



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

**RESOLUTION 3 OF 2006**

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

1. Objective

The objective of this agreement is to:

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

2. Scope

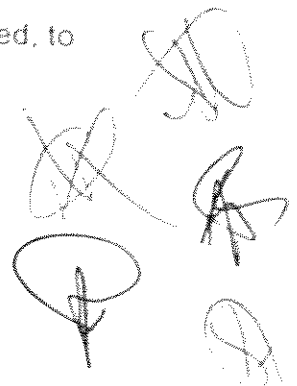
This agreement binds:

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

3. Noting

Parties note that:-

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



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

4. Agreement

Parties agree to the following, that:

4.1 The rules for conduct of proceedings before the PHSDSBC shall be adopted,

4.2 The rules amplify the dispute procedures encapsulated in the PHSDSBC Constitution;

4.3 Where there is conflict between the rules and procedures, the procedures shall have precedence;

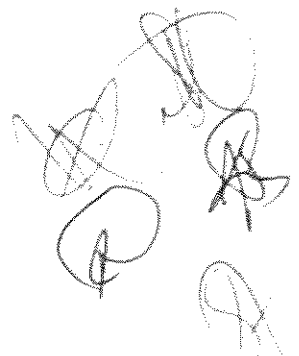
4.4 The rules will come into effect on the date of signing.

5. Dispute Resolution


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

This agreement entered into and signed at Centurion - ELRC on

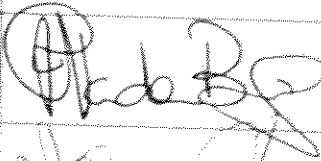


this 19<sup>th</sup> Day of June 2006

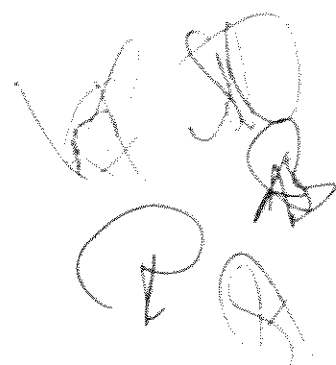


ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as Employer	J. T. CORNWALL	

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
NEHAWU	J.P. VAN DEN BERG	
DENOSA	Jac. C. Magazulu	
PSA	K. Bock	
HOSPERSA		
NUPSAW	S. MATATISANI	



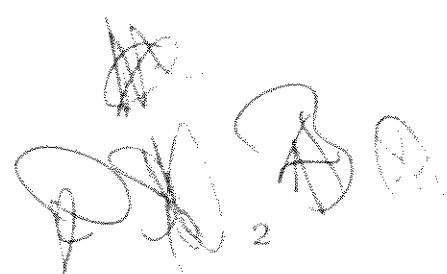
# RULES OF THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTOR BARGAINING COUNCIL

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## **PART ONE: *Serving and filing documents***

### **1. How to contact the Council**

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

**Physical address:** Lyttelton Office Village  
260 Basden Avenue  
Lyttelton  
0176

**Postal address:** PO Box 11467  
Centurion  
0046

**Telephone:** (012) 644 8100

**Fax:** (012) 664 8045/7248

- (2) Documents may only be filed with the Council at the address 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.

- (2) Documents may only be filed with the Council during the hours referred to in sub-rule (1) above, provided that they may be faxed at any time.

- (3) All communication should be addressed to the Secretary to Council

### **3. How to calculate time periods in these rules**

- (1) For the purpose of calculating any period of time in terms of these rules-

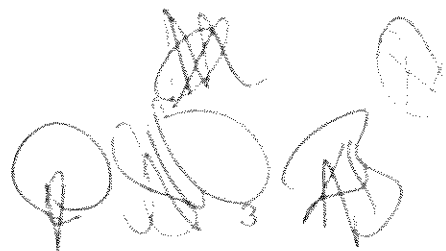
(a) day means a calendar day; and

(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, 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.

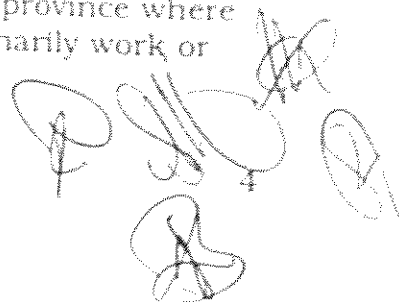
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#### 4. Who must sign documents

- (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 who is mandated by the other employees to sign. A list containing the signatures of the employees who have mandated the employee to sign on their behalf, with each signature linked to the name of that employee, must be attached to the referral form.

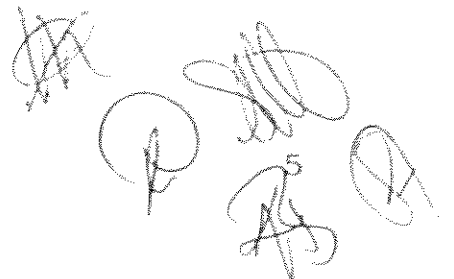
#### 5. How to serve documents on parties

- (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 a 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 service;
    - (ii) any premises in 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 a 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 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





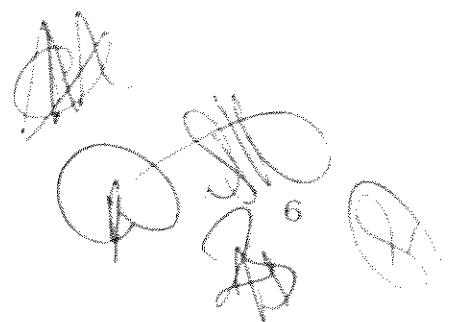
- worked, at any of the addresses specified in Annexure B regarding such province; or
- (iii) if the employee/s involved in the dispute ordinarily work or worked in a national department, on the nominated employer representative at such national department, at any of the addresses specified in Annexure 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 on 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.
- (4) If a party has informed the Council or another party that it is represented by a legal representative and has provided the Council or the other party with a written notice of the name, address and fax number of the legal representative, the Council or such other party (as the case may be) must serve a copy of any documents to be served on the legal representative. A document served in this manner must also be served upon the party itself. Failure to serve a copy of a document upon the legal representative shall not invalidate any subsequent proceedings.
- (5) The Council must serve a notice on a party in the same manner as described in this Rule 5: Provided that, regarding service on the employer, the Council must -
- (a) serve notices on the employer at the provincial office of the province, 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 than the appropriate office listed in sub-rule (5)(a), also serve a copy of the full referral upon the appropriate office listed in that sub-rule.
- (6) The Secretary or a panellist may order service in a manner other than prescribed in this Rule 5.

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- (7) The Secretary must amend Annexure B, regarding the designation 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 the appropriate level.

**6. How to prove that a document was served in terms of the rules**

- (1) A party must prove to the Secretary to Council or a panellist that a document was served in terms of these rules, by providing the Secretary or a panellist:
- (a) with a copy of proof of mailing the document by registered post to the other 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 recipient clearly indicating the time and date that the email had been delivered;
    - (ii) with a copy of an email or fax from the recipient, where receipt of the email is acknowledged;
    - (iii) with a statement confirming receipt of the email by, or on behalf of the party, signed by the person who had telephoned the recipient to confirm receipt of the email, and indicating the name and designation of the recipient and the time and date of receipt.
- (2) If a proof of 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 Secretary or a panellist may accept proof of service in a manner other than prescribed in this rule, as sufficient.

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## **7. How to file documents with the Council**

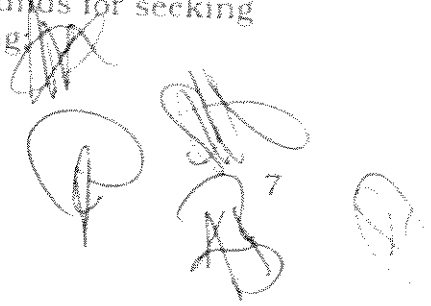
- (1) A party must file documents with the Council:
  - (a) by handing the document to the office of the Secretary at the address listed in rule 1;
  - (b) by sending a copy of the document by registered post to the office of the Secretary at the address listed in rule 1; or
  - (c) by faxing the document to the office of the Secretary at a number listed in rule 1.
- (2) A document is filed with the Council when –
  - (a) the document is handed to the office of the Secretary;
  - (b) a document sent by the registered post is received by the office of the Secretary; or
  - (c) the transmission of the whole of a fax is completed.
- (3) A party must only file the original of a document filed by fax, if requested to do so by the Secretary or a Panellist. A party must comply with a request to file an original document within five working days of the request.

## **8. Documents and notices sent by registered post or by fax**

- (1) Any document or notice sent by registered post by a party or the Council is presumed, until contrary is proved, to have been received by the person to whom it was sent five working days after it was posted.
- (2) Any document or notice sent by fax is presumed to have been received at the time of transmission of the last page of such document or notice. However, if it is sent outside of office hours, whether to the Council or any other party, the document or notice will be presumed to have been received at the start of business on the next day on which the offices of the Council is open.

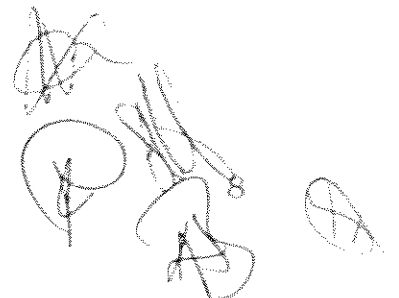
## **9. How to seek condonation for documents filed late**

- (1) This rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act, these rules, or the dispute resolution procedure of the Council.
- (2) A party must apply for condonation, in terms of rule 30, when filing the document with the Council.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:

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- (a) the degree of lateness;
- (b) the reasons for the 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 Secretary may assist a referring party to comply with this rule.

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## **PART TWO: Conciliation of disputes**

### **10. How to refer a dispute to the Council for conciliation**

- (1) A referral of a dispute for conciliation must be made on the referral forms of the Council.
- (2) The referring party must –
  - (a) sign the referral document in accordance with rule 4;
  - (b) attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
  - (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 9.
- (3) The Secretary will refuse to accept a referral until sub-rule (2) has been complied with.

### **11. What notice must the Secretary give of a conciliation**

The Secretary must give the parties at least 14 days' notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice.

### **12. Secretary may seek to resolve dispute before conciliation**

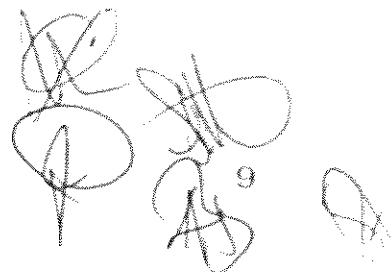
The Secretary or a panellist may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

### **13. How to determine whether a panellist may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the panellist must require the referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation.

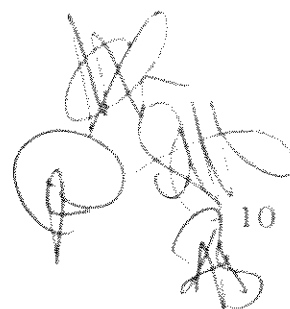
### **14. Issuing of a certificate of outcome**

A certificate of outcome, stating whether the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the panellist and agreed to by parties during conciliation process.

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## 15. Conciliation proceedings may not be disclosed

- (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 the Council or in any court to give evidence about what transpired during conciliation, unless the parties and the panellist has agreed otherwise in writing.
- (3) Notwithstanding the provisions of sub-rules [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.



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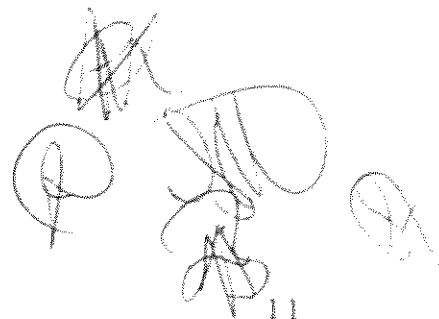


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**PART THREE: Con-arb in terms of section 191(5A)**

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

- (1) The Council must give the parties at least 21 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 Secretary and the 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 22(4).
- (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 commence on the date specified in terms of the notice in sub-rule (1), the Secretary must schedule the matter for arbitration by issuing a notice in terms of Rule 17.



## **PART FOUR: Arbitrations**

### **17. Within which period must a case be set down for arbitration?**

- (1) The Secretary shall set a case down for arbitration on a date that falls within 42 days from the date that the Secretary received either from the panellist or from a party to the proceedings a copy of the certificate of outcome stating that the dispute was unresolved.
- (2) The Secretary must give the parties at least 21 days notice, in writing, of an arbitration hearing in terms of sub-rule (1), unless the parties agree to a shorter period.

### **18. When must the parties file statements**

- (1) The Secretary or a panellist may direct –
  - (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 in sub-rule (1).

### **19. Holding a pre-arbitration conference**

- (1) The parties to arbitration may 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 and whether documents, or parts 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;
  - (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 for which languages.
- (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.

**20. How to determine whether a panellist has jurisdiction to arbitrate a dispute**

- (1) If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, 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 he or she does not have jurisdiction.
- (3) The following shall apply regarding issues of jurisdiction that arise during arbitration:
  - (a) If it transpires during an arbitration that a party should have applied for condonation but did not, the party may, in the discretion of the panellist, bring an application of condonation verbally during arbitration.

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## **PART FIVE: Rules that apply to conciliations and arbitrations**

### **21. Where a conciliation or arbitration will take place**

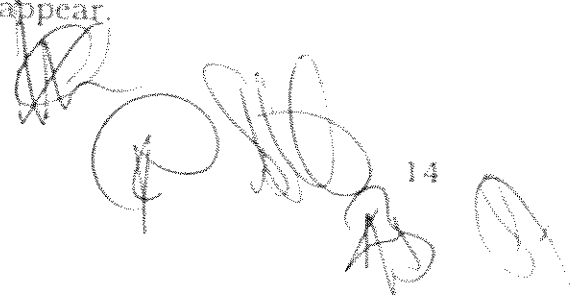
- (1) A dispute must be conciliated or arbitrated in the province in which the cause of action arose, unless otherwise directed by the Secretary.
- (2) The conciliation and/or arbitration proceedings shall be held at a venue determined by the Secretary, which shall preferably be at the Employee's workplace. The employer shall provide a venue, when requested to do so by the Secretary.

### **22. Who may appear or represent parties in proceedings**

- (1) In the conciliation proceedings a party to the dispute may appear in person or be represented only by a co-employee, 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) the panellist may during conciliation allow for legal representation to argue matters of jurisdiction only. After the legal representative argued the matter he/she must be excused from the proceedings.
- (3) In deciding the admissibility of representation as per sub-rule (2) the panellist must take into account the complexity of the issue to be argued, the comparative ability of the opposing parties or their representatives to deal with the dispute and any prejudice that may be suffered by any party to allow such representation.
- (4) In any con-arb or arbitration proceedings, a party to the dispute may appear in or be represented only by a legal practitioner, a co-employee, member and an office bearer or official of that party's trade union or an employee of a national department or provincial administration.

### **23. Objections to a representative appearing before the Council.**

- (1) A party to the dispute that challenges the right of appearance of a representative must furnish reasons showing why the representative does not have the right of appearance.
- (2) The panellist may call upon the representative to furnish reasons why the representative should be permitted to appear.

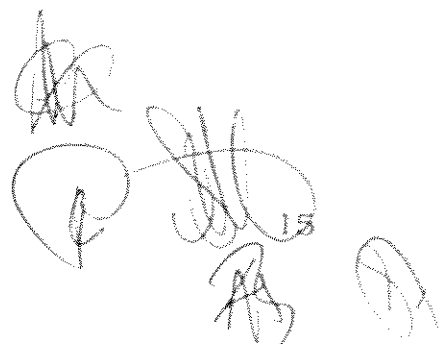


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(3) A representative must provide any documents requested by the panellist, in terms of sub-rule (2), including but not limited to, constitutions, payslips, contract of employment, documents and forms, recognition agreements and proof of membership of a trade union or employer's organisation.

#### **24. How to join or substitute parties to proceedings**

- (1) 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 and if the party to be joined has a substantial interest in the proceedings.
- (2) A panellist may make an order in terms of sub-rule (1) -
- (a) of his or her own accord;
  - (b) on application by a 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 30.
- (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 in any proceedings it becomes necessary to substitute a party for an existing party, any party to the proceedings may apply to the Secretary or the panellist appointed to hear the matter 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. If the panellist orders such substitution, the panellist must inform the Secretary of such ruling.
- (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.



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## 25. How to correct the citation of a party

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

## 26. When the Secretary may consolidate disputes

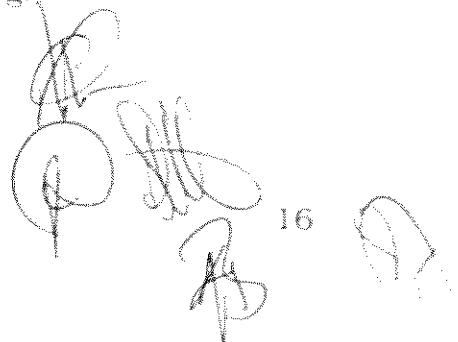
The Secretary or a panellist, of his/her own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings after consultation with the parties.

## 27. Disclosure of documents

- (1) Either party may request a panellist to make an order as to the disclosure of relevant documents.
- (2) The parties may agree on the disclosure of documents.

## 28. How to postpone a hearing

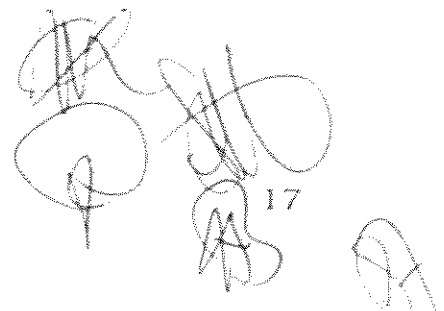
- (1) A scheduled hearing may be postponed -
  - (a) by agreement between the parties in terms of sub-rule (2), provided the parties jointly suggest one or more alternative dates; or
  - (b) by application and on notice to the other parties in terms of sub-rule (3).
- (2) The Secretary must postpone a hearing 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 Secretary 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 provided that it is received by the Secretary and the other parties to the dispute at least five working 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 Secretary at least five (5) days prior the scheduled date of the hearing.

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- (5) After due consideration of any application and written representations received in terms of sub-rule (4), the Secretary must decide whether or not to grant a request for postponement in terms of sub-rule (3) and convey his/her 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), (3) or (4), the conciliation or arbitration must take place on the scheduled date, unless the Secretary on good cause shown grants a postponement and conveys his/her decision in writing to the panellist and all parties to the dispute.
- (7) If a panellist adjourns a hearing in terms of rule 29:
  - (a) the panellist must award the cost of the adjournment against the party, or parties responsible for the adjournment must bear the cost of adjournment, unless good cause is shown;
  - (b) the panellist must specify a date that the proceedings is postponed to, and must inform the Secretary of this date; and the Secretary may amend this date by notice to the parties.

**29. What happens if a party fails to attend proceedings before the Council**

- (1) If an applicant fails to attend or be represented at any proceedings before the Council, a panellist may dismiss the matter by issuing a ruling, or may adjourn the matter.
- (2) If a respondent fails to attend or be represented at any 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) or (2).
- (4) If a matter is dismissed, the Secretary must send a copy of the ruling to the parties and the party or parties responsible for the dismissal must bear the cost for adjournment.

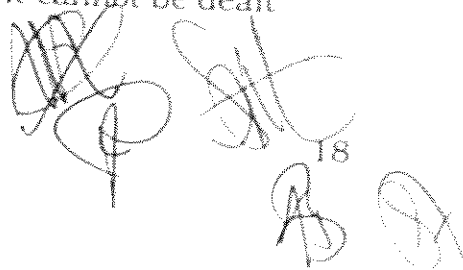


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## **PART SIX: Applications**

### **30. How to bring an application**

- (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 s142A read with s51(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 s143;
  - (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 Secretary;
  - (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
  - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within ten (10) working 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-paragraph (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 document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt




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- 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 10 working 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 initiating the proceedings may deliver a replying affidavit within five working 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 Secretary or panellist may permit the affidavits referred to in this rule to be substituted by a written statement.
- (7) In an urgent application, the Secretary or a panellist -
- (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 Secretary 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 Secretary must notify the parties of the date, time and place of the hearing of the application.
  - (c) Applications may be heard on a motion roll.
- (9). Despite this rule, the panellist may determine an application in any manner it deems fit.

### **31. How to apply to vary or rescind rulings or arbitration awards**

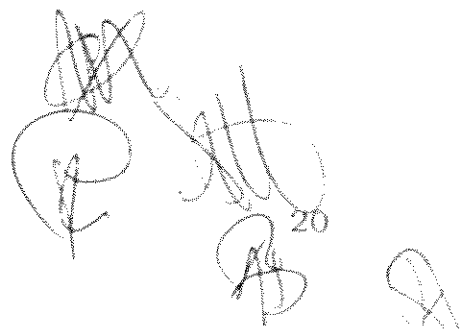
- (9) An application for the variation or rescission of an arbitration award or a ruling must be made within fourteen (14) days of the date on which the applicant became aware of-
- (a) the arbitration award or ruling; or
  - (b) a mistake common to the parties to the proceedings.
- (10) A ruling made by a panellist, which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

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**PART SEVEN: Arbitration in place of a disciplinary hearing**

**33. Chairing of disciplinary hearings in place of the employer**

- (1) This provision applies when the Council chairs a disciplinary hearing in place of the employer in terms of Resolution 1/2003 of the Public Service Coordinating Bargaining Council.
- (2) An employer requesting the Council to conduct a disciplinary hearing in terms of clause 7.3 (c) of the PSCBC Resolution 1/2003 must do so by delivering the completed form prescribed for this process to the Council.
- (3) The employee must sign the form consenting to the process, unless the employee has consented in terms of a contract of employment, in which case a copy of the contract must be attached to the form.
- (4) When filing the form, the employer must pay the fee prescribed in Council Resolution 2 of 2005 to the Council. Payment of the fee may only be made by -
  - (a) a bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the Council.
- (5) Within fourteen (14) days of receiving a request in terms of sub-rule (2) and payment of the prescribed fee, the Secretary must notify the parties to the disciplinary hearing of the date, time and venue of the case.
- (6) Unless the parties agree otherwise, the Secretary must give the parties at least fourteen (14) days notice of the commencement of the hearing.
- (7) The Council is only required to refund a fee paid in terms of sub-rule (5) if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (6).



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## **PART EIGHT: General**

### **34. Condonation for failure to comply with the rules**

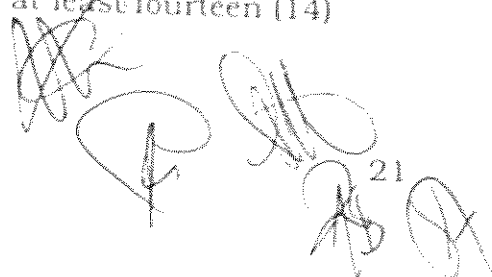
The Secretary or a panellist may condone any failure to comply with the time frames in these rules on good cause shown.

### **35. 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 oral proceedings of the arbitration 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 arbitration 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.

### **36. How to have a subpoena issued**

- (1) Any party who requires the 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 Secretary at least fourteen (14)



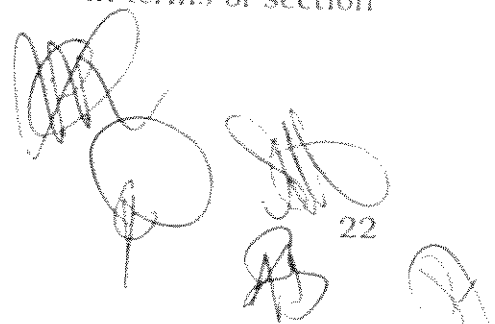
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days before the arbitration hearing, or as directed by the panellist hearing the arbitration.

- (4) The Secretary or the panellist appointed by the Secretary to decide the issue, may refuse to issue a subpoena if-
- (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
  - (c) the Secretary or the panellist is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed, except in as far as the Secretary or panellist has waived the requirement of payment of witness fees or travel costs.
- (5) A subpoena must be served on the witness subpoenaed -
- (a) by the Secretary 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, as directed by the Secretary or the panellist; and
  - (b) if so directed by the Secretary or 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 witnesses' reasonable travel costs.

### **37. 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 Secretary 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 Secretary or a panellist waives fully the requirement for the party to pay witness fees in terms of section 142(7)(c).



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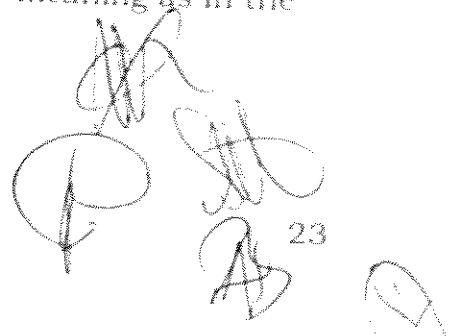
- (3) Despite sub-rule (1), the Secretary or a panellist may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

### **38. Taxation of bills of cost**

- (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.
- (2) The Secretary 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.
- (3) The Secretary will determine the date, time and venue for the taxation.
- (4) 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.
- (5) 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.
- (6) Any person requesting a taxation must complete PHSDSBC Rules Form 2.
- (7) 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.
- (8) Any decision by a taxing officer has the status of an arbitration award and is subject to review by the Labour Court.

### **39. What words mean in these rules**

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.

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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);

**"Council"** means the Public Health and Social Development Sector Bargaining Council;

**"deliver"** means serve on other parties and file with the Commission;

**"file"** means to lodge with the Council in terms of rule 7;

**"panellist"** means a person appointed in terms of this rules or the Dispute Resolution Procedure to handle disputes as conciliators or arbitrators;

**"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);

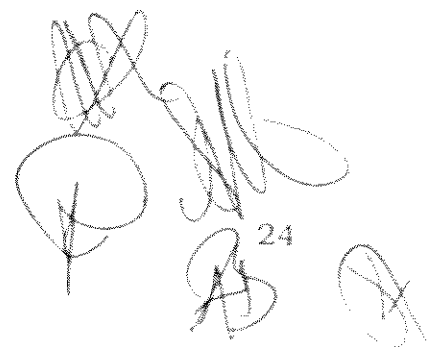
**"rules"** means these rules and includes any footnote to a rule;

**"Secretary"** means the Secretary to Council;

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

**"taxing officer"** means any panellist appointed by the Secretary in terms of rule 38; and

**"working days"** means working days, excluding Saturdays, Sundays and Public Holidays, and excludes the first and includes the last day, and should be interpreted taking into account the provisions of rule 3.



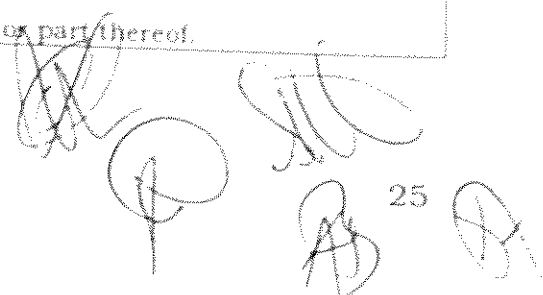
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## ANNEXURE A. TAXATION OF BILL OF COSTS

	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.	R150-00
2.	Completion of "referral document".	R60-00
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.	R75-00
5.	Making necessary copies	R1-00 per page
6.	Taking instructions to make or to oppose any other application.	R150-00
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.	R300-00 per hour.
10.	Attending conciliation arbitration, pre-arb meeting including waiting time, time spent on attending inspection in loco, and travelling time to and from the venue.	R100-00 per quarter-hour or part thereof.
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 consists of two hundred and fifty (250) words or part thereof.

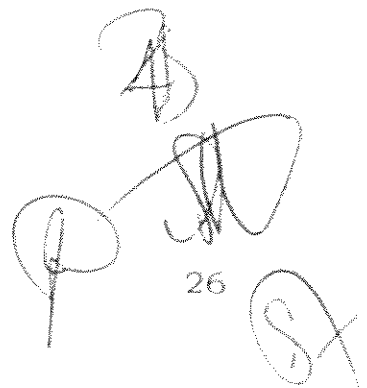

  
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## ANNEXURE B: EMPLOYER'S ADDRESSES FOR SERVICE

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:**  
PO Box 227  
BLOEMFONTEIN  
9301  
**Fax No:** (051) 409 8426  
**Tel No:** (051) 409 4441/8633
- (d) For the **province of Gauteng:**  
Private Bag x085  
MARSHALLTOWN  
2107  
**Fax No:** (011) 355 3358  
**Tel No:** (011) 355 3185
- (e) For the **province of KwaZulu-Natal:**  
Private Bagx9051  
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

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1200  
Fax No: (013) 766 3458  
Tel No: (013) 766 3350

(h) For the **province of Northern Cape:**  
Private Bagx5021  
KIMBERLEY  
Fax No: (053) 802 2432  
Tel No: (053) 802 2358  
[yapetrus@temp.ncape.gov.za](mailto:yapetrus@temp.ncape.gov.za)

(i) For the **province of North West:**  
Private Bag 2068  
MMABATHO  
Fax No: (018) 384 5624  
Tel No: (018) 387 5808

(j) For the **province of Western Cape:**  
PO Box 2060  
CAPE TOWN  
Fax No: (021) 483 3952  
Tel No: (021) 483 3991

2 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 x0039  
BISHO  
5606  
Fax No: (040) 636 9008  
Tel No: (040) 609 4108

(c) For the **province of Free State:**  
Private Bag x20616  
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

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P  
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