



**RESOLUTION No. 11 OF 2002**

**CONSTITUTION OF THE PUBLIC SERVICE CO-ORDINATING  
BARGAINING COUNCIL**

## **AMENDMENT TO THE PSCBC'S CONSTITUTION**

### **Scope**

1. This agreement binds,
  - (a) the employer,
  - (b) the employees of the employer who are members of the trade union parties to this agreement; and
  - (c) the employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council.

### **Noting**

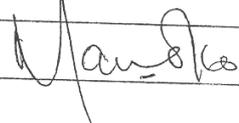
2. Noting that the Council has been in existence since 13 October 1997, a need arose to comprehensively amend its constitution to align it with new circumstances and changes to the legislative framework.

### **Agreement**

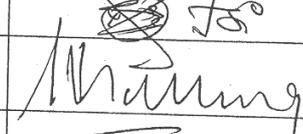
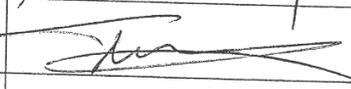
3. Therefore the Council resolves that the constitution, as registered by the Registrar of Labour Relations on 13 October 1997, be amended as per the attached Constitution to this resolution, as Schedule 1.
4. The constitution at Schedule 1 takes effect from the date of its certification by the Registrar of Labour Relations in terms of section 57(4) of the Labour Relations Act 66 of 1995.
5. If there is a dispute about the interpretation or application of this agreement, any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.
6. The Council will monitor the implementation of this agreement.

ENTERED INTO AND SIGNED AT Pretoria THIS  
9<sup>th</sup> DAY OF October 2002.

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as Employer	Manoko Nchwe	

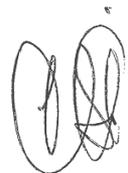
ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
DENOSA		
HOSPERSA	T.T. Gwagwa	
NAPTOSA		
NUPSAW		
NEHAWU	Thembeké Siko	
PAWUSA		
POPCRU	Leas B. Motjisi	
PSA	HN DE CLERCQ	
SADTU	T.W. NXESI	
SAPU		









**CONSTITUTION  
OF  
THE PUBLIC SERVICE CO-  
ORDINATING BARGAINING COUNCIL**

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## CONSTITUTION OF THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

### Name

1. The name of the Bargaining Council is the Public Service Co-ordinating Bargaining Council.

### Registered scope

2. In terms of section 36 of *the Act*,<sup>1</sup> read with section 213, the registered scope of the *Council* is the *public service* in respect of those matters that—
  - (a) are regulated by uniform rules, norms and standards that apply across the *public service*; or
  - (b) apply to terms and conditions of service that apply to two or more *sectors*; or
  - (c) are assigned to the State as *employer* in respect of the *public service* that are not assigned to the State as *employer* in any *sector*.

### Objectives

3. The objectives of the *Council*, within its registered scope, are to—
  - (a) generally enhance labour peace in the *public service*;
  - (b) promote a sound relationship between the *employer* and its *employees*;
  - (c) in terms of *the Act* and this constitution, negotiate and bargain collectively to reach agreement on matters of *mutual interest* to the *employer* and *employees* represented by admitted *trade unions* in the *Council*;
  - (d) provide mechanisms for the prevention and resolution of *disputes* between—
    - (i) the *employer* and *trade unions* admitted to the *Council*;
    - (ii) the *employer* and *trade unions* not admitted to the *Council*; and
    - (iii) the *employer* and *employees*,where the *employer* has the requisite authority to resolve such disputes;
  - (e) conclude, supervise and enforce collective agreements;
  - (f) comply with its powers and duties in terms of *the Act* and this constitution;
  - (g) consider and deal with such other matters as may affect the interests of the parties to the *Council*; and
  - (h) promote effective communication and co-ordination between the *Council* and *sectors* designated in terms of **clause 21.3**.

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<sup>1</sup> An italicised word or phrase indicates that the word or phrase is defined in clause 28.

## **Powers and duties**

4. The powers and duties of the *Council* are to—
  - (a) negotiate and conclude collective agreements in respect of matters regulated by section 36(2) of *the Act*, which may include negotiating minimum standards on such matters;
  - (b) supervise and enforce collective agreements concluded in the *Council*;
  - (c) prevent and resolve labour disputes;
  - (d) resolve disputes between the parties to *Council* in terms of *the Act* and the *dispute resolution procedures* of the *Council*;
  - (e) resolve the disputes of parties who are not parties to the *Council*, but who fall within the registered scope of the *Council*, in terms of section 51(3) of *the Act* and the *dispute resolution procedures* of the *Council*;
  - (f) establish and administer a fund to be utilised for resolving disputes, collective bargaining and general administration of the *Council* and the *Sectoral Councils*;
  - (g) develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect labour relations in the *public service*;
  - (h) determine by collective agreement the matters which may not be an issue in dispute for strike or a lock out;
  - (i) designate *sectors*, vary their scope, amalgamate or disestablish *Sectoral Councils* in the *public service*;
  - (j) co-ordinate, among the *Sectoral Councils*, and between such Councils and the Council, the functions and operations of such Councils, including those related to collective bargaining and administration;
  - (k) determine, in consultation with *Sectoral Councils*, appropriate standards of financial control and service that such Councils must maintain;
  - (l) provide operational services to *Sectoral Councils*, if it contributes to efficiency or administrative convenience, and is appropriate for the sharing of skills, expertise or resources, including the following:
    - (i) providing policy and guidelines regarding appointment, training and payment of panellists;
    - (ii) management and maintenance of case management systems and policy;
    - (iii) training of users and parties regarding the dispute resolution framework in the *public service*;
    - (iv) provision to the public, the parties and the *Sectoral Councils* of information services relevant to the functions of the *Council*;
    - (v) providing accommodation to *Sectoral Councils*; except for ELRC.
    - (vi) formulation and maintenance of human resources policy and systems for the *Council* and *Sectoral Councils*, and training of their staff;

- (vii) collection of uniform levies from *employees* and the *employer*, and proportional disbursement of such levies to *Sectoral Councils*; and
  - (viii) the determination of uniform levies by the *Council* and the effective date thereof.
- (m) where a *Sectoral Council* becomes dysfunctional in the view of the *Council*, and in consultation with such Council, provide such assistance and fulfil such functions as are required;
  - (n) raise, borrow, lend, levy and invest funds; and
  - (o) exercise any other power or duty that may be necessary or desirable to achieve the objectives of the *Council*.
5. Council's power in respect of **clause 4 (I)** will be exercised in agreement with the relevant *Sectoral Council* should the parties fail to reach an agreement, the Council's dispute resolution mechanism will apply.

### **Parties to Council<sup>2</sup>**

6. The parties to the *Council* are the *employer* and all *trade unions* admitted to the *Council*.

### **Application of *trade unions* for admission to Council**

- 7.1 Any single *trade union* party may apply for admission to the *Council* if it—
- (a) meets the threshold requirement of 50 000 *members*; and
  - (b) is admitted to a *Sectoral Council*.
- 7.2 Any two or more *trade unions* acting together as a single party (referred to as a *combined trade union party*), may apply for admission to the *Council* if—
- (a) their combined membership meets the threshold requirement of 50 000 *members*; and
  - (b) each constituent party of the *combined trade union party*, on its own or acting together (as a single party), is admitted to a *Sectoral Council*.
- 7.3 A single *trade union* applying for membership in terms of **clause 7.1**, must submit—
- (a) a copy of its constitution, fully updated with all amendments as registered and duly authenticated by the signature of the *chief executive officer*;
  - (b) a certified 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 addresses, the full telephone number and the full telefax number of its head office;
  - (d) a list of national or provincial departments or organisational components in which the *trade union* has *members* with regard to whom stop-orders

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<sup>2</sup> The founding parties to the Council were the parties to the Education Labour Relations Council, the National Negotiating Forum and the former Central Chamber of the Public Service Bargaining Council as at the date of registration of the Council.

have already been implemented, with an indication, per such national or provincial department, or organisational component of their names, identity numbers, PERSAL numbers (where applicable) and the occupational classes to which they belong;

- (e) *audited membership figures* of all *members* of the *trade union* falling within the scope of the *Council* and proof that the *trade union* satisfies the *threshold requirements*; and
  - (f) any other information on which the *trade union* relies in support of its application.
- 7.4 A combined *trade union* applying for membership in terms of **clause 7.2**, must submit—
- (a) the documentation referred to in **clause 7.3** in respect of each constituent *trade union*;
  - (b) the agreement between the constituent *trade unions* addressing material aspects of their acting together arrangement, including—
    - (i) the name under which that *combined trade union party* will be acting;
    - (ii) the allocation of agency fees between the *trade unions*; and
    - (iii) the period of validity which must be at least until the *Council's* Annual General Meeting in the year following the year within which the *combined trade union party* applies for membership.

7.5 The *Council* must—

- (a) within 90 calendar days of receiving an application for admission to the *Council*, decide whether or not to grant the application;
- (b) within 21 *working days* of reaching such a decision, advise the applicant of its decision; and
- (c) if the applicant satisfies the admission criteria, admit the applicant as a party forthwith.

### **Change to position of admitted *trade unions***

#### *Acting together between admitted trade unions*

- 8.1 When two or more admitted *trade unions* form a combined *trade union*, they must submit the information referred to in **clause 7.4(b)** to the *Secretary*.
- 8.2 Once the *Secretary* receives the required information, he/she must inform the *Council* at its next meeting of the formation of such combined *trade union*.
- 8.3 The *Council* must recognise the combined *trade union* as a *party to Council*.
- 8.4 The validity of the acting together arrangement of the combined *trade union*, must be at least until the next Annual General Meeting of the *Council*.

#### *Acting together between admitted and non-admitted trade unions*

- 8.5 When an admitted *trade union* forms a combined *trade union* with a non-admitted *trade union*, the admitted *trade union* must submit to the *Secretary*—

- (a) the information referred to in **clause 7.3** (read with the necessary changes) in respect of the non-admitted *trade union*; and
  - (b) the information referred to in **clause 7.4(b)**.
- 8.6 Once the *Secretary* receives the required information, he/she must inform the *Council* at its next meeting of the formation of such combined *trade union*.
- 8.7 The *Council* must recognise the combined *trade union* as a *party to Council*.
- 8.8 The validity of the acting together arrangement of the combined *trade union*, must be at least until the next Annual General Meeting of the *Council*.

*Amalgamation of admitted trade unions*

- 8.9 When an admitted *trade union* amalgamates with another admitted *trade union* in terms of *the Act*, the new amalgamated *trade union* must, within one *month* of registration by the Registrar of Labour Relations, notify the *Secretary* of such amalgamation and submit to him/her the information referred to in **clause 7.3(a), (b) and (c)**.
- 8.10 Once the *Secretary* receives the required information, he/she must inform the *Council* at its next meeting of the establishment of the new amalgamated *trade union*.
- 8.11 The *Council* must recognise the new amalgamated *trade union* as a *party to Council*.
- 8.12 **Clauses 8.9 to 8.11** apply (with the necessary changes) when all the constituent *trade unions* of a *combined trade union party* amalgamate.

*Amalgamation of admitted trade union with non-admitted trade union*

- 8.13 When an admitted *trade union* amalgamates with a non-admitted *trade union* in terms of *the Act*, the new amalgamated *trade union* must, within one *month* of registration by the Registrar of Labour Relations, notify the *Secretary* of such amalgamation and submit to him/her the information referred to in—
- (i) **clause 7.3(a), (b) and (c)**; and
  - (ii) **clause 7.3(d), (e) and (f)** in respect of the previously non-admitted *trade union*.
- 8.14 Once the *Secretary* receives the required information, he/she must inform the *Council* at its next meeting of the establishment of the new amalgamated *trade union*.
- 8.15 Subject to **clause 8.16**, the *Council* must recognise the new amalgamated *trade union* as a *party to Council*.
- 8.16 If a constituent *trade union* of a *combined trade union party* amalgamates with a non-admitted *trade union*, the new amalgamated *trade union* will be recognised as a constituent *trade union* of the *combined trade union party*.

*Change to composition of combined trade union party*

- 8.17 When the composition of the constituent *trade unions* of a *combined trade union party* changes by the withdrawal or expulsion of a member of the *combined trade union party*, the remaining member(s) of such *combined trade*

*union party* must, within one *month* of such change, notify the *Secretary* of such change.

- 8.18 The *Secretary* must determine whether or not the *combined trade union party* still complies with the *threshold requirements*. If the party still complies, the *Secretary* must notify the *Council* of the change. If the party no longer complies, the provisions of **clauses 9.1 and 9.2** become applicable.

#### *Change of name of admitted trade union*

- 8.19 An admitted *trade union* must, within one *month* of registration by the Registrar of Labour Relations of the change of its name, notify the *Secretary* of such change.

- 8.20 Once the *Secretary* receives the notification, he/she must inform the *Council*, at its next meeting, of the change of name of the admitted *trade union*.

- 8.21 The *Council* must note the name change of the admitted *trade union*.

#### *Record of admitted trade unions to Council*

- 8.22 The *Secretary* must maintain a register of admitted *trade unions* and, in respect of a *combined trade union party*, also the names of the constituent *trade unions* of such *combined trade union party*.

### **Termination of membership of Council**

- 9.1 The *Council* must terminate the membership of an admitted *trade union* when—

- (a) it receives a notice of resignation of such membership from the *trade union*;
- (b) the *trade union* dissolves, winds up in terms of its constitution or is liquidated;
- (c) the Registrar of Labour Relations cancels the *trade union's* registration;
- (d) the *trade union* no longer complies with the *threshold requirements*;
- (e) a *combined trade union party*, because of the loss of a constituent union(s), no longer complies with the threshold requirement; or
- (f) it fails to comply with a requirement referred to in **clause 10.3(b) or (c)**.

- 9.2 Before the *Council* terminates the membership of an admitted *trade union* in terms of **clause 9.1(d), (e) or (f)**, the *trade union* must be afforded a reasonable opportunity to submit representations to the *Council* as to why its membership should not be terminated.

- 9.3 An admitted *trade union* disputing the termination of its membership may refer the dispute to the *Council* in terms of its *dispute resolution procedures*.

### **Review of trade union membership of Council**

- 10.1 Each admitted *trade union* must submit to the *Secretary* by 31 March each year its *audited* or *verified membership figures* (as the case may be) as at 31 December of the previous year with regard to its *members* who fall within the

registered scope of the *Council* and according to the *sectors* falling within the registered scope of the *Council* as referred to in section 100(a) of *the Act*. The *Council* will determine during which years *audited membership figures* and during which years *verified membership figures* must be submitted.

10.2 The *Secretary* must determine the membership figures of the *trade unions* concerned and report it to the *Council* not later than 14 May of each year.

10.3 The *Secretary* must—

- (a) afford a *trade union* which has not submitted its *audited* or *verified membership figures* by 31 March of a specific year, the opportunity to submit such figures by 30 April;
- (b) after the deadline provided for in **clause 10.3(a)** has passed, request the *trade union* concerned to provide reasons within 5 *working days* for non-compliance with these requirements and, if the *trade union* does not provide reasons within that period, then the admission of the *trade union* to the *Council* terminates; and
- (c) if the *trade union* timeously supplies reasons, extend the period for submission of the relevant membership figures for a further 14 *working days* of receipt of the reasons and, if the *trade union* does not provide the requested figures within that period, then the admission of the *trade union* to the *Council* terminates.

#### **Determination of basis of votes**

11.1 The voting rights of an admitted *trade union* in the *Council* must be determined on the basis of the number of *members* in good standing of such a *trade union* who are *employees* as on 31 December of the previous year in proportion to the number of *members* who are *employees* represented by all the *trade unions* admitted to the *Council*.

11.2 The *Secretary* must determine the number of votes of each admitted *trade union* based on the membership figures in **clause 10.1**.

11.3 The *Secretary* must, by 14 May of each year—

- (a) serve a notice upon every admitted *trade union*, indicating the number of votes it has in the *Council* and the number of *members* it has in each designated *sector*; and
- (b) inform the *Council* of the number of votes that each admitted *trade union* has in the *Council* and the number of *members* that each has in a designated *sector*.

11.4 Subject to **clauses 11.5, 11.6, 11.7 and 11.8**, the voting rights determined by the *Secretary* apply from one Annual General Meeting to the next Annual General Meeting.

11.5 When a *trade union* referred to in **clause 7.1 or 7.2** is admitted to the *Council*, the *Secretary* must immediately redetermine the number of votes of the admitted *trade unions* to the *Council* and, within 5 *working days* take the steps indicated in **clause 11.3**.

11.6 When two or more admitted *trade unions* form a combined *trade union* or amalgamate, the *Secretary* must combine the votes of such *trade unions* as determined by him/her in terms of **clause 11.2**. The combined votes apply from the date on which the *Council* recognises the combined or amalgamated

*trade union* as an admitted *trade union* until the next Annual General Meeting.

- 11.7 When an admitted *trade union*'s membership is terminated in terms of **clause 9.1**, the *Secretary* must immediately redetermine the number of votes of each remaining admitted *trade union*, based on the *audited membership figures* applicable from the last Annual General Meeting, and, within 5 *working days* take the steps indicated in **clause 11.3**.
- 11.8 When the composition of a combined *trade union* changes as a result of the withdrawal or expulsion of a constituent *trade union*, the *Secretary* must, if such withdrawal or expulsion does not result in the termination of the membership of the combined *trade union*, immediately redetermine the number of votes of the combined *trade union* as well as the other admitted *trade unions* and then, within 5 *working days*, take the steps indicated in **clause 11.3**.
- 11.9 When an admitted *trade union* forms a combined *trade union* or amalgamates with a non-admitted *trade union*, the membership of the previously non-admitted *trade union* is not taken into account for purposes of the votes of the combined or amalgamated *trade union* until the next Annual General Meeting.
- 11.10 When a constituent *trade union* of a *combined trade union party* amalgamates with a non-admitted *trade union*, the membership of the previously non-admitted *trade union* is not taken into account for purposes of the votes of the combined *trade union* until the next Annual General Meeting.
- 11.11 When an admitted *trade union* changes its name, its number of votes will remain unaffected.
- 11.12 Any admitted *trade union* that disputes a determination of votes by the *Secretary* in terms of **clauses 11.2, 11.5, 11.6, 11.7 and 11.8** may refer such a dispute to the *Council* in terms of its *dispute resolution procedures*.
- 11.13 The *employer* has an equal number of votes to that of the admitted *trade unions* collectively and the voting rights in the *Council* must 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.

### **Appointment of representatives**

- 12.1 The *employer* is represented in the *Council* by authorised representatives.
- 12.2 Each admitted *trade union* to the *Council* is represented by three representatives for the first 50 000 *members*, then one additional representative for every additional 30 000 *members* or part thereof up to a maximum of five representatives. The expression "part thereof" means *members* in excess of 15 000 *members*.
- 12.3 The *Secretary* must in all instances that he/she is required to act in terms of **clause 11.3** also notify each admitted *trade union* and inform *Council* of the number of representatives that each admitted *trade union* is entitled to.

### **Chairperson and Vice-chairpersons**

#### *Chairperson*

- 13.1 The Chairperson is elected during the Annual General Meeting of the *Council* in terms of the procedure set out in **clauses 13.3 to 13.7**.

- 13.2 Subject **clause 13.14**, the Chairperson holds office for a term of 24 *months*.
- 13.3 The outgoing Chairperson presides over the Annual General Meeting of the *Council* and must call for nominations for a Chairperson for the forthcoming term of office (when applicable) at the conclusion of such meeting.
- 13.4 A person other than a representative of a *party to Council* who has consented to his/her nomination, may also be nominated as Chairperson.
- 13.5 A person to be nominated must be duly proposed and seconded.
- 13.6 The person receiving the highest percentage of the total votes, is the duly elected Chairperson. In the event of a deadlock the *Secretary* must draw lots in accordance with **clause 13.7** to determine the duly elected Chairperson.
- 13.7 If an equal number of votes are cast for two or more candidates, the *Secretary* must, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place such papers in a suitable container and draw one of the papers from the container. The candidate whose name is so drawn is deemed to have been duly elected.
- 13.8 The Chairperson must—
- (a) preside over all meetings of the *Council*;
  - (b) enforce order at all meetings at which he or she is present in accordance with normal meeting procedures;
  - (c) sign the minutes of a meeting after confirmation thereof by the *Council*;
  - (d) endorse accounts for payment and financial statements after approval by the *Council*; and
  - (d) perform such other duties as by usage and custom pertain to the office of Chairperson.
- 13.9 Where applicable, the *Council* must from time to time determine a honorarium payable to the Chairperson of the *Council*. If it becomes necessary or desirable to retain the services of the Chairperson on a full time basis, the *Council* must determine the salary and other conditions of employment of the Chairperson.

#### *Vice-chairpersons*

- 13.10 **Clauses 13.1 and 13.2**, read with the necessary changes, apply in respect of the election of two Vice-chairpersons of the *Council*, one of who must be elected by the *employer* and the other by the admitted *trade unions*.
- 13.11 When the Chairperson is not available, the Vice-chairpersons must alternately act as Chairperson and must exercise the powers and perform the duties of the Chairperson.

#### *Provisions applicable to both Chairperson and Vice-chairpersons*

- 13.12 When both the Chairperson and the two Vice-chairpersons are absent or unable to act at a meeting, the representatives present must elect from their number, a person to act as chairperson at that meeting.
- 13.13 The Chairperson or the Vice-chairpersons may not vote on any matter: Provided that if any of the Vice-chairpersons have not been replaced by another representative of that party to the *Council*, such Vice-chairperson may vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of both the Chairperson and the Vice-

chairpersons.

- 13.14 The term of office of a Chairperson or Vice-chairperson may be terminated by written notice of either such Chairperson or Vice-chairperson, or the *Council* consequent to a decision to that effect.
- 13.15 The Chairperson and Vice-chairpersons of the *Council* are not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith while performing their functions for or on behalf of the *Council*.

### **Secretary and other personnel**

- 14.1 The *Council* must appoint a part-time or full-time *Secretary* or may request the *employer* that an *employee* be placed at its disposal, or be directed, to act as Secretary.
- 14.2 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 the *Executive Committee* and record the minutes of the meetings;
  - (d) ensure that minutes of all committee and task team meetings of the *Council*, other than those referred to in **clause 14.2(c)**, be recorded;
  - (e) administer the *dispute resolution procedures* of the *Council*;
  - (f) keep books of account in accordance with general accepted accounting practices and the instructions of the *Council*;
  - (g) bank all monies received on behalf of the *Council* within 3 *working days* of receipt thereof;
  - (h) 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;
  - (i) once every calendar year, submit the books of account of the *Council* to a public auditor appointed by the *Council* for auditing;
  - (j) countersign cheques signed by the Chairperson or a Vice Chairperson, on the banking account of the *Council*;
  - (k) determine the number of votes of admitted *trade unions* in terms of **clauses 11.2, 11.5, 11.6, 11.7 and 11.8**;
  - (l) appoint an acting Secretary to act when the *Secretary* is not able to fulfil his or her functions, unless the *Executive Committee* has made such appointment in terms of **clause 19.4(e)**;
  - (m) enter into agreements duly delegated by the *Executive Committee*;
  - (n) assist in the co-ordination by the *Council* of the functions and operations of the *Sectoral Councils* and the *Council* as provided in **clause 4(j)**.
  - (o) fulfil any functions assigned to the *Secretary* by this constitution, including annexures to it; and
  - (p) perform such other duties as the *Council* or Chairperson may direct or

which is required by *the Act*.

- 14.3 The *Secretary* must keep in safe custody at the offices of the *Council*—
- (a) the approved minutes of every meeting of the *Council*, duly signed by him/her and by the person who presided at such meeting;
  - (b) the original signed Resolutions of the *Council*; and
  - (c) the statements referred to in **clause 20.9(a) and (b)** and all records in relation thereto.
- 14.4 The *Secretary* may, in all instances with the prior approval of the *Council* or of the *Executive Committee*—
- (a) appoint such part-time or full-time personnel as he/she considers necessary, subject to the budget, staff structure, salary structure, conditions of service and policies as adopted by the *Council*; or
  - (b) request that an *employee* of the *employer* be placed at the disposal of the *Council* or that such employee be directed to perform duties necessary for the administration of the *Council*.
- 14.5 In the case of personnel appointed in terms of **clause 14.4(a)**, the *Secretary* may—
- (a) determine the salary and other conditions of employment of such personnel, provided that it falls within the applicable policies of the *Council*, and the budget allocated for such use;
  - (b) terminate their employment after following due process.
- 14.6 Where applicable, the *Council* must determine the salary and other conditions of employment of the *Secretary*.
- 14.7 Where applicable, the employment of the *Secretary* may be terminated on one *month's* notice on either side. Termination of services by the *Council* must be done upon a decision of the *Council* as contemplated in **clause 17.3**.
- 14.8 The services of the *Secretary* or other personnel of the *Council* may be terminated for serious neglect of duty, misconduct or incapacity after following due process.
- 14.9 The functions of the *Secretary* may be performed by any of the other personnel of the *Council* acting under the directions of the *Secretary*.

## **Meetings of Council**

### *General provisions regarding meetings*

- 15.1 The *Council* must meet once every *month*, unless it decides otherwise. One such meeting must be the Annual General Meeting.
- 15.2 The Chairperson may on his/her own initiative, or must at the request of a party to the *Council*, call a meeting of the *Council* to deal with an urgent matter, if the *employer* plus a number of admitted *trade unions* representing a majority of the votes on the side of labour consent thereto.
- 15.3 The *Secretary* must *serve* on the parties to the *Council* a written notice of a meeting referred to in **clause 15.1 or 15.2** showing the date, time and the business to be transacted—

- (a) in the case of **clause 15.1**, at least 5 *working days* before the date of such meeting; or
  - (b) in the case of **clause 15.2**, as the Chairperson determines before the date of such meeting.
- 15.4 Copies of the minutes of the meeting held immediately prior to the relevant meeting, must be made available to the parties concerned at least 5 *working days* prior to the said meeting, and must, after confirmation by the meeting, be signed by the *Secretary* and the person who chaired the relevant meeting.
- 15.5 Subject to **clause 15.4**, copies of the minutes of all meetings must be forwarded by the *Secretary* to all parties concerned within a period of 21 *working days* subsequent to a meeting, unless the *Council* determines a shorter period at such meeting.
- 15.6 Every meeting of the *Council* must be conducted in private unless the *Council* decides otherwise.
- 15.7 The *Council* may, on its own initiative or on request of a *Secretary* of a *Sectoral Council*, permit the *Secretary* of a *Sectoral Council* to attend a *Council* meeting. If so permitted, such *Secretary* may address the *Council*.

#### *Annual General Meetings*

- 15.8 The *Council* must hold an Annual General Meeting during the month of June of each year.
- 15.9 The following matters must be dealt with at the Annual General Meeting:
- (a) The election of a Chairperson and Vice-chairpersons, if necessary in terms of this constitution;
  - (b) the election/appointment of members and alternates of the *Executive Committee* in terms of this constitution;
  - (c) the appointment of a panel of conciliators and a panel of arbitrators for purposes of conducting dispute resolution;
  - (d) the appointment of auditors, if necessary;
  - (e) the financial statements of the *Council*;
  - (f) the report of the auditor in respect of the financial statements referred to in **clause 20.12**;
  - (g) the annual report of the *Council*;
  - (h) the approval of the budget of the *Council*;
  - (i) the levies to be imposed on the parties to the *Council*; and
  - (j) a report as to the number of votes held by each party in the *Council*, as determined by the *Secretary* in accordance with **clause 11.2**.
- 15.10 The *Council* may deal with any other urgent matter at the Annual General Meeting.

#### *Quorums*

- 15.11 The *employer* plus the number of admitted *trade unions* representing a majority of the votes on the side of labour constitute a quorum at any duly constituted meeting of the *Council*.
- 15.12 If, within 30 minutes of the time fixed for any meeting, a quorum is not present, the meeting stands adjourned to such other date, time and place to

be determined by the Chairperson after consultation with the parties present, on condition that the *Secretary* notifies the relevant parties accordingly. At such a reconvened meeting the parties present form a quorum. The date and time for such reconvened meeting shall not be later than 10 *working days* after the date of the original meeting.

### **Negotiating procedure on matters of *mutual interest***

- 16.1 Any party to the *Council* may submit a written proposal regarding a matter of *mutual interest* to the *Secretary* for consideration by the *Council*. The *Council* must determine the procedure for placing a proposal on the agenda of the *Council*.
- 16.2 If it is decided that the *Council* will deal with a proposal, it must meet within 21 *working days* after receipt of a proposal submitted in terms of **clause 16.1** or any time thereafter, if the party who made the proposal agrees thereto.
- 16.3 At the meeting referred to in **clause 16.2**, the *Council* must attempt to agree on a negotiation process which may include the following:
- (a) The submission of counter proposals;
  - (b) the establishment of a negotiating committee;
  - (c) the appointment of one or more facilitators, if necessary, to facilitate the negotiations and chair the meetings; and
  - (d) the timetable for negotiations.
- 16.4 If the *Council* agrees to facilitation in terms of **clause 16.3(c)** but fails to agree, within a period of 5 *working days* from the decision to appoint a facilitator(s), on which facilitator(s) to appoint, the *Secretary* must in his or her own discretion decide how many facilitators to appoint and appoint the facilitator(s), taking into consideration the views of the parties.
- 16.5 In the event of the *Council* not meeting within the period provided for in **clause 16.2**, or at the meeting not agreeing upon a negotiating procedure in terms of **clause 16.3**, the parties must within 2 *working days* from the expiry of the period provided for in **clause 16.2** commence negotiations.
- 16.6 If the parties do not conclude a *Resolution of Council* during a period of 21 *working days* from the date of the expiry of the period referred to in **clause 16.2**, or such longer period as agreed between the parties, and the matter is not settled, any party may refer the matter for conciliation in terms of the *dispute resolution procedures*.
- 16.7 If the matter is not resolved during the conciliation process, parties to the *Council* may exercise their rights in terms of *the Act*.

### **Decisions and Resolutions of *Council***

- 17.1 The Chairperson may require that a proposal by the *employer* or an admitted *trade union* be submitted in writing and be read by him or her as a prerequisite to any debate or decision in respect thereof.
- 17.2 No proposal shall be considered unless it has been duly seconded.
- 17.3 Any decision of the *Council* requires the vote of the *employer* together with a majority of votes of the admitted *trade union* parties.

- 17.4 Voting in the *Council* must be by a show of hands by the chief spokesperson of each party who shall carry the votes of the party, unless a party requests a secret ballot.
- 17.5 The *Secretary* must act as electoral officer.
- 17.6 The *Council* may decide any procedural matters not regulated in this constitution.
- 17.7 A person who is not a representative as referred to in **clauses 12.1 and 12.2** may be allowed to address the *Council* subject to a *decision of Council*.
- 17.8 Any *decision of Council* may be made a *Resolution of Council*.
- 17.9 Before a *Resolution of Council* becomes binding, it must be signed by the *employer* and by a number of admitted *trade unions* who represent the majority of votes on the side of labour in the *Council*.
- 17.10 The following provisions apply to the adoption of a *Resolution of Council*:
- (a) The *Secretary* must –
    - (i) prepare a draft resolution on the matter;
    - (ii) within 21 *working days* of the *Council* concluding on the matter, present the draft resolution for signature to the *employer* and the *chief executive officer* (or his or her delegate) of each of the admitted *trade unions*;
    - (iii) if not signed within the period referred to in **clause 17.10(a)(ii)** by sufficient parties to comply with **clause 17.9** table the draft resolution at the next meeting of the *Council* to confirm the parties' position.
  - (b) If there is no majority support at the *Council* meeting referred to in **clause 17.10(a)(iii)**—
    - (i) the draft resolution falls away; or
    - (ii) the matter may, by decision of the *Council*, be reopened for discussion or negotiation.
  - (c) The *Secretary* must, within 5 *working days* after a majority signature has been achieved in respect of any draft resolution, provide copies of the signed *Resolution of Council* to each *party to Council*.
- 17.11 Each party signing a draft *Resolution of Council* must note the date on which it signs the draft resolution. However, failure to do so shall not invalidate the Resolution.
- 17.12 The date of the *Resolution of Council* is the first date on which **clause 17.9** is complied with, and the *Secretary* must insert such date as the date of the Resolution at the end of the Resolution.
- 17.13 The *Secretary* must number each *Resolution of Council*, "Resolution No x of y", where y is the year in which **clause 17.9** is complied with, and x is a number allocated sequentially in one year relative to the date on which **clause 17.9** is complied with.

#### **Committees and *chambers of Council***

- 18.1 The *Council* may from time to time establish committees in terms of section 55 of *the Act* subject to such conditions as it may determine, and may delegate any of its functions to any such committee. However, the *Council* may not delegate the powers, and duties contemplated in **clauses 7.5, 15.9, 25.1, 25.4 and 26.1** and the power of the *Council* to delegate.
- 18.2 Any decision or action of a committee contemplated in **clause 18.1** must be reported to the *Council* for consideration and may be ratified, set aside or varied by the *Council*.
- 18.3 By delegating any of its functions, the *Council* is not divested of any of its powers nor is it relieved of any of its duties.
- 18.4 A committee established in terms of **clause 18.1** must consist of an equal number of representatives of the admitted *trade unions* collectively and the *employer* as determined by *Council*.
- 18.5 A committee is chaired by the Chairperson, one of the Vice-chairpersons of the *Council* or a person designated by the *Council* to act as chairperson of such committee.
- 18.6 At least 50% of the *employer* representatives plus 50% of the representatives of the admitted *trade unions* referred to in **clause 18.4**, constitute a quorum for a meeting of a committee.
- 18.7 Secretarial or other services shall be rendered to a committee of the *Council* by the *Secretary* or other personnel of the *Council*.
- 18.8 **Clauses 18.1 to 18.7** apply with the necessary changes to any other committees appointed or established in terms of this constitution, unless otherwise provided.
- 18.9 The *Council* may, by *Resolution of Council*, establish *chambers* of the *Council* subject to such conditions as it may determine.

### ***Executive Committee***

- 19.1 The *Executive Committee* of the *Council* consists of—
- (a) the Chairperson and the two Vice-chairpersons of the *Council* by virtue of their respective offices; and
  - (b) 4 representatives appointed/elected by the *employer* side and 4 representatives appointed/elected by the admitted *trade unions* collectively at the Annual General Meeting.
- 19.2 The *employer* and the admitted *trade unions* must, respectively, elect/appoint an alternate for each of their 4 representatives in the *Executive Committee*.
- 19.3 The *Secretary* must attend meetings of the *Executive Committee*, but may not participate in the taking of decisions.
- 19.4 Subject to the directions and control of the *Council*, the *Executive Committee* may—
- (a) exercise and perform the powers, functions and duties of the *Council* relating to the supervision and control of the day-to-day management and administration of the *Council*;

- (b) investigate and report to the *Council* on any matter connected with the registered scope of the *Council*;
  - (c) do anything necessary to give effect to decisions of the *Council*;
  - (d) monitor and enforce collective agreements concluded in the *Council*;
  - (e) appoint an acting Secretary to act when the *Secretary* is not able to fulfil his or her functions, or cancel the appointment of an acting Secretary that was made by the *Secretary* in terms of **clause 14.2(I)** and appoint a different person to act as Secretary;
  - (f) exercise and perform any power and duty that is conferred or imposed on the *Executive Committee* by or in terms of this constitution or that is delegated by the *Council* to the *Executive Committee*. However, the *Council* may not delegate to the *Executive Committee* the powers, and duties contemplated in **clauses 7.5, 15.9, 25.1, 25.4 and 26.1** and the power of the *Council* to delegate;
  - (g) facilitate bilateral meetings between the various *employer* structures, admitted *trade unions* and *Sectoral Councils*; and
  - (h) make recommendations to the Chairperson of the *Council* to discuss urgent matters that need resolution.
- 19.5 A member of the *Executive Committee* holds office for 12 *months* unless withdrawn by the *employer* or admitted *trade union* parties who appointed/elected the member, and is eligible for re-election at the end of that term.
- 19.6 A member of the *Executive Committee* whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the *Executive Committee* until the member's successor assumes office.
- 19.7 A member of the *Executive Committee*—
- (a) may resign from the committee at any time after having given at least one *month's* notice in writing to the *Secretary*;
  - (b) must vacate office immediately—
    - (i) in the case of resignation, when the resignation takes effect; or
    - (ii) upon ceasing to be a representative of the *Council*;
  - (c) who fails to attend 3 consecutive meetings of the *Executive Committee* without submitting a prior and formal apology to the Chairperson or without arranging for the alternate to attend in his or her place, shall cease to be a member from that day.
- 19.8 The *Executive Committee* may reinstate a member referred to in **clause 19.7(c)** if it is satisfied that there was an acceptable reason for his or her failure to attend at least one of the meetings that he or she failed to attend. If the *Executive Committee* does not reinstate such former member within a period of one *month* from the date on which he or she ceased to be a member, the *employer* or the admitted *trade unions* that elected or appointed him or her must elect or appoint another member.
- 19.9 If the seat of a member of the *Executive Committee* becomes vacant, it must be filled by the *employer* or the admitted *trade unions*, whichever is applicable.

- 19.10 A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- 19.11 The *Executive Committee* must hold a meeting at least once every 3 months.
- 19.12 A special meeting of the *Executive Committee*—
- (a) may be called by the Chairperson with a view to disposing of urgent business; and
  - (b) must be called by the Chairperson within 5 *working days* of receiving a request for that purpose, stating the purpose of the special meeting and agreed to by the *employer* and at least 2 members of the admitted *trade unions* elected/ appointed to the *Executive Committee*.
- 19.13 The *Secretary* must, not later than 5 *working days* before the date of the meeting, notify each member of the *Executive Committee* showing the date, time and venue of the meeting and the business to be transacted. However, the Chairperson may authorise shorter notice for a special meeting.
- 19.14 At least 2 of the *employer* representatives plus 2 of the representatives elected/ appointed to the *Executive Committee* by the *trade unions*, shall constitute a quorum for a meeting of the committee.
- 19.15 All decisions of the *Executive Committee* shall be taken by consensus. If consensus cannot be reached, the matter must be referred back to the *Council* for a decision.
- 19.16 The *Secretary* must provide the parties to the *Council* with reports and minutes of all *Executive Committee* meetings.

### **Financial matters of Council**

- 20.1 The expenses of the *Council* must be met from a fund approved by the *Council*.
- 20.2 The *Council* must decide at which bank to keep its accounts.
- 20.3 The *Secretary* must deposit all monies within 3 *working days* after receipt thereof at the bank referred to in **clause 20.2**.
- 20.4 The *Secretary* may, in terms of the financial policy of the *Council*, invest any surplus funds not required for the expenses of the *Council*.
- 20.5 Travelling, subsistence and other expenses of representatives and alternates shall be for the parties' own account unless otherwise agreed.
- 20.6 All expenses to be made from the fund of the *Council* shall be approved of by the Chairperson or a Vice-chairperson and shall be paid by cheque signed by the Chairperson, or if applicable a Vice-chairperson, and countersigned by the *Secretary*, unless the procedure is amended by the *Council*.
- 20.7 Funds required for a petty cash account must—
- (a) be kept safely in such a manner as the *Council* may determine from time to time;
  - (b) be provided by the drawing of a cheque; and

- (c) not exceed the petty cash limit as determined by the *Council* from time to time.
- 20.8 The *Secretary* must every 6 *months* submit to the *Council*, statements of the income and expenditure that reflect the financial position of the *Council*.
- 20.9 The *Secretary* must, 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 must include but not be restricted to—
- (a) a statement showing—
    - (i) monies received; and
    - (ii) expenditure incurred under *inter alia* the following headings:
      - (aa) salaries and other payments to personnel;
      - (bb) office accommodation;
      - (cc) printing and stationery; and
      - (dd) miscellaneous expenditure; and
  - (b) a statement indicating the assets and liabilities of the *Council*.
- 20.10 The financial year of the *Council* shall be from 1 April of a particular year to 31 March of the following year.
- 20.11 The statements referred to in **clause 20.9**—
- (a) must be countersigned by the Chairperson; and
  - (b) must be submitted for audit to a public accountant and auditor appointed by the *Council*.
- 20.12 Certified copies of the audited statements and of the audit report thereon must be made available for inspection at the office of the *Secretary*.
- 20.13 Certified copies of the audited statements and the auditor's report must be transmitted to the Registrar of Labour Relations, within one *month* after the Annual General Meeting.
- 20.14 There shall be a joint financial committee (“joint fincom”), consisting of at least—
- (a) one *employer* representative and one employee representative from the *Council*;
  - (b) one *employer* representative and one employee representative from each Sectoral *Council*;
  - (c) the *Secretary* of the *Council* and the Secretaries of each of the Sectoral *Councils*;
  - (d) the Financial Manager/Officer of the *Council* and of each of the Sectoral *Councils*.

- 20.15 The power and functions of the joint fincom are to—
- (a) consider recommendations from *Sectoral Councils* that have financial implications for the *Council*, including those that are exceptions to the norm;
  - (b) give input to the *Council's* budgetary process, primarily from the perspective of the *Sectoral Councils*;
  - (c) make recommendations to the *Executive Committee* in the above regard.
- 20.16 The joint fincom shall meet at least once every quarter. Meetings of the joint fincom shall be called and co-ordinated by the *Secretary*.
- 20.17 At least 50% of the *employer* representatives plus 50% of the representatives of the admitted *trade unions*, referred to in **clause 20.14(a) and (b)**, shall constitute a quorum for a meeting of the committee.
- 20.18 The office-bearers referred to in **clause 20.14(c) and (d)** may not participate in the decision-making process of the joint fincom.
- 20.19 The Secretaries of *Sectoral Councils* may attend a meeting of the *Executive Committee* when a recommendation of the joint fincom is considered and may participate in the discussions on the matter (unless the *Executive Committee* decides otherwise), but may not participate in the taking of decisions.
- 20.20 All decisions of the joint fincom shall be taken by consensus. If consensus cannot be reached, the matter must be referred to the *Executive Committee*.

#### **Procedure for designating sectors and establishing bargaining councils for such sectors**

- 21.1 Any party to the *Council* may request the *Council* to consider the designation of a further sector in the *public service* in terms of section 37(1) of *the Act*.
- 21.2 In considering a request for the designation of a *sector*, the *Council* must take into account—
- (a) whether the State as *employer* in that *sector* has the requisite authority to deal with matters concerning the specific *sector*;
  - (b) representations by *trade unions* which are sufficiently representative of *employees* in the specific *sector*; and
  - (c) the need to negotiate *sector* specific matters in a separate bargaining council as well as the effect that such an arrangement will have on existing bargaining councils.
- 21.3 The *Council* must consider the request and take a decision thereon in terms of **clauses 17.3** and if applicable, conclude a *Resolution of Council* in terms of **clause 17.9**.
- 21.4 If the *Council* decides to designate a *sector*, the *Secretary* must publish a notice in the *Government Gazette* inviting the relevant *employer* and the *trade unions* with *members* employed in the *sector* to attend a meeting to establish a bargaining council for the *sector* on a date determined by the *Council*.
- 21.5 The *Council* must appoint a chairperson for the meeting referred to in **clause 21.4** to facilitate the conclusion of an agreement on—
- (a) the *trade unions* to be the initial parties to the bargaining council for that

*sector*, and

- (b) a constitution for the bargaining council that must meet the requirements of section 30 of *the Act*, read with the necessary changes) and must be consistent with this constitution.

21.6 If agreement is concluded, the Registrar must be approached to register the bargaining council *in terms of the Act*.

21.7 If no agreement is concluded on a constitution or any part thereof, the Registrar must be approached to determine the constitution that meets the requirements of section 30 of *the Act* and register the bargaining council in terms of *the Act*.

### **Variation of designation or amalgamation of Sectoral Councils**

22.1 The *Council* may, in terms of section 37(1) of *the Act*, vary the designation of, or amalgamate, *Sectoral Council(s)* by *Resolution of Council*.

22.2 Before varying the designation of, or amalgamating *Sectoral Council(s)*, the *Council*—

- (a) must first consult the *Sectoral Council(s)* concerned; and
- (b) may not take a decision regarding a proposed variation or amalgamation before 45 *working days* have passed since it has notified such *Sectoral Council(s)* of such proposed variation or amalgamation.

22.3 Once the *Council* has adopted a *Resolution of Council* in terms of **clause 22.1**, the *Secretary* must inform the Registrar of Labour Relations about such variation or amalgamation.

### **Disestablishment of *bargaining councils in the public service***

23.1 The *Council* may, in terms of section 37(1) of *the Act*, disestablish a *bargaining council* in the public service by *Resolution of Council*.

23.2 Once the *Council* has adopted a *Resolution of Council* in terms of **clause 23.1**, the *Secretary* must inform the Registrar of Labour Relations about such disestablishment.

23.3 Before disestablishing a *Sectoral Council*, the *Council*—

- (a) must first consult the *Sectoral Council* concerned; and
- (b) may not take a decision regarding a proposed disestablishment before 45 *working days* have passed since it has notified such *Sectoral Council* of such proposed disestablishment.

## **Relationship between *Council* and *Sectoral Councils***

- 24.1 The objective of interaction between the *Council* and the *Sectoral Councils* will be to cooperate and coordinate with, and contribute to, one another.
- 24.2 Decisions of the *Council* in as far as they affect the *Sectoral Councils*, bind such Councils.
- 24.3 Each *Sectoral Council* is a juristic person with autonomy on aspects that it can implement itself. However it cannot make decisions that bind the *Council*.
- 24.4 A *Sectoral Council* may make recommendations to the *Council*. If the *Council* receives a recommendation for its consideration from a *Sectoral Council*, it must discuss and consider it. However, the *Council* is free to make any decision falling within the scope of this Constitution regarding such recommendation.

## **Amendment of constitution of *Council***

- 25.1 This constitution may be amended by *Resolution of Council* provided the *employer*, together with a number of admitted *trade unions* representing 66% of the votes on the side of labour vote in favour of amending the constitution.
- 25.2 A proposed amendment to, or replacement of, the constitution of the *Council* may only be considered if at least one *month's* prior notice of the proposed amendment has been given to the *Secretary*, unless the *Council* agrees otherwise.
- 25.3 Such notice must be transmitted to all representatives at least two weeks prior to the meeting at which it is to be considered.
- 25.4 The *Council* may, by *Resolution of Council* adopted unanimously, amend the constitution without notice.
- 25.5 If the *Council* by way of *Resolution of Council* in terms of clause **25.1** or **25.4** amends the threshold requirements, any admitted *trade union* that, in terms of its membership figures reported to the last Annual General Meeting in terms of **clause 15.9(I)**, does not comply with the amended *threshold requirements* may, within a period of 90 calendar days after the adoption of the *Resolution*, or before the certification of the amendment by the Registrar of Labour Relations, whichever is the later, submit proof, in the form of *audited* or *verified membership figures* (whichever is applicable), to the *Secretary* that the *trade union* complies with such increased *threshold requirements*. If the *Secretary* determines that the *trade union* complies with such increased *threshold requirements*, the *trade union* remains a *party to Council*.
- 25.6 Once the *Council* has adopted a *Resolution of Council* in terms of **clause 25.1** or **25.4**, the *Secretary* must inform the Registrar of Labour Relations about the amendment to, or replacement of, the constitution.
- 25.7 Any amendment to, or replacement of, this constitution takes effect on the date it is certified by the Registrar of Labour Relations in terms of section 57(3) of *the Act*.

## **Winding up**

- 26.1 If section 35 of *the Act* is repealed and there is no statutory requirement for the existence of the *Council*, the *Council* may be wound up as follows:
- (a) At a special meeting called for that purpose, the *Council* may, by *Resolution of Council*, decide to wind up the *Council*.
  - (b) Upon adoption of such Resolution, the *Secretary* must take the necessary steps to ensure that—
    - (i) application is immediately made to the Labour Court for an order giving effect to the resolution; and
    - (ii) the *Council's* books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the *Council* at the disposal and under the control of the liquidator.
- 26.2 Each party to the *Council* remains liable for any unpaid liabilities to the *Council* as at the adoption of the Resolution to wind up the *Council*.
- 26.3 If all the liabilities of the *Council* have been discharged, the *Council* must transfer any remaining assets to—
- (a) a bargaining council with the same or similar scope; or
  - (b) the CCMA if—
    - (i) there is no bargaining council with the same or similar scope; or
    - (ii) the parties to the *Council* fail to agree on a bargaining council that is to receive the remaining assets.

## General

- 27.1 For purposes of section 30(1)(k) of *the Act*, the *Council* must consider and dispose of applications for exemption from the provisions of any *Resolution of Council*.
- 27.2 Press and media statements by the *Council* must be released by the *Secretary* after approval by the *Council*.
- 27.3 Press and media statements by individual parties to the *Council* shall not be prohibited, unless an unanimous decision is taken by the *Council* to limit such statements in respect of a specific matter.
- 27.4 A *Resolution of Council* must determine the domicilium executandi of the *Council*.

## Definitions and interpretation

- 28.1 Unless the context indicates otherwise—
- “**audited membership figures**” means membership figures of a *trade union* as reflected in stop orders or other auditable methods audited by the registered auditor appointed by such *trade union* and verified by the registered auditor appointed by the *Council*.
- “**CCMA**” means the Commission for Conciliation, Mediation and Arbitration;

“**chief executive officer**” means, in the case of an admitted *trade union*, the person finally responsible for administrative matters in that *trade union*, irrespective of the terms used within that *trade union* to name that position;

“**chamber**” means a chamber established by the *Council* in terms of **clause 18.9**;

“**combined trade union party**” means two or more *trade unions* acting together as a single party for the purposes of **clause 7.2**;

“**Council**” means the Public Service Co-ordinating Bargaining Council;

“**decision of Council**” means a decision of *Council* that complies with the requirements of **clause 17.3**;

“**dispute resolution procedures**” means the *Council's* dispute resolution procedure contained in Annexure A to this constitution and which forms part of this constitution;

“**employee**” means—

- (a) any person, excluding an independent contractor, who works for the *employer* and who receives, or is entitled to receive, any *remuneration*; and
- (b) any other person who in any manner assists in carrying on or conducting the business of the *employer*,

and “**employed**” and “**employment**” have corresponding meanings, and “**employee**” includes, regarding any dispute on an alleged unfair labour practice referred to in the Employment Equity Act 55 of 1998, an applicant for employment;

“**employer**” means the State as employer falling within the registered scope of the *Council*;

“**Executive Committee**” means the Executive Committee referred to in **clause 19.1**;

“**member**” means an employee who has paid the initial entry fee laid down in the constitution of the *trade union* and who is not more than 3 *months* in arrears with the payment of his or her membership fees payable in terms of that constitution;

“**month**” means a calendar month, measured from any day in the month up to the day before the day with the same number one month later, and excludes the first and includes the last such day; in the case of there being no day with the same number in the latter month, the last day of such month will apply;

“**mutual interest**” means any matter of mutual interest between—

- (a) on the one side—
  - (i) one or more *trade unions*;
  - (ii) one or more *employees*; or
  - (iii) one or more *trade unions* and one or more *employees*; and
- (b) on the other side—
  - (i) one or more *employers' organisations*;
  - (ii) one or more *employers*; or

(iii) one or more *employers'* organisations and one or more *employers*;

**“official”**, in relation to a *trade union* or federation of *trade unions*, means a person employed as the secretary, assistant secretary or organiser of a *trade union* or federation, or in any other capacity prescribed by regulation in terms of section 208 of *the Act*, whether or not that person is employed in a full-time capacity;

**“party to Council”** means the *employer* or a *trade union* admitted to the *Council*;

**“public service”** means the national departments, provincial administrations, provincial departments and organisational components contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding—

- (a) the members of the South African National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service;

**“remuneration”** means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for the *employer*;

**“Resolution of Council”** means a Resolution of Council that complies with the requirements of **clause 17.9**;

**“Secretary”** means the Secretary of the *Council* appointed in terms of **clause 14.1** or any person appointed as acting Secretary in terms of **clause 14.2(l) or 19.4(e)**;

**“sector”** means any part of the *public service* which is designated as a *sector* in terms of section 37(1)(a) of *the Act*;

**“Sectoral Council”** means a bargaining council—

- (a) established in terms of section 37(2) of *the Act*, or
- (b) deemed, by item 31 of Schedule 7 to *the Act*, to have been established in terms of section 37(2),

and includes all the structures (including committees and chambers) of such councils;

**“serve”** means—

- (a) to effect personal service of the notice on the party concerned;
- (b) to post a registered letter containing the notice to the office of the party concerned;
- (c) to telefax the notice to the office of the party concerned provided that the telefax receipt shows that the notice has been transmitted to the addressee; or
- (d) to hand the notice to an *official* of a *trade union* party or a head of department or person delegated by that department;

**“the Act”** means the Labour Relations Act 66 of 1995;

**“threshold requirements”** means the threshold requirements as provided in **clause 7.1(a) or 7.2(a)**;

**“trade union”** means an association of *employees* whose principal purpose is to regulate relations between *employees* and *employers* and include a *combined trade union party*, unless inconsistent with the context: Provided that—

- (a) the trade union and each trade union forming part of a *combined trade union party* is registered in terms of *the Act*,
- (b) the trade union has organisational rights with an *employer* falling within the registered scope of the *Council*, or
- (c) two or more *trade unions* acting together as a single party have organisational rights with an *employer* falling within the registered scope of the *Council*, either jointly or separately;

**“verified membership figures”** means membership figures of a *trade union* as reflected in stop orders or other auditable methods submitted to the *Council* for it to be audited by the registered auditor of the *Council* (and not the registered auditors of the *trade unions*);

**“working days”** means all days excluding Saturdays, Sundays and public holidays, and excludes the first and includes the last such day.

- 28.2 Words used in this constitution in the singular include the plural, unless the context indicates otherwise.
- 28.3 References in this constitution to the male gender include the female gender and vice versa.

## ANNEXURE A

### DISPUTE RESOLUTION PROCEDURES OF COUNCIL<sup>3</sup>

#### Application

- 1.1 *Sectoral Councils* may use these procedures to establish their own procedures. The procedures may be amended in accordance with the needs of that particular council.
- 1.2 These procedures apply to all disputes that arise within the *public service* in respect of those matters that:<sup>4</sup>
- (a) are regulated by uniform rules, norms and standards that apply across the *public service*;
  - (b) apply to terms and conditions of service that apply to two or more *sectors*; or
  - (c) are assigned to the State as *employer* in respect of the *public service* that are not assigned to the State as *employer* in any *sector*.
- 1.3 If there is a *dispute* that arises in a bargaining council in the *public service* that is not capable of being determined by that bargaining council as the *employer* in that council does not have the requisite

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<sup>3</sup> An italicised word or phrase indicates that the word or phrase is defined in clause 28 of the constitution or in paragraph 12 of this Annexure.

<sup>4</sup> The following disputes are not dealt with by the Council but, must, in terms of the provisions of the Act, be dealt with by the CCMA:

- (a) disclosure of information - sections 16 and 89 of the Act
- (b) organisational rights - chapter III part A of the Act
- (c) agency shop disputes - section 25 of the Act
- (d) closed shop disputes - section 26 of the Act
- (e) interpretation or application of collective bargaining provisions - section 63(1) of the Act
- (f) picketing disputes - section 69 of the Act
- (g) workplace forum disputes - sections 86 and 94 of the Act

authority to resolve the *dispute*, the *dispute* will be referred to the *Council* and these procedures apply.

- 1.4 Individual rights disputes may not be dealt with by the *Council* but must be dealt with by the bargaining council that has the requisite authority. If a bargaining council does not have the authority to resolve the matter, these procedures may be employed by the *Council*.
- 1.5 If there is a jurisdictional dispute between the *Council* and a *Sectoral Council* as to whether these procedures or the *Sectoral Council's* procedures apply, any party to the *dispute* may refer the *dispute* to the CCMA in terms of section 38 of *the Act* for conciliation and arbitration.

### ***Mutual interest disputes***

- 2.1 If a *dispute* is declared by a *party to Council* in terms of **clause 16.6** of the constitution, the *Secretary* must appoint a *conciliator* and convene a dispute meeting which the *conciliator* must conciliate. If the *dispute* is not settled at that meeting, the conciliator must attempt to obtain agreement on—
  - (a) further conciliation meetings to settle the *dispute*;
  - (b) the referral of the *dispute* to voluntary arbitration; or
  - (c) if the *dispute* must be referred to arbitration, the appointment of the *arbitrator*.
- 2.2 If no collective agreement exist on (a) the establishment of a minimum service in any essential service, (b) rules about the conduct of a strike or lockout, or (c) picketing rules, the *conciliator* must attempt to obtain agreement thereon.
- 2.3 If the *dispute* is not settled, the parties to the *dispute* may exercise their rights in terms of *the Act*.

- 2.4 Any employee party who refers a *dispute* to the *Council* that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in **clause 16.2** of the constitution—
- (a) require the *employer* not to implement unilaterally the change to terms and conditions of employment; or
  - (b) if the *employer* has already implemented the change unilaterally, require the *employer* to restore the terms and conditions of employment that applied before the change.
- 2.5 The *employer* must comply with a requirement referred to in **paragraph 2.4**.
- 2.6 If the *dispute* must be referred to arbitration, the procedures contained in **paragraph 6** apply.

#### ***Other mutual interest disputes***

- 3.1 In **paragraphs 3.2 to 3.9**, a “dispute” means any dispute of interest, other than one contemplated in **paragraph 2.1**, 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*.
- 3.2 The provisions contained in **paragraphs 6 and 7** apply to a dispute contemplated in **paragraphs 3.3 to 3.9**.
- 3.3 If there is a dispute about whether or not the matter is a matter contemplated in section 134 of *the Act*, the dispute must be referred to expedited arbitration in terms of **paragraph 6**.
- 3.4 If the dispute is about a refusal to bargain, a party to the dispute may request the *conciliator* to issue an advisory award and the *conciliator* must issue the advisory award—
- (a) within 14 days of the request; and
  - (b) before notice is given in terms of section 64(1) of *the Act*.

- 3.5 If the parties do not conclude a collective agreement within 30 days after the matter has been raised by a party with another party, any party may declare a dispute. The *Secretary* must convene a dispute meeting that the *conciliator* must conciliate. If the dispute is not settled at that meeting, the *conciliator* must attempt to obtain 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*.
- 3.6 If no collective agreements exist on (a) the establishment of a minimum service in any essential service, (b) rules about the conduct of a strike or lockout, or (c) picketing rules, the *conciliator* must attempt to obtain agreement thereon.
- 3.7 If the dispute is not settled, the parties to the dispute may exercise their rights in terms of *the Act*.
- 3.8 Any employee party who refers a dispute to the *Council* that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in **paragraph 3.5**—
- (a) require the *employer* not to implement unilaterally the change to terms and conditions of employment;
  - (b) if the *employer* has already implemented the change unilaterally, require the *employer* to restore the terms and conditions of employment that applied before the change.
- 3.9 The *employer* must comply with a requirement referred to in **paragraph 3.8**.

### ***Disputes of right***

- 4.1 In **paragraphs 4.2 to 4.4** a “dispute” means any dispute, other than a *mutual interest* dispute contemplated in **paragraphs 2 and 3**, that must be referred to the *Council* for—
- (a) conciliation;
  - (b) arbitration;<sup>5</sup> or
  - (c) conciliation and arbitration.<sup>6</sup>
- 4.2 If the dispute is one that is contemplated in terms of **paragraph 4(1)(a)**, the conciliation procedure contained in **paragraph 5** applies.
- 4.3 If the dispute is one that is contemplated in terms of **paragraph 4(1)(b)**, the arbitration procedure contained in **paragraph 6** applies.
- 4.4 If the dispute is one that is contemplated in terms of **paragraph 4(1)(c)**, the procedures contained in **paragraphs 5 and 6** apply.

### **Conciliation by *Council***

- 5.1 A party to a *dispute* may refer a *dispute* in writing to the *Secretary* within the period stipulated in *the Act* (if any).
- 5.2 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*.
- 5.3 If the *Secretary* is satisfied that the referral has been properly served, the *Secretary* must—
- (a) appoint a *conciliator* to attempt to resolve the *dispute* through conciliation within 30 days of the date of the referral;
  - (b) decide the date, time and venue of the conciliation meeting; and
  - (c) notify the parties to the *dispute* of such details.

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<sup>5</sup> For example a dispute about the interpretation and application of the constitution (section 30(1)(h) of the Act).

- 5.4 If the parties to a *dispute* have agreed on a particular *conciliator*, the *Secretary* must appoint the person agreed upon if that person is available to conciliate the *dispute* within the 30 day period or any agreed period. If the parties do not agree upon a *conciliator*, the *Secretary* must appoint the *conciliator*.
- 5.5 The *conciliator* appointed to conciliate the *dispute* must determine the process to attempt to resolve the *dispute* which may include—
- (a) mediating the *dispute*;
  - (b) conducting a fact-finding exercise;
  - (c) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (d) arbitrating the *dispute* immediately if all the parties to the *dispute* request the *conciliator* to do so.
- 5.6 In the conciliation proceedings a party to the *dispute* may appear in person or be represented only by a member, an office bearer or *official* of that party's *trade union* or by an employee of any national department or provincial administration.
- 5.7 If a party to the *dispute* fails to appear in person or to be represented at the conciliation, the *conciliator* may—
- (a) dismiss the matter; or
  - (b) continue with the conciliation in the absence of the party; or
  - (c) adjourn the conciliation to a later date.
- 5.8 Any party to the *dispute* may, at least 5 *working days* before the date of the conciliation, inform the *Secretary* and any other party to the *dispute* in writing that it is not in position to settle the matter in conciliation. If so informed, the *Secretary* must request a *conciliator* to issue an outcome certificate indicating that the matter remains unresolved.

### **Arbitration by Council**

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<sup>6</sup> For example a dispute about the interpretation or application of a collective agreement (section 24 of the Act); a dispute in an essential service (section 74); a dispute about an unfair dismissal (section 191); a dispute about an unfair labour practice (item 2 of Schedule 7).

- 6.1 A party to a *dispute* may refer the *dispute* in writing to the *Secretary* within the period stipulated in *the Act* (if any), if—
- (a) the matter is a matter referred to in **paragraph 4.1(b)**; or
  - (b) the *conciliator* in terms of **paragraph 5** issued an outcome certificate indicating that the matter remains unresolved.
- 6.2 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*.
- 6.3 If the *Secretary* is satisfied that the referral has been properly served and—
- (a) the parties to a *dispute* have agreed on an *arbitrator*, the *Secretary* must appoint the person agreed upon; or
  - (b) the parties do not agree upon an *arbitrator*, the *Secretary* must appoint an *arbitrator*.
- 6.4 If all the parties to the *dispute* agree thereto, the *arbitrator* must attempt to resolve the *dispute* through conciliation.
- 6.5 The *Secretary* must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the *dispute* of these details.
- 6.6 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.
- 6.7 In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by a legal practitioner, a member, office bearer or *official* of that party's *trade union* or an employee of a national department or a provincial administration.

- 6.8 If the party to the *dispute* fails to appear in person or to be represented at the arbitration proceedings, the *arbitrator* may—
- (a) dismiss the matter;
  - (b) continue with the arbitration proceedings in the absence of the party; or
  - (c) adjourn the arbitration proceedings to a later date.
- 6.9 Within 14 days of the conclusion of the arbitration proceedings—
- (a) the *arbitrator* must issue an arbitration award with reasons signed by him/her; and
  - (b) the *Secretary* must *serve* a copy of the award on each party to the *dispute* or to the person who represented a party in the arbitration proceedings.
- 6.10 On good cause shown, the *Secretary* may extend the period within which the arbitration award and the reasons are to be filed.

## **Costs**

- 7.1 The *Council* must, subject to **paragraphs 7.4, 7.5 and 10.7**, pay the costs of the *arbitrators* and *conciliators* in the proceedings. Each party to the *dispute* must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- 7.2 If at the conclusion of an arbitration, the *arbitrator* is satisfied that the referral to arbitration was made in a vexatious manner or without reasonable cause, the *arbitrator* may, on application by the respondent party, make an appropriate order for costs against the referring party including the costs of the arbitration.
- 7.3 Costs awarded by the *arbitrator* may include—
- (a) the costs of the arbitration;
  - (b) legal and professional costs and disbursements;

(c) other expenses which a party has incurred in the conduct of the *dispute*; and

(d) expenses of witnesses.

7.4 If a party to a *dispute* withdraws a referral less than 5 working days before the scheduled date of the conciliation or arbitration, that party must bear the cost of the *conciliator* or *arbitrator*, unless the withdrawal is the result of a settlement agreement.

### **Panels of *conciliators* and *arbitrators***

8.1 The *Council* must, in terms of **clause 15.9(c)** of the constitution, at its Annual General Meeting appoint from the nominations received from the parties for a period of one year—

(a) a panel of *conciliators* to conciliate *disputes*; and

(b) a panel of *arbitrators* to arbitrate *disputes*.

8.2 In making such appointment the *Council* must ensure that the panels—

(a) are drawn from each of the 9 provinces having regard to the anticipated number of *disputes* that are likely to arise in each province and the number of *employees* employed in national and provincial departments in the various provinces;

(b) have skill and experience in labour relations, knowledge about the *public service* and knowledge or experience in conciliation and/or arbitration; and

(c) are broadly representative of South African society.

8.3 All *conciliators* and *arbitrators* will conduct themselves in accordance with the Code of Conduct in Addendum A.

8.4 The *Council* may remove a member of the panels from office—

- (a) because of serious misconduct;
- (b) because of incapacity;
- (c) by a decision of the *Council*.

8.5 If for any reason there is a vacancy in a panel, the *Council* may appoint a new member to the relevant panel for the unexpired term of office.

8.6 A member of the panel, whose term of office expires, will be eligible for re-appointment.

8.7 If the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the *CCMA*, who in consultation with the Minister for the Public Service and Administration must appoint a suitably qualified person to fill the vacancy.

### **Time periods and condonation**

9.1 Late applications can be condoned on good cause shown.

9.2 Despite the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any *dispute*.

### **Postponements**

10.1 If all the parties to the *dispute* agree in writing to a postponement and the request for the postponement is received by the *Secretary* at least 5 *working days* before the scheduled date of the conciliation or arbitration, the *Secretary* must grant the postponement without the parties having to appear before the *conciliator* or *arbitrator*.

10.2 The *Secretary* must inform in writing the *conciliator* or *arbitrator* and all parties to the *dispute* of the postponement.

10.3 If the parties cannot agree to postpone a conciliation or arbitration, 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 7 *working days* before the scheduled date of the conciliation or arbitration.

10.4 A party that does not agree to a postponement as contemplated in **paragraph 10.3**, may make written representations to the *Secretary* at least 5 *workings days* before the scheduled date of the conciliation or arbitration.

- 10.5 After due consideration of any written representations received in terms of **paragraph 10.4**, the *Secretary* must decide whether or not to grant a request for postponement in terms of **paragraph 10.3** and convey his/her decision in writing to the *conciliator* or *arbitrator* and all parties to the *dispute*.
- 10.6 If a party to a *dispute* fails to comply with the time periods referred to in **paragraph 10.1 or 10.3**, 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 *conciliator* or *arbitrator* and all parties to the *dispute*.
- 10.7 If a *conciliator* or *arbitrator* adjourns conciliation or arbitration proceedings in terms of **paragraph 5.7(c) or 6.8(c)**, the party or parties responsible for the adjournment must bear the cost of adjournment.

### **Joinder of *dispute***

11. The *Secretary* may, of his/her own accord or on application, combine cases or join parties in conciliation or arbitration proceedings, if the *disputes* deal with substantially the same question of law or fact.

### **Definitions**

- 12.1 In this Annexure and the Appendix 1 hereto, unless the context otherwise indicates—

“**conciliator**” means a conciliator appointed by the *Council* in terms of **paragraph 6**;

“**arbitrator**” means an arbitrator appointed by the *Council* in terms of **paragraph 7**;

“**dispute**” means—

- (a) a dispute that exists in respect of matters that—
- (i) are regulated by uniform rules, norms and standards that apply across the *public service*;

- (ii) apply to terms and conditions of service that apply to two or more *sectors*; or
  - (iii) are assigned to the State as *employer* in respect of the *public service* that are not assigned to the State as *employer* in any sector; or
- (b) a dispute of right that must be referred to the *Council* for conciliation or arbitration or both,

12.2 Any other expression used in this Annexure not defined in **paragraph 12.1** which is defined in the Labour Relations Act 66 of 1995 or the constitution of the *Council* has the same meaning as in *the Act* and the constitution.

**CODE OF CONDUCT FOR CONCILIATORS AND ARBITRATORS**

**Purpose**

1. The purpose of this code is to—
  - (a) assist in maintaining the good repute of the conciliation, mediation and arbitration processes; and
  - (b) provide guidance to all *conciliators and arbitrators* on matters of professional conduct and practice generally.

**General attributes of *conciliators and arbitrators***

2. In order for conciliation, mediation and arbitration processes to be seen to be fair and just, *conciliators and arbitrators* shall—
  - (a) act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of their functions;
  - (b) conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
  - (c) not solicit appointment for themselves. This shall not however preclude *conciliators and arbitrators* from indicating a willingness to *serve* in any capacity;
  - (d) accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment;
  - (e) avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias;
  - (f) not influence any of the parties in *disputes* by improper means, including gifts or other inducements; and
  - (g) support sound labour relations in the *public service*.

## Conflict of interest and disclosure

3.1 *Conciliators and arbitrators* should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the *conciliators and arbitrators*.

3.2 *Conciliators and arbitrators* appointed to intervene in any matter should, before accepting, disclose this to the *Secretary*:

- (a) any direct or indirect financial or personal interest in the matter;
- (b) any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias;
- (c) if the circumstances requiring disclosure are unknown to *conciliators and arbitrators* prior to accepting appointments, disclosure must be made when such circumstances become known to the *conciliators and arbitrators*. The disclosure in this regard could in arbitration proceedings, include witnesses who may have a relationship with the *conciliators and arbitrators*;
- (d) after appropriate disclosure *conciliators and arbitrators* may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties;
- (e) in the event where there is no consensus on whether *conciliators and arbitrators* should withdraw or not, *conciliators and arbitrators* should not withdraw if the following circumstances exist:
  - (i) if the terms of reference provide for a procedure to be followed for determining challenges to the *conciliators and arbitrators* then those procedures should be followed;

- (ii) if *conciliators and arbitrators*, after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

## **Hearing conduct**

- 4.1 *Conciliators and arbitrators* should conduct proceedings fairly, diligently and in an even-handed manner.
- 4.2 *Conciliators and arbitrators* should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.
- 4.3 *Conciliators and arbitrators* should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings.
- 4.4 Agreements by the parties for the use of mechanical recording should be respected by *arbitrators*.
- 4.5 In determining whether to conduct an *ex parte* hearing, an *arbitrator* must consider the relevant legal, contractual and other pertinent circumstances.
- 4.6 A *conciliator or arbitrator* must be satisfied before proceeding *ex parte* that a party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing.
- 4.7 In an event of more than one *conciliator or arbitrator* acting as either a conciliator, mediator or arbitrator, the *conciliator or arbitrator* should afford each other a full opportunity to participate in the proceedings.

- 4.8 *Conciliators and arbitrators* should not delegate their duty to intervene in any matter to any other person without prior notice to and the consent of the *Secretary*.

### **Post-hearing**

- 5.1 *Arbitrators* should not disclose a prospective award to either party prior to its simultaneous issuance to both parties.
- 5.2 *Arbitrators'* awards should be definite, certain and as concise as possible.
- 5.3 No clarification or interpretation of an award is permissible without the consent of both parties.
- 5.4 Under agreements which permit or require clarification or interpretation of an award, *arbitrators* shall afford each party an opportunity to be heard.

### **Confidentiality**

6. Information disclosed to *conciliators* in confidence by a party during the course of conciliation, should be kept by *conciliators* in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained for such disclosure.

### **Jurisdiction**

- 7.1 *Conciliators and arbitrators* must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which they serve.
- 7.2 A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by *conciliators and*

*arbitrators* as relieving him or her of further jurisdiction in respect of such issues.

### **Reliance on other arbitrators' awards and independent research**

8. *Conciliators and arbitrators* issuing advisory or binding awards may have regard to other arbitrators' awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.

### **Avoidance of delays**

- 9.1 *Conciliators and arbitrators* have the duty to plan their work schedules in a manner that ensures that commitments to the *Council* are fulfilled timeously.
- 9.2 *Conciliators and arbitrators* should co-operate with the parties and the *Council* to avoid delays.
- 9.3 On completion of a hearing, *arbitrators* must adhere to the time limits for issuing an award.

### **Fees and expenses**

- 10.1 *Conciliators and arbitrators* should be governed by the fee structure of the *Council* and should not enter into any arrangement with the parties regarding fees.
- 10.2 *Conciliators and arbitrators* must maintain adequate records to support charges for services and expenses and must account timeously to the *Council*.

### **Competency**

11. *Conciliators and arbitrators* should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.