

PHSDSBC

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

RESOLUTION NO 2 OF 2015

**AMENDMENTS TO THE RULES FOR THE CONDUCT OF THE
PROCEEDINGS BEFORE THE PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL BARGAINING COUNCIL**

**PHSDSBC Block E / Public Service Bargaining Centre / 260 Basden Avenue / Lyttelton / 0176
P.O. Box 11467 / Centurion / Pretoria / 0046
Tel: 012 644 8122/3 Fax: 012 664 7248 E-mail: servicedesk@phsdsbc.org.za
Website: www.phsdsbc.org.za**



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1. OBJECTIVE



The objective of this agreement is to:

- 1.1 Effect amendments to the rules for the conduct of the proceedings before the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC).

2. SCOPE

This agreement binds:

- 2.1 The State as the Employer;

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2.2 Public Health and Social Development personnel employed by the Employer who are members of the Trade Union parties to this agreement; and

2.3 Public Health and Social Development personnel employed by the Employer who are not members of any Trade Union parties to this agreement, but who fall within the registered scope of the PHSDSBC.

3. NOTING

Parties note that:

3.1 The use of emails in the service of documents on other parties;

3.2 Clause 15 has been inserted on Determination by Council/ Commissioner

"15 (1) If a party referring the matter fails to attend the conciliation, the commissioner must determine the matter which may include the issuing of a certificate of non-resolution.

15 (2) The Council or an appointed panelist must issue a certificate in terms of s 135(5) of the Act"; and

3.3 Clause 25 (5) has been inserted on Appearance or Representation of Parties "(5) A party seeking to be represented by a legal practitioner at the arbitration must bring an application in terms of Rule 32".

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4. AGREEMENT

The parties therefore agree as follows:

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

5. DISPUTE RESOLUTION

Should there be a dispute about the interpretation or application of this agreement, such dispute shall be dealt in terms of the dispute resolution procedure of the Council.


6. IMPLEMENTATION OF AGREEMENT

The Council will monitor the implementation of this agreement.

THIS DONE AND SIGNED AT CETUNION OF THIS 15 DAY OF JULY 2015.

MM  RTM  MMS

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature	Date
EMPLOYER	NGAICE		30/07/2015

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature	Date
NEHAWU	Mike Shingange		15/7/15
DENOSA	RITTA MSIBI		29/7/2015
PSA	Ernie Oosthuizen		29/7/2015
HOSPERSA	Masale Selamatsele		04/08/15
NUPSAW			

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PART ONE : SERVING AND FILING OF DOCUMENTS

1. Contacting the Council

- (1) The addresses; telephone; fax to email and fax numbers of the office of the Council are as follows:

Physical Address: Lyttelton Office Public Service Bargaining Centre (PHSDSBC)

260 Basden Avenue

Lyttelton

0176

Postal Address: P O Box 11467

Centurion

0046

Telephone: (012) 644 8100

Fax: (012 644 8045 / 7248

Email: servicedesk@phsdsbc.org.za

Fax to email: 0862356300 (referrals)/086 235 6300

- (2) Documents may only be filed with the Council at the address; email or telefax numbers listed in sub-rule (1) above.

2. Office Hours

- (1) Offices of the Council will be open every day from Monday to Friday; excluding public holidays; between the hours of 07h30 and 16h00; or as determined by the Council.
- (2) Documents may only be filed with the Council during the hours referred to sub-rule (1); provided that they may be faxed or email at any time.
- (3) All communications should be addressed to the Secretary of the Council.



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3. Calculation of time periods in these rules

- (1) For the purposes of calculating any period of time in terms of these rules:-
 - (a) Day means a calendar day; unless the context indicates otherwise; and
 - (b) The first day is excluded and the last day is included; subject to sub-rule (2)
- (2) For purposes of sub-rule (1)(b); if the last day of any period falls:
 - (a) On a Saturday; Sunday or a Public Holiday; the last day will be the next working day; and
 - (b) On a day during the period between 16 December to 7 January; the last day will be 8 January or; if it is not a working day; then the next working day thereafter.

4. Signing of documents

- (1) A document that a party must sign in terms of the Act or these rules may be signed by the party or by a person entitled in terms of the Act or these rules to represent that party in the proceedings.
- (2) If proceedings are jointly instituted or opposed by more than one employee; documents may be signed by an employee / representative who is mandated by the employee/s.
- (3) The other employees to (must) sign a list containing their names; signatures and ID numbers of the employees who have mandated the employee to sign on their behalf; with each signature linked to the name of that employee; and must be attached to the referral form.

5. Service of documents on other parties

- (1) A party must serve a document on the other parties –
 - (a) by handing a copy of the document to:-
 - (i) a person identified in sub-rule (2);
 - (ii) a representative authorised in writing to accept service on behalf of the person identified in sub-rule (2);



- (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence; business or place of employment premises at the time;
- (b) by leaving a copy of the document at:-
 - (i) an address chosen by the person identified in sub-rule (2) to receive services;
 - (ii) any premises in the accordance with sub-rule (3);
- (c) by faxing a copy of the document to the person identified in sub-rule (2) to the last-known fax number; or number chosen by that person to receive service;
- (d) by sending a copy of the document by registered post or telegram to the last-known address of the party or an address chosen by the party to receive service;
- (e) by sending a copy of the document by email to the last-known email address of the party or an email address chosen by the party to receive service, subject to the rule 6(1)(e).
- (2) a document must be served –
 - (a) In the case of the employer:-
 - (i) On a responsible employee of the employer at the workplace where the employee/s involved in the dispute ordinarily work or worked, or
 - (ii) If the employee/s involved in the dispute ordinarily work or worked in a provincial office, on the nominated employer representative at the provincial office of the province where the employee/s involved in the dispute ordinarily work or worked, at any of the addresses specified in Annexure B regarding such province;
 - (iii) If the employee/s involved in the dispute ordinarily work or worked in a national department, on the nominated employer representative at such national department, at any of the addresses specified in Annexure B regarding such national department; or
 - (iv) On the chief negotiator of the State as specified in Annexure B.
 - (b) In the case of an employee or trade union, on the employee or an official at the trade union's head office.
- (3) If no person identified in sub-rule (2) is willing to accept service, service may be effected by affixing a copy of the document to –
 - (a) The main door of the premises concerned; or
 - (b) If this is not accessible, a post-box or other place to which the public has access.

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- (4) If a party has informed the Council or other party that is represented by a legal practitioner and has provided the Council or the party with a written notice of the name, address and fax number of the legal practitioner, the Council or such other party (as the case may be) must serve a copy of any documents to be served on the legal practitioner. The legal practitioner must place himself / herself on record as a legal representative at arbitration once the conciliation has remained unresolved.
- (5) Failure to serve a copy of a document upon the legal practitioner shall not invalidate any subsequent proceedings.
- (6) The Council must serve a notice on a party in the same manner as described in this rule 6; provided that regarding service on the employer, the Council must –
 - (a) Serve notices on the employer at the provincial office of the employer, at the address specified in Annexure B, where the employee party was situated at the time of the referral, unless the matter clearly involves a national department, in which case the Council must serve notices on the relevant national department; and
 - (b) If it appears from any referral by an employee that the referral had been served upon the employer at another office that the appropriate office listed in sub-rule (6)(a), also serve a copy of the full referral to the appropriate office listed in that sub-rule 6(a).
- (7) The Council or a panellist may order service in a manner other than prescribed in sub-rule 6(a).
- (8) The General Secretary must amend Annexure B, regarding the destination of the employer's representative nominated for receiving service of documents, or any addresses for service, on receipt of written notice from the employer representative at appropriate level.

6. Proof of Service of a document in terms of the rules

- (1) A party must prove to the Council or a panellist that a document was served in terms of these rules, by providing the Council or panellist:
 - (a) With a copy of proof of email the document or proof of sending a registered post to the party;



- (b) With a copy of the telegram or telex communicating the document to the other party;
- (c) With a copy of the fax transmission report indicating the successful transmission to the other party of the whole document; or
- (d) If a document was served by hand –
 - (i) With a copy of a receipt signed by, or on behalf of the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
 - (ii) With a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (e) If a document was served by email –
 - (i) With a copy of the email notification that the relevant email had been delivered by the sender clearly indicating the time and date that the email had been delivered;
- (2) If a proof of a service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The Council or a panellist may accept proof of service in a manner other than prescribed in this rule as sufficient.

7. Filing of documents with the Council

- (1) A party must file documents with the Council:
 - (a) By handing the document to the office of the General Secretary at the address listed in rule (1);
 - (b) By sending a copy of the document by registered post of the office of the General Secretary at the address listed in rule (1); or
 - (c) By faxing or email the document to the office of the General Secretary at a number or email address listed in rule (1).
- (2) A party must file the original of a document filed by fax or mail, if requested to do so by General Secretary or a panellist. A party must comply with a request to file an original document within seven (7) days of the request.

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8. Documents and notices sent by registered post or by fax or email

- (1) Any document or notice sent by registered post by a part or the Council presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was posted.
- (2) Any document or notice sent by fax or email is presumed to have been received at the time of successful transmission.

9. Condonation for documents or applications filed late

- (1) This rule applies to any referral document or application delivered outside the applicable time period prescribed in the Act, these rules or the dispute resolution procedure of the Council.
- (2) A party who files a document or application outside of the applicable time period prescribed in the Act, these rules or dispute resolution procedure of the Council must, when filing the document or application with the Council, apply for Condonation in terms of Rule 32.
- (3) An application for Condonation must set out the grounds for seeking Condonation and must include details of the following:
 - (a) The degree of lateness;
 - (b) The reason for lateness
 - (c) The referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
 - (d) Any prejudice to the other party; and
 - (e) Any other relevant factors.
- (4) The General Secretary may assist a party to comply with this rule.

10. Referring a dispute to the Council

- (1) A referral of a dispute must be made on the referral forms of the Council.
- (2) The referring party must –



- (a) Sign the referral form in accordance with rule 4;
- (b) Attach to the referral form written proof, in accordance with rule 6, that the referral form was served on the other parties to the dispute;
- (c) The Council will refuse to accept a referral of a dispute until sub-rule (2) has been complied with.



PART TWO : CONCILIATION OF DISPUTES

11. Notice of conciliation

The Council must give the parties at least fourteen (14) days written notice of conciliation hearing, unless the parties agree to a shorter period of notice.

12. Pre-conciliation

The Council or a panellist may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

13. Jurisdictional issues at conciliation

- (1) If it appears during conciliation proceedings that a jurisdictional issue has not been determine, a panellist must require the referring party to prove that the Council has jurisdiction to conciliate the dispute.
- (2) A panellist must always give written reasons for a ruling that the Council does or does not have jurisdiction.

14. Certificate of outcome after conciliation

A panellist must, after conciliation, issue a certificate of outcome stating whether the dispute has or has not been resolved.

15. Determination by Council / Commissioner

- 15(1) If a party referring the matter fails to attend the conciliation, the commissioner must determine the matter which may include the issuing of a certificate of non-resolution.



- 15(2) The Council or an appointed panellist must issue a certificate in terms of rule 135(5) of the Act.

16. Nature of conciliation proceedings

- (1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing.
- (2) No person, including a panellist may be called as a witness during any subsequent proceedings in Council or in any court to give evidence about what transpired during conciliation, unless the parties and the panellist have agreed otherwise in writing.
- (3) Notwithstanding the provision of sub-rule (1) and (2) parties may submit evidence and call witnesses as to what transpired during conciliation –
- (a) In as far as this is aimed at proving or disproving the existence of a settlement agreement concluded during such proceedings; or
- (b) In the case of an application for the review of any proceedings in terms of section 145 or 158 of the Act, where the ground for review is linked to the conduct of the panellist.

PART THREE : CON-ARB IN TERMS OF SECTION 191(5A)

17. Conduct of con-arb in terms of section 191(5A)

- (1) The Council must give the parties at least 14 days' notice in writing that a matter has been scheduled for a con-arb in terms of section 191(5A) of the Act.
- (2) A party that intends to object to a dispute being dealt with in terms of this section must deliver a written notice of objection to the General Secretary and other



- party, at least five working days prior the scheduled date in terms of sub-rule (1).
- (3) Sub-rule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
 - (4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule 1, the panellist must conduct the conciliation on the date specified in the notice issued in terms of sub-rule (1).
 - (5) Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
 - (6) Representation of parties in con-arb proceedings is determined in accordance with the provisions of rule 25.
 - (7) The provisions of the Act and these rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
 - (8) If the arbitration does not conclude on the date specified in terms of the notice in sub-rule (1) and where neither party has objected in terms of the sub-rule (2) the General Secretary must schedule the matter for arbitration by issuing a notice in terms of rule 19 or as agreed to by the parties.

PART FOUR : ARBITRATIONS

18. Setting down a case for arbitration

- (1) The Council shall set a case down for arbitration on a date that falls within 30 days from the date that the Council received the request for arbitration from a party.

19. Filing of statements by parties

- (1) The Council or a panellist may direct –



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- (a) The referring party in an arbitration to deliver a statement of case; and
- (b) The other parties to deliver an answering statement.
- (2) A statement in terms of sub-rule (1) must –
 - (a) Set out the material facts upon which the party rely on and the legal issues that arise from the material facts;
 - (b) Be delivered within any time-period specified in the notice referred to sub-rule (1).

20. Holding of a pre-arbitration conference

- (1) The parties to arbitration shall hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2).
- (2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
 - (a) any means by which the dispute may be settled;
 - (b) facts that are agreed between the parties;
 - (c) facts that are in dispute;
 - (d) the issues that the panellist is required to decide;
 - (e) The precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - (f) The sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
 - (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents, will serve as evidence of what they appear to be;
 - (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit.
 - (i) which party must begin;
 - (j) the necessity for any *in loco* inspection;

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- (k) securing the presence at the hearing of any witness;
- (l) the resolution of any preliminary points that are intended to be taken;
- (m) the exchange of witness statements;
- (n) expert evidence;
- (o) any other means by which the proceedings may be shortened;
- (p) an estimate of the time required for the hearing;
- (q) the right of representation; and
- (r) whether an interpreter is required and, if so, for how long and which language.
- (3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (4) A minute in terms of sub-rule (3) may also deal with any other matter listed in sub-rule (2).
- (5) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed panellist within five working days of the conclusion of the pre-arbitration conference.

21. Notice of arbitration

The Council must give the parties at least fourteen (14) days written notice of an arbitration hearing, unless the parties agree to a shorter period.

22. Jurisdictional issues at arbitration

- (1) If during the arbitration proceedings it appears that jurisdictional issues has not been determine, the panellist must require the party that raises the jurisdictional point to prove that the Council does not have jurisdiction to arbitrate the dispute.
- (2) The panellist must always give written reasons for a ruling that the Council does not have jurisdiction.

PART FIVE : RULES THAT APPLY TO PROCEEDINGS

23. Postponements

- (1) An arbitration may be postponed –
 - (a) by agreement between the parties in terms of sub-rule (2); or
 - (b) by application and on notice to the other parties in terms of sub-rule (3).
- (2) The Council may postpone a hearing on good cause shown without the parties appearing if –
 - (a) all the parties to the dispute agree in writing to the postponement as provided in sub-rule (1)(a); and
 - (b) the written agreement for the postponement is received by the Council at least seven (7) days prior to the scheduled date of the arbitration.
- (3) If the conditions of sub-rule (2) are not met, any party to the dispute may request a postponement in writing with reasons, provided that it is received by the Council and the other parties to the dispute at least five (5) days before the scheduled date of the hearing.
- (4) A party that wants to oppose a postponement as contemplated in sub-rule (3) may make written representations to the Council at least five (5) days prior to the scheduled date of the hearing.
- (5) After due consideration of any application and written representations received in terms of sub-rule (4), the Council must decide whether or not to grant a request for postponement in terms of sub-rule (3) and convey its decision in writing to the panellist and all parties to the dispute.
- (6) If a party to a dispute fails to comply with the time periods referred to in sub-rules (1), (2), (3) or (4), the arbitration must take place on the scheduled date, unless the Council on good cause shown grants a postponement and conveys its decision in writing to the panellist and all parties to the dispute.
- (7) If a postponement is granted by the Council in terms of sub-rule (6), the party responsible for the postponement must bear the cost of postponement unless good cause is shown.

24. Venue for proceedings

- (1) A dispute must be conciliated or arbitrated in the province which the cause of action arose, unless otherwise directed by the General Secretary.
- (2) The conciliation and/or arbitration proceedings shall be held at a venue determined by the General Secretary.

25 Appearance or representation of parties

- (1) In conciliation proceedings a party to the dispute must appear in person or be represented only by a co-employee, a member, an office bearer or official of that party's trade union or by an employee of national department or provincial administration.
- (2) Despite sub-rule (1) a panellist must during conciliation allow a legal practitioner to argue matters of jurisdiction only.
- (3) In any arbitration proceedings, a party to the dispute may appear in person or be represented only by legal practitioner; a co-employee, a member, an office bearer or official of that party's trade union or an employee of national department or provincial administration.
- (4) If the dispute being arbitrated is about the fairness of a dismissal; and a party has alleged that the reason for dismissal relates to the employee's conduct or capacity, the parties, despite sub-rule (3) are not entitled to be represented by legal practitioner in the proceedings unless –
 - (a) the panellist and all the other parties consent;
 - (b) the panellist concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:-
 - (i) the nature of the questions of law raised by the dispute;
 - (ii) the complexity of the dispute;

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- (ii) the public interest; and
 - (iii) the comparative ability of the opposing parties or their representative to deal with the dispute;
- (5) A party seeking to be represented by a legal practitioner at the arbitration must bring an application in terms of rule 32.

26. Objections to a representative

- (1) A party to the dispute that challenges the right of appearance of a representative must furnish reasons explaining why the representative does not have the right of appearance.
- (2) The panellist call upon the representative whose right of appearance is challenged to furnish reasons why the representative should be permitted to appear.
- (3) A representative whose right of appearance is challenged must provide any documents requested by the panellist, in terms of sub-rule (2), including but not limited to, constitutions, pay slips, contract of employment, documents and forms, recognition agreements and proof of membership of trade union.

27. Joinder or substitution of parties

- (1) The Council or a panellist may make an order joining any number of persons as parties in proceedings if the relief depends on substantially the same question of law or fact or if the party to be joined has a substantial interest in the proceedings.
- (2) The Council or panellist may make an order in terms of sub-rule (1) –
 - (a) of his or her own accord;
 - (b) on application by party; or



- (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (3) An application in terms of this rule must be made in terms of rule (32).
- (4) When making an order in terms of sub-rule (1), a panellist may –
 - (a) give appropriate directions as to the further procedure in the proceedings; and
 - (b) make an order of costs in accordance with these rules.
- (5) If any proceedings it becomes necessary to substitute a party for an existing party, any party to the proceedings may apply to the Council or a panellist for an order substituting that party for an existing party, and a panellist may make such order or give appropriate directions as to the further procedure in the proceedings.
- (6) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (7) Subject to any order made in terms of sub-rules (4) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

28. Correction of citation

If a party to any proceedings has been incorrectly or defectively cited, the Council or a panellist may, on application or on notice to the parties concerned, correct the error or defect.

29. Consolidation of disputes

The Council or a panellist, of his/her own accord after consultation with parties or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

30. Disclosure of documents

- (1) The parties must disclose relevant documents before and/or during arbitration proceedings.
- (2) Either party may bring an application for an order for disclosure of relevant documents.

31. Failure to attend

- (1) If an applicant fails to attend or be represented at arbitration proceedings, before the Council, a panellist may dismiss the matter by issuing a ruling:-
- (2) If a respondent fails to attend or be represented at arbitration proceedings before the Council, a panellist may –
 - (a) continue with the proceedings in the absence of the respondent; or
 - (b) adjourn the matter.
- (3) A panellist must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rules (1) and (2).
- (4) If a matter is dismissed, the Council must send a copy of the ruling to the parties.

PART SIX : APPLICATIONS

32. Bringing of applications

- (1) This rule applies to any –**
 - (a) application for condonation, joinder, substitution, variation or rescission;**
 - (b) application in a jurisdictional dispute;**
 - (c) application to have a settlement agreement made an arbitration award in terms of Section 142A read with Section 51(8) of the Labour Relations Act as amended;**
 - (d) application to make an award as if it were an order of the Labour Court in terms of Section 143;**
 - (e) other preliminary or interlocutory application.**
- (2) An application must be brought on notice to all persons who have an interest in the application.**
- (3) The party bringing the application must sign the notice of application in accordance with rule (4) and must state –**
 - (a) the title of the matter;**
 - (b) the case number assigned to the matter by the Council;**
 - (c) the relief sought;**
 - (d) the address at which the party bringing the application will accept delivery of all documents and proceedings;**
 - (e) that any party that intends to oppose the application must deliver a notice of opposition and answering affidavit within fourteen (14) days after the application has been delivered to it;**
 - (f) that the application may be heard in the absence of a party that does not comply with sub-paragraphs (e);**



- (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out –
 - (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the application;
 - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9;
 - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules;
 - (f) any party opposing the application may deliver a notice of opposition and an answering affidavit within fourteen (14) days from the day on which the application was served on that party;
 - (g) a notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
- (5)(a) The party bringing the application may deliver a replying affidavit within seven (7) days from the day on which any notice of opposition and answering affidavit are served on it.
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (6) The Council or panellist may permit the affidavits referred to in this rule to be substituted by a written statement.
- (7) In an urgent application, the Council or a panellist –

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- (a) may dispense with the requirements of this rule; and
- (b) may only grant an order against a party that has had notice of the application.
- (8)(a) The Council must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.
- (b) the Council must notify the parties of the date, time and place of the hearing of the application.
- (9) Despite this rule, the Council or a panellist may determine an application in any manner it or s/he deems fit.

33. Variation or rescission of rulings or arbitration awards in terms of section 144

- (1) An application for the variation or rescission of an arbitration award or a ruling must be made within fourteen (14) days of the date on which the applicant became aware of the award / ruling –
 - (a) erroneously sought or erroneously made in the absence of any party affected by that ruling / aware;
 - (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (c) granted as a result of a mistake common to the parties to the proceedings.
- (2) Ruling made by a panellist, which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

PART SEVEN : ENQUIRY BY A PANELIST IN TERMS OF SECTION 188A

34. Chairing the disciplinary hearing in terms of section 188A

- (1) The Council may appoint a panellist to conduct an enquiry in accordance with the provisions of section 188A of the Act.



- (2) The Council must give the parties at least fourteen (14) days' notice of an enquiry in terms of sub-rule (1).
- (3) The Council will only refund a fee paid in terms of section 188A if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (2).

PART EIGHT : GENERAL

35. Condonation for failure to comply with the time frames prescribed in the rules

- (1) The Council or a panellist may condone any failure to comply with the time frames in these rules on good cause shown.

36. Record of proceedings

- (1) The Council must keep a record of --
 - (a) any evidence given in an arbitration hearing, including all documents handed in to the panellist during the hearing;
 - (b) any sworn testimony given in any proceedings before the Council; and
 - (c) any arbitration award or ruling made by a panellist.
- (2) The record of the arbitration proceedings may be kept by any appropriate means, including by legible hand-written notes, by electronic notes or by means of a mechanical, magnetic or electronic recording of sound.
- (3) Where the outcome of proceedings before the Council is taken on review, the Council shall file a copy of the record with the Labour Court, as specified in the Labour Court Rules.
- (4) If the panellist that conducted the arbitration has certified the written portions of the record (comprising of the documents handed in during the hearing and the arbitrator's notes), these portions of the record is presumed to be correct, unless the Labour Court decides otherwise.



37. Issuing of a subpoena

- (1) Any party who requires the Council or a panellist to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form (PHSDSBC Rules Form 1) together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees or a witness's reasonable travel costs in terms of section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of sub-rule (1) and any request in terms of sub-rule (2) must be filed with the Council at least fourteen (14) days before the arbitration hearing, or as directed by the panellist hearing the arbitration.
- (4) The Council or a panellist may refuse to issue a subpoena if –

 - (a) the party applying for the subpoena does not establish why the evidence of the person is necessary;
 - (b) the person to be subpoenaed does not have a reasonable period in which to comply with the subpoena;
 - (c) the Council or the panellist is not satisfied that the party applying for the subpoena has made arrangements to pay the witness fees and the reasonable travel costs of the person to be subpoenaed, except in as far as the Council or a panellist has waived the requirement of payment of witness fees or travel costs.
- (5) A subpoena must be served on the person to be subpoenaed –

 - (a) by the Council or by the person who has requested the issue of the subpoena or by the Sheriff, at least seven (7) days before the scheduled date of the arbitration; and
 - (b) if so directed by the Council or a panellist, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act and the witness' reasonable travel costs.



38. Payment of witness fees

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette of section 142(7) of the Act, provided that, if such witness is an employee of the State, such witness shall not be paid an allowance for the time that he/she was required to be available to give evidence during such proceedings, unless the Council or a panellist is satisfied that the witness will not be paid for such time.
- (2) Any witness fee due (including reasonable travel costs) must be paid by –
 - (a) the party who requested the Council to issue the subpoena; or
 - (b) the Council, if the issuing of the subpoena was requested by a panellist or if the Council or a panellist waives fully the requirement for the party to pay witness fees in terms of section 142(7)(c).
- (3) Despite sub-rule (1), the Council or a panellist may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

39. Cost orders

- (1) The basis on which a panellist may make an order as to costs in any arbitration, is regulated by the dispute resolution procedure of the Council and section 138(10) of the Act.



40. Taxation of bills of cost

- (1) The Council must on receipt of the application for taxation and bill of costs appoint a panellist as taxing officer to perform the functions of a taxing officer in terms of this clause.**
- (2) The Council will determine the date, time and venue for the taxation.**
- (3) The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Council, in terms of Annexure A to these Rules.**
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.**
- (5) Any person requesting taxation must complete PHSDSBC Rules Form 2.**
- (6) The taxing officer must ascertain –**
 - (a) the parties' entitlement to be present at the taxation; and**
 - (b) that the parties have received notice of the date, time and place of the taxation.**
- (7) The Council must give the parties at least fourteen (14) days written notice of a taxation hearing, unless the parties agree to a shorter period.**
- (8) Despite sub-rules (6) and (7), notice need not be given to a party –**
 - (a) who failed to appear or to be represented at the hearing; or**
 - (b) who consented in writing to the taxation taking place in that Party's absence.**
- (9) Any decision by a taxing officer has the status of an arbitration award and is subject to review by the Labour Court.**



41. Definitions

Any expression in these rules that is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), has the same meaning as in that Act except that, if such expression is defined in the constitution or the dispute resolution procedure of the Council, it shall have the meaning as in the constitution or such dispute procedure.

In addition, the following words shall have the meaning as indicated below:

| | |
|---------------------|---|
| "Act" | means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of that Act; |
| "association" | means any unincorporated body of persons; |
| "con-arb" | means proceedings held in terms of section 191(5A) of the Act; |
| "Council" | means the Public Health and Social Development Sector Bargaining Council established in terms of section 37 of the Act; |
| "deliver" | means serve on other parties and file with the Council; |
| "file" | means to lodge with the Council in terms of rule 7; |
| "General Secretary" | means the General Secretary of the Council and includes any person delegated by the General Secretary to perform any of the functions of the General Secretary; |
| "Labour Court" | means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court; |
| "panellist" | means a person appointed by the Council to handle disputes as a conciliator or arbitrator; |
| "party" | means any party to proceedings before the Council and may be organisations and/or individuals; |
| "public holiday" | means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994); |



"rules" means these rules and includes any footnote to a rule;

"serve" means to serve in accordance with rule 5 and "service" has a corresponding meaning;

"taxing officer" means any panellist appointed by the Council in terms of rule 40.



ANNEXURE A: TAXATION OF BILLS OF COSTS

| | DESCRIPTIONS OF FEES AND DISBURSEMENTS | Fees & disbursements applicable to legal practitioners and to trade union officials, officials of employers' organisations and employee acting on behalf of their employers |
|-----|---|---|
| 1. | Taking instructions to refer or to defend a dispute | R326.50 |
| 2. | Completion of "referral document" | R164.00 |
| 3. | Service and filing of documents | Any disbursement reasonably incurred to give effect to the provisions of clauses requiring a document to be forwarded to the Council or other party |
| 4. | Taking instructions to request arbitration, where applicable | R326.50 |
| 5. | Making necessary copies | R2.50 per page |
| 6. | Taking instructions to make or to oppose any other application | R338.00 |
| 7. | Drafting and drawing documents in support of or in opposition of any application, heads of argument or other notices | R20.00 per folio |
| 8. | Attending on signature of any affidavit drafted in support or in opposition of an application | R60.00 |
| 9. | Preparation for arbitration hearing and consulting with witnesses | R338.00 per hour |
| 10. | Attending conciliation arbitration, pre-arb meeting including waiting time, time spent on attending inspection <i>in loco</i> , and travelling time to and from the venue | R100.00 per quarter-hour or part thereof |

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE PMSDSSC

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| | | |
|-----|--|---------------------|
| 11. | Sorting, arranging and pagination of documents and compiling index for purposes of an arbitration hearing | R100.00 |
| 12. | Any necessary telephone call for purposes of the orderly process of determining the dispute between the parties, including the disbursements incurred in making or receiving the telephone call | R10.00 |
| 13. | Any necessary letter written or received for purpose of the orderly process of determining the dispute between the parties, including any disbursement incurred in sending or receiving the letter | R10.00 |
| 14. | Travelling costs for the purposes of attending conciliation, con-arb, pre-arbitration conference, arbitration hearing and taxation | R2.00 per kilometre |
| 15. | Drawing bill of costs | R75.00 |
| 16. | Attending to taxation | R75.00 |

NOTE

One folio consist of two hundred and fifty six (256) words or part thereof

ANNEXURE B: EMPLOYER'S ADDRESSES FOR SERVICE

The designation of the nominated employer representative, and such representative's nominated addresses, to be used for service on the employer in terms of rule 5(5), are as follows:

1. National and Regional Departments of Health:

(a) For the National Department of Health:

Private Bag X828

PRETORIA

0001

Fax No. (012) 312 3111

Tel No. (012) 312 0055

(b) For the Province of Eastern Cape:

Private Bag X0038

BISHO

5605

Fax No. (040) 635 1128

Tel No. (040) 609 2271

(c) For the Province of Free State:

P O Box 227

BLOEMFONTEIN

9301

Fax No. (051) 409 8426

Tel No. (051) 409 444/8633

(d) For the Province of Gauteng:

Private Bag X085

MARSHALLTOWN

2107

Fax No. (011) 355 3358

Tel No. (011) 355 3185

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(e) For the Province of Kwa-Zulu-Natal:

Private Bag X9051

PIETERMARITZBURG

3200

Fax No. (033) 395 3220

Tel No. (033) 395 2763

(f) For the Province of Limpopo:

Private Bag X9302

POLOKWANE

0700

Fax No. (015) 293 6211

Tel No. (015) 293 6161

(g) For the Province of Mpumalanga:

Private Bag X11278

NELSPRUIT

1200

Fax No. (013) 635 1128

Tel No. (013) 766 3360

(h) For the Province of Northern Cape:

Private Bag X5021

KIMBERLEY

Fax No. (053) 802 2432

Tel No. (053) 802 2358

EMAIL: YAPETRUS@TEMP.NCAPE.GOV.ZA



(i) For the Province of North West:

Private Bag X2068

MMABATHO

Fax No. (018) 384 5624

Tel No. (018) 387 5808

(j) For the Province of Western Cape:

P O BOX 2060

CAPE TOWN

Fax No. (021) 483 3952

Tel No. (021) 483 3991

(1) National and Regional Departments of Social Development:

(a) For the National Department of Social Development:

PRIVATE BAG X901

PRETORIA

Fax No. (012) 312 7765

Tel No. (012) 312 7513

(b) For the Province of Eastern Cape:

PRIVATE BAG X901

PRETORIA

Fax No. (012) 312 7765

Tel No. (012) 312 7513

(c) For the Province of Free State:

PRIVATE BAG X2616

BLOEMFONTEIN

9300

Fax No. (051) 409 0530

Tel No. (051) 409 0561

- (d) For the Province of Gauteng:
PRIVATE BAG X35
JOHANNESBURG
2000
Fax No.(011) 355 7920/7667
Tel No. (011) 355 7610
- (e) For the Province of Kwa-Zulu-Natal:
PRIVATE BAG X27
ULUNDI
3838
Fax No.(035) 874 3710
Tel No. (035) 874 3726
- (f) For the Province of Limpopo:
PRIVATE BAG X9302
POLOKWANE
Fax No.(015) 293 6211
Tel No. (015) 293 6078/6161
- (g) For the Province of Mpumalanga:
PRIVATE BAG X11213
NELSPRUIT
1200
Fax No.(013) 766 3458
Tel No. (013) 766 3188
- (h) For the Province of Northern Cape:
P O BOX 5042
KIMBERLEY
8300
Fax No.(053) 874 5299
Tel No. (053) 874 9145



(i) For the Province of North West:

PRIVATE BAG X6

MMABATHO

2735

Fax No.(018) 384 4434

Tel No. (018) 384 9668

(i) For the Province of Western Cape:



14 QUEEN VICTORIA STREET

CAPE TOWN

Fax No.(021) 483 6039

Tel No. (021) 483 5702

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE PHSDSBC

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PHSDSBC RULES FORM 1: SUBPOENA

Rules 37 of the PHSDSBC Rules

Physical Address: Lyttelton Office Village, 280 Basden Avenue, Lyttelton, 0176

Postal Address: P O Box 11467, Centurion, 0046

Telephone: (012) 644 8100 Fax (012) 664 8045/7248

The Public Health and Social Development Sectoral Bargaining Council conciliates and arbitrates disputes in the Public Health and Social Development Sector in terms of the Council's constitution.

TO:

(Name of Subpoenaed Person)

.....
(Organisation of Subpoenaed Person)

.....
(Address of Subpoenaed Person)

A panellist has been appointed to attempt to resolve a dispute in terms of the Dispute resolution procedure of the Public Health and Social Development Sectoral Bargaining Council.

Commissioner..... has been appointed

(Name of Commissioner)

This dispute is between (Names of Parties)

.....

.....



You are required in terms of Section 142 of the Labour Relations Act 1995 to appear before the panellist at

(Address where hearing is being held)

On.....(date of hearing) at(Time of Hearing)

You are subpoenaed:

- For requesting in terms of section 142(1)(a)
- To produce any book, document or object in terms of section 142(1)(b)
- To give expert evidence in terms of section 142(1)(c)

(Highlight/mark appropriate block)

You must bring and produce the books, documents or objects listed below:

.....

.....

(List books, documents and objects)

The party requesting the subpoena has been directed to furnish you with the first day witness fees together with the reasonable travel expenses to attend the hearing.
[Delete if not applicable]

.....
(Signed on behalf of the PHSDSBC)

(Date)

.....
(Place)

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PHSDSBC RULES FORM 2: REQUEST FOR TAXATION

Rule 40 of the PHSDSBC Rules

- Read this first
 - What is the purpose of this form? To tax a bill of costs
 - Who fills in this form? The party requesting the taxation
 - Where does this form go? To the Secretary of the Council at the addresses set out in Rule 1
 - Other instructions
 - A copy of this form must be served on the other party
 - Submit proof that a copy of this form has been served on the other party. Attach:
 - A copy of a registered slip from the Post Office
 - A copy of a signed receipt if hand delivered
 - A signed statement confirming service by the person delivering the form
 - A copy of fax confirmation slip
 - Any other satisfactory proof of service
 - A copy of the draft bill of costs must be attached to this form
1. Details of party requesting taxation

Institution:

Surname:

First Names:

Postal Address:

Postal Code:

Tel:..... Cell:.....

Fax:..... Email:.....



2. Details of other party

Institution:

Surname:

First Names:

Postal Address:.....

Postal Code:

Tel: Cell:

Fax: Email:

3. Request for taxation

In the case between:..... **(Applicant) and**

.....(Respondent), case number.....

a cost order was made in favour of the applicant/respondent. In terms of Rule 39 of the PHSDSBC I / we now request that the matter be set down for taxation.

4. Confirmation of above details

Form submitted by (name).....

Signature.....

Position

Date.....

Place.....

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE PHSDSBC

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