

**PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL**

**RESOLUTION OF 1999**

**1. Adoption of Incapacity Code and Procedures**

Parties to the PSCBC adopt the attached Incapacity Code and Procedure for the Public Service.

**2. Date of implementation**

This agreement comes into effect on the date on which the Public Service Laws Amendment Act, 1998 (Act No 86 of 1998), which deem as an agreement the clauses that establish a disciplinary code for the public service, comes into effect.

**THIS DONE AND SIGNED AT ON THIS THE DAY OF 1999**

**ON BEHALF OF THE EMPLOYER**

	<b>NAME</b>	<b>SIGNATURE</b>
<b>STATE AS EMPLOYER</b>		

**ON BEHALF OF TRADE UNION PARTIES**

<b>TRADE UNION</b>	<b>NAME</b>	<b>SIGNATURE</b>
DENOSA		
HOSPERSA		
NAPTOSA		
NUPSAW		
NWU		
NEHAWU		
PAWUSA		
POPCRU		
PSA		
SADTU		
SAPU		
SAOU		

## INCAPACITY CODE AND PROCEDURES FOR THE PUBLIC SERVICE

### 1. AIMS

The purpose of this code and procedures is to:

- 1.1 assist employees overcome poor performance,
- 1.2 promote efficient and effective performance,
- 1.3 avert and correct inadequate performance,
- 1.4 ensure that the employer and employees share a common understanding of incapacity,
- 1.5 prevent arbitrary or discriminatory actions by the employer toward employees,
- 1.6 give reasonable assistance to employees who are incapable of performing in accordance with the needs of their jobs,
- 1.7 promote mutual respect between employees and between employers and employees, and
- 1.8 support constructive labour relations in the public service.

### 2. SCOPE OF APPLICATION

This procedure applies to the employer and all employees falling within the registered scope of the Public Service Co-ordinating Bargaining Council (the PSCBC). It does not, however, apply to the employer and employees covered by an incapacity procedure:

- 2.1 concluded in a sectoral council and approved by the PSCBC to ensure uniformity of procedures throughout the public service, or
- 2.2 contained in any other legislation regulating employment conditions.

### 3. CODES, RULES AND STANDARDS

- 3.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this code and procedure.
- 3.2 In applying this procedure, management must assess the incapacity by considering:
  - [a] the extent to which the incapacity impacts on the work of the public service, the employee's components, colleagues, and the public.
  - [b] the extent to which the employee fails to meet the required performance standards established by the employer,
  - [c] the extent to which the employee lacks the necessary skills to perform in accordance with the employee's job description,

- [d] the nature of the employee's work and responsibilities, and
- [e] the circumstances of the employee.

4. PROCEDURE FOR EMPLOYEES IN RESPECT OF POOR PERFORMANCE
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- 4.1 If the employer is of the view that an employee, whether on probation or a permanent staff member, is not performing in accordance with the job that the employee has been employed to do the employer must:
  - [a] give written reasons why it is necessary to initiate this procedure,
  - [b] after serving the written reasons referred to in clause 4.1[a], meet with the employee, and if the employee so chooses with the employee's trade union representative and/or a fellow employee.
- 4.2 In the meeting described in clause 4.1 [b], the employer must
  - [a] explain the requirements, grade, skills and nature of the job,
  - [b] evaluate the employee's performance in relation to the requirements of the job,
  - [c] indicate reasons for perceived poor performance,
  - [d] hear the employee or the employee's representative on
    - [i] whether the employee has performed in accordance with the requirements of the job, and
    - [ii] if the employee agrees she or he has not performed in accordance with the requirements of the job, give reasons.
- 4.3 After hearing the employee's standpoint, the employer must if necessary:
  - [a] develop and initiate a formal programme of counselling and instruction to enable the employee to reach the required standard of performance, which must include:
    - [i] assessing with the employee the time that it would take for an employee to overcome the poor work performance,
    - [ii] on the basis of the assessment defined in paragraph 4.3[a][i], establishing realistic time frames within which

the employer will expect the employee to have met the required performance standards; and

[iii] if necessary, identify and provide appropriate training for the employee to reach the required standard of performance, and

[b] establish ways to address any factors that affect the employee's performance that lie beyond the control of the employee.

4.4 If the poor performance of the employee is not remedied within the time frames established by the programme referred to in clause 4.3, the employer must

[a] give the employee a written report on the outcome of the procedure, and

[b] consult again with the employee to explain the outcome of the procedure, and on measures to address any problems indicated in the report.

4.5 After consulting with the employee, the employer must consider whether:

[a] to continue to give the employee the appropriate guidance, instruction and counselling and establish a further, appropriate period for the employee to meet the required standard of performance,

[b] to mentor the employee,

[c] to place the employee in a more appropriate job, or

[d] to dismiss the employee.

4.6 Before exercising the option of dismissal or placement in an alternative job, the employer must give the employee a hearing to establish failure to meet required standards.

4.7 If the employer places an employee in a different job that entails lower pay, the employee must first agree.