



## CONSTITUTION OF THE SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL

### 1. NAME

The name of the Bargaining *Council* is the Safety and Security *Sectoral Bargaining Council*.

### 2. DEFINITIONS

2.1 Any expression used in this constitution which is defined in the Labour Relations Act, 1995 (Act no. 66 of 1995) shall have the same meaning as in *the Act* except that -

- (a) "*the Act*" means the Labour Relations Act, No.66 of 1995;
- (b) "*Arbitrator*" means an arbitrator appointed by the *Council* or the PSCBC;
- (c) "*CCMA*" means the Commission for Conciliation, Mediation and Arbitration;
- (d) "*this Constitution*" means the Constitution of the South African Safety and Security *Sectoral Bargaining Council* and includes the Schedules to the constitution;
- (e) "*Conciliator*" means a conciliator appointed by the *Council* or the PSCBC;
- (f) "*Council*" means the Safety and Security *Sectoral Bargaining Council*;
- (g) "*dispute*", includes an alleged dispute and means :
  - (i) a dispute that is specific to the safety and security *sector*; and
  - (ii) a dispute that the *employer* has the requisite authority to resolve.
- (h) "*employee*" means the *employees* of the *employer* within the registered scope of the *Council*;
- (i) "*employer*" means the State as *employer* within the registered scope of the *Council*;
- (j) "*member*" means an *employee* who is a *member* in good standing of a trade union;

- (k) "member in good standing" means an *employee* who is not more than three months in arrears with the payment of his or her *membership* fees payable in terms of the said constitution;
- (l) "mutual interest" means any matter of *mutual interest*<sup>1</sup> in respect of which the *employer* may conclude collective agreements because :
  - (a) the matter has been assigned to the *Council* by *the PSCBC*; or
  - (b) the matter is specific to the safety and security *sector*; and
  - (c) the *employer* has the requisite authority to do so.
- (m) "notice", including any reference to "notify", "notified", "properly notified", "serve", "served" means written *notice* by means of affecting personal *notice* on the party concerned, the posting of a registered letter containing the *notice* to the office of the party concerned, or telefaxing the *notice* to the office of the party concerned provided that the telefax receipt shows that the *notice* has been transmitted to the addressee;
- (n) "*the PSCBC*" means the Public Service Co-ordinating Bargaining Council;
- (o) "*the Public Service Act*" means the Public Service Act, No. 103 of 1994;
- (p) "the provincial bargaining chamber" means a chamber established in terms of this Constitution;
- (q) "*the Registrar*" means the Registrar of Labour Relations as set out in section 213 of *the Act*;
- (r) "*sector*" means the employer and the employees falling within the registered scope of the Council;
- (s) "*the South African Police Service Act*" means the South African Police Service Act, No 68 of 1995.

### 3. SCOPE

The scope of the Safety and Security Sectoral Bargaining *Council* is the State, as *employer* and its *employees* employed in the South African Police Service in terms of:

- (a) *the South African Police Service Act*; and
- (b) *the Public Service Act*.

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<sup>1</sup> See Section 51 of the Act.

#### 4. **OBJECTIVES**

The objectives of the *Council* are to promote:

- (a) labour peace in the *sector*;
- (b) a sound relationship between the *employer* and its *employees*;
- (c) collective bargaining in the *sector*; and
- (d) the effective and expeditious resolution of disputes in the *sector*.

#### 5. **POWERS AND FUNCTIONS**

The powers and functions of the *Council* are to perform those functions set out in section 28 of *the Act*, including to:

- (a) negotiate collective agreements on matters of *mutual interest*;
- (b) implement, monitor and enforce its collective agreements;
- (c) implement and monitor those collective agreements that have been concluded in *the PSCBC*.
- (d) prevent and resolve labour disputes;
- (e) resolve disputes between the *employer* and:
  - (i) trade unions admitted to the *Council*; or
  - (ii) its *employees*
- (f) administer funds to be used for resolving disputes, collective bargaining, and general administration of the *Council*;
- (g) raise, borrow, lend, levy and invest funds;
- (h) develop policy proposals that may affect the *sector*;
- (i) promote and establish training and education schemes; and
- (j) exercise any other power or perform any other function that may be necessary or desirable to achieve the objectives of the *Council*.

#### 6. **PARTIES TO THE COUNCIL**

- 6.1 The parties to the *Council* are the *employer* and all registered trade unions admitted to the *Council*.

## 7. ADMISSION TO COUNCIL

### 7.1 Criteria for Admission to Council

The following trade unions may apply for admission to the *Council*:

- (a) A registered trade union which meets the threshold requirements set out in the collective agreement of the *Council* regulating the threshold for admission to the *Council*; or
- (b) two or more registered trade unions acting together as a single party, each having organisational rights with the *employer*, provided the combined membership of the trade unions acting together meets the threshold for admission to the *Council* for parties acting together as set out in the collective agreement of the *Council* regulating the threshold for admission to the *Council*.

### 7.2 A trade union, or two or more registered trade unions acting together as a single party, applying for membership of the *Council* must submit:

- (a) a certified copy of the trade union's registered constitution;
- (b) a copy of the trade union's certificate of registration;
- (c) the full names of the trade union's chief executive officer, permanent street and postal address, the telephone number, telefax number and e-mail of its head office;
- (d) a list of the *employees* of the *employer* who are *members* of the trade union, with the *employees'* Persal number and an indication of the provinces, components and units where they are in the service of the *employer*.
- (e) reasons why the trade union ought to be admitted as a party to the *Council*;
- (f) any other information on which the trade union relies in support of its application;
- (g) a declaration that the trade union satisfies the required threshold *membership* figure for admission contained in the collective agreement regulating threshold for admission to the *Council*; and
- (h) where two or more trade unions act together, a declaration that each trade union satisfies the minimum *membership* figures for purposes of acting together as set out in the collective agreement regulating thresholds for admission to the *Council* referred to in paragraph (g).

### 7.3 The *Council* may admit the applicant trade union if it meets the admission criteria set out in paragraph 7.2 above.

- 7.4 If two or more trade unions acting together meet the admission criteria, the trade unions must apply for admission to *Council*, as a single party and if admitted to the *Council*, those trade unions will be represented in the *Council* as a single party. If the composition of the trade unions acting together changes the trade unions acting together must notify the Secretary of the *Council* of this change.
- 7.5 The *Council* will, within 90 days of receiving an application for admission, decide whether to grant or refuse the application and must advise the applicant thereof within 30 days of reaching such a decision.

## **8. TERMINATION OF TRADE UNION MEMBERSHIP**

- 8.1 The *Council* must terminate the *membership* of a trade union if:
- (a) it receives a *notice* of termination of such *membership* from the trade union; or
  - (b) the trade union dissolves, winds up in terms of its constitution or is liquidated; or
  - (c) the Registrar withdraws the trade union's registration.
- 8.2 The *Council* may terminate the *membership* of a trade union if:
- (a) the trade union no longer complies with the admission requirements prescribed in this Constitution, or any relevant collective agreement;
  - (b) it contravenes or fails to comply with a provision of *the Act* this constitution or any relevant collective agreement that justifies termination of its *membership*; or
  - (c) the trade union party consists of trade unions acting together as contemplated in this constitution, and such party re-composes by the addition of further unions(s) or the loss of an existing union (s).
- 8.3 Termination of a trade union's *membership* to the *Council* may, upon written notice to the *Council* be initiated by:
- (a) the Secretary following the monthly review of membership figures as set out in clause 9; or
  - (b) any party to the *Council*.
- 8.4 The *Council* must consider any initiation to terminate the membership of a trade union. In considering this the trade union must be afforded a reasonable opportunity to submit representations to the *Council* as to why its membership should not be terminated.

- 8.5 In the event of a union's membership falling below the threshold regulated by the collective agreement of the Council on the threshold for admission agreement such trade union shall first be given a period of 3 months by the Council within which to comply with such requirement.
- 8.6 If the membership of a trade union is terminated and such a trade union disputes the termination, the dispute may be referred to arbitration in terms of the *Council's* dispute resolution procedure.

9. **MEMBERSHIP FIGURES**

The Secretary must present the Persal figures of all admitted trade unions at each monthly meeting of the *Council*.

10. **APPOINTMENT OF REPRESENTATIVES**

- 10.1 The *employer* must be represented in the *Council* by authorised representatives appointed by the *employer*, the total number of whom shall not exceed the total number of representatives on the trade union side.
- 10.2 The trade unions in the *Council* may each be represented by a maximum of four (4) representatives. A trade union may appoint any person to represent it in the *Council*, depending upon the issues that are to be discussed in the *Council*, and up to the number designated to it in terms of this clause.
- 10.3 A maximum of two (2) observers for the *employer* and for each trade union admitted to the *Council* may be allowed to attend a meeting of the *Council* by prior arrangement with the chairperson.

11. **DETERMINATION OF BASIS OF VOTES**

- 11.1 The voting rights of an admitted trade union in the *Council* shall be determined on the basis of the number of *members* in good standing of the trade union, in proportion to the number of *members* who are *employees* represented by all the trade unions in the *Council*, according to the latest monthly *membership* figures referred to in paragraph 9.
- 11.2 The Secretary shall determine the number of votes of each admitted trade union in accordance with clause 9, which voting rights shall apply from one meeting of the *Council* to the next meeting of the *Council*.
- 11.3 Any party that disputes the determination of the Secretary in terms of clause 9 or 11, may refer such a dispute for arbitration in terms of the *Council's* dispute resolution procedures. Any arbitration award shall substitute the Secretary's determination.

- 11.4 The *employer* shall have a number of votes equal to that of the admitted trade unions jointly and the voting rights in the *Council* shall at all times be divided on an equal basis between the trade unions collectively, on the one hand, and the *employer* on the other hand.
- 11.5 In the case of negotiations regarding a particular matter the voting rights shall be limited to those trade unions representing *employees* affected by such matter, determined according to the number of its *members* in good standing who are affected by the matter, in relation to the total number of *members* who are affected by the matter as represented by the trade unions admitted in the *Council*. For this purpose the Secretary shall determine the voting rights of the parties concerned.

## 12. **CHAIRPERSON**

- 12.1 *Council* will appoint chairpersons during the annual general meeting of the *Council* in terms of the procedure provided for in this clause.
- 12.2 The outgoing chairperson will preside over the annual general meeting of the *Council* and will call for nominations for a chairperson for the forthcoming term of office (when applicable) at the conclusion of such a meeting.
- 12.3 The *Council* will appoint an independent chairperson;
- 12.4 A person nominated as chairperson must be proposed and seconded.
- 12.5 The person receiving the highest percentage of the total votes, will be declared the elected chairperson: Provided that in the event of a deadlock the Secretary must draw lots in accordance with this paragraph, to determine the chairperson.
- 12.6 Should an equal number of votes be cast for two or more candidates, the Secretary will, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place the papers in a suitable container and draw one of the papers from the container. The candidate whose name is drawn will be deemed to have been duly elected.
- 12.7 Council shall appoint two vice-chairpersons nominated by employer and trade unions of which one will be from the employer and the other from the trade unions.
- 12.8 The chairperson and vice-chairpersons will hold office for a term of 24 months unless removed by a decision of the *Council*. Any past chairperson may be re-elected.
- 12.9 The chairperson will preside over all meetings of the *Council*. In the absence of the chairperson, the vice-chairpersons shall alternatively act as Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.

12.10 The Chairperson must -

- (a) preside over and enforce order at all meetings, which may include making a procedural ruling, in accordance with normal meeting procedure;
- (b) sign the minutes of a meeting after confirmation by the *Council*;
- (c) endorse accounts for payment and financial statements after approval by the Executive Committee; and
- (d) perform any other duties as required of the chairperson.

12.11 The term of office of the chairperson may be terminated by:

- (a) written *notice* by the chairperson, or
- (b) by a decision of the *Council* to remove the chairperson.

12.12 The salary and other terms and conditions of office for the chairperson shall be determined by decision of the *Council*.

12.13 If the appointment of the chairperson is pending or if the chairperson is for any reason not able to carry out the duties of chairperson, the *Council* must appoint an acting chairperson, who may be from among the parties. The acting chairperson will have all the powers of the chairperson.

### 13. **SECRETARIAT**

13.1 The *Council* must appoint an independent full-time Secretary.

13.2 The Secretary must-

- (a) conduct all correspondence of the *Council*;
- (b) keep originals of letters received and copies of those despatched;
- (c) attend the meetings of the *Council* and tape record the minutes of the meetings, which tape recordings must be kept for a period of one year after the date of the meeting;
- (d) keep books of account in accordance with general accepted accounting practices and the instructions of the *Council*;
- (e) bank all monies received on behalf of the *Council* within three (3) working days of receipt thereof;



- (f) submit statements of the financial position of the *Council* whenever required to do so by the *Council* and in accordance with the provisions of *the Act* and this constitution;
- (g) submit the books of account of the *Council* to a public auditor once every calendar year for auditing;
- (h) ensure that all agreements concluded in the *Council* are reduced to writing, signed by all parties and within seven (7) days of the conclusion of the agreement are circulated to all parties to Council and to the Provincial Chambers.
- (i) countersign cheques signed by the Chairperson, on the banking account of the *Council*;
- (j) present monthly membership figures in terms of clause 9;
- (k) determine the number of votes in terms of clause 11;
- (l) administer the dispute resolution of the *Council*; and
- (m) perform any other duties as the *Council* or Chairperson may direct or which is required by *the Act*.

13.3 The Secretary shall keep in safe custody at the offices of the *Council*-

- (a) the approved minutes of every meeting of the *Council*, duly signed by the Secretary and by the person who presided at the meeting;
- (b) the original signed agreements of the *Council*; and
- (c) the statements, records and reports referred to in *the Act* and in this constitution and all records in relations thereto.

13.4 The Secretary after approval of the *Council* may appoint part-time or full-time personnel or may request that the *employer* place an *employee or employees* at the disposal of the *Council* to perform duties necessary for the administration of the *Council*.

13.5 The *Council*, where applicable, will determine the salary and other conditions of employment of the Secretary and other personnel of the *Council*.

13.6 Where applicable, the remuneration and associated costs of the Secretary and other personnel of the *Council* will be paid from the *Council's* available funds or from the *Council's* levy, and in the event of insufficient funds available from these quarters, shall be borne equally by the:

- (a) *employer*; and
- (b) the admitted trade unions together.

- 13.7 The *Council* may terminate the employment of the Secretary and other personnel of the *Council* on one month's *notice*, unless there are grounds to terminate without *notice*.
- 13.8 The duties of the Secretary may be exercised by any of the other personnel of the *Council* acting under the directions of the Secretary.
- 13.9 The Secretary may at any time prior to a meeting of the *Council*, request the Chairperson to place on the agenda of the meeting, any matter concerning the administration or functioning of the *Council*.

#### 14. **COMMITTEES AND CHAMBERS**

- 14.1 The *Council* may from time to time establish:
- (a) committees in terms of section 55 of *the Act*;
  - (b) chambers *in terms of section 30(4) of the Act*; and
  - (c) delegate or assign any of its functions to any such committee or chamber.
- 14.2 Any decision or action of a committee or chamber shall be reported to the *Council* for consideration and the *Council* may ratify, set aside or vary the *decision* unless the *Council* has specifically assigned its powers or functions to that committee or chamber.
- 14.3 If the *Council* has delegated a function it does not itself divest any of its powers.
- 14.4 Any chamber or committee established in terms of this clause will consist of an equal numbers of representatives of the *employer* and the trade unions admitted to the *Council*.
- 14.5 Any committee or chamber established in terms of this clause will operate and have powers agreed to by the *Council*.
- 14.6 The Secretary or other personnel of the *Council* must render Secretarial or other services to a committee or chamber of the *Council* as and when required.

#### 15. **PROVINCIAL CHAMBERS**

##### *ESTABLISHMENT OF PROVINCIAL CHAMBERS*

- 15.1 The Council shall in terms of section 30(4) of the Act establish Provincial Chambers.
- 15.2 A Provincial Chamber established by Council shall not be a juristic person and shall have powers and functions as determined by the Council.

### *SCOPE OF PROVINCIAL CHAMBERS*

- 15.3 A Provincial Chamber shall function in the province within which it is established and shall deal with matters referred or delegated to that Provincial Chamber by the Council, as well as matters that fall exclusively under its jurisdiction.
- 15.4 Provincial Chambers may negotiate on any matters of mutual interest on which the Provincial Commissioner has the power to make a final decision. These powers are limited to the Province for which the Provincial Commissioner is appointed.

### *OBJECTIVES*

- 15.5 The objectives of the Provincial Chamber must be, within the province for which it is established :
- (a) To maintain and promote labour peace
  - (b) To mutually prevent and resolve labour disputes
  - (c) To promote collective bargaining within the scope of its powers;
  - (d) To promote training and build capacity, subject to approval by Council.

### *POWERS AND FUNCTIONS OF A CHAMBER*

- 15.6 The powers and functions of the chamber are to:
- (a) To negotiate and conclude collective agreements within its area of jurisdiction
  - (b) To act as a forum for consultation between the employer and the admitted trade unions on matters affecting the province
  - (c) To implement, monitor and enforce collective agreements concluded in the Council and chamber;
  - (d) To establish lower bargaining/consultation structures within their area of jurisdiction in terms of National guidelines;
  - (e) To deal with any matter referred or delegated to it by Council;
  - (f) To exercise any other power or perform any other function that may be necessary or desirable to achieve the objectives of the chamber, as agreed to by the Council; and
- 15.7 Any decision, action of a chamber shall be reported to the Council for consideration and the Council may ratify, set aside or vary the decision unless the Council has specifically assigned its powers or functions to that Chamber.

- 15.8 Collective agreements concluded in a chamber shall be reported to the Council for consideration and the Council may ratify or set aside the collective agreement. The collective agreement cannot be implemented by the Chamber until Council has ratified that agreement.

*PARTIES TO THE CHAMBER*

- 15.9 The parties to the provincial chamber shall be the employer and trade unions admitted to Council in terms of clause 6 of this constitution.

*APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSONS*

- 15.10 The Provincial Chambers shall appoint a Chairperson and Vice-Chairpersons in terms of the provisions of clause 12 of this Constitution.

*CHAMBER SECRETARIAT*

- 15.11 The Council must appoint an independent Secretary for the Chambers.
- 15.12 The salaries and other terms of conditions of office for the Chairperson and Secretary shall be determined by decision of Council.
- 15.13 The Provincial Secretary shall :
- (a) conduct all correspondence of the *Chamber*;
  - (b) keep originals of letters received and copies of those despatched;
  - (c) attend the meetings of the *Chamber* and tape record the minutes of the meetings, which tape recordings must be kept for a period of one year after the date of the meeting;
  - (d) determine the number of votes in terms of clause 11;
  - (e) submit monthly, quarterly and annual reports of the chamber to the Council;
  - (f) perform any other duties as the *Chamber* or chairperson may direct or which is required by *the Act*.
- 15.14 The Secretary shall keep in safe custody at the offices of the *Chamber*-
- (a) the approved minutes of every meeting of the *Chamber*, duly signed by the Secretary and by the person who presided at the meeting;

(b) Recording equipment or any other equipment provided by the Council to the Chamber

(c) the original signed agreements of the *Chamber* and

#### *COMMITTEES AND STRUCTURES OF THE CHAMBER*

15.15 The Provincial Chamber shall have the following structures:

- (a) Chamber
- (b) Exco

which will operate in terms of the provisions of this constitution

15.16 The Provincial Chamber may from time to time establish committees.

#### *MEETINGS OF THE CHAMBER*

15.17 The Provincial Chamber will meet at least bi-monthly or as agreed between the parties to the chamber.

15.18 The provisions of this Constitution in relation to meeting procedures, quorum, chamber decision, and negotiating procedure will apply within the chambers.

15.19 Provincial Chambers shall hold Annual General Meetings before the 15<sup>th</sup> of April each year.

15.20 The provisions of clause 17.3 (excluding 17.3 c, d, e & g) shall apply to the provincial AGM.

### 16. **EXECUTIVE COMMITTEE**

16.1 The *Council* must appoint an Executive Committee, which will be accountable to *Council* and shall have the following functions:

- (a) to manage the day-to-day business of the Council;
- (b) to determine terms of reference for all committees, including the Executive Committee, sub-committees and *ad hoc* sub-committees of the Council
- (c) to decide on the manner in which matters referred to the *Council* shall be dealt with and, if necessary, to refer matters to another committee or sub-committee for advice or recommendation(s);
- (d) to appoint sub-committees and *ad hoc* sub-committees of the Executive Committee;

- (e) to consider recommendations submitted to it by other committees, sub-committees and *ad hoc* sub-committees;
- (f) to identify research to be undertaken;
- (g) to prepare the agenda and supportive documentation for meetings of *Council* and the Annual General Meeting; and

16.2 The executive committee shall consist of:

- (a) a Chairperson;
- (b) Vice-Chairpersons;
- (c) four *employer* representatives; and
- (d) four trade union representatives.

16.3 The Secretary shall attend meetings of the executive committee but will not participate in the decision making of the executive committee.

16.4 At the annual general meeting, the *Council* must appoint four *employer* and four trade union members of the executive committee and an alternate for each of them. The members and their alternates must be representatives in the Council

16.5 A member of the executive committee will hold office for twelve months unless withdrawn by the party who nominated the member, and will be eligible for re-appointment at the end of that term.

16.6 A member of the executive committee whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a member of the executive committee until the member's successor assumes office.

16.7 A member of the executive committee-

- (a) may resign from the committee at any time after having given at least 21 day's *notice* in writing to the Secretary;
- (b) must vacate office immediately-
  - (i) in the case of resignation, when the resignation takes effect,
  - (ii) upon ceasing to be a representative in the *Council*, or
  - (iii) upon being withdrawn by the party who nominated the member.

- 16.8 If the seat of a member of the executive committee becomes vacant, the *Council* must fill the vacancy from the number of candidates nominated for that purpose by-
- (a) the *employer* representatives in the Council, if that seat had been held by a member representing the *employer*, or
  - (b) the employee representatives in the Council, if that seat had been held by a member representing employees.
- 16.9 A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- 16.10 The executive committee must hold a meeting at least once every month.
- 16.11 The Secretary must prepare a written *notice* of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted. This *notice* must be sent to each member of the committee.
- 16.12 At least two members representing the employer and two members representing the admitted trade unions form a quorum and must be present before a meeting may begin or continue.
- 16.13 All decisions of the executive committee shall be taken by consensus. In the event of consensus not being arrived at, the matter shall be referred back to the *Council* for a decision.
- 16.14 The Secretary shall provide the parties to the *Council* with reports and minutes on all decisions taken by the executive committee.

## 17. MEETINGS OF THE COUNCIL

- 17.1 The *Council* will meet monthly at a place, date and time determined by the Secretary after consultation with the parties to the Council, provided that one of the meetings will be the annual general meeting.
- 17.2 The *Council* will hold an annual general meeting as soon as possible after 1 April each year, but no later than 31 May.
- 17.3 The following matters must be dealt with at the annual general meeting:
- (a) the appointment of the chairperson, should it be necessary in terms of this Constitution;
  - (b) the appointment of a Secretary, should it be necessary in terms of this Constitution;
  - (c) the appointment of auditors, should it be necessary in terms of this Constitution;

- (d) the financial statements of the Council;
  - (e) the report of the auditor in respect of the financial statements;
  - (f) the annual report of the Council;
  - (g) levies, if any to be imposed by the Council; and
  - (h) appointment of the executive committee.
- 17.4 Agenda items will be submitted to the Secretary in writing with a proper motivation, together with all relevant documentation within **7** days of a meeting of *Council*.
- 17.5 Any party may request a special meeting of the *Council* by communicating such request in writing to the Secretary who will determine a time and venue for the meeting: provided that such a determination will not be later than 48 hours after the chairperson receiving the request. The chairperson will inform all parties as to whether an extra-ordinary meeting is to take place which meeting, if it takes place, must be convened within 10 days of the chairperson receiving the request.
- 17.6 The agenda of the special meeting will be limited to the matter placed before the meeting by the party or parties requesting the meeting.
- 17.7 *Notice* of a meeting will be deemed to be given to the parties, if *notice* of the meeting was given by -
- (a) effecting personal service of the *notice* on the party concerned;
  - (b) the posting of a registered letter containing the *notice* to the office of the party concerned; or
  - (c) telefaxing the *notice* to the office of the party concerned provided that the telefax receipt shows that the *notice* has been transmitted to the addressee.
- 17.8 A quorum of the *Council* is constituted by the *employer* side plus the trade unions that represent *employees* affected by the subject matter concerned and who possess at least 50% of the number of votes allocated in terms of clause 11 of this constitution.
- 17.9 A person who is not a representative may be allowed to address the *Council* subject to a decision to this effect being taken by the *Council*.



- 17.10 If there **is** no quorum within thirty (30) minutes of the time fixed for the meeting, the chairperson will consult with the parties present and adjourn the meeting for at least seven (7) days. The Secretary will notify the parties accordingly. At the reconvened meeting, the parties present will form a quorum.
- 17.11 If a representative of a trade union is absent at any meeting, the voting power of the *employer* will be reduced to achieve parity of votes between the *employer* and the trade unions present.
- 17.12 The Secretary will circulate to all parties' copies of the minutes of the *Council* meeting held immediately prior to the relevant meeting, at least 7 days prior to the meeting. After the meeting has confirmed the minutes the Secretary and chairperson will sign the minutes.
- 17.13 The Secretary will forward copies of the minutes of all meetings to all parties within 30 days subsequent to a meeting, unless the *Council* determines a shorter period at such meeting.
- 17.14 Every meeting of the *Council* will be conducted in private unless the *Council* otherwise decides.

## 18. **NEGOTIATING PROCEDURE**

- 18.1 Any party to the *Council* may submit proposals for the conclusion of a collective agreement in the *Council*. These proposals must be submitted to the Secretary of the *Council*.
- 18.2 Parties to *Council* must, within a period of 14 days following the date of the *Council meeting*, try to agree on a negotiation process which may include the following issues:
- (a) the submission of counter proposals;
  - (b) the establishment of a negotiating committee;
  - (c) the appointment of a *conciliator*, if necessary, to facilitate the negotiations and chair the meetings; and
  - (d) the time table for negotiations.
- 18.3 If the parties to the negotiations do not conclude a collective agreement by the expiry of a 60-day period, calculated from the first day that matter was before *Council*, which period may be extended by agreement between the parties, any party to the negotiations may declare a dispute.

- 18.4 If a dispute is declared by any one of the parties to the negotiations, parties must try to agree on the appointment of a *conciliator* and in the absence of an agreement the chairperson must appoint a *conciliator*. The chairperson must convene a dispute meeting at which meeting the *conciliator* must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
- (a) further conciliation meetings to settle the dispute;
  - (b) the referral of the dispute to voluntary arbitration;
  - (c) if the dispute must be referred to arbitration, the appointment of the arbitrator;
  - (d) the establishment of a minimum service in any essential service, if applicable;
  - (e) rules about the conduct of a strike or lockout; if applicable, and
  - (f) picketing rules, if applicable.
- 18.5 If the dispute is not settled, the parties to the dispute may:
- (a) in the case of an essential service, refer the dispute to arbitration. The following procedure will apply:
    - (i) a party to the dispute may refer the dispute in writing to the Secretary;
    - (ii) the party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute;
    - (iii) if the Secretary is satisfied that the referral has been properly served the Secretary must appoint an *arbitrator*, to arbitrate the dispute;
    - (iv) if the parties to a dispute have agreed on an *arbitrator* the Secretary must appoint the person agreed upon;
    - (v) an *arbitrator* appointed by the Secretary to arbitrate the dispute may, should all the parties to the dispute agree, attempt to resolve the dispute through conciliation and if unsuccessful, proceed with the arbitration;
    - (vi) the Secretary must decide the date, time and venue of the arbitration hearing and must notify the parties to the dispute of these details.

- (b) in the case of a non-essential service resort to a lawful strike or lockout provided that 7 days of *notice* of the proposed strike or lockout has been given.

19. **DECISIONS OF THE COUNCIL OR CHAMBER OR COMMITTEE**

- 19.1 Subject to *the Act* and this constitution, the vote of the employer together with a majority of votes on the trade union's side will decide all matters
- 19.2 Voting in the *Council* will be by a show of hands by a spokesperson of each party who will carry the votes of the party, unless a party requests a secret ballot.
- 19.3 The Secretary will act as electoral officer.
- 19.4 No decisions taken at a meeting of the *Council* shall be invalidated by the absence of any party concerned if it has been properly notified of such meeting.
- 19.5 If any issue which the Secretary considers to be extremely urgent arises between meetings of the *Council*, and it is possible to answer the question by a simple 'Yes' or 'No', the Secretary in consultation with the Chairperson may cause a vote of the representatives on the *Council* to be taken by telefax, provided the telefax is served on all parties to council. Any decision made by telefax vote must be ratified by the parties admitted to the *Council* at the next meeting of *Council*.
- 19.6 Decisions of a committee or chamber will follow the provisions of this section unless the terms of reference of the particular committee or chamber state otherwise.
- 19.7 All agreements concluded in *Council* must be in writing and signed by all parties to the agreement either at the meeting during which the agreement is entered into or within three days thereafter unless otherwise agreed.
- 19.8 If a party to *Council* refers a dispute to the *Council* concerning a unilateral change to terms and conditions of employment, the *employer* shall not implement the change unless otherwise agreed by the parties and if already implemented, the *employer* shall restore the status quo.
- 19.9 If a collective agreement is terminated in accordance with section 23(4) of the Act the consequences of such agreement shall stay in force and effect until a further agreement has been concluded or award or order has been made.
- 19.10 Any person / group of persons wishing to apply for exemption from a collective agreement entered into in the Council may submit a fully motivated application setting out reasons why the applicant should be exempted to the Secretary of the council within 30 days of the signing of the agreement, or within such extended time as the Council may permit, on good cause shown.

- 19.10.1 Upon receipt of such application the secretary of the Council shall refer the application to the first scheduled meeting of the executive committee of the Council.
- 19.10.2 The executive committee shall make a recommendation and refer the application to the first scheduled meeting of the Council for a decision.
- 19.10.3 The Council may postpone the decision to the next scheduled meeting of the Council for final decision with the agreement of the applicant if necessary.
- 19.10.4 The Secretary must inform the applicant of the decision of the Council within 3 days after such decision had been made.
- 19.10.5 If the applicant is not satisfied with the decision of the Council, the applicant may follow the dispute resolution procedure provided for in the Act.

## 20. **DISPUTE PROCEDURES**

Disputes must be dealt with in terms of the Council's dispute procedure set out in Schedule 1 of this Constitution.

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

- 21.1 *Council* will approve a fund to cover its expenses.
- 21.2 The Council shall before 01 April of each year approve a budget to cover its expenses for the particular financial year.
- 21.3 Within three days of receiving any money the Secretary will deposit the money to the credit of the *Council*, at a bank to be decided upon by it provided that any surplus funds which are not for the time being required may be invested in terms of the financial policy of the *Council*.
- 21.4 Travelling, subsistence and other expenses of representatives and observers will be for the parties' own account unless otherwise agreed.
- 21.5 The Executive Committee must approve all expenses to be made from the fund of the *Council*, which will be paid by cheque signed by the Chairperson and countersigned by the Secretary, unless the *Council* amends this procedure.
- 21.6 Funds required for a petty cash account must -
  - (a) be kept safely;
  - (b) be provided by the drawing of a cheque; and

- (c) not exceed an amount determined by the *Council*.
- 21.7 Every six months the Secretary will submit to the *Council*, statements of the income and expenditure that reflect the financial position of the *Council*.
- 21.8 The Secretary will, prior to the Annual General Meeting of each year, in respect of the financial year ending on 31 March of that specific year prepare a statement, according to generally accepted accounting practices, principles and procedures, which will include but not be restricted to:-
  - (a) a statement showing -
    - (i) monies received; and
    - (ii) expenditure incurred under the following headings:
      - (aa) salaries and other payments to personnel;
      - (ab) office accommodation;
      - (ac) printing and stationery; and
      - (ad) miscellaneous expenditure; and
  - (b) a statement indicating the assets and liabilities of the *Council*.
- 21.9 The financial year of the *Council* will be from 1 April of a particular year to 31 March of the following year.
- 21.10 The statements referred to in clause 22.8
  - (a) will be countersigned by the Chairperson; and
  - (b) will be submitted for audit to a public accountant and auditor appointed by the *Council*.
- 21.11 The Secretary will make certified copies of the audited statements and of the audit report available for inspection at the Secretary's office.
- 21.12 The Secretary will transmit certified copies of the audited statements and the auditor's report to the Registrar, Department of Labour, within 30 days after the close of the period covered by the statements.
- 21.13 The funds of the Council will be used for collective bargaining, dispute resolution, training and any other matter, which the Council may decide upon.

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

- 22.1 The scope of the *Council* (clause 3) may not be amended only by way of a decision of the *Council* but requires the approval and ratification of *the PSCBC*.
- 22.2 All other clauses excluding clause 3 in this Constitution may be amended by way of a decision of the *Council* provided the *employer* on the one side, together with 66% of votes on the trade unions side in favour of amending the Constitution.
- 22.3 No amendment shall be considered unless at least 30 days prior *notice* of the proposed amendment has been given to the Secretary, unless otherwise agreed by the *Council*.
- 22.4 Such *notice* shall be transmitted to all representatives at least two weeks prior to the meeting at which it is to be considered.
- 22.5 The *Council* may, by unanimous vote, amend the constitution without *notice*.
- 22.6 Any amendment of or addition to this constitution shall have no force or effect until certified by the Registrar in terms of section 57(3) of *the Act*.

## 23. **WINDING UP**

The *Council* may only be wound up in terms of the following procedures:

- 23.1 The *Council* may be wound up if it has been resolved by majority of votes at a meeting specially called for that purpose to wind up its matters. The Secretary of the *Council* shall as soon as possible after such resolution had been taken, apply to the Labour Court for an order giving effect to the said resolution.
- 23.2 The liquidator appointed by the Labour Court in terms of section 59(3) of the Act shall call upon the last appointed Secretary of the *Council* to deliver to the liquidator the Council's books of account showing the Council's assets and liabilities and also to hand over any unexpended funds to the Council;
- 23.3 The liquidator shall take the necessary steps to liquidate the debts of the *Council* from its unexpended funds and any other monies realised from any asset of the *Council* and if the said funds and monies are insufficient to pay all creditors after the trustee's fees and the expenses of winding up have been met, the order in which the creditors shall be paid shall be the same as that prescribed in any law for time being in force relating to the distribution of the assets of an insolvent estate, and the trustee's fees and expenses of winding up shall rank in order of preference as though he/she was a trustee of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.

- 23.4 For the purpose of this clause the liability of the parties to the *Council* shall be limited to their unpaid liabilities (if any) to the *Council* as at the date on which the resolution for winding up was passed or the date as from which the *Council* was unable to continue to function, whichever occurs earlier.
- 23.5 A committee or chamber may only wind up in consultation with the Council
- 23.6 If all the liabilities of a committee or chamber have been discharged any remaining assets shall be transferred to the *Council* and in the event of the winding up of the *Council* any remaining assets shall be transferred to the PSCBC.

24. **GENERAL**

The domicilium executandi of the *Council* shall be

Public Service Bargaining Centre  
260 Basden Road  
Lyttelton  
O140

## **SCHEDULE 1**

### **DISPUTE PROCEDURE FOR THE SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL**

#### **A: APPLICATION**

#### **1. APPLICATION**

- 1.1 This procedure applies to all disputes, which arise within the registered scope of the Council, including disputes between parties and non-parties to the Council<sup>2</sup>:
- 1.2 In the event of there being a dispute about:
- (a) the application or interpretation of any collective agreement concluded in the Council;
  - (b) the application or interpretation of the constitution of the Council
- the dispute procedure provided for in this schedule shall apply.
- 1.3 Jurisdictional disputes between the Council and any other bargaining Council must be referred to the Dispute Resolution Committee established in terms of section 38(1) of the Act for conciliation and arbitration, which shall be conducted in accordance with the procedures set out in this schedule.
- 1.4 Any dispute that arises in a provincial chamber must be referred to the *Council* within 30 days from the date the dispute was declared in the provincial Chamber, if any party intends taking the dispute further-
- i. A party to the dispute may refer the dispute in writing to the Secretary
  - ii. Within 7 days of receiving the referral, the Secretary must contact the national offices of the relevant parties to enquire whether they want to have a meeting. If the parties do not want to meet or do not respond to the Secretary, within 10 days after the Council has received the referral, the Secretary must add the issue in dispute to the next Exco meeting's agenda.

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<sup>2</sup> The following *disputes* must, in terms of the provisions of *the Act*, be dealt with by the CCMA:

- 1 disclosure of information -sections 16 and 89 of *the Act*,
- 2 organisational rights - chapter III part A of *the Act*
- 3 agency shop *disputes*- section 25 of *the Act*
- 4 closed shop *disputes* - sections 26 of *the Act*
- 5 interpretation or application of collective bargaining provisions - section 63(1) of *the Act*
- 6 picketing *disputes* - section 69
- 7 workplace forum *disputes* - section 86 and 94
- 8 unfair discrimination disputes (which in terms of the Employment Equity Act the CCMA must conciliate)



- iii. In the event that the dispute is referred after an Exco meeting and before a Council meeting, the Secretary must request that the issue in dispute is added to the agenda of the Council meeting.
  - iv. The Council will decide whether the issue is an urgent one that has to be discussed immediately or whether it should stand down to the next Exco meeting.
  - v. If the dispute cannot be resolved through a meeting of the parties or Council, the dispute must be dealt with in terms of the dispute resolution procedure contained in this Schedule.
- 1.5 This procedure applies to all disputes that may be referred to the Council, including:
- (a) disputes of interest after deadlock has been reached in negotiations;
  - (b) unfair labour practice disputes after the internal grievance procedure has been exhausted; or
  - (c) disputes with reference to unfair dismissals or disciplinary measures short of dismissal, after the internal appeals procedure has been exhausted, or the time period as stipulated in the relevant prescripts has lapsed.
- 1.6 If this procedure is silent on an issue the Act will apply.

## **B: DISPUTES OF INTERESTS**

### **2. PROCEDURE FOR MUTUAL INTEREST DISPUTES**

- 2.1 In this clause a dispute means any dispute of interest, other than one contemplated in clause 15 of the constitution, between the employer and a party to the Council or the employer and a non party to the Council, which concerns a matter of mutual interest contemplated in section 134 of the Act.
- 2.2 Determining whether the dispute is a mutual interest dispute
- 2.2.1 If there is a dispute about whether or not the matter is a matter contemplated in section 134 of the Act such dispute must be referred in terms of the following procedure:
- (a) A party to the dispute may refer the dispute in writing to the Secretary.
  - (b) The party who refers a dispute to the Council must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.

- (c) Within 4 working days of service of the referral either party may notify the Secretary in writing if the parties have agreed on a particular arbitrator to arbitrate the dispute. The Secretary must appoint the person agreed upon if that person is available to arbitrate the dispute within 30 days of the dispute having been referred or any extended period if the parties to the dispute so agree in writing. If:
- (i) the person agreed upon is not available within 30 days of the dispute having been referred or any extended period agreed upon in writing; or
  - (ii) either party does not notify the Secretary within 4 working days of service of the referral of the identity of the arbitrator agreed to,
- the Secretary must appoint an arbitrator.
- (d) If the Secretary is satisfied that the referral has been properly served the Secretary must:
- (i) appoint the arbitrator to arbitrate the dispute in accordance with clause (c);
  - (ii) decide the date, time and venue of the arbitration hearing meeting; and
  - (iii) notify the parties to the dispute of these details;
- (e) An arbitrator appointed to arbitrate the dispute may, should all the parties to the dispute agree, attempt to resolve the dispute through conciliation, and if unsuccessful, proceed with the arbitration.
- (f) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (g) If the party to the dispute fails to appear at the arbitration proceedings the arbitrator may-
- (i) dismiss the matter;
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date.

- (h) Within 14 working days of the conclusion of the arbitration proceedings-
  - (i) the arbitrator must issue an arbitration award with reasons signed by the arbitrator;
  - (ii) the Secretary must serve a copy of the award on each party to the dispute or if the parties were represented, on the person who represented a party in the arbitration proceedings within 1 day of receiving the award.
- (i) The arbitrator may apply to the Secretary to extend the period within which the award with reasons is to be filed. The Secretary may only grant such an extension on good cause shown.
- (j) Any arbitration conducted in terms of this schedule takes place in terms of the Act.

## 2.3 Mutual Interest, Unilateral Change to Terms and Conditions of Employment and Refusal to Bargain Disputes

2.3.1 In any mutual interest dispute contemplated in section 51 of the Act including a dispute about a refusal to bargain, as contemplated in section 64(2) of the Act and a dispute about unilateral change to terms and conditions of employment, as contemplated in section 64(4) of the Act, a party to the dispute may refer the matter for conciliation in terms of the following procedure:

- (a) The provisions of clauses 2.2.1 (a) and (b) apply with the necessary changes required by the context.
- (b) The Secretary will invite the parties to nominate a conciliator to conciliate the dispute.
- (c) Within 4 working days of receipt of the notice from the Secretary, either party may notify the Secretary in writing if the parties have agreed on a particular conciliator to conciliate the dispute. The Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within 30 days of the dispute having been referred or any extended period if the parties to the dispute so agree in writing. If:
  - (i) the person agreed upon is not available within 30 days of the dispute having been referred or any extended period agreed upon in writing; or
  - (ii) either party does not notify the Secretary within 4 working days of service of the referral of the identity of the conciliator agreed to,

the Secretary must appoint a conciliator.

- (d) Once the Secretary has received the nominations from the parties, the Secretary must:
  - (i) appoint a conciliator to attempt to resolve the dispute through conciliation within 30 days of the date of the referral in accordance with clause (b) above;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.
  
- (e) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include-
  - (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute immediately if the parties request the conciliator to do so.
  
- (f) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may-
  - (i) dismiss the matter;
  - (ii) continue with the conciliation in the absence of the party; or
  - (iii) adjourn the conciliation to a later date.
  
- (g) If the dispute concerns a refusal to bargain dispute in terms of section 64(2) either party may request the conciliator to issue an advisory award. The conciliator must issue the advisory award within 14 working days of the request. Neither party may give notice in terms of section 64(1) of the Act nor proceed further with the dispute, until the advisory award has been issued.
  
- (h) If the dispute is not settled at the conciliation the conciliator must try to get agreement on:
  - (i) further conciliation meetings to try to settle the dispute;

- (ii) the referral of the dispute to voluntary arbitration;
- (iii) the referral of the dispute to arbitration and the appointment of an arbitrator if the dispute involves employees who have been declared an essential service;
- (iv) the establishment of a minimum service and if necessary the conclusion of a minimum service agreement if the dispute involves employees who have been declared an essential service. If a minimum service is established the conciliator must, if applicable, also try to get agreement on:
  - (a) rules about the conduct of a strike or lockout; and
  - (b) picketing rules

2.4 If a mutual interest dispute referred to in clause 2.3 is not settled, the parties to the dispute may resort to a lawful strike or lockout: unless the parties are part of an essential service in which case it may proceed to arbitration and the procedure in clause 2.5 below will apply.

2.5 The applicant must, within 90 days of the date of the conclusion of the conciliation proceedings, request the Secretary in writing to set the matter down for arbitration.

2.6 Within 4 working days of the written notice in terms of paragraph 2.5, either party may provide proof to the Secretary in writing of agreement on a particular arbitrator to arbitrate the dispute.

2.7 The Secretary must appoint the person agreed upon if the person is available to arbitrate the dispute within 30 days from the date of the request in terms of 2.5 or any extended period if the parties to the dispute so agree in writing. If:

- (i) the person agreed upon is not available within 30 days from the date of the request in terms of 2.5 or any extended period agreed upon in writing; or
- (ii) either party does not notify the Secretary within 4 working days of service of the request in terms of 2.5 of the identity of the arbitrator agreed to,

the Secretary must appoint an arbitrator.

2.8 If the Secretary is satisfied that the above has been complied with and an arbitrator/s has been appointed, the Secretary must:

- (i) decide the date, time and venue of the arbitration hearing meeting; and
  - (ii) notify the parties to the dispute of these details;
- 2.9 The provisions of clauses 2.2 (f) to (k) apply with the necessary changes required by the context.

## **C: DISPUTES OF RIGHT**

### **3. DISPUTES ABOUT ALLEGED UNFAIR DISMISSALS, UNFAIR LABOUR PRACTICES, AND ENTITLEMENT TO SEVERANCE PAY AND INTERPRETATION AND APPLICATION OF A COLLECTIVE AGREEMENT**

3.1 In this clause a dispute means any dispute, other than a mutual interest dispute contemplated in clause 2 that must in terms of the Act be referred to the Council for:

- (a) conciliation<sup>3</sup>; or
- (b) arbitration<sup>4</sup>; or
- (c) joint conciliation and arbitration<sup>5</sup>

3.2 Prior to any dispute of right being referred to the Council, the aggrieved employee must have exhausted all internal procedures as set out in clause 1.5 (b) and (c) above.

#### **3.3 DISPUTES THAT THE COUNCIL ONLY CONCILIATES**

3.3.1 If the dispute is one that is contemplated in terms of clause 3.1(a), that is a dispute that in terms of the Act the Council will only conciliate and the Labour Court will adjudicate, such as dismissals for operational requirements or automatically unfair dismissals the following procedure applies:

- (a) A party to the dispute may refer the dispute in writing to the Secretary of the Council.
- (b) The dispute must be referred to the Council within 30 days after all internal procedures have been exhausted.

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<sup>3</sup> *Disputes* contemplated are those that must be conciliated by the *Council* and may be referred to the Labour Court for adjudication. For example: dismissals for operational requirements or automatically unfair dismissals or dismissals for participating in an unprotected strike- section 191(5)(b);

<sup>4</sup> *Disputes* contemplated are those concerning the interpretation and application of the constitution.

<sup>5</sup> *Disputes* contemplated are those *disputes*, which the *Council* must conciliate and arbitrate. For example, dismissals for misconduct and incapacity - see section 191(5)(a) item 2(1)(b) to (d) of Schedule 7- unfair labour practice *disputes*. Section 24- the interpretation or application of a collective agreement

- (c) The party who refers a dispute to the Council must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (d) Within 4 working days of service of the referral either party may notify the Secretary in writing if the parties have agreed on a particular conciliator to conciliate the dispute. The Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within 30 days of the dispute having been referred or any extended period if the parties to the dispute so agree in writing. If:
  - (i) the person agreed upon is not available within 30 days of the dispute having been referred or any extended period agreed upon in writing; or
  - (ii) either party does not notify the Secretary within 4 working days of service of the referral of the identity of the conciliator agreed to,the Secretary must appoint a conciliator.
- (e) If the Secretary is satisfied that the referral has been properly served, the Secretary must:
  - (i) appoint a conciliator subject to clause (d) above, to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.
- (f) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include-
  - (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute, if the parties agree that the conciliator should arbitrate the dispute.
- (g) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may-

- (i) dismiss the matter; or
- (ii) continue with the conciliation in the absence of the party; or
- (iii) adjourn the conciliation to a later date.

### 3.4 **DISPUTES THAT THE COUNCIL ONLY ARBITRATES**

3.4.1 If the dispute is one that is contemplated in terms of clause 3.1 (b), that is a dispute that in terms of the Act the Council may only arbitrate, such as disputes over the interpretation or application of the constitution, the following procedure applies.

- (a) A party to a dispute may refer the dispute in writing to the Secretary.
- (b) The party who refers a dispute to the Council must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) Within 4 working days of service of the referral either party may notify the Secretary in writing if the parties have agreed on a particular arbitrator to arbitrate the dispute. The Secretary must appoint the person agreed upon if that person is available to arbitrate the dispute within 30 days of the dispute having been referred or any extended period if the parties to the dispute so agree in writing. If:
  - (i) the person agreed upon is not available within 30 days of the dispute having been referred or any extended period agreed upon in writing; or
  - (ii) either party does not notify the Secretary within 4 working days of service of the referral of the identity of the arbitrator agreed to,the Secretary must appoint an arbitrator.
- (d) If the Secretary is satisfied that the referral has been properly served the Secretary must:
  - (i) appoint the arbitrator to arbitrate the dispute in accordance with clause (c);
  - (ii) decide the date, time and venue of the arbitration hearing meeting; and
  - (iii) notify the parties to the dispute of these details;



- (e) An arbitrator appointed by the Secretary to arbitrate the dispute may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation.
- (f) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (g) If the party to the dispute fails to appear in person or to be represented at the arbitration proceedings the arbitrator may-
  - (i) dismiss the matter; or
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date.
- (h) Within 14 working days of the conclusion of the arbitration proceedings-
  - (i) the arbitrator must issue an arbitration award with reasons signed by the arbitrator;
  - (ii) the Secretary must serve a copy of the award on each party to the dispute or if the parties were represented, on the person who represented a party in the arbitration proceedings within 1 day of receiving the award.
- (i) The arbitrator may apply to the Secretary to extend the period within which the award with reasons is to be filed. The Secretary may only grant an extension on good cause shown.
- (j) The parties may agree to an alternative procedure such as fact finding, the arbitrator issuing an advisory award or conciliation/arbitration.

#### 3.4.2 **AGREEMENT FOR PRE-DISMISSAL ARBITRATIONS**

- (a) The Council may conduct pre-dismissal arbitration hearing in terms of procedures as set out in the DR Rules of Council.

### **3.5 DISPUTES THAT THE COUNCIL JOINTLY CONCILIATES AND ARBITRATES**

3.5.1 If the dispute is one that is contemplated in terms of clause 3.1(c), that is a dispute that in terms of the Act the Council must conciliate and arbitrate, it must be referred to the Council for joint conciliation and arbitration. Such disputes include disputes over dismissals for misconduct and incapacity, unfair labour practice disputes (excluding disputes concerning alleged discrimination). In respect of these disputes the following procedure applies:

- (a) A party to a dispute may refer the dispute in writing to the Secretary for a joint process of joint conciliation and arbitration. In the referral, the referring party must state the facts giving rise to the dispute.
- (b) The dispute must be referred to the Council within 30 days after all internal procedures have been exhausted as set out in clause 1.5 (b) and (c) above.
- (c) The party who refers the dispute must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (d) Within 5 working days of the date of the referral the Secretary will notify the parties that they must hold a pre-arbitration meeting. This meeting must be held within 15 working days of the date of the notification.
- (e) If the respondent intends raising a jurisdictional point, a statement wherein the jurisdictional point is raised, must be served on all the parties to the dispute and on the Council within 5 working days of the conclusion of the pre-arbitration meeting.

The following procedure will apply if a jurisdictional point is raised:

- (i) If the applicant wants to oppose the jurisdictional point taken by the respondent, he/she may file his/her response on all the parties to the dispute and on the Council within 5 working days from receiving the Respondent's answer
- (ii) The Respondent may reply within 3 working days
- (iii) The Secretary will appoint an arbitrator to decide on the jurisdictional issue.
- (iv) The arbitrator may do so on the basis of the statements filed with the Secretary. The arbitrator may allow the submission of affidavits or of own accord or on

application of a party request the Secretary to convene a hearing with oral evidence in respect of the jurisdictional issue(s).

- (v) The arbitrator must issue a jurisdictional ruling within 5 working days.
- (f) In a pre-arbitration meeting the parties must attempt to reach consensus on:
- (i) nomination of a maximum of 3 arbitrators from which the secretary shall attempt to appoint one depending on the availability of the arbitrators;
  - (ii) any means by which the dispute may be settled;
  - (iii) facts that are common cause;
  - (iv) facts that are in dispute;
  - (v) the nature of the dispute;
  - (vi) the issue(s) that the arbitrator is required to decide;
  - (vii) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
  - (viii) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
  - (ix) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will serve as evidence of what they appear to be;
  - (x) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
  - (xi) which party must begin;
  - (xii) the necessity for any on-the-spot inspection;
  - (xiii) securing the presence at the arbitration of any witness;
  - (xiv) the resolution of any preliminary points that are intended to be taken;
  - (xv) the exchange of witness statements;

- (xvi) expert evidence;
  - (xvii) any other means by which the proceedings may be shortened;
  - (xviii) an estimate of the time required for the hearing;
  - (xviii) the right of representation;
  - (xx) whether an interpreter is required and, if so, for how long and for which languages; and
  - (xxi) A possible date for the con-arb hearing
- (g) The parties must keep signed minutes of the outcome of the pre-arbitration meeting. The referring party must ensure that a copy of the minute of the pre-arbitration meeting is filed with the Secretary on or before the expiry date as set out in the notice from the Secretary referred to in paragraph (e).
- (h) If the Secretary is satisfied that:
- (i) all internal procedures have been exhausted;
  - (ii) the referral has been properly served;
  - (iii) the minutes of the pre-arbitration meeting have been filed with no jurisdictional points being raised therein; or
  - (iv) the time period as set out in the notice has lapsed and the applicant has provided writing proof of an attempt to secure a pre-arb meeting with the employer , the Secretary must-
    - (aa) appoint an arbitrator to arbitrate the dispute, in accordance with clause (c);
    - (ab) decide the date, time and venue of the arbitration;
    - (ac) set the matter down for arbitration within 14 working days or any extended period agreed to by the parties in writing; and
    - (ad) notify the parties to the dispute of these details;
- (i) At the commencement of the arbitration the arbitrator must first attempt to conciliate the dispute. If the arbitrator decides that no further purpose will be served by continuing with the conciliation, the arbitrator must commence the arbitration proceedings.

- (j) If the parties to the dispute have not attended a pre-arbitration meeting, the arbitrator must first try to narrow the issues in dispute between the parties before commencing the arbitration and may consider the issue of costs if any of the parties is requesting a postponement.
- (k) If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the panellist must require the parties to prove that the Council has jurisdiction to arbitrate the dispute.
- (l) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (m) If a party to the dispute fails to appear in person or to be represented at the arbitration proceedings the arbitrator may-
  - (i) dismiss the matter; or
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date, subject to clause 8.3.
- (n) Within 14 working days of the conclusion of the arbitration proceedings-
  - (i) the arbitrator must issue an arbitration award with reasons signed by the arbitrator;
  - (ii) the Secretary must serve a copy of the award on each party to the dispute or if the parties were represented, on the person who represented a party in the arbitration proceedings within 1 day of receiving the award.
- (o) The arbitrator may apply to the Secretary to extend the period within which the award with reasons is to be issued. The Secretary may only grant such extension on good cause shown.

## **D: GENERAL**

### **4. CONCILIATIONS AND ARBITRATIONS BY THE COUNCIL**

- 4.1 Any conciliation or arbitration conducted in terms of this procedure will take place in terms of the Act.
- 4.2 A panelist appointed by Council may not represent a party in any conciliation or arbitration proceeding of the Council.
- 4.3 In any conciliation or arbitration conducted under the auspices of the Council the parties may agree to exclude members of the public from attending the proceedings.
- 4.4 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
- 4.5 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; provided that any person may be called to testify to the existence or not of a written agreement between the parties concluded during the conciliation, or whether or not a party has signed such an agreement.
- 4.6 A certificate of outcome, where appropriate, must identify the nature of the dispute as described in the referral document or as identified by the panelist during the conciliation process and it must be issued within 7 working days.
- 4.7 In instance where an advisory award is issued, the award must state the nature of the dispute as described in the referral document or as identified by the panellist during the conciliation process.
- 4.8 Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- 4.9 In the event that a conciliator or arbitrator is not able to finalise a hearing and issue an outcome form or an award, the Secretary will appoint another conciliator or arbitrator. The newly appointed conciliator or arbitrator will consider the matter afresh.
- 4.10 A dispute will be conciliated / arbitrated in the province in which the cause of action arose. Upon written request and after considering the view of the other party, the Secretary will have the discretion to schedule the hearing in another province.

4.11 In any conciliation/arbitration/joint conciliation and arbitration proceedings, a party to the dispute may appear in person or be represented only by, in the case of an employee or trade union:

- (a) a legal practitioner,
- (b) a co-employee from the same unit/station/component within the same geographical area as the applicant, provided that such co-employee will not be regarded as being on duty and any costs incurred by the co-employee will not be borne by the employer; or
- (c) a shop steward, office bearer, official or a legal representative employed/contracted by that party's trade union recognized in the sector, and such shop steward shall be regarded to be on duty, provided that the person must have been a member in good standing of such trade union, at the time that the cause of action which had led to the dispute arose; or
- (d) an office bearer or official of that party's trade union recognized in the public service provided that the person must have been a member in good standing of such trade union at the time that the cause of action which had led to the dispute arose; or
- (e) An official or office bearer of that party's registered trade union that:
  - (i) has registered with the Council for the purposes of representation in the above said proceedings and has paid the registration fee which is to be renewed on 1 January of each year and has purchased copies of all collective agreements and resolutions applicable to the sector at cost thereof; and
  - (ii) provided further that the person must have been a member in good standing of such trade union at the time that the cause of action which had led to the dispute arose; and
  - (iii) provided further that such trade union furnishes adequate security in the form of a personal surety or bank guarantee for the purposes of clause 5 below.

4.12 In the case of the employer, a legal practitioner or an employee designated to appear on behalf of the employer

## **5. COSTS**

5.1 The Council shall pay, excluding pre-dismissal arbitration, the costs of the conciliation or arbitration proceedings, including the cost of the venue (if any), the fee of the conciliator or arbitrator and the expenses incurred in terms of the Council's fee policy (e.g. tape recording cassettes, parking fees etc).

- 5.2 Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses. However, an employee who is a party or a witness in any dispute resolution proceedings will be regarded as being on duty for the purposes of attending such proceedings.
- 5.3 At any time during the proceedings costs may be awarded on application of a party or of the arbitrator's own accord, after hearing the parties, on the following grounds:
- (a) If the arbitrator is satisfied that the referral to arbitration was made or defended vexatiously or without reasonable cause; or
  - (b) Where a party has caused unreasonable delays; or
  - (c) If the arbitrator is satisfied that a party, or a person who represented that party in the arbitration proceedings, acted in a manner seriously compromising the proceedings.
- 5.4 If a matter is dismissed due to the non-attendance of either party, the arbitrator may make a preliminary cost order against such a party. The following procedures will apply:
- (a) The secretary will serve the preliminary cost order on both parties and inform the party against whom the cost order is being made, that the party may within 14 days of receipt of the award, furnish written reasons why the cost order should not be confirmed.
  - (b) If the other party wants to oppose the reasons given by the party against whom the cost order is being made, the party may file his/her response on all the parties to the dispute and on the Council within 5 working days from receiving the said reasons
  - (c) The party against whom the cost order is being made may reply within 3 working days
  - (d) The arbitrator will consider the reasons for non-attendance, if any, and exercise his/ her discretion as to whether the preliminary cost order should be made final or set aside.
- 5.5 Costs awarded by an arbitrator may include-
- (a) the costs of the arbitration in terms of 5.1, including the fees of the arbitrator
  - (b) legal and professional costs and disbursements;
  - (c) expenses incurred by the other party;
  - (d) Expenses of witnesses.



5.6 An arbitrator must specify the composition of the cost order, taking into account the items mentioned in 5.5 (a) to (d).

**5.7** If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award, at the same rate prescribed from time to time in respect of a judgment debt in terms of Section 2 of the Prescribed Rates of Interests Act 55 of 1975, unless the award provides otherwise

## **6. TAXATION OF BILL OF COSTS**

6.1 The Secretary must on receipt of an application for taxation appoint a panelist as taxing officer to perform the functions of a taxing officer in terms of the dispute resolution rules.

6.2 Any decision by a taxing officer is subject to review by the Labour Court.

## **7. TIME PERIODS AND CONDONATION**

7.1 It is necessary to apply for condonation if any referral is served out of time or any time limit in this procedure is not complied with.

7.2 Condonation may only be granted on good cause shown after considering the criteria set out in the dispute resolution rules.

## **8. POSTPONEMENTS**

8.1 Postponements will be granted without the need for the parties to appear if both of the following conditions are met:

- (a) if all the parties to the dispute agree in writing to the postponement; and
- (b) if the request for the postponement is received by the Secretary more than 6 days prior to the scheduled date of the conciliation or arbitration as the case may be.

8.2 A formal request in writing for a postponement must be made if:

- (a) the parties cannot agree whether or not an arbitration or conciliation, as the case may be, should be postponed; or
- (b) the request for a postponement is made within 6 working days of the scheduled date of the conciliation or arbitration.

The application must be served before the scheduled date of the conciliation or arbitration. The Secretary of the Council will decide whether to grant the request for a postponement on the written documents presented by both parties or whether to convene a formal hearing before a conciliator or arbitrator.

8.3 Unless the parties to a dispute agree to a postponement in terms of 8.1, postponements will only be granted in exceptional circumstances on good cause shown.

8.4 The arbitrator may grant postponement at the hearing in exceptional circumstances on good cause shown.

## **9. PART-HEARD MATTERS**

9.1 In the case of an arbitrator not being able to finalise a part-heard matter, the Secretary must appoint another arbitrator to hear the matter de novo.

9.2 In the case of a panelist's contract having expired or being terminated, the panelist will finalise his/her part-heard matters as if the contract has not expired/terminated.

## **10. VARIATION AND RESCISSION OF ARBITRATION AWARDS**

10.1 An arbitrator may on own accord or on application of an affected party vary or rescind an arbitration award issued by him/her:

- (a) erroneously sought or erroneously made in the absence of any party affected by that award;
- (b) in which there is an ambiguity or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
- (c) granted as a result of a mistake common to the parties to the proceedings.

10.2 An application for the rescission of an arbitration award or ruling must be brought in terms of rule 15.3 within 10 working days of the date on which the party became aware of:

- (a) the arbitration award or ruling; or
- (b) the mistake common to the parties to the proceedings

10.3 Any ruling made by an arbitrator in terms of this procedure, which has the effect of a final order, will be regarded as an arbitration award.

## **11. SUBPOENAS**

11.1 The Council may upon approval of an arbitrator issue the subpoena in terms of the procedures prescribed by the DR Rules.

## **12. WITNESS FEES**

12.1 A witness subpoenaed in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed and published by notice in the Government Gazette in terms of Section 142 (7) of the Labour Relations 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 he or she can show that he or she will not be paid for such time.

12.2 The party calling for the subpoena of a witness shall be responsible for the payment of the prescribed allowances for the witness.

12.3 The prescribed allowance for witnesses shall not apply to public servants called to testify by the employer.

## **13. CALCULATION OF TIME PERIODS IN THESE PROCEDURES**

13.1 For the purpose of calculating any period of time in terms of these procedures –

- (a) day means calendar day, unless otherwise specified
- (b) the first day is excluded and the last day is included, subject to clauses 13.2 and 13.3

13.2 When calculating time periods the following days are excluded:

- (a) Public Holidays
- (b) The days between 16 December and 16 January

13.3 The last day of any period must be excluded if it falls on a Saturday, Sunday or any day referred to in clause 13.2.