



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

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

RESOLUTION 1 OF 2016

**AGREEMENT ON THE TRANSFER AND PLACEMENT OF THE INSPECTION AND
COMPLIANCE FUNCTION IN THE NATIONAL DEPARTMENT OF HEALTH (NDoH)
TO THE OFFICE OF HEALTH STANDARDS, COMPLAINTS AND COMPLIANCE
(OHSC)**

1. NOTING THAT:

- 1.1. The legislature has enacted the amendment of section 1 of the National Health Act 61 of 2003 (the Act) to provide for the establishment of the Office of Health Standards, Complaints and Compliance (OHSC) to monitor and enforce compliance by health establishments within the norms and standards prescribed by the Minister in relation to the national health system; and
- 1.2. By notice in the Government Gazette to be published by the Minister of Finance, the OHSC has been listed as a Section 3A Public Entity with effect from 01 April 2014.
- 1.3. The Office of Health Standards, Complaints and Compliance (OHSC) will be a statutory body, tasked in terms of an amendment to the National Health Act, Act 61 of 2003, to “protect and promote the safety of users of health services” by monitoring health services, enforcing their compliance with prescribed

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norms and standards, and responding to complaints about substandard care in a fair and expeditious manner.

1.3.1. The OHSC represents a more resolute approach and brings new tools to bear on the challenge of achieving good essential healthcare for all.

1.3.2. It has the potential to make progress where less robust and focused efforts have fallen short. This is because:

1.3.2.1. The OHSC will be the first institution to have statutory powers of enforcement in relation to healthcare establishments or facilities.

1.3.2.2. The OHSC will be independent of the structures that provide healthcare services, both in the private and public health sectors.

1.3.2.3. The OHSC, having no other responsibilities, will be single-minded in its pursuit of good standards of care.

1.4. Monitoring compliance by health establishments with norms and standards prescribed by the Minister in relation to the health system;

1.4.1. The entity must ensure consideration, investigation and disposal of complaints relating to non compliance within the prescribed norms and standards in a procedurally fair, economical and expeditious manner.

1.4.2. The establishment of the entity has the effect of transferring of the compliance inspection and complaints function from the National Department of Health to the Office of Health Standards, Complaints and Compliance, and

1.4.3. The formation of the OHSC will result in the shift of the current OSC staff from the NDoH to the newly established OHSC.

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2. PRINCIPLES

- 2.1. The parties recognize the importance of ensuring the smooth transfer of the function from the NDoH to the entity and, as such, make an undertaking that the transfer shall be free of disruption and that the employees are guaranteed of uninterrupted employment with the entity.
- 2.2. Having regard to what has been stated above, the parties agree, as set out hereunder, to effect the transfer of the employees, who perform inspection and compliance services from the department to the OHSC in terms of section 197 of the Labour Relations Act, Act 66 of 1995 ("**the LRA**").

3. PURPOSE

- 3.1. To ensure transfer of employees from the Department to the OHSC in terms of section 197 of the LRA, without disruption to the management and administration of the inspection and compliance function .
- 3.2. To ensure adequate protection for the rights of the transferred employees.

4. SCOPE OF APPLICATION

This Agreement binds –

- 4.1. The National Department of Health;
- 4.2. The Office of Health Standards Complaints and Compliance as per the memorandum of understanding between the NDoH and the OHSC, attached herewith as Annexure "A".
- 4.3. The Trade Unions and their members who fall within the registered scope of the Council; and
- 4.4. The employees who are not members of any of the Trade Unions and who fall within the registered scope of the Council.

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5. AGREEMENT

The parties agree as follows:

- 5.1. Employees who perform the compliance inspection and complaints function would be transferred in terms of Section 197 Labour Relations Act, 1995 (Act No. 66 of 1995) ("LRA"), as amended;
- 5.2. The NDoH shall transfer all concomitant resources, including personnel, to the OHSC;
- 5.3. The NDoH shall co-ordinate the transfer;
- 5.4. The OHSC shall accept accountability for the services on the date of the transfer;
- 5.5. The accounting officer of the NDoH shall retain accountability for matters originating prior to the date of transfer;
- 5.6. The transfer of funds shall take place in accordance with the requirements of paragraph 6.5 of the Treasury Regulations and memorandum of understanding between the NDoH and the OHSC;
- 5.7. All transferred employees shall report to the OHSC upon the date of transfer.
- 5.8. Such transfer shall be carried out in a fair, equitable and transparent manner in terms of the criteria set out in Section 197 of the LRA, provided such employees were so appointed and placed to execute functions as provided for in the Act;
- 5.9. All the organisational rights between the respective Trade Unions and the old employer shall, as at the date of the transfer, be transferred to the new employer and Trade Unions until such time that new organisational rights are negotiated in a recognised bargaining structure.
- 5.10. All vacant positions shall be subject to ordinary recruitment processes, and
- 5.11. The payment of salaries and benefits of those employees transferring to the OHSC shall be paid by the NDoH until such time the OHSC has capacity to do so.

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6. DISPUTE RESOLUTION PROCEDURES

- 6.1. Any dispute about the interpretation and application of this agreement may be referred to the PHSDSBC and shall be dealt with in terms of the dispute resolution procedure of the Council.
- 6.2. Any dispute between the new employer and the transferred employees about the interpretation and application of this agreement will be referred to the Commission of Conciliation Mediation and Arbitration (CCMA) for adjudication.

7. IMPLEMENTATION DATE

- 7.1. The agreement would be implementable on the day it attains majority signature.

**THIS DONE AND SIGNED AT CENTURION ON THIS ^{31st} DAY OF
.....March..... 2016.**

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ON BEHALF OF THE EMPLOYER		
STATE AS THE EMPLOYER	NAME	SIGNATURE
	NGACE M. A. I. E	
ON BEHALF OF THE TRADE UNION PARTIES		
TRADE UNION	NAME	SIGNATURE
DENOSA	Thandeka Msibi	
HOSPERSA	Masale Selomakele	
NEHAWU	Mike Shingwe	
NUPSAW		
PSA		