

# new **CCMA** and **BARGAINING COUNCIL** rules fast track workshop

SOUTH AFRICAN LABOUR LAW REPORTS (SALLR) once again providing **reliable** and **trusted solutions**



The new rules are out and you are cordially invited to attend the **SALLR webinar workshop**:



**Tuesday**  
**10 November 2026**



**09h00 – 11h00**  
— or —  
**13h00 – 15h00**



**Zoom**  
— or —  
**Teams**



**R950.00**  
exl VAT  
per delegate



registration qualifies you for a **R200.00 discount** on the upcoming 5<sup>th</sup> edition of our **rules** publication



**CPD certificate** (2 CPD points) included in your registration fee



**electronic workbook** included in your registration fee

- ✓ how should the changes be **interpreted**?
- ✓ how should the changes be **applied**?
- ✓ what is the relevant **case law**?
- ✓ what will change when the **anticipated amendments** to the LRA and the BCEA become effective?



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FULL BROCHURE



### **Our last CCMA rules workshop: May 2023**

In May 2023, we co-presented a workshop dealing with the 2023 amendments to the CCMA rules. These amendments were mainly driven by the following considerations: the application of the Protection of Personal Information Act 4 of 2023 (POPIA), case law development and online and virtual service delivery.

### **The 2026 amendments are out!**

According to the CCMA's advisory notification, these amendments seek to modernise and clarify practice and procedure, strengthen procedural certainty and align dispute-resolution processes with legislation, case law, technology and current practice.

### **Who should attend the upcoming fast track SALLR webinar workshop?**

- employee relations practitioners
- human resources practitioners
- conciliators and arbitrators
- advocates, attorneys and candidate attorneys
- government officials
- trade union representatives
- employer organisation representatives
- CCMA and bargaining council commissioners

#### **A. Amendments to the CCMA rules (also applicable to bargaining councils) to be dealt with during the upcoming fast track webinar sessions**

In line with the aforesaid considerations, the following amendments have, *inter alia*, been identified for specific attention:

- **Greater utilisation of digital channels** – a signature now includes an electronic signature, inclusive of a referral made through the CCMA's online platforms; these include the CCMA WhatsApp Chatbot and [cmsonline.ccma.org.za](https://cmsonline.ccma.org.za); notice of hearings now includes notification by means of WhatsApp; the Electronic Communications and Transactions Act 25 of 2002 applies to service by means of email or WhatsApp. Filing through the platforms are applicable to conciliation referrals, arbitration requests and condonation applications.
- **Calculation of time periods**: two scenarios exist – the calculation of time periods in the CCMA rules are to be treated differently to the calculation of time periods as set out in the employment law statutes.
- **Pre-conciliation intervention, conciliation and con-arb** – the pre-conciliation interventions may now also take place by a trained CCMA staff member; when referring an organisational rights dispute for conciliation there is an obligation to show that the union complied with the requirements of s21(1) and s21(2) of the LRA; if a party objects to con-arb and if the conciliation remains unresolved, or if the 30-day conciliation period has expired, the referring party must file an LRA Form 7.13 request for arbitration; on the other hand, if arbitration proceeds after the conciliation phase, but the

commissioner adjourns the proceedings to a later date, the referring party will not be required to file such form.

- **Pre-arbitration and artificial intelligence** – the agenda for a pre-arbitration conference must include the use of AI and AI-generated information and the nature and extent of such usage.
- **Representation** – a member of a party's registered trade union or employers' organisation can only represent a party in conciliation if authorised by such organisation.
- **Joinder** – if a party is not cited in the referral form, such party cannot be joined; the referring party is required to first serve and file a referral form on that party (and apply for condonation, if applicable).
- **Disclosure of documents or materials** – rule 29 regulates such disclosure between the parties; rule 37 (issuing of a subpoena) regulates such procedure in respect of documents or materials held by non-parties.
- **Non-appearance at arbitration** – non-appearance by the referring party could lead to the dismissal of the matter if such absence, on the face of it, is wilful or unexplained; the former rule 31C, dealing with a request to have a matter re-enrolled, has been deleted.
- **Labour court referral** – application to refer a dismissal dispute to the labour court ito s191(6) must contain certain elements, such as the reason for the dismissal, any question of law raised, the complexity of the dispute, whether there are conflicting arbitration awards to be resolved and the public interest.
- **Written undertakings and compliance orders made arbitration awards** – an application to make a written undertaking an arbitration award may be opposed by the employer by delivering and serving an answering affidavit and supporting documents; an application to make a compliance order an arbitration award may be opposed by the employer by delivering and serving a written notice of objection, together with any supporting documents.
- **Enquiry by an arbitrator ito s188A of the LRA** – the fee, irrespective of who requested the inquiry, must be paid by the employer per electronic transfer to the CCMA; the fee is refunded only if the CCMA is informed, before it issues the notice of inquiry, that the matter is not to proceed.

B. **Relevant case law development so applicable to the new rules and will be dealt with during the upcoming fast track webinar sessions**

- *Alexkor Soc Ltd v Carstens* (LC) – consequences of the recusal of an arbitrating commissioner; the lack of jurisdiction of a presiding commissioner to declare a pre-arbitration minute concluded ito rule 20 of the CCMA rules invalid.
- *Naidoo v Khosa and Others* (LC) – extra-territorial jurisdiction of the CCMA.

- *Sibanye Rustenburg Platinum Mines v AMCU* (LAC) – limitations on the parties and the presiding arbitrating commissioner created by a pre-arbitration agreement.
- *Innovative Staffing Solutions (Pty) Ltd and Others v National Bargaining Council for the Road Freight and Logistics Industry* (LAC) – consideration of institutional bias when the CCMA appoints an arbitrator in enforcement proceedings initiated by a bargaining council and a non-party to such council objects to the appointment by the council of a specific arbitrator.
- *Democratised Transport Logistics and Allied Workers Union obo Tshwili v Bidvest Services (Pty) Ltd* (LC) – a jurisdictional ruling that the CCMA has the power to conciliate a dispute is not regarded as a final ruling in respect of its power to arbitrate such dispute.
- *Valinor Trading v CCMA* (LC) – if a party fails to comply with rule 17(2) of the CCMA rules by not delivering to the CCMA and the other party, at least 7 days prior to the scheduled date, an objection to con-arb, it does not follow that the notice in non-compliance with the 7-day requirement renders the objection defective to the level of it being ignored.
- *Glencore Operations v CCMA* (LC) – in the scenario where a commissioner dismisses a matter at arbitration because the party who referred the dispute to the CCMA did not appear at arbitration or, alternatively, such party's representative did not appear at arbitration, the labour court identified the approach to be adopted by such absent party if, despite such ruling, he still wants the matter to be arbitrated by the CCMA.
- *AMCU and Others v Ngululu Bulk Carriers* (CC) – the consequences of a certificate of outcome following conciliation proceedings; when a referral is made to the CCMA or a bargaining council concerning a dismissal, it is not a requirement that the reason for the dismissal (i.e. misconduct, incapacity poor work performance, etc) be identified.
- *Motor Industry Staff Association and Another v McCarthy* (LAC) – the circumstances under which an arbitrator may refuse to proceed with an arbitration, taking into account the election of the parties not to lead evidence or to proceed by means of a stated case.
- *Lyttleton Dolomite v NUM* (LC) – the helping hand principle in the CCMA guidelines on misconduct.
- *Adams v National Bargaining Council for the Road Freight and Logistics Industry* (LAC) – the consequences of a referral form of a dispute not signed by a referring party, but, for instance, by such referring party's attorney and the referring party's participation in conciliation proceedings and subsequently arbitration proceedings.
- *Proactive Employers' Association of SA v Director: CCMA* (LC) – if a representative meets the requirements, as set out in rule 25(1) of the CCMA

rules, the extent to which a commissioner is still entitled to enquire into various issues in terms of rule 25(5) of the CCMA rules and the exclusion of such representative from the proceedings.

- *Singamandla and Others v SA Public Workers Trade Union* (LC) – the jurisdictional prerequisites to be met before an organisational rights dispute can be arbitrated.
- C. **Relevant anticipated statutory development that will affect the powers and functions of the CCMA and bargaining councils and will be dealt with during the upcoming fast track seminar sessions**

#### LRA Amendment Bill 2025

- s115(1) – the conciliation and arbitration functions of the CCMA are not only related to the LRA but to any employment law.
- s115(2)(bB) – if so requested by an employee earning less than the threshold (currently R269 600.90 per annum), the CCMA must provide assistance to enforce an arbitration award and this includes instructing and paying the fees of the sheriff.
- s115(2A)(IA); s115(2A)(IB); s115(2A)(IC) and s115(2B) – the jurisdiction of the CCMA to make rules will include the following: facilitation ito s189A, the enforcement of claims for breaches of the NMWA or any other employment law ito Chapter 10 of the BCEA, including the payment by employers of security and fines, any matter in connection with the enforcement of awards and inquiries by an arbitrator ito s188A.
- s115(3) – CCMA is to provide advice or training re any employment law covering various topics, such as supporting collective bargaining; this includes the publication of training guidance materials.
- s127 – the CCMA has the power to accredit bargaining councils or private agencies to perform conciliation and arbitration functions in respect of any employment law.
- s140A – if a request is made for postponement of arbitration and such request is made frivolously or vexatiously, or could reasonably have been avoided, the commissioner may charge the responsible party a postponement fee.
- s143(5) – despite s143(1), a party enforcing or executing an arbitration award, where the other party is required to pay an amount of money, may enforce or execute it as if it were an order of either the magistrate's court or the labour court.
- s188A(2) – the request for an inquiry by an arbitrator must be made in the form issued by the CCMA (and comply with the provisions of the collective agreement or contract of employment).
- s189A(5); s189A(6A) – the CCMA and not the minister of employment and labour is to make the relevant rules.

- s191(5)(v) – if the employee has referred a dispute to s10(6)(aA) of the EEA, the CCMA/bargaining council may jointly arbitrate a dismissal dispute to s187 or s188 of the LRA.
- s191(5A)(c) – arbitrations may commence immediately after the dispute has been certified as unresolved in the following circumstances: a dismissal relating to probation, an unfair labour practice relating to probation, any other dispute where no party objects to same being dealt with in this manner or any other dispute specified in the rules of the CCMA to s115(2A) of the LRA.
- s213 – a dispute about the interpretation or application of the LRA, any other employment law, constitution, collective agreement, settlement agreement or determination includes a dispute about whether or not there has been compliance with same.
- Item 36 (Schedule 7) – the facilitation regulations currently in place remain effective until the rules made by the CCMA come into operation.
- Item 37 (Schedule 7) – in respect of an inquiry by an arbitrator, the form prescribed the minister of employment and labour remains effective until the CCMA issues a new form.

#### BCEA Amendment Bill 2025

- s41(6) – any dispute about the entitlement to severance pay (and not only the entitlement in terms of s41 of the BCEA) are to be referred to the CCMA or the relevant bargaining council.
- s69(5)(a); s69(5)(b); s69(5A) – on good cause shown, an employer may refer a dispute to the CCMA outside the period within which to comply with a compliance order: such referral does not suspend the operation of the compliance order unless security is provided to the CCMA equivalent to the amount of the order.
- s73(2) – the CCMA may issue an arbitration award contemplated to s73(1) requiring an employer to comply with a compliance order if it is satisfied that a compliance order was served on the employer and the employer did not refer the dispute to s69(5).
- s73(3) – the powers of the CCMA arbitrator, when dealing with a compliance order, amount to the issuing of an award that confirms, varies or sets aside the compliance order, as well as an order that the employer is to pay a fine to s76A or Schedule 2.
- s73A(1), s73A(4) and s73A(5) – the failure to pay an amount to the BCEA/ NMWA/contract of employment/sectoral determination/collective agreement: the relevant bargaining council having jurisdiction has conciliation and arbitration jurisdiction and, if not so applicable, then the CCMA has conciliation and arbitration jurisdiction.

## EEA Amendment Bill 2025

- s10(6)(aA) – an employee may refer a dispute to the CCMA for arbitration, if conciliation fails, where the employee alleges unfair discrimination on the grounds of harassment (same not to be limited to sexual harassment).
- s10A – nothing in the EEA prevents the referral of a dispute to Chapter II (prohibition of unfair discrimination) to a bargaining council to a collective agreement binding on the parties to the dispute or, alternatively, if the council has been accredited to s127 of the LRA (for conciliation or arbitration in respect of such dispute).

## **Pre-workshop questions and questions raised during the workshop?**

Once a delegate has registered and paid for the workshop, such delegate may, prior to the date of the workshop, email no more than two questions that he/she wishes Brian van Zyl to deal with during the question and answer sessions of the workshop. If a delegate wishes to make use of this opportunity, then such questions must be forwarded, per email, to Annesha Schutte at [pa@vanzyrudd.co.za](mailto:pa@vanzyrudd.co.za), by no later than Friday, 6 November 2026.

## **About the presenter?**

Dr Brian van Zyl is the co-author of various publications, including the following: *The Final Codes on Broad-Based Black Economic Empowerment: An Analysis*, Part 1 and Part 2, *The Business of Restructuring*, *Guide to the CCMA Rules*, 1<sup>st</sup> and 2<sup>nd</sup> editions. Brian has also published the best seller *Changes to Employment Laws*. In 2019, he produced *The CCMA Rules, including Rules of Various Courts*, 4<sup>th</sup> edition. Brian has been the presenter and chief architect of *The South African Labour Law Reports'* annual seminars since 1990. He is an admitted advocate and regularly appears in the civil and labour courts.

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**Tick the appropriate box(es) and complete the entire form**

**TUESDAY**  
**10 November 2026**  
**09h00 - 11h00**

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