

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. Jurisdiction 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 provision of this Constitution.

2. MATTERS OF MUTUAL INTEREST

- 2.1. Any party to the Council may submit proposals for the conclusion of 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 to the General Secretary must serve copies of the proposals on the parties to the Council.



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- 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.
- 2.4. If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion of the item on the agenda of the Council, that 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 the negotiation process, which may include the following:
- a) The submission of counter proposals;
 - b) The establishments of 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 expire 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 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; and

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- c) The appointment of the arbitrator, if the dispute must be referred to arbitration.
- 2.8. If no collective agreement exists 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 referral to in clause 2.6:
- a) Require the employer not to implement unilaterally the change to terms and conditions of employment; or
 - b) If the employer has already implement 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 5 apply.
- 2.13. The Employer must comply with requirement as set out in clause 2.11 within 48 hours of service of the referral on the Employer.



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- 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 and 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, parties to the dispute may exercise their rights in terms of the Act.
- 2.16. Any dispute between the Employer and the trade union to Council or the Employer and a non-trade union to the Council which concerns a matter of mutual interests contemplated in section 134 of the Act, shall be dealt with in terms of clause 4 and 5 of the Dispute Procedure.

3. DISPUTES OF RIGHTS

- 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;
 - 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.
- 3.4. If the dispute is one that is contemplated in terms of clause 3.1(c), the following procedure applies:



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- 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 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,



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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:
- a) Mediating the dispute;
 - b) Conducting a fact-finding exercise; and
 - c) Making a recommendation to the parties, which may be in the form of and 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 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. ARBITRATION 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 shall appoint an arbitrator.



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- 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, 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, and 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



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- 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 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 travelling, meals, legal representation (if possible) 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;



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- c) Other expenses which a party has incurred in the conduct of the dispute; and
- d) Expenses of witnesses.

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; and
 - 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 nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the various provinces;
 - b) Have skill and experience in labour relations, knowledge about the public service and knowledge and experience in conciliating and/or arbitration; and
 - 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; and
 - 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.



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- 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 panellist 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. Application 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.

10. GENERAL

- 10.1. The PHSDSBC Rules are regarded as Supplementary to the Dispute Procedures 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



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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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