



# **PHSDSBC**

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

## **CONSTITUTION OF THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL**

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# CONSTITUTION OF THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL

## Table of Contents

1.	NAME	3
2.	DEFINITIONS	3
3.	SCOPE	7
4.	OBJECTIVES	8
5.	POWERS AND FUNCTIONS	9
6.	PARTIES TO THE COUNCIL	11
7.	ADMISSION OF TRADE UNIONS TO THE COUNCIL	12
8.	TERMINATION OF TRADE UNION MEMBERSHIP OF THE COUNCIL	14
9.	TRADE UNIONS ACTING JOINTLY	15
10.	CHANGES IN THE COMPOSITION OF TRADE UNIONS TO THE COUNCIL	16
11.	ANNUAL REVIEW OF MEMBERSHIP FIGURES	19
12.	APPOINTMENT OF REPRESENTATIVES	21
13.	DETERMINATION OF VOTING WEIGHTS OF TRADE UNIONS	23
14.	CHAIRPERSON AND VICE-CHAIRPERSONS	25
15.	GENERAL SECRETARY AND OTHER PERSONNEL	29
16.	COMMITTEES AND CHAMBERS	32
17.	EXECUTIVE COMMITTEE	39
18.	MEETINGS OF THE COUNCIL	45
19.	DECISIONS OF THE COUNCIL	49
20.	PROCEDURE FOR NEGOTIATING COLLECTIVE AGREEMENTS	50
21.	DISPUTE PROCEDURE	53
22.	EXEMPTION PROCEDURE	53
23.	FINANCIAL MATTERS OF THE COUNCIL	55
24.	DELEGATIONS	58
25.	AMENDMENT OF THE CONSTITUTION OF THE COUNCIL	58
26.	WINDING UP	60

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27.	STATUS OF THIS CONSTITUTION	61
28.	GENERAL	61
29.	SCHEDULE 1	64
30.	SCHEDULE 2	66

## 1. NAME

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

## 2. DEFINITIONS

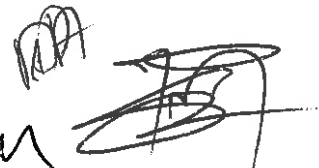
Unless the context indicates otherwise, any expression used in this Constitution which is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended, shall have the same meaning as in the Act and the following words / expressions shall mean as follows:-

- 2.1        **"Act"** means the Labour Relations Act, No. 66 of 1995, as may be amended from time to time;
- 2.2        **"acting jointly"** means two or more trade unions acting as a single trade union for the purpose of clause 7.3 of this Constitution;
- 2.3        **"Annual General Meeting"** means the annual general meeting of the Council provided for in terms of clause 18.4 of this Constitution;
- 2.4        **"arbitrator"** means an individual appointed by the Council to the panel of arbitrators;
- 2.5        **"audited membership figures"** means membership figures of a trade union as reflected in stop orders or other generally recognized audit methods, as audited by the registered auditor appointed by such trade union and if so required by the Council, verified by a registered auditor appointed by the Council;

- 2.6        **"Chairperson"** means the chairperson elected in terms of clause 14 of this Constitution (and **"Vice-Chairperson"** shall mean the same, with any changes required by the context);
- 2.7        **"Chamber"** means a Chamber of the Council established in terms of clause 16 of this Constitution;
- 2.8        **"Chief Executive Officer"** in the case of a trade union, means the most senior official in the trade union, irrespective of the title assigned to that person by the trade union;
- 2.9        **"conciliator"** means an individual appointed by the Council to its panel of conciliators;
- 2.10       **"Constitution"** means the Constitution of the Council and the Schedules to it;
- 2.11       **"Council"** means the Public Health and Social Development Sectoral Bargaining Council;
- 2.12       **"day"** means a calendar day, including Saturdays, Sundays and public holidays, and when used in the context of calculating *dies* shall exclude the first day and include the last day;
- 2.13       **"dispute"** includes an alleged dispute and means a dispute that falls within the scope of the Council;
- 2.14       **"Dispute Procedure"** means the Dispute Procedure referred to in clause 21 and contained in Schedule 2 to this Constitution;
- 2.15       **"employee"** means an employee of the employer who falls within the registered scope of the Council and "employed" shall have a corresponding meaning;

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- 2.16        **"employer"** means the State as employer within the registered scope of the Council;
- 2.17        **"Executive Committee"** means the Executive Committee as appointed in terms of clause 17 of this Constitution;
- 2.18        **"General Secretary"** means the individual appointed as general secretary of the Council in terms of clause 15 of this Constitution or any person appointed in an acting capacity in such position;
- 2.19        **"member"** means an employee who is a member in good standing of a trade union under the trade union's Constitution;
- 2.20        **"mutual interest"** means any matter of mutual interest between
- (a)    on the one side
    - (i)    one or more trade unions;
    - (ii)   one or more employees; or
    - (iii)   one or more trade unions and one or more employees; and
  - (b)    On the other side
    - (i)    one or more employers' organisations
    - (ii)   one or more employers; or
    - (iii)   one or more employers' organisations and one or more employers;
- 2.21        **"observer"** means an employee, office bearer or official of the party to the Council 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;
- 2.22        **"PSCBC"** means the Public Service Co-ordinating Bargaining

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Council;

- 2.23      **"Public Health and Social Development Sector"** means the sector falling within the registered scope of the Council as contemplated in clause 3 of this Constitution;
- 2.24      **"representative"** means a person duly appointed by a party to Council in terms of this Constitution and who is authorized by that party to represent it in the Council.
- 2.25      **"sector"** means a part of the public service designated as a sector in terms of section 37(1)(a) of the Act;
- 2.26      **"standing orders"** means directives or delegation of authority by Council to the Executive Committee (and any sub-committee thereof or ad hoc committee) or Chambers;
- 2.27      **"Registrar"** means the Registrar of labour relations as defined in the Act;
- 2.28      **"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;
- 2.29      **"trade union"** means a trade union as defined and registered in terms of the Act, and shall include, unless the context indicates otherwise, two or more trade unions acting jointly;
- 2.30      **"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

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meeting shall be calculated using the voting weight allocated to the respective trade unions present at the meeting

- 2.31 "working days" means all days excluding Saturdays, Sundays and public holidays, and when used in the context of calculating *dies* shall exclude the first day and include the last day.

### 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 the employers and employees in:
- 3.1.1 the department of health in the national sphere of government;
  - 3.1.2 the 9(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 9(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 103 of 1994, as amended from time to time and the Correctional Services Act 8 of 1959 as amended from time to time 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.

#### **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;
- 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 and enforce its powers within the scope of its powers in terms of the Act and this Constitution;
- 4.9 conclude, supervise, interpret and enforce collective agreements;
- 4.10 give effect to the purposes of the Act; and
- 4.11 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, to deal with the issues set out in section 30 of the Act, and those agreed to by the parties to the Council, including the:

- 5.1 conclusion of negotiated collective agreements on matters of mutual interest;
- 5.2 implementation, monitoring, interpretation 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 the establishment and administration of a fund to be utilized 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 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;

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- 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 and resources;
- 5.14 formulation and maintenance of systems and policies for the Council;
- 5.15 conclusion of contracts and performance of any juristic acts;
- 5.16 institution and defense of legal proceedings and dispute resolution procedures;
- 5.17 consideration of and attendance to any matter that affects the interests of any party to the Council;
- 5.18 resolution of a dispute referred to the Council, where a party to that dispute is not a party to the Council in terms of section 51(3) of the Act and the dispute procedures of the Council;
- 5.19 establishment of procedures and requirements to exempt parties or non-parties from collective agreements;
- 5.20 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 and to enable it to effectively perform its powers and functions.

## **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

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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 30 000 members in good standing in the Public Health and Social Development Sector.
- 7.2 Any single trade union which is a party to the Council shall meet the threshold requirement of 30 000 membership in good standing within the PHSDSBC, failing which the single trade union shall be dealt with in terms of the provisions of clause 8.1.4, clause 8.1.5 and clause 25.8.
- 7.3 If two or more trade unions act jointly, and each enjoys organizational rights with an employer and have a combined membership of 30 000, the trade unions may be represented in the Council as a single party.
- 7.4 A single trade union applying for membership in terms of clause 7.1 must submit:
- 7.4.1 a fully updated copy of its Constitution, as registered and duly authenticated by the signature of the Chief Executive Officer or the general secretary;
- 7.4.2 a certified copy of the trade union's certificate of registration;
- 7.4.3 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;

- 7.4.4 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;
- 7.4.5 any other information on which the trade union relies in support of its application.
- 7.5 Trade unions acting jointly in terms of clause 7.3 which apply for membership as a trade union to the Council, must submit:
- 7.5.1 the documentation referred to in clause 7.4 in respect of each of the trade unions acting jointly;
- 7.5.2 the written agreement between the trade unions acting jointly, which must address material aspects of their joint action, including:
- 7.5.2.1 the name under which they will be acting jointly (which must be the registered name of one of the trade unions acting jointly); and
- 7.5.2.2 the period of the agreement under which the trade unions will act jointly, which must at least be until the Annual General Meeting of the Council held in the year following on from the year in which the trade unions acting jointly apply for membership of the Council.
- 7.6 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:

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- 7.6.1 the trade union ceases to act jointly with the other trade union or unions;
- 7.6.2 the agreement in 7.5.2 becomes inoperative before the period in 7.5.2.2 has expired, or
- 7.6.3 clause 8.1. applies to the trade union.
- 7.7 If clause 7.6 applies, the membership and voting rights of the remaining parties to the agreement shall be determined on the basis of each parties' membership figures submitted under clause 7.4.4 until the next annual review under clause 11.
- 7.8 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.
- 7.9 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, failing which the Council will be deemed to have declined the application.

## **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 or liquidated in terms of its

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Constitution or the Act or is declared by the Labour Court to no longer be independent in terms of section 105 of 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 trade union, 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; or
  - 8.1.6 as a result of the trade union failing to comply with the requirements of clause 11.3.
- 8.2 If the membership of a trade union is terminated for any reason in clause 8.1, other than clause 8.1.1, it may refer the dispute in terms of the Dispute Resolution procedure of Council.

## **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 7.5.2 to the General Secretary.
- 9.2 Once the General Secretary receives all 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.

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- 9.3 Should the trade unions meet the threshold requirements and criteria for membership provided for in this Constitution, 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.

### **Admitted and non-admitted trade unions acting jointly**

- 9.4 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 7.4 in respect of the non-admitted trade union, and
- 9.4.2 the information referred to in clause 7.5.2.
- 9.5 Once the General Secretary receives all the required information, he/she must inform the Council at its next meeting that the trade unions are acting jointly as one trade union in the Council.
- 9.6 Should the trade unions meet the threshold requirements and criteria for membership provided for in this Constitution, the Council must recognise the trade unions acting jointly as a trade union to Council with effect from the Council meeting in clause 9.5.

## **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 7.4.1 to 7.4.3.

- 10.2 Once the General Secretary receives all 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 recognize 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 month of registration by the Registrar, notify the General Secretary of such amalgamation and submit to him/her the information referred to in clauses 7.4.1 to 7.4.3 in respect of the amalgamated union and the information referred to in clauses 7.4.4 to 7.4.5 in relation to 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.

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- 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 recognized as the trade union acting jointly in the place of the admitted trade union subject to it meeting the requisite threshold requirements and criteria for membership in terms of this Constitution.
- 10.8 Subject to the amalgamated trade union meeting the requisite threshold requirements and criteria for membership in terms of this Constitution, 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 recognized 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 7.6.1 to 7.6.3 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 7.7 shall apply. This is without derogating from any other rights which the Council may have in terms of this Constitution, including the right of the General Secretary to determine whether the remaining trade union still meets the threshold requirements. If the threshold requirements still apply the General Secretary must notify the Council of the change. If the threshold requirements no longer apply, the provisions of clause 8 shall apply.

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### **Change of name of admitted trade union**

- 10.10 Within 1 (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.
- 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 an updated 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 reasonably 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

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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 a period of 30 days;

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

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 21 (twenty one) days 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 and the Council shall be entitled to instruct the Council's and/or an independent auditor to verify these figures.

## **12. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES**

12.1 The parties shall be represented in the Council by authorized representatives.

12.2 Subject to the employer and the trade union parties at all times being equally represented on the Council, 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 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

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12. A trade union may change such representative upon 10 working days written notice to the General Secretary. 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 for each of its representatives to act as representatives in the absence of authorized representatives. Such alternatives shall be subject to the same conditions of service as the representatives. Subject to clause 12.6 below each representative's term of office shall be for a renewable period of one year.
- 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.
- 12.6 A representative must vacate their seat in the following circumstances:
- 12.6.1 when the representative ceases to be employed for any reason by the employer or if they are an official of a trade union if they cease to be employed by that trade union;
- 12.6.2 when the party who appointed the representative to the Council, withdraws the representative from the Council for any reason;
- 12.6.3 when the party who appointed the representative to the Council, places the representative on suspension for alleged misconduct;

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- 12.6.4 when the representative is convicted of a criminal offence without the option of a fine;
- 12.6.5 when the representative absents himself/herself without good cause (to be determined in the sole discretion of the Council via the Executive Committee) from 3 (three) consecutive meetings of the Council and without making arrangements for an alternate to attend in his/her place; or
- 12.6.6 where the representative conducts himself/herself in such a manner as to prejudice the Council or bring its name into disrepute, provided that in such circumstances the Council will first, in writing, notify the party who nominated the representative of the representatives conduct, which party will have 30 days to make representation to council on the measures taken to address the conduct of the representative of the party.
- 12.7 The provisions of clause 12.6 shall apply mutatis mutandis to the removal of any alternatives.
- 12.8 If the position of any representative or alternative becomes vacant, the party that appointed the representative or alternative may appoint another representative or alternative with immediate effect, upon written notice to the General Secretary.

### **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 members in good standing (as determined with reference to the trade unions audited membership figures) of

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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 in writing 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 collectively.
- 13.6 The voting weight of the 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.
- 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

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of 24 (twenty four) months unless removed by a decision of the Council. Any past Chairperson may be re-elected.

- 14.8 1 (One) Vice-Chairperson shall be elected by the employer from its constituency and the other Vice-Chairperson shall be elected by 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, one of the Vice-Chairpersons shall act as Chairperson in accordance with clause 14.16.
- 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.

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- 14.12 Subject to clauses 14.7 and 14.13, the Chairperson shall hold office for a term of 24 (twenty-four) 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 in its discretion 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.
- 14.15 Clauses 14.1 and 14.9 with the necessary changes required by the context apply in respect of the election of the 2 (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 alternatively 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. Provided that where clause 14.11 applies, such representative may vote on any matter at that meeting.

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- 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.

### **Removal of Chairperson and Vice-Chairpersons from office**

- 14.19 The Chairperson or Vice-Chairpersons may be removed from office by the Council during their term of office as provided for below:
- 14.19.1 in the case of the Vice-Chairperson where a simple majority of the Council votes in support of his/her removal from office; or
- 14.19.2 in the case of the Chairperson where a two-third majority of the Council votes in support of his/her removal from office.
- 14.20 The Chairperson or Vice-Chairpersons, as the case may be, must vacate his/her office where they cease to be a representative of the Council due to any of the circumstances contemplated in clause 12.6 and/or where they are disqualified from fulfilling such office due to their conduct and/or lack of capacity to carry out the required duties and responsibilities.
- 14.21 A party may withdraw its duly elected Vice –Chairperson on 10 working days' written notice to the Council.
- 14.22 If the office of Chairperson or Vice-chairperson becomes vacant before the next election of the Chairperson or Vice-Chairperson, as the case may be, the Council, must elect a person to act in the office until the next election.

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## **15. GENERAL SECRETARY AND OTHER PERSONNEL**

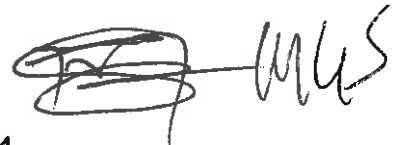
### **Appointment of the General Secretary**

- 15.1 The Council shall appoint a part-time or full-time General Secretary or may request the employer that a suitably qualified 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 dispatched;
  - 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 3 (three) 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;

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- 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 lawful 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 appoint an acting General Secretary to act when he or she is not able to fulfill 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;
- 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

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- 15.3.4 terminate an employee's service for any lawful reason, after following due process.
- 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.
- 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 Council for any reason permitted in law, provided that the General Secretary's

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services may be terminated without notice for serious neglect of duty or misconduct. Subject to the applicable termination provisions of the Act, the final decision to terminate the General Secretary's services must be taken by a two-third majority of the Council.

- 15.9 In circumstances where the General Secretary is not an employee of the Council (for example, where their services have been made available on a temporary basis by the employer), the Council may vote to remove him/her from office by way of a simple majority and advise his/her employer of such removal.

## **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, 7.6, 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 representatives of the employer and the trade union parties, as well as the Chairperson

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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 Unless expressly provided otherwise in this constitution decisions of a Committee or Chamber established under clause 16.1 shall be required to be passed by a vote in favour by no less than two thirds of the employer and trade union representatives.
- 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.

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## **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 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 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 in writing 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

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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.

### **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

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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; and

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.

### **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 in writing 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.


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## **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 (thirty) 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 infringes upon the jurisdiction of the Council, the Council may vary or set aside the decision of such Chamber, within -
- 16.19.1 the 30 (thirty) 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 (thirty) day period, determine, with regard to that specific decision.
- 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 in its discretion issue standing orders from time to time 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

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Chamber by a maximum of 2 (two) representatives and will be entitled to have a maximum of 2 (two) observers.

- 16.22 The employer shall be represented in a Chamber by authorised representatives appointed by the executive 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 with effect from the date of termination 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.
- 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.


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## **Meetings of Chambers**

- 16.27 Meetings of Chambers will be held bi-monthly, provided that requests for special meetings of Chambers will be made in writing 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;
- 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;

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- 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 fulfill his or her functions, or review the appointment of an acting General 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 employer, 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

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duties contemplated in clauses 7.9, 18.4, 24, and 25 and the power of the Council to delegate.

- 17.2 The Executive Committee shall consist of -
- 17.2.1 the Chairperson;
  - 17.2.2 the 2 (two) Vice-Chairpersons;
  - 17.2.3 the General Secretary;
  - 17.2.4 3 (three) employer representatives and an equivalent number of alternates; and
  - 17.2.5 3 (three) trade union representatives and an equivalent number of alternates.
- 17.3 At the Annual General Meeting, the Council must appoint 3 (three) employer and 3 (three) employee members of the Executive Committee and an alternate for each of them.
- 17.4 The members and their alternates as contemplated in clause 17.3 above 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, 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 12 (twelve) months unless withdrawn by the party who appointed the member or until such time as they cease to be a representative of the Council, whichever is earlier, and will be



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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, provided that this period may not extend beyond 30 days.
- 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 (twenty one) days' notice in writing to the General Secretary;
- 17.8.2 must vacate office immediately -
- 17.8.2.1 in the case of resignation, when the resignation takes effect; or
- 17.8.2.2 upon ceasing for any reason whatsoever to be a representative of a party to the Council, including in any of the circumstances contemplated in clause 12.6 of this Constitution.
- 17.9 If the seat of a member of the Executive Committee becomes vacant, the Council must fill the vacancy with a candidate appointed by -
- 17.9.1 the employer in the Council, if that seat had been held by a member representing the employer; or
- 17.9.2 the trade unions in the Council, if that seat had been held by a member representing employees.

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- 17.10 A member appointed to fill a vacant seat holds that seat for the remainder of the period which of the predecessor would have held office.
- 17.11 The Executive Committee must hold a meeting at least once every 3 (three) 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 (ten) days of receiving a written request from the employer or a 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 member of the Executive Committee at least 7 (seven) 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

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this clause, the meeting may be conducted and decisions may be taken using conference telephone facilities or in exceptional circumstances a venue outside of Council's premises used, provided that the required quorum is met.

- 17.16 At least half of the members of the Executive Committee representing the employer 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 simple majority.
- 17.19 If consensus cannot be reached the matter must be referred to the Council for decision.
- 17.20 An alternate for each representative may attend meetings of the Executive Committee but in the event that the representative is in attendance the alternative shall have 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 (twenty four) 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

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meeting in place of the representative.

## **18. MEETINGS OF THE COUNCIL**


- 18.1 The Council shall meet at least 4 (four) times per annum in Pretoria, unless otherwise agreed, at such venue, date and time as may be determined by the Chairperson 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 special meeting of the Council, which meeting shall subject to the provisions of clause 18.6 below be convened within 21 (twenty one) 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 each year. The annual general meeting should be held by no later than the end of June each year and may only be postponed by the Council pursuant to a resolution passed by a two thirds majority.
- 18.5 In addition to any other urgent matter, the following matters shall be dealt with at the Annual General Meeting:

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- 18.5.1 the election of a Chairperson and Vice-Chairpersons, should it be necessary in terms of this Constitution;
- 18.5.2 the election / appointment of members and alternates of the Executive Committee in terms of this Constitution;
- 18.5.3 the appointment of auditors, should it be necessary in terms of this Constitution;
- 18.5.4 the financial statements of the Council;
- 18.5.5 the report of the auditor in respect of the financial statements;
- 18.5.6 the annual report of the Council;
- 18.5.7 the approval of the budget of the Council;
- 18.5.8 the levies to be imposed on the parties to the Council;
- 18.5.9 a report as to the membership figures and number of votes held by the admitted trade unions to the Council, as determined by the General Secretary of the Council in accordance with clause 13.2, as well as a report on any change in name or composition of a trade party to the Council or the admittance or expulsion of a party to the Council; and
- 18.5.10 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.

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## **Special Meetings of Council**

- 18.6 The Chairperson at the request of a party to the Council must call a meeting of the Council to deal with an urgent matter, provided that the employer and trade unions which hold at least half the trade unions' voting weight in the Council, consent thereto; Further provided that the Chairperson may call such meeting on his or her own initiative.
- 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;
- 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 The employer, on the one side, plus the number of the trade

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unions which hold at least half of the trade union voting weight in the Council, on the other side, 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. The date of such reconvened meeting shall not be later than 10 working days after the scheduled date of the original meeting.

### **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.
- 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

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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 the employer, on the one side, and the trade unions who hold more than half the trade unions voting weight of the trade unions represented at that meeting, on the other side.
- 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 Any procedural matters that are not regulated in this Constitution shall be decided by the vote of the employer, on the one side, and the trade unions representatives who hold a majority of the trade unions' voting weight of the trade unions represented at that meeting, on the other side.
- 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 representatives on the Council to be taken by telefax. A proposal subjected to a telefax vote may be adopted only if supported by the employer and by trade unions holding


two-thirds of the unions' voting weight in the Council. 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 written proposals for the conclusion or amendment 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 Should it be decided that the Council will deal with the proposal(s), 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


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- 20.4.4 the time table for negotiations.
- 20.5 Upon completion of the negotiation process and when the employer has tabled a signed final offer, the trade unions shall have 21 (twenty one) days within which to consider the draft agreement or offer on the table and revert to the Council at a meeting convened by the General Secretary.
- 20.6 The General Secretary shall within 5 (five) working days of the signatures of the majority of the parties being attained, circulate the copy of a signed agreement to all parties to the Council.
- 20.7 Should trade unions not have mandate to sign the final offer at the meeting convened for the purpose as contemplated in clause 20.5 the following will result:
- 20.7.1 the draft agreement will fall away; and
- 20.7.2 the area/s of disagreement in the draft agreement may, by a decision of Council re-open for discussion and/ or further negotiations.
- 20.8 If the Council agrees to conciliation in terms of clause 20.4.3, but within a period of 5(five) 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.
- 20.9 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 20.4, the parties must immediately

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commence with negotiations, if the General Secretary has called a special meeting of the Council in terms of clause 18.2, within 2 (two) working days from the date of that meeting, commence negotiations.

- 20.10 If the parties do not conclude a collective agreement during a period of 21 (twenty-one) working days from –
- 20.10.1 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
- 20.10.2 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.
- 20.11 If the matter is not resolved during a conciliation process under clause 20.10.2, parties to the Council may exercise their right in terms of the Act.
- 20.12 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.
- 20.13 If a dispute concerning a refusal to bargain exists, the conciliator appointed in terms of the provisions of this clause may issue an award as if acting under the provisions of clause 2.14 of the Dispute Procedure.
- 20.14 A dispute concerning whether or not the issue in dispute concerns a matter of mutual interest must be dealt with in terms of the

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provisions of clause 2.4 and 25 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 the 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/s 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 in writing whether or not it supports the application and, if it does support it, must provide written reasons for supporting the application despite being a party to the agreement in question.

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- 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 (thirty) 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 (thirty) 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 and binding upon the party in question.
- 22.7 The decision of the arbitrator (which shall take into account any exemption criteria, if any, in the collective agreement referred to in clause 22.1.2) 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:

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- 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.

### **23. FINANCIAL MATTERS OF THE COUNCIL**

- 23.1 The expenses of the Council shall be met from a fund approved by the Council, such funds to be raised by levies on employees and employers and if applicable supplemented by income generated by any activities of the Council.
- 23.2 The funds raised by the Council may be used for the following purposes:
- 23.2.1 the payment of expenses / expenditure contemplated in clause 23.8 below;
- 23.2.2 the making of grants to anybody engaged in research designed to advance the interests and well-being of persons employed within the registered scope of the Council.
- 23.3 All monies received shall be deposited by the General Secretary to the credit of the Council within 3 (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.

- 23.4 Travelling, subsistence and other expenses of representatives and observers shall be for the parties' own account unless otherwise agreed.
- 23.5 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.
- 23.6 Funds required for a petty cash account shall –
- 23.6.1 be kept safely in such a manner as the Council may determine from time to time;
- 23.6.2 be provided by the drawing of a cheque; and
- 23.6.3 must not exceed an amount determined by the Council.
- 23.7 Quarterly, the General Secretary must submit to the Council, statements of the income and expenditure that reflect the financial position of the Council.
- 23.8 Prior to the Annual General Meeting of each year, the General Secretary must, prepare a financial statement in respect of the financial year ending on 31 March of that specific year, in accordance with International Financial Reporting Standards. The financial statement prepared by the General Secretary must include but is not restricted to –
- 23.8.1 a statement showing monies received, and expenditure

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incurred under the following headings:

- 23.8.1.1 salaries and other payments to and/or on behalf of personnel;
- 23.8.1.2 in relation to any benefit schemes in place for employees;
- 23.8.1.3 office accommodation and venues for meetings of the Bargaining Council, Chambers, Executive Committee and other structures of Council;
- 23.8.1.4 in relation to the Council's dispute resolution procedures and functions;
- 23.8.1.5 printing, stationery and related office expenses; and
- 23.8.1.6 any miscellaneous expenditure, including any activities related to enforcing the powers, objectives and functions of the Council in compliance with its finance policy.
- 23.8.2 a balance sheet indicating the assets and liabilities of the Council.
- 23.9 The financial year of the Council shall be from 1 April of a particular year to 31 March of the following year.
- 23.10 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.
- 23.11 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.


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

## **24. DELEGATIONS**

- 24.1 The Council may delegate any power conferred, or assign any duty imposed, upon it in terms of this Constitution except the powers and duties contemplated in clauses 1, 2.19, 3, 5.3, 5.4, 5.10, 7, 7.6, 7.9, 18.4, 24 and 25.
- 24.2 A delegation or assignment must be in writing and may be subject to any conditions or restrictions determined by the Council:
- 24.2.1 The Council may at any time withdraw a delegation or assignment made in terms of subsection (1); and
- 24.2.2 withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).
- 24.3 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 in its delegation.


## **25. AMENDMENT OF THE CONSTITUTION OF THE COUNCIL**

- 25.1 The following clauses in this Constitution may not be amended by

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way of a decision of the Council but require the approval and ratification of the PSCBC:

- 25.1.1 the definition of mutual interest (clause 2.19), and
- 25.1.2 the scope of the Council (clause 3).
- 25.2 Subject to the provisions of section 30 of the Act, all other clauses, with the exception of clause 25.1 in this Constitution, may be amended by way of a decision of the Council provided the employer on the one side, and trade unions holding two-thirds of the trade unions' voting weight in the Council, on the other, vote in favour of amending the Constitution.
- 25.3 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.
- 25.4 Such notice shall be transmitted to all representatives at least 2(two) weeks prior to the meeting at which it is to be considered.
- 25.5 The Council may, by unanimous vote, amend this Constitution without notice.
- 25.6 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.
- 25.7 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.

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- 25.8 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 25.7 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.

## **26. WINDING UP**

The Council may only be wound up by the Public Service Coordinating Bargaining Council. Subject to the provisions of the Act and the PSCBC's Constitution, this shall occur in accordance with the following procedures:

- 26.1 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 the employer, at a meeting specially called for the purpose of winding up the Council. The General Secretary 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.
- 26.2 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.
- 26.3 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 is 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.

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


26.5 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 Conciliation, Mediation and Arbitration for its own use.

## **27. STATUS OF THIS CONSTITUTION**

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

## **28. GENERAL**

The *domicilium executandi* of the Council is:

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c/o The General Secretary  
P O Box 11467  
CENTURION  
0046

Signed at Centurion on behalf of the State as Employer, all  
signatories being duly authorized thereto, on this day of 27/02 2018.

NAMES AND SIGNATURE OF THE EMPLOYER AUTHORISED  
REPRESENTATIVE: MARIE THOMAS NGAKE

NAME OF AUTHORISED REPRESENTATIVE [Signature]

Signed at Centurion on behalf of the National Education, Health and  
Allied Workers Union being duly authorized thereto, on this 28 day of  
Feb 2018.

NAMES AND SIGNATURE OF **NEHAWU** AUTHORISED REPRESENTATIVE:

[Signature] Michael Shingye

NAME OF AUTHORISED REPRESENTATIVE .....

Signed at Pretoria on behalf of the Democratic Nursing  
Organisation of South Africa being duly authorized thereto, on this 28 day of  
FEBRUARY 2018.

NAMES AND SIGNATURE OF **DENOSA** AUTHORISED REPRESENTATIVE:

SIMON HLUNGWANI [Signature] [Signature]

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NAME OF AUTHORISED REPRESENTATIVE Astrid Deidre  
Al-anani

Signed at Centurion on behalf of the Public Servants Association  
being duly authorized thereto, on this 14 day of March 2018.

NAMES AND SIGNATURE OF **PSA** AUTHORISED REPRESENTATIVE:

Al-anani

NAME OF AUTHORISED REPRESENTATIVE .....

MASALE GOOFLEY SELEMATSELA

Signed at Centurion on behalf of the Health and Other Services  
Personnel Trade Union of South Africa being duly authorized thereto, on this  
28 day of February 2018.

NAMES AND SIGNATURE OF **HOSPERSA** AUTHORISED REPRESENTATIVE:

[Signature]

NAME OF AUTHORISED REPRESENTATIVE .....

Signed at ..... on behalf of the National Union of Public  
Service and Allied Workers Union, being duly authorized thereto, on this .....  
day of ..... 2018.

NAMES AND SIGNATURE OF **NUPSAW** AUTHORISED REPRESENTATIVE:

.....

NAME OF AUTHORISED REPRESENTATIVE .....

[Signature]

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[Signature]



## **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)  
Social Auxiliary Workers  
Community Development Practitioners  
Assistant Community Development Practitioners  
Child Youth (Care) Workers  
Social Workers  
Probation Officer  
Medical Officer  
Medical/Dental Superintendent  
Specialist  
Dentist  
Pharmacist  
Forensic Analyst  
Medical Physicist  
Air Pollution Control Officer



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Medical Natural Scientist  
Medicine Control Officer  
Radiation Control Officer  
Radiation Scientist  
Medical Orthotist and Prosthetist  
Medical Technologist  
Clinical Technologist  
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. 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.

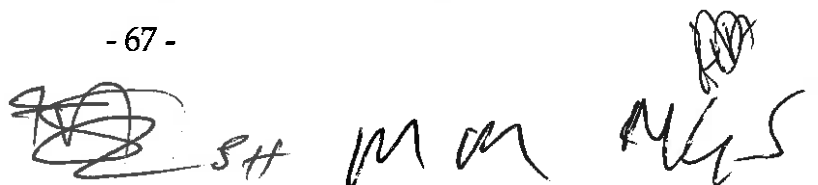


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- 2.3. The Executive Committee must set the agenda of the next meeting of the Council. Should the Executive Committee be of the view that some of the proposals submitted to the Council should not be included on the agenda, the matter will be referred 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-arbitration<sup>1</sup> 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:



- 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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