

Chapter 2

Organisations of employers and employees

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Strong trade unions and employers' organisations are necessary for effective collective bargaining. Collective bargaining is an important way of regulating industrial relations and of determining employees' wages and benefits.

In the past trade unions have struggled to secure organisational rights (such as permission to enter a workplace or conduct union meetings there). These rights are essential for building the capacity of trade unions to enable them to bargain more effectively. (See chapter 3 in this guide for further details on organisational rights.)

The LRA attempts to strengthen trade union organisation in two ways:

- by supporting freedom of association rights which enable employees and jobseekers to participate freely in union activities; and
- by supporting organisational rights which make it easier for unions to organise employees.

The LRA also supports the right of employers to join together to form employers' organisations.

Promoting and protecting employees' and employers' rights

Protecting employees and jobseekers

The Act prohibits employers from victimising employees or jobseekers for their trade union activities both at their workplace and in their previous jobs. It also prohibits employers from offering some advantage to an employee or jobseeker to prevent that employee or jobseeker from joining a union. So, for example, an employer may not offer to pay non-union employees more than union members. Employers may also not prevent employees or jobseekers from exercising any right under the Act.

Protecting employers

Employers cannot be placed under pressure not to join a particular employers' organisation or not to exercise any right conferred by the Act.

Registration of employers' organisations and unions

Employers' organisations and unions do not have to register with the Department of Labour, but they are advised to do so. If they do not register, there is no guarantee for members that there will be a proper constitution or control over finances. Registration provides some check on abuse, corruption and unconstitutional practices, such as racism. Registration also affects the rights of unions - see below.

Requirements for registration: ballots, non-discrimination and independence

If unions or employers' organisations wish to be registered, their constitutions have to meet certain requirements. Two important requirements are as follows:

- there must be provision in the constitution for a ballot of members before a strike or lock-out is called; and
- there must not be any provision in the constitution that discriminates on the grounds of race or sex.

A trade union wishing to register must also be independent, that is, it must be free from the influence or control of an employer or employers' organisation. The Labour Court may decide whether or not a union is independent.

In the past, some businesses or consultancies have formed bogus trade unions or employers' organisations. Now the registrar of labour relations has the power not to register (or to withdraw the registration of) a trade union or an employers' organisation if the registrar is satisfied that the applicant is not a genuine trade union or a genuine employers' organisation.

The Minister, in consultation with the National Economic Development and Labour Council (NEDLAC), may publish guidelines to be applied by the registrar to determine whether an applicant is a genuine trade union or a genuine employers' organisation.

Rights of registered unions

Registered unions have more rights than unregistered ones under the LRA. Some of the important rights of registered unions are:

- organisational rights awarded by the Commission for Conciliation, Mediation and Arbitration (CCMA);
- a right to be a member of a bargaining or statutory council, subject to the admission requirements of the council;
- a right to enter into agency and closed shop agreements;
- a right to establish workplace forums; and
- a right to conclude collective agreements as defined under the Act.

Winding-up and cancellation of registration

If a trade union or employers' organisation is unable to continue functioning, it may be wound up by the Labour Court on the application of the registrar of labour relations or any member of the trade union or employers' organisation. A trade union or employers' organisation may also resolve to wind up its affairs, and it may apply to the Labour Court to give effect to that resolution.

The Labour Court may appoint a suitable person as liquidator to assist with the winding up process.

Any registered trade union may apply to the Labour Court for an order declaring that another trade union is no longer independent.

The registration of any trade union or employers' organisation that has been wound up by the Labour Court, or has been declared to be not independent by the Labour Court, must be cancelled by the registrar of labour relations.

When an organisation's registration is cancelled all the rights it enjoyed as a result of being registered come to an end.

Further information

Relevant sections in the Act

Sections 4 - 10: Freedom of association and general protections

Section 95 - 106: Registration and regulation of trade unions and employers' organisations

Forms to fill in

LRA Form 6.1 Registration of a trade union

LRA Form 6.2 Registration of an employers' organisation

LRA Form 6.3 Certificate of registration of a trade union

LRA Form 6.4 Certificate of registration of an employer's organisation

LRA Form 6.5 List of members to be kept by a trade union

LRA Form 6.6 List of members to be kept by an employers' organisation

LRA Form 6.7 Number of trade union members

LRA Form 6.8 Number of employers' organisation members

LRA Form 6.9 Application by amalgamating trade union for registration

LRA Form 6.10 Application by amalgamating employers' organisation for registration

