statutory council is a weaker version of a bargaining council.

While the parties to a statutory council can draw up agreements on wages and working conditions, these agreements cannot be extended to employers and employees outside the council. However, agreements on training schemes, provident or pension funds, medical schemes and similar benefit schemes can be extended by the minister to cover all employers and employees in that sector.

Unions that are members of a statutory council will enjoy the advantage of acquiring organisational rights of access, meetings, ballots and stop-order facilities for all workplaces in that sector. The rights will apply even in a workplace in that sector where the union has no members.

Establishment of a statutory council

In order to apply to the minister of labour for a statutory council, a registered union or unions must have organised at least 30% of the employees in the sector or area, or members of a registered employers' organisation or organisations must employ at least 30% of the employees in that sector or area. The sector must be acceptable to NEDLAC.

If the union or employers' organisation meets the above requirement, the minister will set in motion a process to establish a council even if some parties are not co-operative. The CCMA will be used to facilitate this process.

Bargaining Councils in the public service

The Public Service Co-ordinating Bargaining Council (PSCBC) negotiates issues that are common to all public service employees.

The PSCBC may also set up bargaining councils for particular sectors in the public service. These sector specific bargaining councils have exclusive jurisdiction over all matters that are specific to their sector.

Demarcation disputes between bargaining councils in the public sector may be referred to the CCMA which will first conciliate the disputes, failing which the disputes may be referred to arbitration.

Further information

Relevant sections in the Act

Sections 27 - 48: Collective Bargaining

Schedule 7: Parts C and D

Forms to fill in

LRA Form 3.3 Application for registration of a bargaining council

LRA Form 3.4 Certificate of registration of a bargaining council

LRA Form 3.5 Bargaining council requests extension of collective agreement to non-parties

LRA Form 3.8 Council requests appointment of designated agent

LRA Form 3.10 Subpoena by designated Agent

LRA Form 3.11 Amalgamating bargaining council applies for registration

LRA Form 3.12 Referring public service jurisdictional disputes for conciliation

LRA Form 3.13 Referring public service jurisdictional disputes for arbitration

LRA Form 3.14 Trade union applies for establishment of statutory council

LRA Form 3.15 Employers' organisations applies for establishment of statutory council

LRA Form 3.16 Certificate of registration of statutory council

LRA Form 3.19 Statutory council applies to register as a bargaining council

