



PHSDSBC

**PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL**

**AMENDMENTS TO THE CONSTITUTION OF THE
PUBLIC HEALTH AND WELFARE
SECTORAL BARGAINING COUNCIL**

CONSTITUTION OF THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL

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1. NAME

The name of the Bargaining Council is the Public Health and Social Development Sectoral Bargaining Council.

2. DEFINITIONS

Any expression used in this Constitution which is defined in the Labour Relations Act, 1995 (Act no. 66 of 1995) shall have the same meaning as in the Act except that:-

- 2.1. **"Act"** means the Labour Relations Act, No. 66 of 1995;
- 2.2. **"arbitrator"** means an arbitrator appointed by the Council to the panel of arbitrators;
- 2.3. **"audited membership figures"** means membership figures of a trade union as reflected in stop orders or other generally recognised audit methods, as audited by the registered auditor appointed by such trade union;
- 2.4. **"Chamber"** means a Chamber of the Council established in terms of this Constitution;
- 2.5. **"acting jointly"** – means two or more trade unions acting as a single trade union for the purpose of clause 7.2 of this constitution;
- 2.6. **"this Constitution"** means the Constitution of the Council and the Schedules to it;
- 2.7. **"conciliator"** means a conciliator appointed by the Council to its panel of conciliators;
- 2.8. **"Council"** means the Public Health and Social Development Sectoral Bargaining Council;

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- 2.9. **"day"** means a calendar day, including Saturdays, Sundays and public holidays;
- 2.10. **"dispute"** includes an alleged dispute and means:
- 2.10.1. a dispute that is specific to the Public Health and Social Development Sector, and
- 2.10.2. a dispute that the employer has the requisite authority to resolve, or is a dispute concerning specific decisions of the Council or the General Secretary as provided for in this Constitution and Schedule 2 to this Constitution.
- 2.11. **"Dispute Procedure"** means the Dispute Procedure referred to in clause 21 and contained in Schedule 2 to this Constitution;
- 2.12. **"employee"** means an employee of the employer within the registered scope of the Council;
- 2.13. **"employer"** means the State as employer within the registered scope of the Council;
- 2.14. **"Executing Authority"** means the Ministers of Health and Social Development and MEC's of Health and Social Development in Provinces;
- 2.15. **"member"** means an employee who is a member in good standing of a trade union under the trade union's Constitution;
- 2.16. **"mutual interest"** means any matter of mutual interest in respect of which the employer may conclude collective agreements because the employer has the requisite authority to do so, and if
- 2.16.1. the matter has been assigned to the Council by the PSCBC,
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- 2.16.2. the matter is specific to the Public Health and Social Development Sector.
- 2.17. **"observer"** means an employee, office bearer or official of the party which appointed that person to attend a meeting in the capacity of an observer in terms of this Constitution, and such person has no speaking or voting rights when attending a meeting as an observer;
- 2.18. **"PSCBC"** means the Public Service Co-ordinating Bargaining Council;
- 2.19. **"General Secretary"** means the general secretary of the Council appointed in terms of the provisions of this Constitution;
- 2.20. **"standing orders"** means directives or delegation of authority by Council to Committees or Chambers;
- 2.21. **"Registrar"** means the Registrar of labour relations as defined in the Act;
- 2.22. **"threshold requirements"** means the minimum membership requirements that a trade union must satisfy to be admitted as a party to the Council, or remain a party to the Council, as the case may be, under the provisions of this Constitution;
- 2.23. **"trade union"** means a trade union registered in terms of the Act, and shall include, unless the context indicates otherwise, two or more trade unions acting jointly;
- 2.24. **"voting weight"** means the percentage of the trade unions' aggregate votes, which has been allocated to a particular trade union to the Council under clause 13 of this Constitution, and any calculation of votes cast by the trade unions to the Council in a meeting shall be calculated using the voting weight allocated to the respective trade unions present at the meeting.

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3. SCOPE

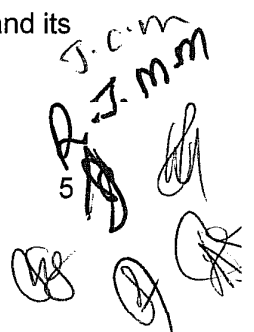
The scope of the Council is the Public Health and Social Development Sector meaning the State, as employer, and its employees who fall within the registered scope of the PSCBC, and includes:

- 3.1. employers and employees in:
 - 3.1.1. the department of health in the national sphere of government;
 - 3.1.2. the nine departments of health in the provincial spheres of government;
 - 3.1.3. the department of social development in the national sphere of government;
 - 3.1.4. the nine departments of social development in the provincial spheres of government;
- 3.2. all other employees who are employed in health and social development facilities under the Public Service Act and the Correctional Services Act and their employers, and
- 3.3. other health and social development employees as defined in Schedule 1 attached to this Constitution and employed under the Public Service Act and their employers.

4. OBJECTIVES

The objectives of the Council are to:

- 4.1. promote labour peace in the public health and social development sector;
- 4.2. promote and maintain sound relationships between the employer and its employees;

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- 4.3. promote negotiation and collective bargaining to conclude collective agreements on matters of mutual interest to the employer and employees falling within the scope of the Council;
- 4.4. supervise and enforce collective agreements;
- 4.5. promote the effective and expeditious resolution of disputes in the public health and social development sector between:
 - 4.5.1. the employer and trade unions admitted to the Council;
 - 4.5.2. the employer and trade unions not admitted to the Council;
 - 4.5.3. the employer and employees, where the employer has the requisite authority to resolve such disputes;
 - 4.5.4. a party to the Council and the Council, or the General Secretary, in relation to specific issues in this Constitution;
- 4.6. promote effective communication between the employer, its employees and the trade unions in the Public Health and Social Development Sector;
- 4.7. promote effective communication and co-ordination of the Council and its Chambers;
- 4.8. comply with its duties within the scope of its powers in terms of the Act and this Constitution, and
- 4.9. consider and deal with such other matters as may affect the interests of the parties to the Council.

5. POWERS AND FUNCTIONS

The powers and functions of the Council are to perform those functions set out in section 28 of the Act and those agreed to by the parties to the Council, which include the:

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- 5.1. conclusion of negotiated collective agreements on matters of mutual interest;
- 5.2. implementation, monitoring and enforcement of collective agreements concluded in the Council;
- 5.3. prevention and resolution of labour disputes;
- 5.4. performance of any dispute resolution function imposed on it by the provisions of this Constitution or the Act, including management and maintenance of case management systems and policy;
- 5.5. raising, borrowing, lending, levying of fees and investment of funds;
- 5.6. collection of levies and administration of a fund to be utilised for resolving disputes, collective bargaining and general administration and the human resources of the Council, in terms of the relevant PSCBC resolution;
- 5.7. development of policy on matters within the Council's jurisdiction and proposals to be made to another institution that may affect the sector;
- 5.8. determination by collective agreement of any matter which may not be an issue in dispute for the purposes of a strike or a lock out;
- 5.9. promotion and establishment of training and education schemes;
- 5.10. establishment, amalgamation or dissolution of Chambers of the Council within the sector and the variation of their scope;
- 5.11. co-ordination, among Chambers, and between such Chambers and the Council, of the functions and operations of such Chambers, including those related to collective bargaining and administration;
- 5.12. determination of appropriate standards of financial control for the Council and Chambers and service that must be maintained;
- 5.13. provision of accommodation and operational services to Chambers, for the purpose of efficiency or administrative convenience, and, if appropriate, for the sharing of skills, expertise or resources;

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- 5.14 formulation and maintenance of systems and policies for the Council;
- 5.15 The exercise of any other power or performance of any other function that may be necessary or desirable to achieve the objectives of the Council.

6. PARTIES TO THE COUNCIL

The parties to the Council are the employer and, all trade unions admitted to the Council under the provisions of clause 7, or admitted under the previous admission provisions of this Constitution that applied at the time of their admission and which currently comply with the threshold requirements of this Constitution.

7. ADMISSION OF TRADE UNIONS TO THE COUNCIL

- 7.1. Any single trade union may apply for admission to the Council if it meets the threshold requirement of 10 000 members in good standing in the Public Health and Social Development Sector.
- 7.2. If two or more trade unions act jointly, and each enjoys organisational rights with an employer and have a combined membership of 10 000, the trade unions may be represented in the Council as a single party.
- 7.3. A single trade union applying for membership in terms of clause 7.1, must submit—
 - 7.3.1. a fully updated copy of its Constitution, as registered and duly authenticated by the signature of the Chief Executive Officer or General Secretary;
 - 7.3.2. a certified copy of the trade union's certificate of registration;

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- 7.3.3. the full names of the trade union's Chief Executive Officer or General Secretary, permanent street and postal addresses, the full telephone and telefax numbers of its head office;
 - 7.3.4. audited membership figures of all members of the trade union falling within the scope of the Council as proof that the trade union satisfies the threshold requirements; and
 - 7.3.5. any other information on which the trade union relies in support of its application.
- 7.4. Trade unions acting jointly in terms of clause 7.2 which apply for membership as a trade union to the Council, must submit—
- 7.4.1. the documentation referred to in clause 7.3 in respect of each of the trade unions acting jointly;
 - 7.4.2. the agreement between the trade unions acting jointly, which must address material aspects of their joint action, including—
 - 7.4.2.1 the name under which they will be acting jointly; and
 - 7.4.2.2 the period of the agreement under which the trade unions will act jointly.
- 7.5. If any of the following events occurs in respect of a trade union that is acting jointly with another trade union, the provisions of clause 10.9 shall apply:
- 7.5.1. the trade union ceases to act jointly with the other trade union;
 - 7.5.2. the agreement in 7.4.2, becomes inoperative before the period in 7.4.2 has expired, or
 - 7.5.3. clause 8.1.2 or clause 8.1.3 applies to the trade union.
- 7.6. If clause 7.5 applies, the membership and voting rights of the remaining parties to the agreement shall be determined on the basis of each

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parties' membership figures submitted under clause 7.3.4, until the next annual review under clause 11.

- 7.7. If an adjustment in voting rights takes place under clause 7.6, the voting rights of other trade unions to the Council shall be adjusted, if necessary, to preserve equality between employer and trade union voting rights.
- 7.8. Within 90 days of receiving an application for admission, the Council must decide to grant or refuse the application, and must advise the applicant thereof within 30 days of reaching such a decision.

8. TERMINATION OF TRADE UNION MEMBERSHIP OF THE COUNCIL

- 8.1. The membership of a trade union to the Council shall terminate, if:
- 8.1.1. the trade union gives notice of its termination of membership to the Council;
 - 8.1.2. the trade union is wound up in terms of its Constitution or the Act;
 - 8.1.3. the Registrar cancels the trade union's registration;
 - 8.1.4. the trade union no longer complies with the membership threshold requirements of this Constitution; or
 - 8.1.5. a previously admitted trade union, which is now acting jointly with another trade union as a single trade union to the Council, ceases to act jointly with the other trade union, and does not independently meet the membership threshold requirements of this Constitution.
- 8.2. The Council may also terminate the membership of an admitted trade union if the trade union's contributions to the Council are more than three months in arrears.

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- 8.3. Termination of a trade union's membership to the Council under clause 8.2 may be initiated by:
- 8.3.1. the General Secretary following the annual review of membership figures as set out in clause 11, or
 - 8.3.2. any party to the Council.
- 8.4. If the termination of a trade union's membership as a party to the Council is initiated under clause 8.3, the Council must consider and decide if it should be terminated.
- 8.5. Before the Council terminates the membership of an admitted trade union in terms of clause 8.2 the trade union must be afforded a reasonable opportunity to submit representations to the Council as to why its membership should not be terminated.
- 8.6. If the membership of a trade union is terminated for any reason in clause 8.1, other than clause 8.1.1, or for any reason in clause 8.2 and such trade union disputes termination, it may refer the dispute for arbitration in terms of clause 5 of the Council's Dispute Procedure.

9. TRADE UNIONS ACTING JOINTLY

Admitted trade unions acting jointly

- 9.1. When two or more admitted trade unions act jointly, they must submit the information referred to in clause 7.4.2 to the General Secretary.
- 9.2. Once the General Secretary receives the required information, he/she must inform the Council at its next meeting that the trade unions are acting jointly as one trade union to the Council.

The Council must recognise the trade unions acting jointly as a trade union to Council with effect from the Council meeting in clause 9.2.

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Admitted and non-admitted trade unions acting jointly

- 9.3. When an admitted trade union acts jointly with a non-admitted trade union, the admitted trade union must submit to the General Secretary—
- 9.4.1 the information referred to in clause 7.3 in respect of the non-admitted trade union, and
 - 9.4.2 the information referred to in clause 7.4.2.

10 CHANGES IN THE COMPOSITION OF TRADE UNIONS TO THE COUNCIL

Amalgamation of admitted trade unions

- 10.1 When an admitted trade union amalgamates with another admitted trade union in terms of the Act, the amalgamated trade union must, within one month of registration by the Registrar, notify the General Secretary of such amalgamation and submit to him/her the information referred to in clauses 7.3.1 to 7.3.3.
- 10.2 Once the General Secretary receives the required information, he/she must inform the Council at its next Annual General Meeting of the establishment of the newly amalgamated trade union.
- 10.3 The Council must recognise the amalgamated trade union as a trade union to Council with effect from the Council meeting in clause 10.2.
- 10.4 The voting weight of an amalgamated trade union shall be the combined voting weight of each of the constituent trade unions, as determined in terms of clause 13.2 below.

Amalgamation of an admitted trade union with non-admitted trade union

- 10.5 If an admitted trade union amalgamates with a non- admitted trade union in terms of the Act, the amalgamated trade union must, within one

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month of registration by the Registrar, notify the General Secretary of such amalgamation and submit to him/her the information referred to in clause 7.3 in respect of the previously non-admitted trade union.

- 10.6 Once the General Secretary receives the required information, he/she must inform the Council at its next Annual General Meeting of the establishment of the amalgamated trade union.
- 10.7 If a trade union acts jointly with another trade as a trade union to the Council and the admitted trade union amalgamates with a trade union which is not admitted to the Council, the newly amalgamated trade union will be recognised as the trade union acting jointly in the place of the admitted trade union.
- 10.8 If a non-admitted trade union of a trade union acting jointly amalgamates with another non-admitted trade union, the amalgamated trade union will be recognised as a constituent trade union of the trade union acting jointly with effect from the next Annual General Meeting.

Change in the composition of a trade union acting jointly with another union

- 10.9 If any of the events in clauses 7.5.1 to 7.5.3 occur, the remaining trade union acting jointly must, within one month of such change, notify the General Secretary of such change and the provisions of clause 7.6 shall apply.

Change of name of admitted trade union

- 10.10 Within one month of registration by the Registrar of the change of its name, an admitted trade union must notify the General Secretary of such change.
- 10.11 Once the General Secretary receives the notification, he/she must inform the Council, at its next Annual General Meeting, of the change of name of the admitted trade union.

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10.12 The Council must note the name change of the admitted trade union.

Record of admitted trade unions to Council

10.13 The General Secretary must maintain a register of admitted trade unions and, in respect of trade unions acting jointly as a party, the names of the trade unions acting jointly.

11 ANNUAL REVIEW OF MEMBERSHIP FIGURES

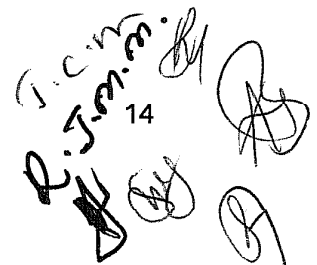
11.1 The General Secretary to the Council must review the annual membership figures, as at 31 December of the previous year, of all trade unions admitted to the Council. This review must take place as soon as possible after 1 April of each year. The General Secretary must report this decision to the Council by no later than 14 May of each year, or such later date as the Council may decide.

11.2 For the purpose of the review in clause 11.1–

11.2.1 the audited membership figures of each trade union with regard to its members that fall within the registered scope of the Council as referred to in section 100(a) of the Act, must be submitted to the General Secretary of the Council by 31 March each year;

11.2.2 the General Secretary of the Council must afford a trade union which has not submitted its audited membership figures by 31 March of a specific year, the opportunity to submit such figures within 30 days;

11.2.3 The General Secretary must, after the 30 day period in clause 11.2.2 has elapsed,

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11.2.3.1 suspend the participation of such trade union in the proceedings of the Council until its audited membership figures have been received or until the trade union's membership of the Council terminates in terms of clause 11.3, whichever occurs first;

11.2.3.2 adjust the voting weight of the remaining trade unions to the Council on the basis of their membership figures alone, in accordance with clause 13.1.

11.2.4 If the relevant trade union provides the audited membership figures during the period of suspension, and provided that such figures comply with the requirements of this Constitution, the voting weights of the trade union parties shall be adjusted in accordance with clause 13.1;

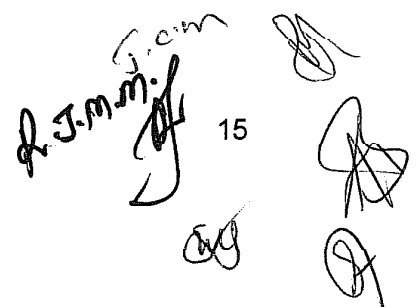
11.2.5 The General Secretary shall inform all the parties to Council if any of the events referred to in clauses 11.2.2 to 11.2.4 occur.

11.3 If the audited membership figures of the trade union are not received by the Council within three months of the date of suspension, referred to in clause 11.2.3, admission of the trade union to the Council will automatically terminate, and the General Secretary must inform that party and all the remaining parties to Council accordingly.

11.4 The General Secretary may request:

11.4.1 the employer to provide figures of the number of employees for whom it deducts membership dues of any trade union by means of stop orders, which the employer must provide, and

11.4.2 a trade union to provide audited figures of the members who are in good standing in accordance with guidelines on membership audits issued by the Council from time to time.

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12 APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

- 12.1 The employer shall be represented in the Council by authorised representatives appointed by each of the executing authorities representing the employers that fall within the jurisdiction of the Council, subject to the total number of authorised employer representatives being equal to the number of trade union representatives as determined in clause 12.2.
- 12.2 The trade unions in the Council may each be represented by two representatives for the first 10 000 members, then one additional representative for every additional 20 000 members or part thereof up to a maximum of 5 representatives.
- 12.3 A trade union may appoint any person to represent it in the Council up to the number designated to it in terms of this clause. A trade union may change such representative at any time. The number of representatives accorded to each trade union will remain the same from one annual review of the trade union's membership figures, under clause 11, to the next annual review.
- 12.4 The employer and trade unions may appoint a number of alternate representatives, not exceeding the number of representatives determined in clause 12, to act as representatives in the absence of appointed representatives.
- 12.5 At meetings of the Council, each trade union shall be entitled to one observer and the employer would be entitled to an equivalent number.

13 DETERMINATION OF VOTING WEIGHTS OF TRADE UNIONS

- 13.1 Notwithstanding sub-clauses 12.1 and 12.2 the voting weight of each admitted trade union in the Council shall be equal to the number of

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members of such a trade union who are employees within the scope of the Council as on 31 December of the previous year, as determined in clause 11, expressed as a percentage of the aggregate number of trade union members of all the trade union parties to the Council who are employees within the scope of the Council on that date.

- 13.2 The General Secretary shall determine the voting weight of each admitted trade union in accordance with clause 13.1, which shall apply from one annual general meeting to the next annual general meeting.
- 13.3 The General Secretary shall, as soon as practicable after 31 March of each year, but by no later than 14 May of each year, or such later date as the Council may decide, inform the Council and the admitted trade unions of the voting weights of the admitted trade unions in the Council.
- 13.4 Any party that disputes the determination of voting weights by the General Secretary in accordance with the provisions of clause 13, may refer such a dispute for conciliation and, if the dispute remains unresolved, for arbitration under clause 5 of the Dispute Procedure. If the dispute is referred to arbitration, the arbitrator's award shall replace the General Secretary's determination.
- 13.5 The employer's vote shall always be equal to that of the admitted trade unions jointly, irrespective of the number of representatives of the employer and the number of representatives of the trade unions respectively attending any meeting of the Council.
- 13.6 The voting weight of trade unions acting jointly shall be determined on the same basis as the voting weight of an individual trade union, with the necessary changes required by the context.

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14 CHAIRPERSON AND VICE-CHAIRPERSONS

Chairperson

- 14.1 The Chairperson and Vice-Chairpersons shall be elected during the Annual General Meeting of the Council in terms of the procedure provided for in this clause.
- 14.2 The outgoing Chairperson shall preside over the Annual General Meeting of the Council and shall call for nominations for a Chairperson for the forthcoming term of office (when applicable) at the conclusion of such a meeting.
- 14.3 A person other than a representative or alternate of the parties to the Council, who has consented to his or her nomination, may also be nominated as Chairperson.
- 14.4 A person to be nominated shall be duly proposed and seconded.
- 14.5 The person receiving the highest percentage of the total votes shall be declared the duly elected Chairperson, subject to clauses 14.6 and 14.7. In the event of all candidates receiving an equal number of votes each the General Secretary shall draw lots in accordance with the provisions of clause 14.6 to determine the duly elected Chairperson.
- 14.6 The General Secretary shall, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place such papers in a suitable container and shall draw one of the papers from the container.
- 14.7 The candidate whose name is so drawn shall be deemed to have been duly elected. The Chairperson shall hold office for a term of 24 months unless removed by a decision of the Council. Any past Chairperson may be re-elected.
- 14.8 The procedure for the election of the Vice-Chairpersons shall be elected by the employer from its constituency and the other shall be elected by

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the admitted trade unions from their constituency prior to the Annual General Meeting and shall be presented at the Annual General Meeting.

14.9 The Chairperson must –

14.9.1 preside and enforce order over all meetings at which the Chairperson is present, which may include making rulings on the procedure to be followed in accordance with normal meeting procedure;

14.9.2 sign the minutes of a meeting after confirmation thereof by the Council;

14.9.3 endorse accounts for payment and financial statements after approval by the Council;

14.9.4 perform such other duties as by usage and custom pertain to the office of Chairperson.

14.10 Whenever the Chairperson is not available, the Vice-Chairperson shall act as Chairperson.

14.11 Whenever the Chairperson or the two Vice-Chairpersons are absent or unable to act at a meeting, the representatives present shall elect from their number someone to act as Chairperson at that meeting.

14.12 Subject to clauses 14.7 and 14.13, the Chairperson shall hold office for a term of 24 months and the Vice-Chairperson shall be elected annually in accordance with the procedure in clause 14.8.

14.13 The term of office of the Chairperson or the Vice-Chairpersons may be terminated by written notice of either such Chairperson, or the Council consequent to a Council decision to that effect.

14.14 Where applicable, the Council shall from time to time determine an honorarium payable to the Chairperson of the Council provided that, should it become necessary or desirable to retain the services of the Chairperson on a full time basis, the Council shall determine the salary and other conditions of employment of the Chairperson by agreement.

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- 14.15 Clauses 14.1 and 14.9 with the necessary changes required by the context apply in respect of the election of the two Vice-Chairpersons of the Council, one of whom must be elected by the Employer and the other by the admitted trade unions
- 14.16 When the Chairperson is not available, the Vice-Chairpersons must alternately act as Chairperson and must exercise the powers and perform the duties of the Chairperson in accordance with the provisions of Clause 14, with the necessary changes required by the context.

Provisions applicable to both Chairperson and Vice-Chairpersons

- 14.17 The Chairperson or the Vice-Chairpersons may not vote on any matter.
- 14.18 The Chairperson and Vice-Chairpersons of the Council are not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith while performing their functions for or on behalf of the Council

15. GENERAL SECRETARY AND OTHER PERSONNEL

Appointment of the General Secretary


- 15.1 The Council shall appoint a part-time or full-time General Secretary or may request the employer that an employee be placed at its disposal, or be directed, to act as General Secretary.
- 15.2 The General Secretary shall –
- 15.2.1 conduct all correspondence of the Council;
 - 15.2.2 keep originals of correspondence received and copies of correspondence despatched;

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- 15.2.3 attend the meetings of the Council and record the minutes of the meetings;
 - 15.2.4 keep books of account in accordance with generally accepted accounting practices and the instructions of the Council;
 - 15.2.5 bank all monies received on behalf of the Council within three (3) working days of receipt thereof;
 - 15.2.6 submit statements of the financial position of the Council whenever required to do so by the Council and in accordance with the provisions of the Act and this Constitution;
 - 15.2.7 submit the books of account of the Council to a public auditor once every calendar year for auditing;
 - 15.2.8 ensure that the Council complies with the provisions of sections 53 and 54 of the Labour Relations Act;
 - 15.2.9 determine the voting weights of trade union parties in accordance with clause 13.1;
 - 15.2.10 perform such other duties as the Council or Chairperson may direct or which a General Secretary of a bargaining council is required by the Act to perform, and
 - 15.2.11 appoints an acting General Secretary to act when he or she is not able to fulfil his or her functions, unless the Executive Committee has made such appointment in terms of clause 17.1.12.
- 15.3 The General Secretary may in all instances, with prior approval of the Council or of the Executive Committee, —
- 15.3.1 appoint such part-time or full-time personnel as he/she considers necessary, subject to the budget, staff structure, salary structure, conditions of service and policies as adopted by the Council;

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- 15.3.2 request that an employee of the employer be placed at the disposal of the Council or that such employee be directed to perform duties necessary for the administration of the Council;
 - 15.3.3 determine the salary and other conditions of employment of such personnel, subject to the budget allocated for such use and in accordance with the salary scales and other conditions of employment of personnel of the Council determined by the Council from time to time, and
 - 15.3.4 terminate an employee's service on one month's notice for any lawful reason, after following due process, provided that the services of personnel may not terminate without notice for serious neglect of duty or misconduct.
- 15.4 The General Secretary shall keep in safe custody at the offices of the Council –
- 15.4.1 the approved minutes of every meeting of the Council, duly signed by the General Secretary and by the person who presided at such meeting;
 - 15.4.2 the original signed agreements of the Council, and
 - 15.4.3 the income and expenditure statement and balance sheet referred to in clause 23.7 and all records in relation thereto.
- 15.5 Subject to the obligations imposed on a General Secretary of the bargaining council by the LRA, and provided that the General Secretary remains responsible for the performance of the General Secretary's duties and functions, the duties of the General Secretary may be performed by any other personnel of the Council acting under the directions of the General Secretary.

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- 15.6 The General Secretary may at any time prior to a meeting of the Council, request the Chairperson to place on the agenda of such meeting, any matter concerning the administration or functioning of the Council.
- 15.7 The Council must determine the salary and other conditions of employment of the General Secretary.
- 15.8 If applicable, the employment of the General Secretary may be terminated on one month's written notice by the General Secretary or the Council, provided that the General Secretary's services may be terminated without notice for serious neglect of duty or misconduct. A decision to terminate the General Secretary's services must be taken by the Council.

16 COMMITTEES AND CHAMBERS

- 16.1 The Council may from time to time establish, amalgamate or dissolve Committees or Chambers and on such conditions as it may determine, delegate any of its functions to any such Committee or Chamber. However, the Council may not delegate the powers and duties contemplated in clauses 5.3, 5.4, 5.10, 7.5, 18.4, 24 and 25 or the power of the Council to delegate.
- 16.2 The Council, by delegating any function, shall not divest any of its powers nor shall it be relieved of any function or duty that it may have delegated unless it expressly states the contrary.
- 16.3 Decisions of a Committee or Chamber, excluding decisions on short-term operational issues referred to in clause 16.20 read with the changes required by the context, shall be reported to the Council for consideration.
- 16.4 Every Committee or Chamber established in terms of clause 16.1 shall consist of an equal number of employer and trade unions collectively, as

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well as the Chairperson of the Council or a person designated by the Council to act as Chairperson of such committee.

- 16.5 In every Committee or Chamber established under this clause, at least half of the employer representatives on that body and employee representatives holding at least 50 % (fifty percent) of the voting weight of the trade unions represented on that body must be present before a meeting may begin or continue.
- 16.6 For the purposes of identifying representatives who form a quorum under clause 16.5, any Vice-Chairpersons, who are present and not acting as a Chairperson at that meeting, shall be deemed to be a representative of the employer or trade union that elected them.
- 16.7 Decisions of a Committee or Chamber established under clause 16.1 shall be taken by consensus. For the purposes of this clause, a consensus exists if no less than two-thirds of the employer representatives and trade union, who hold two-thirds of the trade unions' voting weight of the trade unions represented at the meeting, vote in favour of a decision.
- 16.8 Unless otherwise specified in this Constitution or unless the terms of reference of a Committee state otherwise, decisions of a Committee or Chamber shall be taken in the same manner as the Council, with the necessary changes required by the context provided the decisions of the Committees shall be taken by consensus.
- 16.9 Secretarial or other services shall be provided to a Committee established under clause 16 by the General Secretary or other personnel of the Council.

Health and Social Development Chambers

Establishment of Health and Social Development Chambers

- 16.10 Subject to the provisions of clause 16.1 of this constitution, the Council shall establish Health and Social Development Chambers that

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will be bargaining and consultative forums in the province and at national level in the Sector for which they are established provided that:

- 16.10.1 A Health and Social Development Chamber established in terms of this clause is not a juristic person;
 - 16.10.2 A Health and Social Development Chamber will function in a specific province and at national level and deal with matters allocated to it in terms of this Constitution or by a decision of the Council, subject to the Council granting any required delegation of a power under this Constitution.
- 16.11 Any party to the Council may request the Council to consider the establishment of a further Chamber within the scope of the Council in terms of this Constitution.
- 16.12 In considering a request for the establishment of a Chamber, the Council must take into account—
- 16.12.1 whether the State as employer in such a Chamber would have the requisite authority to deal with matters falling under that Chamber;
 - 16.12.2 representations made by parties to the Council; and
 - 16.12.3 the need to negotiate separately the issues over which such Chamber might have sole jurisdiction, as well as the effect that such an arrangement might have on the Council and any existing Chambers.
- 16.13 The Council must consider the request and, if applicable, take a decision on whether or not a Chamber should be established in terms of clause 16.10 of this Constitution.

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Objectives and functions of a Chamber

16.14 The objectives of a Health and Social Development Chamber are to:

16.14.1 maintain and promote labour peace within the relevant province and, or alternatively, sector;

16.14.2 prevent and resolve labour disputes;

16.14.3 promote collective bargaining under the powers delegated to it by the Council or this Constitution;

16.14.4 conduct research, analyse and survey education, subject to approval by the Council; and

16.14.5 promote training and build capacity.

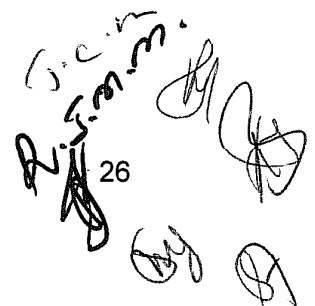
16.15 The functions of a Chamber are:

16.15.1 to deal with such matters and conclude agreements, referred or delegated to a Chamber by the Council;

16.15.2 to conclude agreements on matters exclusively applicable to employees employed in the area or sector for which the Chamber was established, falling within the scope, power and functions of the executive authority of the relevant organisational component of an employer represented in that Chamber, provided that such agreements may not conflict with any collective agreement concluded in the Council, and may not apply to more than one province;

16.15.3 to deal with matters that have been delegated to it by Council under clause 16.10.2

16.15.4 to refer matters which fall outside its scope, and which matters should be dealt with by the Council or the PSCBC, to the General Secretary; and



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Collective agreements of a Chamber

- 16.16 Every collective agreement reached in the Chamber under clause 16.15.1 or 16.15.2:
- 16.16.1 shall be reported to the Council for ratification
 - 16.16.2 may be varied or set aside by the Council, and
 - 16.16.3 shall not be of any force and effect until ratified by the Council under clause 16.16.1
- 16.17 In the event of a conflict between a provision in a collective agreement reached in a Chamber and a provision of a collective agreement reached at the Council, or of this Constitution, the provision of the Council agreement or this Constitution, as the case may be, shall apply to the extent there is a conflict.

Decisions of a Chamber

- 16.18. Any decision of a Chamber, excluding a decision on short-term operational issues referred to in clause 16.20, shall not be implemented for a period –
- 16.18.1 of at least 30 days from the date that the report in clause 16.3 is received by the Council, or
 - 16.18.2 determined by the Council in terms of clause 16.19.2
- 16.19 If a decision of a Chamber infringed upon the jurisdiction of the Council, the Council may vary or set aside the decision of such Chamber, within –
- 16.19.1 the 30-day period referred to in clause 16.18, or
 - 16.19.2 such longer period as the Council may, before the expiry of the 30-day period, determine, with regard to that specific decision.

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16.20 Notwithstanding the provisions of clause 16.19, a Chamber may implement on short-term operational issues, such as dates of meetings of that Chamber. The Council may issue standing orders specifying in more detail the types of issues to be considered “short-term operational issues” or those falling outside the ambit of that term. Chambers are bound by such standing orders.

Composition of Chamber and voting weight

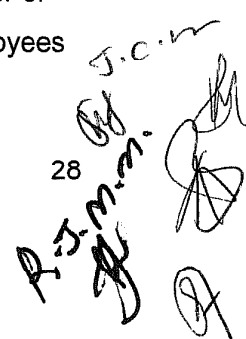
16.21 The trade unions to the Council with members employed within the jurisdiction of a Chamber shall each be represented in that Chamber by a maximum of two (2) representatives and will be entitled to have a maximum of two (2) observers.

16.22 The employer shall be represented in a Chamber by authorised representatives appointed by the executing authorities representing the employers that fall within the jurisdiction of the Chamber. The employer must be represented in the Chamber by its authorised representatives. The employer will be entitled to have a number of representatives equal to those of all the admitted trade unions participating in the Chamber.

16.23 The employer will be entitled to have a number of observers equal to its number of representatives.

16.24 Should a party’s membership of the Chamber or Council be terminated, its representatives shall vacate their seats in the Chamber.

16.25 The voting weight of each trade union to the Council that sits in a Chamber established under this Constitution shall be equal to the number of members in good standing of such a trade union who are employees within the scope of the Chamber as on 31 December of the previous year, expressed as a percentage of the aggregate number of trade union members of trade unions to the Council who are employees within the scope of the Chamber on that date.

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16.26 In determining the voting weights of trade unions represented in a Chamber in accordance with clause 16.25, clauses 13.2 to 13.4 shall apply, with the changes required by the context.

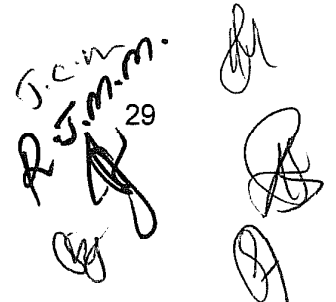
Meetings of Chambers

16.27 Meetings of Chambers will be held bi-monthly, provided that requests for special meetings of Chambers will be made through the General Secretary of Council

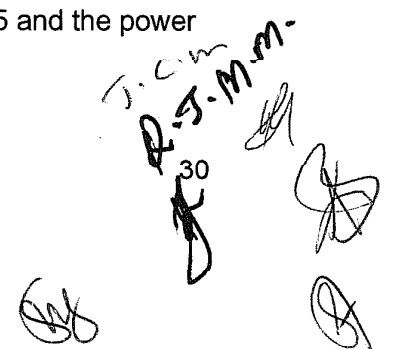
17. EXECUTIVE COMMITTEE

17.1 The Council must appoint an Executive Committee at the Annual General Meeting, which will be accountable to the Council and will have the following functions:

- 17.1.1 to exercise and perform the powers, functions and duties of the Council relating to the supervision and control of the day-to-day management and administration of the Council;
- 17.1.2 to determine standing orders for all Committees, including the Executive Committee, sub-Committees and ad hoc sub-Committees of the Council;
- 17.1.3 to decide on the manner in which matters referred to the Council shall be dealt with and, if necessary, to refer matters to another Committee or sub-Committee for advice or recommendation(s) or to any other Bargaining Council;
- 17.1.4 to appoint sub-Committees and ad hoc sub-Committees of the Executive Committee;

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- 17.1.5 to consider recommendations submitted to it by other Committees, sub-Committees and ad hoc sub-Committees;
- 17.1.6 to identify research to be undertaken;
- 17.1.7 to consider all proposals submitted by parties when preparing the agenda and supporting documentation for meetings of Council and the Annual General Meeting;
- 17.1.8 to deal with all matters relating to staffing;
- 17.1.9 to investigate and report to the Council on any matter connected with the registered scope of the Council;
- 17.1.10 to do anything necessary to give effect to decisions of the Council;
- 17.1.11 to monitor and enforce collective agreements concluded in the Council;
- 17.1.12 to appoint an acting General Secretary to act when the General Secretary is not able to fulfil his or her functions, or review the appointment of an acting Secretary that was made by the General Secretary in terms of clause 15.2.11 and appoint a different person to act as a General Secretary
- 17.1.13 to facilitate bilateral meetings between the various employer structures, admitted trade unions and Sectoral Chambers;
- 17.1.14 to make recommendations to the Chairperson of the Council to discuss urgent matters that need resolution, and
- 17.1.15 to exercise and perform any power and duty that is conferred or imposed on the Executive Committee in terms of this Constitution, or that is delegated by the Council to the Executive Committee, provided that the Council may not delegate to the Executive Committee the powers, and duties contemplated in clauses 7.8, 18.4, 24, and 25 and the power of the Council to delegate.

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- 17.2 The Executive Committee shall consist of –
- 17.2.1 the Chairperson;
 - 17.2.2 the two Vice-Chairpersons;
 - 17.2.3 the General Secretary;
 - 17.2.4 three employer representatives and an equivalent number of alternates;
 - 17.2.5 three trade union representatives and an equivalent number of alternates.
- 17.3 At the Annual General Meeting, the Council must appoint three employer and three employee members of the Executive Committee and an alternate for each of them.
- 17.4 The members and their alternates must be representatives in the Council.
- 17.5 Half of the members of the Executive Committee, as well as their alternates, must be appointed by the employer representatives in the Council, whilst the other half of the members, as well as their alternates must be appointed by the trade unions in the Council.
- 17.6 A member of the Executive Committee will hold office for twelve months unless withdrawn by the party who appointed the member, and will be eligible for re-appointment at the end of that term.
- 17.7 A member of the Executive Committee whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a member of the Executive Committee until the member's successor assumes office.
- 17.8 A member of the Executive Committee-
- 17.8.1 may resign from the Committee at any time after having given at least 21 day's notice in writing to the General Secretary;
 - 17.8.2 must vacate office immediately-

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17.8.2.1 in the case of resignation, when the resignation takes effect; or

17.8.2.2 upon ceasing to be a representative of a party to the Council.

17.9 If the seat of a member of the Executive Committee becomes vacant, the Council must fill the vacancy from the number of candidates nominated for that purpose by-

17.9.1 the employer representatives in the Council, if that seat had been held by a member representing the employers; or

17.9.2 the trade unions in the Council, if that seat had been held by a member representing employees.

17.10 A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.

17.11 The Executive Committee must hold a meeting at least once every 3 months.

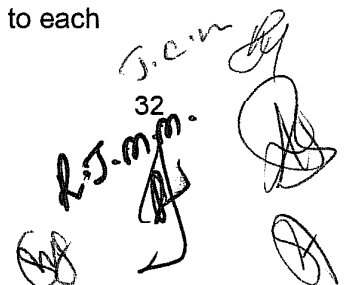
17.12 The General Secretary shall attend and participate in meetings of the Executive Committee but shall not participate in the decision making of the Executive Committee. The absence of the General Secretary at a meeting of the Executive Committee shall not affect the constitutionality of such meeting.

17.13 A special meeting of the Executive Committee-

17.13.1 may be called at any time by the Chairperson with a view to disposing of urgent business, and

17.13.2 must be called by the Chairperson within 10 days of receiving a request from an employer or trade union party to dispose of urgent business, specifying the nature of the urgent business in question.

17.14 The General Secretary must prepare a written notice of every Executive Committee meeting showing the date, time and venue of the meeting and the business to be transacted. This notice must be sent to each

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member of the Executive Committee at least 7 days before the date of the meeting. However, the Chairperson may authorise shorter notice for a special meeting.

- 17.15 In the case of matters requiring urgent resolution or, if for any reason it is impracticable to meet as contemplated elsewhere in this clause, the meeting may be conducted and decisions may be taken using conference telephone facilities, provided that the required quorum is met.
- 17.16 At least half of the members of the Executive Committee representing employers and half of the members of that Committee representing employees form a quorum and must be present before a meeting may begin or continue.
- 17.17 For the purposes of identifying representatives who form a quorum under clause 17.16, any Vice-Chairperson, who is present and not acting as a chairperson at that meeting, shall be deemed to be a representative of the employer or trade union that elected that Vice-Chairperson.
- 17.18 Decisions of the Executive Committee shall be taken by consensus.
- 17.19 For the purposes of clause 17.18, consensus exists if no less than two-thirds of the employer representatives and two-thirds of the trade unions at the meeting vote in favour of a decision.
- 17.20 An alternate for each representative may attend meetings of the Executive Committee as an observer, but such alternate has no speaking or voting rights.
- 17.21 An alternate wishing to attend a meeting under the provisions of clause 17.20 shall notify the General Secretary at least 24 hours in advance of the meeting, failing which the General Secretary need not serve a copy of the documentation relating to the meeting upon the alternate before the meeting. However, the alternate shall still be entitled to attend the meeting.

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18 MEETINGS OF THE COUNCIL

- 18.1 The Council shall meet at least four times per annum in Pretoria, unless otherwise agreed, at such venue, date and time as may be determined by the Chairperson after consultation with the parties to the Council, provided that one such meeting shall be the annual general meeting.
- 18.2 Notwithstanding clause 18.1, any party to the Council may request the Chairperson in writing to convene a meeting of the Council, which meeting shall be convened within 21 days of the date of the request, after consultation with the General Secretary, provided that no scheduled Council meeting falls within that period.

Annual General Meeting

- 18.3 Written notice of a meeting called in terms of clause 18.1 or 18.2 showing the business to be transacted, shall be given to the employer and trade unions by the General Secretary at least twenty-one (21) days before the date of such meeting
- 18.4 The Council shall hold an annual general meeting during the month of June each year.
- 18.5 The following matters shall be dealt with at the annual general meeting:
- 18.5.1 the election of a Chairperson, should it be necessary in terms of this Constitution;
 - 18.5.2 the appointment of auditors, should it be necessary in terms of this Constitution;
 - 18.5.3 the financial statements of the Council;

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- 18.5.4 the report of the auditor in respect of the financial statements;
- 18.5.5 the annual report of the Council;
- 18.5.6 the approval of the budget of the Council;
- 18.5.7 the levies to be imposed on the parties to the Council;
- 18.5.8 a report as to the number of votes held by the employer party to the Council and the voting weight of the respective trade unions to the Council, as determined by the General Secretary of the Council; and
- 18.5.9 the appointment of the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the Council.

Special Meetings of Council

- 18.6 The Chairperson may on his or her own initiative, or at the request of a party to the Council must, call a meeting of the Council to deal with an urgent matter, provided that at least half the employer representatives and trade unions, which hold at least half the trade unions' voting weight in the Council, consent thereto.
- 18.7 In the case of matters requiring urgent resolution or, if for any reason it is impractical to meet as contemplated elsewhere in this clause, the meeting may be conducted and decisions may be taken using conference telephone facilities, provided that the required quorum is met.

Meeting procedure

- 18.8 It shall be deemed that due notice has been given to the parties, if notice of the meeting was given by –
 - 18.8.1 effecting personal service of the notice on the party concerned;

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- 18.8.2 the posting of a registered letter containing the notice to the office of the party concerned, or
- 18.8.3 telefaxing the notice to the office of the party concerned provided that the telefax receipt shows that the notice has been transmitted to the addressee.

Quorum

- 18.9 At least half the employer representatives plus the number of trade unions which represent employees affected by the subject matter concerned, and which hold at least half of the trade union voting weight in the Council, shall constitute a quorum at any duly constituted meeting of the Council.
- 18.10 A person who is not a representative or alternate may be allowed to address the Council subject to a decision to this effect being taken by the Council.
- 18.11 If, within thirty (30) minutes of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned to such other time and place as determined by the Chairperson.
- 18.12 The Chairperson shall adjourn the meeting subject to consultation with the parties concerned, on condition that the General Secretary notify the relevant parties accordingly, and at such a reconvened meeting, the parties present shall form a quorum.

Minutes

- 18.13 Copies of the minutes of the meeting held immediately prior to the relevant meeting, shall be made available to the parties concerned at least seven (7) days prior to the said meeting, and shall, after confirmation by the meeting, be signed by the General Secretary and Chairperson.

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- 18.14 The General Secretary shall forward copies of the minutes of all meetings to all parties concerned within a period of thirty (30) days subsequent to a meeting, unless the Council determines a shorter period at such meeting.
- 18.15 Every meeting of the Council shall be conducted in private unless the Council otherwise decides.

19. DECISIONS OF THE COUNCIL

- 19.1 Subject to the Act and this Constitution, all matters that form the subject of a proposal shall be decided by more than half the employer representatives and the trade unions who hold more than half the trade unions' voting weight of the trade unions represented at that meeting.
- 19.2 Voting in the Council shall be by show of hands by the chief spokesperson of each party who shall hold the votes of the party, unless a party requests a secret ballot.
- 19.3 The General Secretary shall act as electoral officer.
- 19.4 The parties having the right to vote at a meeting shall decide any procedural matters that are not regulated in this Constitution by way of a majority of votes of the representatives on the employer side and the trade union representatives who hold a majority of the trade unions' voting weight of the trade unions represented at that meeting.
- 19.5 No decisions taken at a meeting of the Council shall be invalidated by the absence of any party concerned if it has been properly notified of such meeting.
- 19.6 If any issue which the General Secretary considers to be extremely urgent arises between meetings of the Council, and it is possible to answer the question by a simple 'Yes' or 'No', the General Secretary in consultation with the Chairperson may cause a vote of the

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representatives on the Council to be taken by telefax. A proposal subjected to a telefax vote may be adopted only if supported by at least two-thirds of the employer representatives and by trade unions holding two-thirds of the unions' voting weight in the Council respectively. Any decision made by a telefax vote of the Council must be ratified in a Council meeting.

20 PROCEDURE FOR NEGOTIATING COLLECTIVE AGREEMENTS

- 20.1 Any party to the Council may submit proposals for the conclusion of a collective agreement in the Council. The party submitting a proposal must submit it to the General Secretary of the Council, together with a motivation for the proposal, and must attach any relevant documentation to the proposal.
- 20.2 Within seven (7) days of the submission of the proposals the General Secretary must serve copies of the proposals on the parties to the Council.
- 20.3 The Executive Committee must set the agenda of the next meeting of the Council. Should the Executive Committee be of the view that some of the proposals submitted to the Council should not be included on the agenda; the matter will be referred to the Council for a decision.
- 20.4 The Council must attempt to agree on a process for negotiating the proposals, which may include;
- 20.4.1 the introduction of counter proposals;
 - 20.4.2 the establishment of a negotiating Committee;
 - 20.4.3 the appointment of a conciliator, if necessary, to facilitate the negotiations and chair the meetings, and
 - 20.4.4 the time table for negotiations.

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- 20.5 If the Council agrees to conciliation in terms of clause 20.4.3, but within a period of five (5) working days from the decision, fails to agree to appoint one or more facilitators, or which facilitator(s) to appoint, the General Secretary must, at his or her own discretion, decide how many facilitators to appoint and appoint the facilitator(s), taking into consideration the views of the parties.
- 20.6 If the Council does not meet as contemplated by clause 20.3 or at the meeting so held does not agree upon a negotiating process contemplated under clause 20.3, the parties must immediately at the start of the next quarter or, if the General Secretary has called a special meeting of the Council in terms of clause 18.2, within two (2) working days from the date of that meeting, commence negotiations.
- 20.7 If the parties do not conclude a collective agreement during a period of twenty one (21) working days from –
- 20.7.1 the start of the next quarter, or
- 20.7.2 if the General Secretary had called a special meeting of the Council in terms of clause 18.2, from the date of that meeting, or
- 20.7.3 on the expiry of such longer period as agreed between the parties, whichever event occurs first, any party may refer the matter for conciliation in terms of clauses 2.7 and 2.8 of the Dispute Procedure in Schedule 2.
- 20.8 If the matter is not resolved during a conciliation process under clause 20.7.3, parties to the Council may exercise their right in terms of the Act.
- 20.9 If the dispute is tabled in writing at a Council or negotiating Committee meeting and the meeting is still quorate when the dispute is tabled, the referral of the dispute shall be deemed to have been properly served on all the parties to the dispute.
- 20.10 If a dispute concerning a refusal to bargain exists, the conciliator appointed in terms of the provisions of this clause

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may issue an award as if acting under the provisions of clause 2.14 of the Dispute Procedure.

20.11 A dispute concerning whether or not the issue in dispute concerns a matter of mutual interest must be dealt with in terms of the provisions of clause 2.4 and 2.5 of the Dispute Procedure.

21 DISPUTE PROCEDURE

Disputes must be dealt with in terms of the provisions of the Dispute Procedure contained in Schedule 2 of the Constitution as well as the Rules for Conduct of the proceedings before the Council contained in Resolution 3/2006.

22 EXEMPTION PROCEDURE

22.1 In the event of an employer or employee seeking exemption from a provision in a collective agreement, an application must be submitted in writing to the Council and must at least contain the following information:

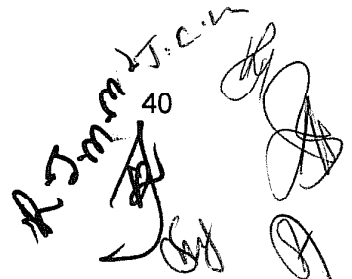
22.1.1 the identity and address, telephone and telefax details of the applicant;

22.1.2 the collective agreement and the specific provision from which exemption is requested;

22.1.3 the period of exemption requested, and

22.1.4 the reason for requesting the exemption.

22.2 If the exemption application is brought by a member of a party to the agreement, or by a party to the agreement, the party must confirm whether or not it supports the application and, if it does support it, must

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provide reasons for supporting the application despite being a party to the agreement in question.

- 22.3 The General Secretary shall table the application at the first meeting of the Executive Committee after receipt of the application provided that the application is received no less than 30 days before the meeting.
- 22.4 The Executive Committee shall consider the application and decide whether or not to grant or refuse the application in its original, or in a modified, form, provided that the Committee may defer its decision to the next meeting if it requires additional information to consider the application.
- 22.5 Where the applicant is not a member of a party to the agreement and the agreement, and in the event that the application is refused or the terms of the exemption as decided by the Executive Committee are not accepted by the applicant, the applicant may appeal against the Executive Committee's decision to an arbitrator within 30 days of receipt of the decision which must be sent to the applicant in writing by the General Secretary.
- 22.6 Until such time as an exemption is granted, unless the Executive Committee agrees otherwise, the relevant provisions of the collective agreement shall remain in force.
- 22.7 The decision of the arbitrator shall be final and binding on the applicant and the Council.
- 22.8 The arbitrator shall be appointed and shall conduct proceedings, in accordance with clause 5 of the Dispute Procedure, with the necessary changes required by the context, save that:
- 22.8.1 the applicant will be permitted to nominate a choice of arbitrator from among the Council's panel of arbitrators, whom the Secretary shall prefer in the appointment of an arbitrator, and
- 22.8.2 any party to the Council shall be entitled to present evidence and make representations in the arbitration proceedings in support of or against the appeal.

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23 FINANCIAL MATTERS OF THE COUNCIL

- 23.1 The expenses of the Council shall be met from a fund approved by the Council.
- 23.2 All monies received shall be deposited by the General Secretary to the credit of the Council within three days after receipt at a bank to be decided upon by it, provided that any surplus funds which are not for the time being required for the purpose referred to in clause 23.1 may be invested in terms of the financial policy of the Council, subject to the provisions of section 53(5) of the Act.
- 23.3 Travelling, subsistence and other expenses of representatives and observers shall be for the parties' own account unless otherwise agreed.
- 23.4 All expenses to be made from the fund of the Council shall be approved of by the Chairperson or a Vice-Chairperson and shall be paid by cheque signed by the Chairperson, or if applicable a Vice-Chairperson, and countersigned by the General Secretary, unless the procedure is amended by the Council.
- 23.5 Funds required for a petty cash account shall –
- 23.5.1 be kept safely in such a manner as the Council may determine from time to time;
- 23.5.2 be provided by the drawing of a cheque, and
- 23.5.3 must not exceed an amount determined by the Council.
- 23.6 Every six (6) months, the General Secretary must submit to the Council, statements of the income and expenditure that reflect the financial position of the Council.
- 23.7 Prior to the Annual General Meeting of each year, the General Secretary must, prepare a financial statement in respect of the financial

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year ending on 31 March of that specific year, in accordance with generally accepted accounting practices, principles and procedures. The financial statement prepared by the General Secretary must include but is not restricted to –

23.7.1 a statement showing monies received, and expenditure incurred under the following headings:

23.7.1.1 salaries and other payments to personnel;

23.7.1.2 office accommodation;

23.7.1.3 printing and stationery, and

23.7.1.4 miscellaneous expenditure;

23.7.2 a balance sheet indicating the assets and liabilities of the Council.

23.8 The financial year of the Council shall be from 1 April of a particular year to 31 March of the following year.

23.9 The statements referred to in clause 23.7 shall be countersigned by the Chairperson and shall be submitted for audit to a public accountant and auditor appointed by the Council.

23.10 Certified copies of the audited statements and of the audit report thereon shall be made available for inspection at the office of the General Secretary.






23.11 The General Secretary of Council must provide to the Registrar within 30 days of receipt of its auditor's report, certified copy of that report and of the financial statements.

24 AMENDMENT OF THE CONSTITUTION OF THE COUNCIL

24.1 The following clauses in this Constitution may not be amended by way of a decision of the Council but require the approval and ratification of the PSCBC:

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- 24.1.1 the definition of mutual interest (clause 2.15), and
- 24.1.2 the scope of the Council (clause 3).
- 24.2 Subject to the provisions of section 30 of the Act, all other clauses, with the exception of clause 19.1 in this Constitution, may be amended by way of a decision of the Council provided that two-thirds of the employer representatives on the one side, and trade unions holding two-thirds of the trade unions' voting weight on the Council, on the other, vote in favour of amending the Constitution.
- 24.3 No amendment shall be considered unless at least thirty (30) days prior notice of the proposed amendment has been given to the General Secretary, unless otherwise agreed by the Council.
- 24.4 Such notice shall be transmitted to all representatives at least two (2) weeks prior to the meeting at which it is to be considered.
- 24.5 The Council may, by unanimous vote, amend this Constitution without notice.
- 24.6 Any amendment of or addition to this Constitution shall have no force or effect until certified by the Registrar in terms of section 57(4) of the Act.
- 24.7 After an amendment of the threshold requirements in clause 7 takes effect, if the General Secretary determines under clause 11 that an admitted trade union does not meet such requirements, the trade union shall remain a party until the next annual general meeting of the Council.
- 24.8 Despite the provisions of clause 8.1.4, within three months of an amendment to the threshold requirements in clause 7 taking effect, a trade union referred to in clause 24.7 shall be entitled to submit proof, in the form of audited or verified membership figures (whichever is applicable), to the General Secretary that the trade union complies with such increased threshold requirements. If the General Secretary determines that the trade union complies with such increased threshold requirements, the trade union shall remain a party to Council.

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25. WINDING UP

The Council may only be wound up by the Public Service Coordinating Bargaining Council in accordance with the following procedures:

- 25.1 The Council may be wound up if it has been so resolved by a vote of the trade unions holding a majority of the unions' voting weight on the employee side and a majority of employer representatives, at a meeting specially called for the purpose of winding up the Council. The General Secretary of the Council shall, as soon as possible after such resolution had been taken, apply to the Labour Court for an order giving effect to the said resolution.
- 25.2 The liquidator appointed by the Labour Court in terms of section 59(3) of the Act shall call upon the last appointed General Secretary of the Council to deliver to his/her the Council's books of account showing the Council's assets and liabilities and also to hand over any unexpended funds to the Council;
- 25.3 The liquidator shall take the necessary steps to liquidate the debts of the Council from its unexpended funds and any other monies realised from any asset of the Council and if the said funds and monies are insufficient to pay all creditors after the trustee's fees and the expenses of winding up have been met, the order in which the creditors shall be paid shall be the same as that prescribed in any law for time being in force relating to the distribution of the assets of an insolvent estate, and the trustee's fees and expenses of winding up shall rank in order of preference as though he/she was a trustee of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- 25.4 For the purpose of this clause the liability of the parties to the Council shall be limited to their unpaid liabilities to the Council, if any, as at the

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date on which the resolution for winding up was passed or the date as from which the Council was unable to continue to function.

25.5 If, after all the liabilities of the Council have been discharged, any assets remain that cannot be disposed of in accordance with the constitution of the Council, the liquidator must realise those assets and pay the proceeds to the Commission for its own use.

26. STATUS OF THIS CONSTITUTION

Notwithstanding the legal status of this Constitution under the provisions of the Act 66 of 1995, it also constitutes a collective agreement binding on the parties to the Council.

27. GENERAL

The *domicilium executandi* of the Council is:

c/o The Secretary

PO Box 11467

CENTURION

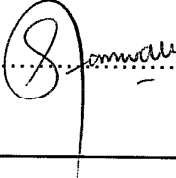
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S. cm. 46
R. S. m. 46
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Signed at CENTURION.....on behalf of the State as Employer, all signatories
being duly authorised thereto, on this 20th day of MARCH.....2007

NAMES AND SIGNATURE OF THE EMPLOYER AUTHORISED

REPRESENTATIVE: JAMES TRIGVAR CORNWALL.....

NAME OF AUTHORISED REPRESENTATIVE .....

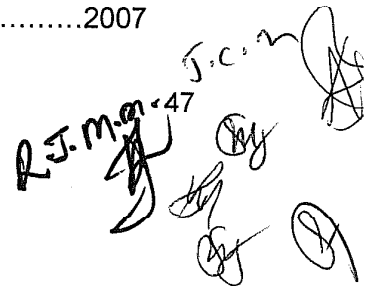
Signed at CENTURION.....on behalf of the National Education, Health and
Allied Workers Union being duly authorised thereto, on this 20th day
of MARCH.....2007

NAMES AND SIGNATURE OF NEHAWU AUTHORISED

REPRESENTATIVE: SHEREEN SAMUEL.....

NAME OF AUTHORISED REPRESENTATIVE .....

Signed at CENTURION.....on behalf of the Democratic Nursing Organisation of
South Africa being duly authorised thereto, on this.....day of.....2007

R.J. M. 47
J.C.M.


NAMES AND SIGNATURE OF DENOSA AUTHORISED

REPRESENTATIVE: Mr. Jabu C. Magagula

NAME OF AUTHORISED REPRESENTATIVE: [Signature]

Signed at Pretoria on behalf of the Public Servants Association being duly authorised thereto, on this 20 day of March 2007

NAMES AND SIGNATURE OF PSA AUTHORISED

REPRESENTATIVE: [Signature]

NAME OF AUTHORISED REPRESENTATIVE: Kim Bock

Signed at Centurion on behalf of the Health and Other Services Trade Union of South Africa being duly authorised thereto, on this 20 day of March 2007

NAMES AND SIGNATURE OF HOSPERSA AUTHORISED

REPRESENTATIVE: [Signature]

[Handwritten notes and signatures]

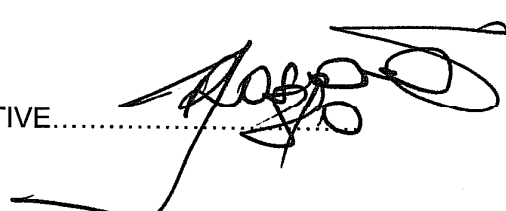
NAME OF AUTHORISED REPRESENTATIVE *J.P.T. Murray*...

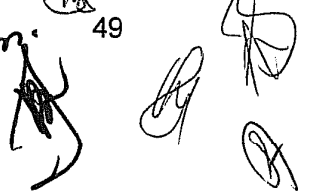
Signed at *Pretoria* on behalf of the National Union of Public Service and Allied Workers Union, being duly authorised thereto, on this *30* day of *March* 2007

NAMES AND SIGNATURE OF NUPSAW AUTHORISED REPRESENTATIVE:

Gregory J. Mosele
.....

NAME OF AUTHORISED REPRESENTATIVE.....



R.J.m.m. *J.C.M.*
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SCHEDULE 1

Clinical Photographer

Orthopaedic Shoemaker

Management Echelon (Medical and Dental Specialists)

Community Development Officer

Clinical Psychologist

Psychologist

Supplementary Diagnostic Radiographer

Biokinetician

Chiropodist

Dietician

Health Therapist

Emergency Care Practitioner

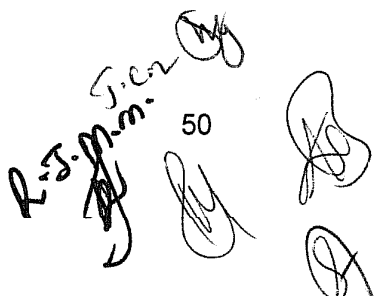
Staff Nurse

Nursing Assistant

Professional Nurse

Nutritionist

Emergency Services Officer (certain categories)

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Social Auxiliary Worker

Community Liaison Officer

Child and Youth (Care) Worker

Social Worker

Probation Officer

Medical officer

Medical/Dental Superintendent

Specialist

Dentist

Pharmacist

Forensic Analyst

Medical Physicist

Air Pollution Control officer

Medical Natural Scientist

Medicine Control Officer

Radiation Control officer

Radiation Scientist

Medical Orthotist and Prosthetist

Medical Technologist

Clinical Technologist

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Constitution of the Public Health and Social Development Sectoral Bargaining Council

Medical Technical Officer

Industrial Technician

Environmental Health Officer

Dental Technician

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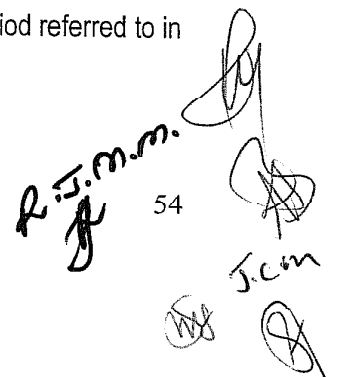
SCHEDULE 2

DISPUTE PROCEDURE FOR THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL

1. **APPLICATION**
 - 1.1 This procedure applies to all disputes, which arise within the registered scope of the Council, including disputes between parties and non-parties to the Council.
 - 1.2 In the event of there being a dispute about:
 - 1.2.1 The application or interpretation of any collective agreement concluded in the Council
 - 1.2.2 The application or interpretation of the constitution of the Council the dispute procedure provided for in this agreement shall apply.
 - 1.3 Jurisdictional disputes between the Council and other bargaining councils must be referred, in writing, to the CCMA for conciliation and arbitration.
 - 1.4 Any dispute over a matter of mutual interest that arises in a provincial chamber must be referred to the Council within seven (7) days after the dispute arose for resolution in terms of the provisions of this Constitution.
2. **MATTERS OF MUTUAL INTEREST**
 - 2.1 Any party to the Council may submit proposals for the conclusion of a collective agreement in the Council. These proposals must be submitted to the General Secretary with a motivation for the proposal and attach any relevant documentation.
 - 2.2 Within seven (7) days of the submission of the proposals the General Secretary must serve copies of the proposals on the parties to the Council.
 - 2.3 The Executive Committee must set the agenda of the next meeting of the Council. Should the Executive Committee be of the view that some of the proposals submitted to the Council should not be included on the agenda, the matter will be referred to the Council for a decision. The Council will decide whether these proposals must be included on the agenda, or whether to refer them to the relevant forum.

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- 2.4 If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion of an item on the agenda of the Council, that party may refer the matter in writing in terms of the Dispute Procedure of the Council.
- 2.5 At the first meeting of the Council, the Council must try to agree on a negotiation process, which may include the following:
- a) The submission of counter proposals;
 - b) The establishment of a negotiating committee;
 - c) The appointment of a *conciliator*, if necessary, to facilitate the negotiations and chair the meetings; and
 - d) The timetable for negotiations.
- 2.6 If the parties do not conclude a collective agreement by the expiry of thirty (30) days after the matter was first included on the agenda of the Council, which period may be extended by agreement, any party may declare a dispute.
- 2.7 Subject to clause 2.6, if a dispute is declared by any one of the parties the General Secretary must appoint a *conciliator* and convene a dispute meeting which the *conciliator* must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
- (a) further conciliation meetings to attempt settle the dispute;
 - (b) the referral of the dispute to arbitration;
 - (c) the appointment of the arbitrator, if the dispute must be referred to arbitration.
- 2.8 If no collective agreements exist the conciliator must try to get agreement on:
- (a) the establishment of a minimum service in any essential service, if applicable;
 - (b) rules about the conduct of a strike or lockout; if applicable, and
 - (c) picketing rules, if applicable.
- 2.9 If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the *Act*.
- 2.10 At least seven (7) days' notice must be given by any one of the parties to the Council in the case of a lawful strike or lockout.
- 2.11 Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 2.6:


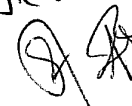

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- a) require the employer not to implement unilaterally the change to terms and conditions of employment; or
 - b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.
- 2.12 If the dispute is referred to arbitration, the procedures contained in clause 6 apply.
- 2.13 The Employer must comply with a requirement as set out in clause 2.11 within 48 hours of service of the referral on the Employer.
- 2.14 If the dispute is about the refusal to bargain, any party may refer the matter in writing to council. Any party to the dispute may request the conciliator to issue an advisory award:
- (a) within 14 days of the request; and
 - (b) before notice is given in terms of section 64(1) of the Act.
- 2.15 If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
- 2.16 Any dispute between the Employer and a trade union to Council or the Employer and a non-trade union to the Council which concerns a matter of mutual interest contemplated in section 134 of the Act, shall be dealt with in terms of clauses 4 and 5 of the Dispute Procedure.

3. DISPUTES OF RIGHT

- 3.1 In this clause a dispute means any dispute, other than a mutual interest dispute contemplated in clause 2 that must be referred to the Council for:-
- (a) conciliation; or
 - (b) arbitration; or
 - (c) conciliation-arbitration¹ process
- 3.2 If the dispute is one that is contemplated in terms of clause 3.1(a), the conciliation procedure contained in clause 4 applies.
- 3.3 If the dispute is one that is contemplated in terms of clause 3.1(b), the arbitration procedure contained in clause 5 applies.

¹ Section 191(5A) of the Labour Relations Act, 1995, as amended


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- 3.4 If the dispute is one that is contemplated in terms of clause 3.1(c), the following procedure applies:-
- (a) A party to a dispute may refer the dispute in writing to the General Secretary.
 - (b) The party who refers the dispute must satisfy the General Secretary that a copy of the referral has been served on all other parties to the dispute.
 - (c) If the General Secretary is satisfied that the referral has been properly served, the General Secretary must:-
 - (i) set the matter down for the conciliation-arbitration process within thirty (30) days of the referral;
 - (ii) appoint a panelist who may be the same person that conciliates and arbitrates the dispute, if no party to the dispute raises any objection thereto.
 - (iii) set the matter down for the conciliation-arbitration process giving notice in terms of the PHSDSBC Rules.

4. CONCILIATION BY THE COUNCIL

- 4.1 A party to a dispute may refer a dispute in writing to the General Secretary of the Council.
- 4.2 The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- 4.3 If the General Secretary is satisfied that the referral has been properly served, the General Secretary must:-
- (a) appoint a *conciliator* to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
 - (b) decide the *date, time* and *venue* of the conciliation meeting; and
 - (c) notify the parties to the dispute of these details.
- 4.4 If the parties to a dispute have agreed on a particular *conciliator*, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within the 30 day period or any agreed period. If the parties do not agree upon a conciliator the Secretary shall appoint the conciliator.
- 4.5 The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include;


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- (a) mediating the dispute;
- (b) conducting a fact-finding exercise;
- (c) making a recommendation to the parties, which may be in the form of an advisory award.

- 4.6 In the conciliation proceedings a party to the dispute may appear in person or be represented only by a member, an office bearer or official of that trade union or by an employee of any national department or provincial administration.
- 4.7 If a party to the dispute fail to appear in person or to be represented at the conciliation, the *conciliator* may-
- (a) dismiss the matter; or
 - (b) continue with the conciliation in the absence of the party; or
 - (c) adjourn the conciliation to a later date.

5. ARBITRATIONS BY THE COUNCIL

- 5.1 A party to a dispute may refer the dispute in writing to the General Secretary.
- 5.2 The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the disputes.
- 5.3 If the parties to a dispute have agreed on three arbitrators, the General Secretary must appoint one of the persons agreed upon.
- 5.4 Should the parties not agree upon the three arbitrators, the General Secretary shall appoint an arbitrator.
- 5.5 If the General Secretary is satisfied that the referral has been properly served the General Secretary must appoint *an* arbitrator to arbitrate the dispute.
- 5.6 The arbitrator may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
- 5.7 The General Secretary must decide the *date, time* and *venue* of the arbitration hearing meeting and must notify the parties to the dispute of these details. The notice period must be in line with the provisions of the PHSDSBC Rules.
- 5.8 The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible,

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but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.

- 5.9 In any arbitration proceedings, a party to the dispute may appear in person or be represented only by a legal practitioner, a member, office bearer or official of that party's trade union or an employee of a national department or a provincial administration.
- 5.10 If the party to the dispute fails to appear in person or to be represented at the arbitration proceedings the arbitrator may-
- (a) dismiss the matter; or
 - (b) continue with the arbitration proceedings in the absence of the party; or
 - (c) adjourn the arbitration proceedings to a later date.
- 5.11 Within fourteen (14) days of the conclusion of the arbitration proceedings-
- (a) the arbitrator must issue an arbitration award with reasons signed by the *arbitrator*;
 - (b) the General Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
- 5.12 On good cause shown, the Secretary may extend the period within which the arbitration award is due. The reasons for the request are to be served and filed.

6. COSTS

- 6.1 The Council will pay the costs of the arbitrators and conciliators in the proceedings. Each party to the dispute must pay its own costs with regard to traveling, meals, legal representation (if applicable) and other related expenses.
- 6.2 The arbitrator may not include an order for costs in the arbitration award unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner –
- (a) by proceeding with or defending the dispute in the arbitration proceedings; or
 - (b) in its conduct during the arbitration proceedings
- 6.3 Costs awarded by the arbitrators may include-
- (a) the costs of the arbitration;
 - (b) legal and professional costs;
 - (c) other expenses which a party has incurred in the conduct of the dispute; and
 - (d) expenses of witnesses.

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7. PANEL OF CONCILIATORS AND ARBITRATORS


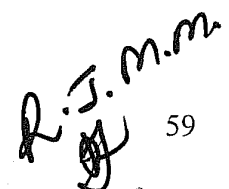


- 7.1 The Provincial Chambers shall nominate the panel of conciliators and arbitrators and the Council must appoint, from nominations received , for a period of three years -
- (a) a panel of conciliators to conciliate disputes;
 - (b) a panel of arbitrators to arbitrate disputes.
- 7.2 In making such appointments, the Council must ensure that the panel-
- (a) is drawn from each of the nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of employees employed in national and provincial departments in the various provinces;
 - (b) have skill and experience in labour relations, knowledge about the public service and knowledge or experience in conciliation and/or arbitration;
 - (c) are broadly representative of South African society.
- 7.3 All conciliators and arbitrators will conduct themselves in accordance with the Code of Conduct .
- 7.4 The Council may remove a member of the panel from office-
- (a) because of serious misconduct;
 - (b) because of incapacity;
 - (c) by a decision of the Council.
- 7.5 If for any reason there is a vacancy in a panel, the Council may appoint a new member to the relevant panel for the unexpired term of office.
- 7.6 A member of the panel, whose term of office expires, will be eligible for re-appointment.

8. TIME PERIODS AND CONDONATION

- 8.1 Any late application may be condoned by a panelist of the Council, on good cause shown.
- 8.2 Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- 8.3 Applications for condonation must be dealt with in terms of the PHSDSBC Rules.

9. POSTPONEMENTS

- 9.1 Applications for postponements must be dealt with in terms of the PHSDSBC Rules.

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10. GENERAL

10.1 The PHSDSBC Rules are regarded as Supplementary to the Dispute Procedure and in the event of conflict, the Dispute Procedure takes precedence.

11. DEFINITIONS

11.1 Any expression used in this procedure that is defined in the Labour Relations Act, 1995 (Act no 55 of 1995, as amended) and the constitution of the Council has the same meaning as in the Act and the constitution.

11.2 "Conciliator" means a *conciliator* appointed by the Council in terms of clause 7 above.

11.3 "Arbitrator" means an *arbitrator* appointed by the Council in terms of clause 7 above.

11.4 "dispute" means a *dispute* that exists in respect of matters that:

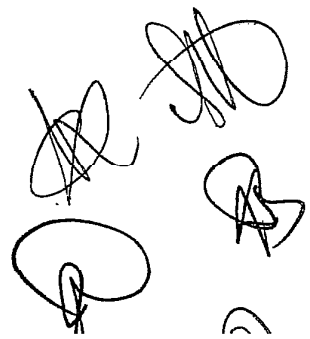
11.4.1 are regulated by uniform rules, norms and standards that apply across the public service in the Health and Social Development Sector; or

11.4.2 apply to terms and conditions of service that apply to the Health and Social Development Sector

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RESOLUTION 3 OF 2006

ADOPTION OF THE RULES FOR CONDUCT OF THE PROCEEDINGS
BEFORE THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL
BARGAINING COUNCIL

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1. Objective

The objective of this agreement is to:

- 1.1 Effect rules for conduct in the dispute proceedings of the PHSDSBC.

2. Scope

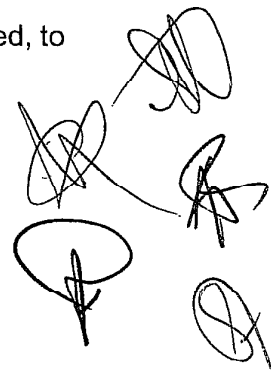
This agreement binds:

- 2.1 The Employer;
- 2.2 The employees of the Employer who are members of the trade union parties to this agreement; and
- 2.3 The employees of the employer who are not members of any trade union party to this agreement, but who fall within the registered scope of Council.

3. Noting

Parties note that:-

- 3.1 The PHSDSBC is accredited by the Governing Body of the CCMA in terms of section 127 of the LRA 66 of 1995 as amended, to perform dispute resolution functions,

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3.2 The PHSDSBC is in a process of amending its dispute resolution procedure.

4. Agreement

Parties agree to the following, that:

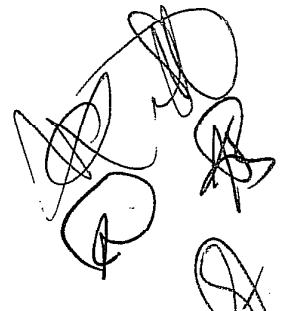
- 4.1 The rules for conduct of proceedings before the PHSDSBC shall be adopted,
- 4.2 The rules amplify the dispute procedures encapsulated in the PHSDSBC Constitution;
- 4.3 Where there is conflict between the rules and procedures, the procedures shall have precedence;
- 4.4 The rules will come into effect on the date of signing.

5. Dispute Resolution

Any dispute about the interpretation or application of this agreement shall be dealt with in terms of the Council's dispute resolution procedures.

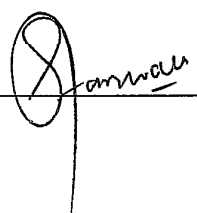
This agreement entered into and signed at Centurion - ELRC on

this 19th Day of June 2006

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11-11-11

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as Employer	J. T. CORNWALL	

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
NEHAWU	J. P. VAN DEN BERG	
DENOSA	JABU C MAGAGULA	
PSA	K Bock	
HOSPERSA		
NUPSAW	S. MATIATSANE	



