

RESOLUTION 1 OF 2024

**RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE PUBLIC SERVICE  
CO-ORDINATING BARGAINING COUNCIL (PSCBC)**

**1. NOTING**

- 1.1 This agreement replaces PSCBC Resolution 4 of 2005 and establishes a new set of rules in "The Conduct of Proceedings before the Public Service Co-ordinating Bargaining Council".
- 1.2 The agreement aligns the rules for the conduct of proceedings before the PSCBC to the applicable legislation, precedent setting judgements and the process of digitization within the Council.

**2. SCOPE**

This agreement binds the employer and the employees who -

- 2.1 are employed by the State, and
- 2.2 fall within the registered scope of the Council.

**3. AGREEMENT**

Therefore, Parties to Council agree to the content of the rules for the conduct of proceedings before the PSCBC, attached hereto as Annexure A.

**4. DISPUTE RESOLUTION**

If there is a dispute regarding the interpretation, application or enforcement of this agreement, any party may refer the matter to the Council for resolution in terms of the Council dispute resolution procedure.

Public Service Bargaining Centre, 260 Basden Ave, Lyttelton, Centurion, Pretoria, 0176

P.O. Box 3123, Lyttelton South, 0176

Tel: (012) 644-8100 • Fax: 086 619 7884

E-mail: [info@pscbc.org.za](mailto:info@pscbc.org.za) • Website: <http://www.pscbc.org.za>

All correspondence must be addressed to the General Secretary of Council

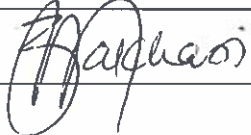
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**5. IMPLEMENTATION OF AGREEMENT**





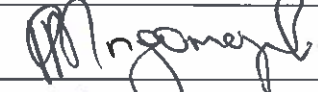

- 5.1. This agreement shall come into effect on the date it enjoys majority support and will remain in force unless terminated or amended by agreement.
- 5.2. In the implementation, interpretation and application of this agreement, words used in the agreement and defined within the constitution of the Council will have the meaning as defined in the constitution.
- 5.3. The Council will monitor the implementation of this agreement.

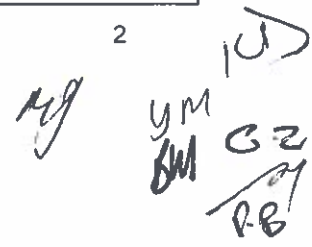
THIS DONE AND SIGNED AT Centurion OF THIS 01 DAY OF March 2024.

**ON BEHALF OF THE EMPLOYER**

	Name	Signature	Date of Signature
State as Employer	Y. Makhoo		30/01/2024

**ON BEHALF OF THE TRADE UNION PARTIES**

Trade Union	Name	Signature	Date of Signature
DENOSA	MAHAMELA K.D		27/02/2024
HOSPERSA	S.D. MSEGGLADERY		13/02/2024
NAPTOSA	B.b. Manuel		13/02/2024
NEHAWU	C.Z. Nanto		22/02/2024
POPCRU			
PSA	Peter Mngomezulu		14/02/2024
SADTU	Mugwena Mahitika		26/02/2024
SAPU			

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## PART ONE

### SERVING AND FILING DOCUMENTS

#### 1. How to contact the Council

- (1) The address, telephone, fax number, e-mail address and relevant hyperlinks of the office of the Council are as follows:

Physical address: Public Service Co-ordinating Bargaining Centre, 260 Basden Avenue Street, Lyttelton, 0176

Postal address: PO Box 3123, Lyttelton South, 0176

Telephone: (012) 644 8100

Fax: (012) 664 5834

Email: [info@pscbc.org.za](mailto:info@pscbc.org.za)

PSCBC Portal Link: <https://labournet.collaboratoronline.com/>

PSCBC e-Referral: <https://pscbc.co.za/index.php/e-Referral/>

- (2) Documents may only be filed with the Council at the address, fax number, e-mail address listed above, through the PSCBC Portal or the e-Referral platform.

#### 1A. Compliance with the legislation regarding personal information

When a party serves or files documents on the Council or on the other party in terms of these rules, or processes documents that contain personal information with the other party, such party must –

- (a) be responsible for complying with their respective obligations under applicable Data Protection Legislation, including, but not limited to the Protection of Personal Information Act 4 of 2013 (POPIA), when processing personal information;
- (b) take appropriate technical and organisational measures and implement security safeguards to prevent the unauthorised or unlawful processing of personal information and/or data of the other party or of another data subject;
- (c) process the other party's personal information and/or data only in accordance with that party's instructions (having regard to the Data Protection Legislation) or as required by law,

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and not disclose the other party's personal information and/or data except in accordance with that party's instructions or as required by law.

## 2. Office Hours

- (1) Office of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 07h30 and 16h00 or as determined by the Council.
- (2) Documents may only be filed at the premises of the Council during the hours referred to in subrule (1).
- (3) Notwithstanding subrule (2), documents may be faxed, e-mailed, uploaded on the PSCBC Portal or the e-Referral platform at any time on any day to the Council.

## 3. How to calculate time periods in these Rules

- (1) For the purpose of calculating any period of time in terms of these rules-
  - (a) day means a calendar day unless otherwise specified; and
  - (b) the first day is excluded and the last day is included, subject to subrule (2).
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period 16 December to 7 January.<sup>1</sup>

## 4. Who must sign documents

- (1) A document that a party must sign in terms of the Act, the PSCBC Dispute Resolution Procedures or these rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in a hearing.
- (2) Where a document has not been signed or was signed by a person who is not entitled to represent that party in terms of the Act, PSCBC Dispute Resolution Procedures or these rules, the intention

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<sup>1</sup> This rule does not apply to timelines regulated by the Labour Relations Act, Employment Equity Act and/or the Basic Conditions of Employment Act, which timelines shall be governed by the provisions of the relevant legislation, alternatively, the Interpretation Act.

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of that party to submit that document may be confirmed by the subsequent appearance of the party at the convened hearing before the commissioner or by any other method of confirmation that may be placed on record at the Council.

- (3) If a hearing is jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list containing the names and signatures of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.
- (4) Documents completed and submitted through the PSCBC Portal or the e-Referral platform are presumed as electronically signed<sup>2</sup> in terms of subrule (1), unless the contrary is proven.

## 5. How to serve documents on other parties

- (1) Unless otherwise provided for in these Rules, a party must serve a document on the other parties

(a) by handing a copy of the document to -

(i) a person identified in subrule (3);

(ii) a representative authorised in writing to accept service on behalf of a person identified in subrule (3);

(iii) in the case of a document being served on any other person as identified in subrule (3), a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time;

(b) by leaving a copy of the document at –

(i) an address chosen by a person identified in subrule (3) to receive service;

(ii) any premises in accordance with subrule (4);

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<sup>2</sup> The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning electronic signatures.

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- (c) by e-mailing or faxing a copy of the document to a person identified in subrule (3)'s e-mail address or fax number respectively, or a number or e-mail address chosen by that person to receive service; and
  - (d) by sending a copy of the document by registered mail or courier service to the last-known address of the party or an address chosen by the party to receive service.
- (2) Documents completed and submitted through the PSCBC Portal or the e-Referral platform are presumed served to the other party and the chief negotiator of the State unless the contrary is proven.
- (3) A document must be served –
- (a) in the case of the employer, on a responsible employee of the employer at the workplace where the employee/s involved in the dispute ordinarily work or worked and on the chief negotiator of the State.
  - (b) in the case of an employee on their address as stated in subrule (1).
  - (c) in the case of a trade union by handing a copy of the document to a responsible employee or official at the main office of the union or its office in the province or region in which the dispute arose.
- (4) Only if no person identified in subrule (3) is willing to accept service, service may be effected by affixing a copy of the document to –
- (a) the main door of the premises concerned or;
  - (b) if this is not accessible, a post-box or other place to which the public has access.
- (5) The Council or a commissioner may order service in a manner other than prescribed in this rule.

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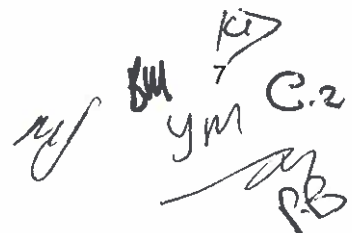


**6. How to prove that a document was served in terms of these Rules**

- (1) A party must prove to the Council or a commissioner that a document was served in terms of these Rules, by providing the Council or a commissioner:
- (a) with a copy of proof that the document has been served by registered mail or courier service to the other party;
  - (b) with a copy of the fax transmission report indicating the successful transmission to the other party of the whole document;
  - (c) if a document was served by hand –
    - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.
  - (d) if a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned; or
  - (e) if a document is filed through the PSCBC Portal or the e-Referral platform, service is presumed unless the contrary is proven.
- (2) If proof of service in accordance with subrule (1) is provided, it is presumed that the party on whom it was served has knowledge of the contents of the document, unless the contrary is proven.<sup>3</sup>
- (3) The Council may accept proof of service in a manner other than prescribed in this rule, where the proof is sufficient.

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<sup>3</sup> The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by e-mail or the service of a notice of proceedings by short message service as permitted by rule 5(5).



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## 7. How to file documents with the Council

- (1) A party must file documents with the Council -
  - (a) by handing the document to the office of the General Secretary at the address as per rule 1(1);
  - (b) by sending a copy of the document by registered mail or courier service to the office of the General Secretary at the address as per rule 1(1); or
  - (c) by e-mailing, faxing or submitting, through the PSCBC Portal or the e-Referral platform, the document to the office of the General Secretary as per rule 1(1).
  
- (2) A document is filed with the Council when –
  - (a) the document is handed to the office of the General Secretary;
  - (b) a document sent by registered mail or courier service is received by the office of the General Secretary;
  - (c) the transmission of the whole fax is completed;
  - (d) the e-mail is received in the office of the General Secretary<sup>4</sup>;
  - (e) a document is completed and submitted through the PSCBC Portal; or e-Referral platform.
  
- (3) A party must only file the original of a document if instructed to do so by the General Secretary or a commissioner. A party must comply with a request to file an original document within seven (7) days of the request.

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<sup>4</sup> As provided for in the Electronic Communications and Transactions Act 25 of 2002.

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**8. Presumption when service was done by registered mail or courier services**

- (1) Any document or notice sent by registered mail or courier service by a party or the Council is presumed, to have been received by the person to whom it was sent seven (7) days after it was posted, unless the contrary is proven.

**9. How to seek condonation for referral documents and applications filed late**

- (1) This rule applies to any referral document or application delivered outside of the applicable time periods prescribed in the Act, applicable employment law, these Rules, or the Dispute Resolution Procedure of the Council.
- (2) A party must apply for condonation, in terms of rule 30, when filing the document late, with the Council.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
  - (a) the degree of lateness;
  - (b) the reasons for the lateness;
  - (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
  - (d) any prejudice to the other party; and
  - (e) any other relevant factors.
- (4) The Council may assist a referring party to comply with this rule.

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## **PART TWO**

### **CONCILIATION OF DISPUTES**

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

- (1) A referral of a dispute for conciliation must be made on the prescribed referral form(s) of the Council or through the PSCBC Portal or the e-Referral platform.
- (2) The referring party must –
  - (a) sign the referral document in accordance with rule 4;
  - (b) attach to the referral documentary proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
  - (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 9 read with rule 30.

#### **11. What notice must the Council give for a conciliation**

The Council must give the parties at least fourteen (14) days' notice in writing for a conciliation hearing, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail or courier service, an additional seven (7) days must be allowed.

#### **12. The Council may seek to resolve a dispute before conciliation**

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

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

- (1) If it appears during a conciliation hearing that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove the Council has the jurisdiction to conciliate the dispute. At a conciliation hearing, the following jurisdictional issue may be dealt with-

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- a) Non-compliance with the timeframes prescribed by the Act;
  - b) Premature referral of a dispute;
  - c) A referral made not in terms of the rules;
  - d) Whether parties fall within the registered scope of the Council; and
  - e) Whether the dispute concerned is an employment-related matter.
- (2) A commissioner must give written reasons for ruling on whether the Council has jurisdiction or not.

**14. Issuing of a certificate of outcome in terms of Section 135(5) of the Act**

A certificate of outcome, stating whether the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the commissioner during a conciliation hearing.

**15. Conciliation hearings may not be disclosed**

- (1) Conciliation hearings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation hearings during any subsequent hearings, unless the parties agree in writing.
- (2) Irrespective of subrule (1) a commissioner may be ordered by a court of law to give evidence in court proceedings concerning the nature of the dispute.

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## **PART THREE**

### **ARBITRATIONS**

#### **16. How to request arbitration**

- (1) A party may request the Council to arbitrate a dispute by completing the prescribed request to arbitration form, available on the PSCBC platforms.
- (2) The referring party must -
  - (a) sign the request to arbitration form in accordance with rule 4;
  - (b) attach to the request to arbitration form written proof that the request to arbitration form was served on the other parties to the dispute in accordance with rule 6; and
  - (c) if the request to arbitration form is served out of time, attach an application for condonation in accordance with rule 9, read with rule 30.

#### **17. When the parties may hold a pre-arbitration conference**

- (1) The parties to an arbitration hearing may hold a pre-arbitration conference, dealing with the matters referred to in subrule (2), at least fourteen (14) days prior to the scheduled date of the hearing.
- (2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
  - (a) any means by which the dispute may be settled;
  - (b) facts that are agreed between the parties;
  - (c) facts that are in dispute;
  - (d) the issues that the commissioner is required to decide;

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- (e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
  - (f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
  - (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents or parts of documents, will serve as evidence of what they appear to be;
  - (h) whether evidence on the affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
  - (i) which party must begin;
  - (j) the necessity for any *in-loco* inspection;
  - (k) securing the presence at the hearing of any witness;
  - (l) the resolution of any preliminary points that are intended to be taken;
  - (m) the exchange of witness statements;
  - (n) expert evidence;
  - (o) any other means by which the arbitration hearing may be shortened;
  - (p) an estimate of the time required for the hearing;
  - (q) the right of representation; and
  - (r) whether an interpreter is required and, if so, for how long and for which languages.
- (3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree, as per the matters listed in subrule (2) or any other matter.

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- (4) The party requesting arbitration must ensure that a copy of the pre-arbitration conference minute is delivered to the Council and appointed commissioner within seven days (7) of the conclusion of the pre-arbitration conference.
- (5) The commissioner may after receiving a pre-arbitration minute as per subrule (4) –
  - (a) direct the parties to hold a further pre-arbitration conference; or
  - (b) make any other directive to the parties concerning the conduct of the arbitration hearing.
- (6) The commissioner has the discretion to continue with the matter despite non-compliance with subrules (3), (4) and (5).
- (7) If any party to the dispute fails to attend or comply with an instruction to hold a pre-arbitration conference as per subrule (5), without a justifiable reason, the commissioner may deal with the matter in terms of rule 29, read within the context of this rule and make an order of cost against that party.

#### **18. Filing of statements by parties**

- (1) A commissioner may direct –
  - (a) the referring party in an arbitration hearing to deliver a statement of the case; and
  - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of subrule (1) must –
  - (a) set out the material facts upon which the party rely and the legal issues that arise from the material facts; and
  - (b) be delivered within the time-period specified by the Council or a commissioner.

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**19. When must the Council notify parties of an arbitration hearing**

The Council must give the parties at least twenty-one (21) days' notice, in writing for an arbitration hearing, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail or courier service, an additional seven (7) days must be allowed.

**20. How to determine whether a commissioner may arbitrate a dispute**

- (1) If during the arbitration hearing it appears that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.
  
- (2) A commissioner must give written reasons for ruling on whether the Council has jurisdiction.

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## PART FOUR

### RULES THAT APPLY TO HEARINGS

#### 21. Where a hearing will take place

- (1) A dispute must be conciliated or arbitrated in the province in which the cause of action arose unless the Council directs otherwise.
- (2) All hearings including conciliation and/or arbitration shall be held at a venue to be determined by the Council.

#### 22. Representation before the Council

- (1) In a conciliation hearing a party to the *dispute* may appear in person or be represented only by an office bearer or *official* of that party's registered *trade union* or by an employee of any national department or provincial government.
- (2) Despite subrule (1), a commissioner may during a conciliation hearing allow for legal representation to argue matters of jurisdiction only. After the legal representative has argued the matter, they must be excused from proceedings.
- (3) During a conciliation hearing, in deciding the admissibility of representation as per subrule (2) the commissioner must take into account the complexity of the issue to be argued, the level of representation of the party in being able to respond to the argument and any prejudice that may be suffered by any party to allow such representation.
- (4) In any other hearing, a party to the *dispute* may appear in person or be represented by a legal practitioner, a candidate attorney, a member, office bearer or *official* of that party's registered *trade union* or an employee of a national department or a provincial government.

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

- (1) A party to the dispute that challenges the right of appearance of a representative must furnish reasons showing why the representative does not have the right of appearance.

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- (2) Any documentary proof requested by the commissioner in terms of subrule (1) must be submitted by the representative.

#### **24. How to join or substitute parties to a hearing**

- (1) The Council or commissioner may, at any stage prior to the conclusion of a hearing, make an order joining any number of persons as parties to the hearing if –
- (a) the right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim;
  - (b) the party to be joined may be prejudicially affected by the outcome of the hearing.
- (2) The Council or a commissioner may make an order in terms of subrule (1) –
- (a) on own accord;
  - (b) on application by a party; or
  - (c) if a person entitled to join the hearing applies at any time during the hearing to intervene as a party.
- (3) An application in terms of this rule must be made in terms of rule 30.
- (4) When making an order in terms of subrule (1), the Council or commissioner may –
- (a) give appropriate directions as to the further procedure in the hearing; and
  - (b) make an order of costs in accordance with these Rules.
- (5) If in any hearing it becomes necessary to substitute a person for an existing party, any party to the hearing may apply to the Council for an order substituting that party for an existing party, and the Council or commissioner may make such an order or give appropriate directions as to the further procedure in the hearing.

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- (6) An application to join any person as a party to a hearing or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, including the referral form unless the person concerned or that person's representative is already in possession of the documents. The application may be made at any stage prior to the conclusion of a hearing.
- (7) Subject to any order made in terms of subrules (4) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in a hearing.

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

If a party to any hearing has been incorrectly or defectively cited, the Council or a commissioner may correct the error or defect on -

- (a) own accord, by consent of the parties; or
- (b) application; and
- (c) notice to the parties concerned.

## **26. When disputes may be consolidated**

- (1) The Council or commissioner may consolidate more than one dispute so that the disputes may be dealt with in the same hearing on –
  - (a) own accord; or
  - (b) application; and
  - (c) notice to the parties concerned.
- (2) The Council or commissioner may order consolidation of separate disputes, where –
  - (a) the relief sought in each of the separate disputes to be consolidated depends on the determination of similar or substantially the same questions of law and fact;

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(b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;

(c) the balance of convenience favour such consolidation; and

(d) the Council has jurisdiction over all disputes sought to be consolidated.

## **27. Disclosure of documents**

(1) At any time after the certificate of outcome is issued or the expiry of the 30-day conciliation period, but not less than fourteen (14) days prior to the hearing date, either party may request the other party to disclose any documents or material relevant to the dispute.

(2) The party to whom the request is made must respond to the request within five (5) days from the date on which the request was received.

(3) A commissioner may either before or during the hearing on own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.

(4) Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.

(5) This rule is to be distinguished from the disclosure of information disputes in terms of section 16 of the Act and rule 36 of these Rules.

## **28. How to postpone a hearing**

(1) A scheduled hearing may be postponed –

(a) by agreement between the parties in terms of subrule (2); or

(b) by application and on notice to the other parties in terms of subrule (3).

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- (2) The Council must postpone an arbitration without the parties appearing if-
- (a) all the parties to the dispute agree in writing to the postponement; and
  - (b) the written agreement for the postponement is received by the Council (7) days prior to the scheduled date of the hearing.
- (3) If the conditions of subrule (2) are not met, any party to the dispute may apply in terms of rule 30 to postpone a hearing by delivering an application to the other parties to the dispute and filing a copy with the Council, seven (7) days prior to the scheduled date of the hearing.
- (4) A party that wants to oppose an application for postponement made in terms of subrule (3), may make written representations to the Council, five (5) days prior to the scheduled date of the hearing.
- (6) After due consideration of any application and written representations received in terms of subrules (3) and (4), the Council may decide whether to postpone the matter or not.
- (6) If a party to a dispute fails to comply with the time periods referred to in subrules (2) to (4), the scheduled hearing must take place on the scheduled date, unless the Council on good cause shown grants a postponement and conveys its decision in writing to the commissioner and all parties to the dispute.
- (7) Notwithstanding subrule (1), conciliation hearings may only be postponed if –
- (a) good cause is shown, and
  - (b) postponement is granted by General Secretary.

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

- (1) If a referring party fails to attend or be represented at a hearing before the Council as contemplated in rule 22, a commissioner may -
- (a) At a conciliation hearing conclude the hearing by issuing a certificate that the dispute remains unresolved.

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(b) At arbitration hearing –

- (i) adjourn the hearing to a later date; or
- (ii) dismiss a matter by issuing a written ruling.

(2) If a respondent fails to attend or be represented at a hearing before the Council contemplated in rule 22, a commissioner may -

(a) At a conciliation hearing conclude the hearing by issuing a certificate that the dispute remains unresolved.

(b) At arbitration hearing -

- (i) adjourn the hearing to a later date; or
- (ii) continue with the hearing in the absence of the respondent and issue a default award.

(3) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the hearing, before making any decision in terms of subrules (1) or (2).

(4) If a matter is dismissed in terms of this rule, the Council must send a copy of the ruling, within fourteen (14) days, to the parties and the party or parties responsible for the dismissal must bear the cost of the dismissal.

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## PART FIVE

### APPLICATIONS

#### 30. How to bring an application

- (1) This rule applies to any –
  - (a) application for condonation, joinder, substitution, variation, rescission or postponement;
  - (b) application in a jurisdictional dispute;
  - (c) application to have a settlement agreement made an arbitration award in terms of Section 142A of the Act; and
  - (d) any other preliminary or interlocutory application.
- (2) Subject to rule 31, an application must be brought on notice to all parties/persons who have an interest in the application.
- (3) A party bringing the application must sign the notice of application in accordance with rule 4 and must state -
  - (a) the title of the matter;
  - (b) the case number assigned to the matter by the Council;
  - (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
  - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering written statement within five (5) days after the application has been delivered to it;

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- (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and
  - (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by a written statement. The written statement must clearly and concisely set out:
- (a) the names, description and addresses of the parties;
  - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
  - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.
- (5) (a) Any party opposing the application may deliver a notice of opposition and an answering written statement within five (5) days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering written statement must contain, with the changes required by the context, the information required by subrules (3) and (4) respectively.
- (6) (a) The party initiating an application may deliver a replying written statement within three (3) days from the day on which any notice of opposition and answering written statement are served on it.

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- (b) The replying written statement must address only issues raised in the answering written statement and may not introduce new issues of fact or law.
- (7) In an urgent application, the Council or commissioner -
- (a) may dispense with the requirements of this rule; and
  - (b) may only grant an order against a party that has had notice of the application.
- (8) (a) The Council must allocate a date for the hearing of the application once a replying written statement is delivered, or once the time limit for delivering a replying written statement has lapsed, whichever occurs first.
- (b) The Council must notify the parties of the date, time and place of the hearing of the application.
- (9) Despite this rule, the commissioner may determine an application in any manner they deem fit.

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

An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

### **32. How to request an inquiry in terms of Section 188A of the Act**

- (1) Where there is a cross-sectoral dispute concerning this rule, an employer requesting the Council to conduct an inquiry must do so by delivering a completed prescribed form to the Council.
- (2) The employee must sign the prescribed form unless the employee has agreed in terms of Section 188A(4)(b)5 to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the contract or the collective agreement must be attached to the form.
- (3) When filing the prescribed form, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by electronic transfer into the bank account of the Council.

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- (4) Within seven (7) days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the Council must notify the parties to the inquiry of when and where the inquiry will be held.
- (5) Unless the parties agree otherwise, the Council must give the parties at least seven (7) days' notice of the commencement of the Inquiry.
- (6) The Council is only required to refund a fee paid in terms of subrule (3) if the Council is notified of the resolution of the matter prior to issuing a notice in terms of subrule (4).
- (7) Despite subrule (1), if any employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.
- (8) Where the employee, in terms of subrule (7), has requested an Inquiry by Arbitrator, the employer must pay the prescribed fee to the Council as set out in subrule (3).

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## **PART SIX**

### **GENERAL**

#### **33. Condonation for failure to comply with these Rules**

On good cause shown, the Council or commissioner may condone any failure to comply with the time frames in these Rules.

#### **34. Record of hearings**

- (1) A commissioner must provide the Council with a record of –
  - (a) all hearings except conciliations, unless otherwise instructed; and
  - (b) any arbitration award or ruling made by a commissioner.
- (2) The record must be kept by legible notes and by means of an electronic recording.
- (3) A party may request a copy of the record, or a portion of a record kept in terms of subrule (2), on payment of the costs where applicable.

#### **35. How an applicant may withdraw a matter**

- (1) The applicant may withdraw a matter by filing a notice of withdrawal on the Council.
- (2) The applicant shall inform the Council in writing if the dispute has been resolved between the parties and if any settlement agreement has been reached, such written settlement agreement must be attached to the notice of withdrawal.
- (3) If an applicant withdraws a matter, that has not been settled in terms of subrule (2), the applicant cannot reinstate the matter at a later date, and the matter must be re-referred to the Council as a new dispute.

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**36. How to have a subpoena issued and served to secure the presence of a person**

- (1) Any party who requires the Council or a commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary. A request for a subpoena does not apply to documents and material relevant to the dispute. Requests for documents and material must be made in terms of Rule 27.
- (1A) The Council or commissioner, in determining the request for the subpoena, may direct that –
  - (a) the party requesting the subpoena provide additional information within three (3) days.
  - (b) the other party provides a written response to the request for subpoena within five (5) days.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) of the Act must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of subrule (1) must be filed with the Council at least fourteen (14) days before a hearing, or as directed by the commissioner conducting the hearing.
- (4) The Council or commissioner may refuse to issue a subpoena if–
  - (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
  - (c) the Council or commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must be served -
  - (a) by the person who has requested the issuing of the subpoena, by the Sheriff or by the Council, at least seven (7) days before the scheduled date of the arbitration; and

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(b) if so directed by the Council or commissioner, it must be accompanied by-

- (i) payment of the prescribed witness fees for one day<sup>5</sup>; and
- (ii) the witnesses' reasonable travel costs, unless the Council has waived the requirement to pay witness fees.

### **37. Payment of witness fees**

- (1) A witness subpoenaed in any hearing in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act, provided that, if such witness is an employee of the State, such witness shall not be paid an allowance for the time that they were required to be available to give evidence during such a hearing unless they can show that they will not be paid for such time.
- (2) The witness fee must be paid by –
  - (a) the party who requested the Council to issue the subpoena; or
  - (b) the Council, if the issuing of the subpoena was requested by a commissioner or if the Council or commissioner waives the requirement for the party to pay witness fees in terms of section 142(7)(c) of the Act.
- (3) Despite subrule (1), the commissioner may, in appropriate circumstances, order that a witness receives no fee or only part of the prescribed fee.

### **38. Order of costs in a hearing**

- (1) In a hearing, a commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so shall have regard to –
  - (a) the measure of success that the parties achieved;
  - (b) considerations of fairness that weigh in favour of or against granting a cost order;

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<sup>5</sup> In accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act.

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- (c) any with prejudice offers that were made with a view to settling the dispute;
  - (d) whether a party or the person who represented that party in a hearing acted in a frivolous and vexatious manner –
    - (i) by proceeding with or defending the dispute in a hearing, or
    - (ii) in its conduct during a hearing.
  - (e) the effect that a cost order may have on a continued employment relationship;
  - (f) any agreement concluded between the parties to a hearing concerning the basis on which costs should be awarded;
  - (g) the importance of the issues raised during a hearing to the parties as well as to the labour community at large; and
  - (h) any other relevant factor(s).
- (2) A commissioner may make an award of costs in favour of a party who appears or is represented in arbitration by a person contemplated by rule 22(4) in respect of reasonable disbursements actually incurred in the conduct of its case in the arbitration. A commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- (3) A commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner or candidate attorney, only if the other parties to the arbitration were represented by a legal practitioner or candidate attorney.
- (4) The legal fees in respect of subrule (3), will be determined by the Council from time to time.

### **39. Certification and enforcement of arbitration awards**

- (1) An application to have an arbitration award certified must be made on LRA Form 7.18A and filed with the Council in terms of these Rules.

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- (2) Any arbitration award that has been certified in terms of section 143 of the Act that –
- (a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business; and/or
  - (b) orders the performance of an act other than that payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.
- (3) For the purposes of subrule (2), an arbitration award includes an award of costs in terms of section 138(10) of the Act and a taxed bill of costs in respect of an award of costs.
- (4) The amount of money that may be enforced through execution by the Sheriff in terms of this rule includes –
- (a) the amount that is ordered to be paid in terms of the award;
  - (b) any interest on that amount calculated in terms of section 143(2) of the Act; and
  - (c) the Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.

#### 40. What do words mean in these Rules

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

“**Act**” means the Labour Relations Act 66 of 1995 as amended, and includes any regulation made in terms of that Act.

“**Deliver**” means serve on the other parties and file with the Council.

“**Candidate attorney**” refers to someone who has obtained their four-year LLB degree and is busy with their articles of clerkship, with the intent of becoming a registered attorney.

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**"Commissioner"** means a person appointed in terms of the constitution of the Council and Dispute Resolution Procedure to handle disputes as a conciliator or arbitrator.

**"Council"** means the Public Services Co-ordinating Bargaining Council as established by section 36 of the Act.

**"Data subject"** in terms of the application of the Protection of Personal Information Act, 4 of 2013 (POPIA), means a person to whom the personal information relates.

**"Employer"** means the State as the employer falling within the registered scope of the Council.

**"Employment law"** for the purposes of these Rules includes the Labour Relations Act, and any other Act of which the administration has been assigned to the Minister of Employment and Labour and any of the following Acts -

- (a) the Basic Conditions of Employment Act, 75 of 1997;
- (b) the Employment Equity Act, 55 of 1998;
- (c) the Mine Health and Safety Act, 29 of 1996;
- (d) the National Minimum Wage Act, 9 of 2019;
- (e) the Skills Development Act, 97 of 1998.

**"File"** means to lodge with the Council in terms of rule 7.

**"General Secretary"** means the General Secretary of the Council appointed in terms of clause 14 of the Council constitution.

**"Labour Court"** means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court.

**"Legal practitioner"** means any person admitted to practise as an advocate or an attorney in the Republic.

**"Office-bearer"** means a person who holds office in a trade union, employers' organisation, federation of trade unions, federation of employers' organisations or council and who is not an official.

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**“Official”**, in relation to a trade union, employers' organisation, federation of trade unions or federation of employers' organisations means a person employed as the secretary, assistant secretary or organiser of a trade union, employers' organisation or federation, or in any other prescribed capacity, whether or not that person is employed in a full-time capacity. And, in relation to a council means a person employed by a council as secretary or in any other prescribed capacity, whether or not that person is employed in a full-time capacity.

**“Party”** means any party to proceedings before the Council and may be organisations and /or individuals.

**“Personal information”** (in terms of the application of POPIA) means “information relating to an identifiable, living natural person or juristic person as far as applicable, and an identifiable, existing juristic person including, but not limited to –

- (a) information relating to race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and the birth of the person;
- (b) information relating to the education or the medical, financial, criminal or employment history of the person;
- (c) any other identification number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- (d) the biometric information of the person;
- (e) the personal opinions, views, or preferences of the person;
- (f) correspondence sent by that person that is implicitly or explicitly or of a private or confidential nature or further correspondence that would reveal contents of the original correspondence;
- (g) the view or opinions of another individual about the person; and
- (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.”

**“Processing”** (in terms of the POPIA) means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including –

- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

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(b) dissemination by means of transmission, distribution or making available in any other form; or merging, linking as well as restriction, degradation, erasure or destruction of information.

**"PSCBC Portal"** means an extension hosted on the Collaborator system on the Cloud that extends the on-premise Collaborator solutions to the public internet.

**"PSCBC e-Referral"** means an electronic referral form which is a web-based link.

**"Public holiday"** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

**"Rules"** means these Rules and includes any footnote to a rule.

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

**"Trade union"** means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations.

**"Trade union representative"** means a member of a trade union who is elected to represent employees in a workplace.

**"Venue"** means a location determined by the Council, where a hearing must take place, either physical or virtual.

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