

# DEPARTMENT OF LABOUR

HEAD OFFICE PRETORIA



Enquiries

Tel Direct

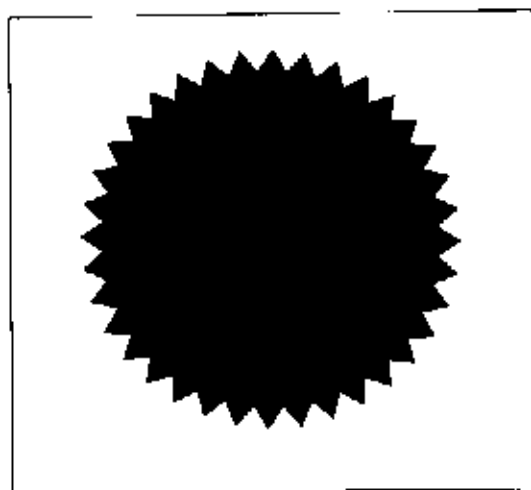
Reference

It is hereby certified that on the date of registration the constitution of the

## *Education Labour Relations Council*

complies with the requirements of section 30(1),

of the Labour Relations Act, 1995.



Official stamp of Registrar

Reference number: LR 2/6/6/110

Date:

14 October 1999.

Registrar of Labour Relations



# **CONSTITUTION OF THE EDUCATION LABOUR RELATIONS COUNCIL**

April 23, 1999

**EDUCATION LABOUR RELATIONS COUNCIL (ELRC)**

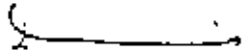
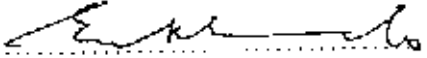
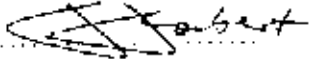

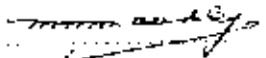
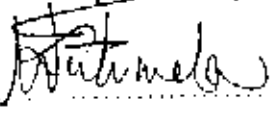



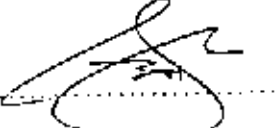
**RESOLUTION 3 OF 1999**

**AMENDEMENT TO THE CONSITUTION OF THE ELRC**

The parties, having noted the changes made to the constitution, hereby agree to the adoption and implementation of the amended constitution of the Council with effect from the date of this agreement and that this constitution be referred to the Registrar of Labour Relations in terms of provisions of the Act.

THUS DONE AND SIGNED BY THE PARTIES AT CENTURION ON THIS 23<sup>RD</sup> DAY OF APRIL 1999.

**EMPLOYER PARTIES**

|  | <u>Name (in Block letters)</u>   | <u>SIGNATURE</u>  |
|--|--|---|
| Department of Education                    | D HINDLE   |    |
| <u>Provincial Departments of Education</u> |  |   |
| Eastern Cape Education Department          |  | E.N. KHUMALO  |
| Free State Education Department            | J.P. JOUBERT   |  |
| Gauteng Education Department               |   | C. B. CLARK   |
| KwaZulu-Natal Education Department         | M. M. MOODLEY  |  |
| Nipumalanga Education Department           | A.W. KUTUMELA  |  |
| Northern Cape Education Department         | S.S. BEUZONS   |  |
| Northern Province Education Department     | M. M. MANDARE B.M.   |  |
| North West Education Department            | CELE T.  |  |
| Western Cape Education Department          | E.M. Southgate   |  |

The Constitution of the Education Labour Relations Council

EMPLOYEE PARTIES

Name (in Block letters)

Signature

South African Democratic Teachers' Union (SADTU)

W. M. MADISHA

National Professional Teachers' Organisation of South Africa (NAPTOSA), acting together with:

South African Union of Vocational and Specialised Education (SAUVSE)

Cape Teachers' Professional Association (CTPA)

National Union of Educators (NUE)

Association of Professional Educators of KwaZulu-Natal (APEK)

Natal African Teachers' Union (NATU)

Professional Educators' Union (PEU)

Orange Free State African Teachers' Association (OFSATA)

Orange Free State Teachers' Association (OFSTA)

Cape African Teachers' Union (CATU)

Independent Teachers' Union of SA (ITUSA)



D. H. BOER

Suid-Afrikaanse Onderwysersunie (SAOU), acting together with:

Hospital Personnel Trade Union of S.A. (HOSPERSA)

Public Servants' Association (PSA)



P. P. DELPORT.

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# THE CONSTITUTION OF THE EDUCATION LABOUR RELATIONS COUNCIL

## CHAPTER 1

### 1. NAME OF COUNCIL

The name of the Council is the "Education Labour Relations Council", hereinafter referred to as the "Council".

### 2. JURISTIC PERSON

(1) The Council is a *juristic person*.

(2) Unless otherwise provided by this constitution, no *employer* or *trade union* shall, by reason only of the fact that it is a party to the Council, be liable for any of the obligations of the Council.

### 3. CONSTITUTIONAL SCOPE

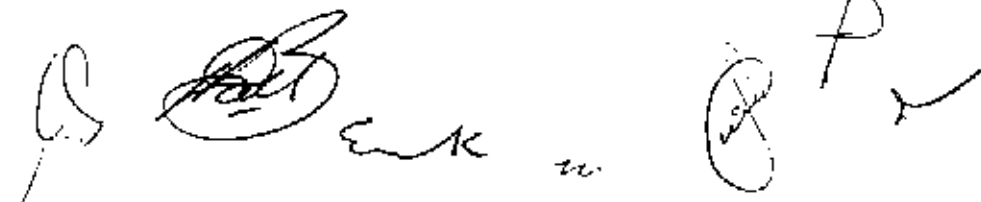
The registered scope of the Education Labour Relations Council is the State and those employees in respect of which the Employment of Educators Act, 1998, applies.

### 4. OBJECTIVES OF THE COUNCIL

(1) Subject to the provisions of *the Act*, the objectives of the Council shall be:

- (a) to maintain and promote labour peace in education;
- (b) to prevent and resolve labour disputes in education;
- (c) to perform dispute resolution functions in terms of section 51 of the Act;
- (d) to promote collective bargaining in relation to all matters of mutual interest;
- (e) to conclude and enforce collective agreements;
- (f) to conduct research, analyse and survey education nationally and internationally, and to promote training and build capacity in education;
- (g) to develop proposals for submission to the *Public Service Co-ordinating Bargaining Council (PSCBC)* and NEDLAC, or any other appropriate forum, on labour policy and labour legislation that may affect education;
- (h) to confer on workplace forums such additional matters for consultation;

Amended



- (i) to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out; and
- (j) to consider and deal with any other matters that may affect the interests of the parties.

**5. POWERS OF THE COUNCIL**

- (1) The Council shall have the following powers:
  - (a) to conclude contracts;
  - (b) to mortgage, pledge or otherwise encumber any of its movable or immovable property;
  - (c) to borrow, lend and invest money;
  - (d) to take part in any form of consultation, litigation and dispute resolution proceedings;
  - (e) to promote and establish training and education schemes;
  - (f) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Council or their members;
  - (g) to establish and administer a fund through the raising of levies to be utilised for the administration of the Council, resolving disputes and other Council activities;
  - (h) to exercise any other powers that may be necessary or desirable to achieve the objectives of the Council and which shall include the authority to overrule matters which had been dealt with in a Chamber and which are in conflict with the provisions of this constitution or any national agreement;
  - (i) to delegate such matters as the Council may deem necessary to any Chamber, committee or sub-committee of the Council for conclusion and subject to any conditions which the Council may attach thereto; and
  - (j) to refer such matters as the Council may deem necessary to any Chamber.

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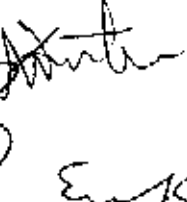
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## 6. PARTIES TO THE COUNCIL

- (1) The parties to the Council shall be the *employer* and *trade unions* registered in terms of the provisions of *the Act*, and have members who fall within the registered scope of the Council and admitted to the Council in terms of the provisions of this constitution.
- (2) Any *trade union* registered in terms of the provisions of *the Act*, may apply in writing to the Council to be admitted as a party
- (3) Any employer or employer organisation registered in terms of the provisions of *the Act*, may apply in writing to the Council to be admitted as a party.
- (4) The application of a *trade union* to the Council must be accompanied by a certified copy of the applicant's registered constitution and its certificate of registration and must include –
  - (a) details of the applicant's *membership* within the registered scope of the Council, indicating that it represents at least 20 000 members, and
  - (b) any reasons or information on which the applicant relies in support of its application for admission as a party to the Council.
- (5) For the purposes of the admission criteria set out in clause 6(4) two or more *trade unions* registered in terms of the provisions of the Act may act together to meet the admission criteria of Council: Provided that where two or more *trade unions* act together to meet these admission criteria, such *trade unions* shall be represented in Council as a single party and shall at all times act as a single party.
- (6) Applications for admission to the Council shall be dealt with in terms of the provisions of this constitution and the vote weight shall be determined in terms of the provisions of clause 10(7).
- (7) The Council must, within 90 (ninety) days of receiving an application for admission referred to in sub-clauses (2), (3), (4) and (6), decide whether to grant or refuse an applicant admission, and must advise the applicant of its decision. Should the Council decide to grant the applicant admission, such applicant will be admitted to the Council and the vote weights of the parties will be adjusted accordingly.
- (8) A *trade union's* membership of the Council may be terminated –
  - (a) on receipt of a notice of termination of the membership of the *trade union*,
  - (b) if a *trade union* is dissolved or wound up in terms of its constitution; or

    
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- (c) if a *trade union* no longer complies with the admission requirements prescribed in this constitution.
- (9) If the membership of a *trade union* is terminated, the *trade union* may refer a dispute about its termination of membership of the Council in terms of the dispute resolution procedures of the Council.

## CHAPTER 2

### 7. APPOINTMENT OF REPRESENTATIVES

- (1) The *employer* shall be represented in the Council by such persons as the employer may from time to time appoint, subject to a maximum of one (1) representative for each representative of a *trade union* in the Council.
- (2) The *trade unions* admitted to the Council shall have 25 representatives allocated on the basis of proportionality according to the vote weights; provided that an admitted *trade union* shall have at least 1 representative.
- (3) Parties to the Council shall make the names of their representative/s available to the *General Secretary* within 30 days of the Annual General Meeting. *Trade union* representatives shall be members registered in terms of their constitutions, or full-time officials. *Employer* representatives shall be full-time officials employed in terms of the Public Service Act, 1994, as amended, or the Employment of Educators Act, 1998.
- (4) A party may at any time withdraw any of its representatives in the Council by giving written notice to the *General Secretary*.
- (5) Should a vacancy arise in the Council as a result of the withdrawal, resignation or death of a representative, the vacancy shall be filled by the party who previously appointed the relevant representative, by giving written notice to the *General Secretary*.
- (6) Should a party's membership of the Council be terminated, its representatives shall vacate their seats.
- (7) Parties to the Council may co-opt persons to give expert advice, assistance or evidence to the Council on matters being discussed in the Council: Provided that-

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- (a) where reasonably possible, the *General Secretary* be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
- (b) *trade unions* or the *employer* shall not be allowed to co-opt more than one person at a time to address, advise or assist the Council on a specific matter; and
- (c) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

**8. APPOINTMENT OF OFFICE-BEARERS AND STAFF**

**(1) OFFICE BEARERS**

The Council shall at its Annual General Meeting, elect a Chairperson and two Vice-Chairpersons. One Vice-Chairperson shall be elected from the *trade unions* and the other from the *employer*.

**Chairperson and Vice-Chairperson**

- (a) The outgoing Chairperson shall preside over the Annual General Meeting of the Council. The *General Secretary* shall request nominations for a new Chairperson for the forthcoming term of office, to reach him 30 days prior to the Annual General Meeting.
- (b) A person other than a representative or observer of the parties who has consented in writing to his or her nomination may also be nominated as Chairperson.
- (c) All nominations shall be sent to parties 14 days prior to the Annual General Meeting.
- (d) During the Annual General Meeting the outgoing Chairperson or the *General Secretary* shall formally introduce the candidates before voting commences in terms of the provisions of clause 10(6). The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should an equal number of votes be cast for two or more candidates, the outgoing Chairperson or the *General Secretary* shall write the name of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared as the elected Chairperson.

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- (e) The Chairperson shall hold office for a term of 12 months unless removed by a decision of the Council. The Chairperson so removed or any past Chairperson may be re-elected.
- (f) The provisions of paragraphs (a) to (e) shall with the necessary effect thereto apply in respect of the election of two Vice-Chairpersons of the Council: Provided that one shall be elected from the *employer* and the other from the *trade unions*: Provided further that the Vice-Chairpersons shall be elected from the duly appointed representatives of the parties to the Council, and nothing herein prevents any party from replacing any representative with an alternate.
- (g) The Chairperson shall preside over all meetings of the Council.
- (h) The Chairperson shall –
- (i) subject to paragraphs (j) and (k), preside over and enforce order at all meetings in accordance with normal meeting procedure,
  - (ii) sign and date the minutes of a meeting after confirmation;
  - (iii) endorse financial statements after approval by the Council;
  - (iv) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson; and
  - (v) countersign cheques on the Council's banking account.
- (i) Whenever the Chairperson is not available, one of the Vice-Chairpersons shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- (j) Whenever the Chairperson or the Vice-Chairpersons is not available or unable to perform his or her duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- (k) The Chairperson, or the Vice-Chairpersons shall not be entitled to 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 shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairpersons.
- (l) The term of office of a Chairperson and/or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Council consequent to a resolution to that effect.

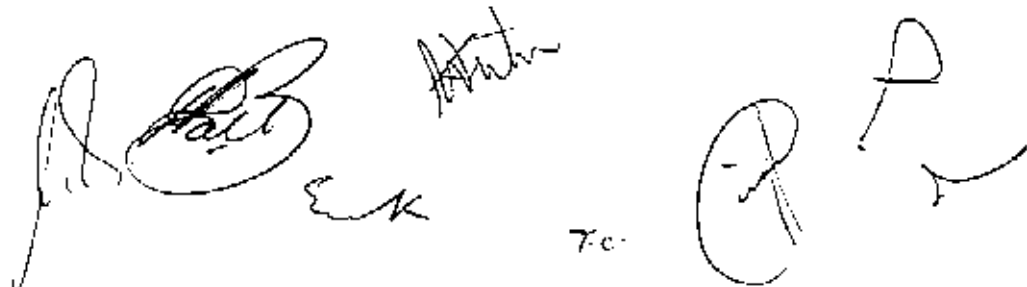
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- (m) The Council may from time to time determine a honorarium payable to the Chairperson of the Council: Provided that, should it become necessary or desirable to engage the services of the Chairperson on a part-time or full-time basis, the Council shall determine the salary and other conditions of employment of the Chairperson by agreement.

## (2) OFFICE BEARERS AND STAFF

- (a) The Council shall appoint a *General Secretary*.
- (b) The terms and conditions of employment of office bearers and staff shall be determined by the Council.
- (c) The termination of employment of all office bearers and staff, including the *General Secretary*, shall be subject to one (1) calendar month's notice on either side.
- (d) Subject to the provisions of *the Act* and this constitution, the *General Secretary* shall be responsible for the sound administration of Council including:
- (i) all meetings of the Council and its committees and recording of minutes of meetings;
  - (ii) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Council;
  - (iii) correspondence of the Council;
  - (iv) keeping an accurate filing system;
  - (v) general office administration;
  - (vi) banking all monies received on behalf of the Council within 24 hours of receipt thereof or on the next working day, whichever is the earliest;
  - (vii) submitting statements of the financial position of the Council whenever required to do so by the Council;
  - (viii) countersigning cheques on the Council's banking account;
  - (ix) keeping a register of all *employers* and *trade unions* registered and/or admitted in terms of the provisions of this constitution, which must be made available for scrutiny upon request;



7.c.



## 9. THE MANNER IN WHICH OFFICE BEARERS AND STAFF MAY BE REMOVED FROM OFFICE

Any office-bearer or member of staff may be dismissed by the Council for incapacity, serious neglect of duty or misconduct, subject to the *rules of natural justice* and fair labour practice. Vacancies occurring as a result of the dismissal of an office-bearer shall be filled as provided for in clause 8(1), and in the case of a member of staff, as provided for in clause 8(2).

## 10. MEETINGS OF THE COUNCIL

(1) The Council shall meet at least four times per year, at such venue, date and time as may be determined by the *General Secretary*; Provided that one such meeting shall be the Annual General Meeting.

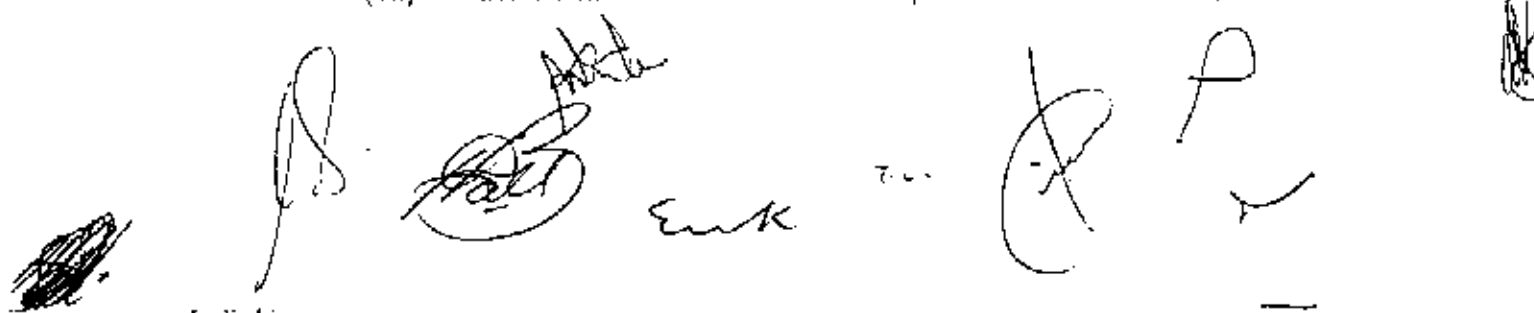
### (2) ANNUAL GENERAL MEETING

(a) The Council shall hold its Annual General Meeting during the month of April of each year.

(b) Admitted *trade unions* shall submit to the *General Secretary* not later than 31 January of each year certified and audited records of their paid-up members, compiled by their own officially appointed auditors and such audit shall run concurrent with the financial year of the Council to enable the Council's official auditors to audit the paid-up membership of parties admitted to the Council; Provided that the certified paid-up membership audit shall also reflect the provincial membership of such *trade unions* represented provincially in each Chamber.

(c) Unless otherwise agreed to, the following matters shall be dealt with at the Annual General Meeting, in the following order:

- (i) presentation of credentials;
- (ii) the financial statements of the previous financial year, which financial year shall run from 1 January to 31 December;
- (iii) the report of the auditor in respect of the financial statements referred to in sub-paragraph (ii) above;
- (iv) the levies to be imposed on educators;
- (v) the appointment of auditors, should it be necessary;
- (vi) the annual report of the Council;
- (vii) the admission or otherwise of parties to the Council;

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- (viii) determination of the vote weight in the Council and the Chambers, which shall come into effect on the date of the Annual General Meeting once so adopted; Provided that the change in the vote weight does not affect the change in representation at the meeting;
- (ix) appointment of a panel of conciliators, mediators and arbitrators or an accredited agency/agencies in terms of the provisions of the Act;
- (x) the determination of the number of members of the Executive, Finance and Legal Committees subject to the provisions of clause 11(5); and
- (xi) the election of a Chairperson and Vice-Chairpersons.

### (3) SPECIAL MEETINGS OF COUNCIL AND COMMITTEES OF COUNCIL

Special meetings shall be called by the *General Secretary* upon a written request by any party to the Council: Provided that the *General Secretary* shall consult, prior to the calling of such a meeting, with the parties to the Council.

### (4) NOTICE OF MEETING

- (a) At least 14 days written notice shall be given to all parties, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted.
- (b) It shall be deemed that due notice had been given to a party, if notice of any meeting was given by –
  - (i) the *General Secretary* or any official of the Council serving notice on any representative of the party concerned.
  - (ii) posting of a registered letter containing the notice to the party, at the registered address; or
  - (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice has been transmitted to and received by the addressee.

**(5) QUORUM OF A MEETING**

- (a) A quorum of a meeting of the Council or its committees shall be at least those *trade unions* representing 50% + 1 and the *employer*; Provided that -
- (i) proper notice in terms of sub-clause (5) has been given to all of the parties; and
  - (ii) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- (b) If, within a further 30 minutes after the 30 minutes referred in sub-clause 5(a)(ii), of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in sub-clause (4), shall again be given to all parties.

**(6) VOTING**

- (a) The *employer* shall have a collective vote, which shall be exercised by its representatives.
- (b) *Trade union* representatives shall vote on the basis as determined in terms of sub-clause (7) below.
- (c) The voting shall be by show of hands, unless a party requests a ballot, in which event the voting shall be by way of a secret ballot.
- (d) The *General Secretary* shall act as electoral officer.

**(7) VOTE WEIGHT**

- (a) The *employer* shall have 50% of the vote weight in the Council and its committees and the admitted *trade unions* the other 50% collectively.
- (b) The admitted *trade unions* in the Council may, during February of each year, reach consensus on the vote weights in respect of the Council and its Chambers based on the PERSAL monthly remittances for the end of December of the previous year and as referred to in the Act.

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- (c) In the event of there being no consensus in the Council on the vote weight, the *General Secretary* shall calculate the vote weight by no later than 15 March of each year and make recommendations to Council using:
- (i) the monthly remittances referred to in clause 10(7)(b) as at the end of December of the previous year; and
  - (ii) the recommendations of the official auditors of the Council, taking into consideration the respective trade unions' membership audits for the period 1 January to 31 December of the applicable year.

The vote weight that the *General Secretary* must calculate is the ratio of the *trade union's* paid-up membership to the total number of paid-up members of all *trade unions* which are members of this Council. This ratio must be expressed as a percentage. If two or more *trade unions* are acting jointly they will be treated as a single entity for purposes of calculating their vote weight; Provided that the vote weight of each individual *trade union* shall be reflected separately.

- (d) For the purposes of calculating the vote weight, dual and multiple membership shall be included in the total membership figures of each of the *trade unions*, who are admitted parties to Council, to which they are fully paid-up members in terms of the *official membership audit*; Provided that dual and multiple membership figures shall not be counted more than once in calculating the vote weight, where the educators are members of trade unions which are acting jointly as a single party
- (e) If a *trade union* is in dispute regarding the vote weight determined by the *General Secretary*, such dispute shall be dealt with in terms of the dispute resolution procedures of Council as set out in clause 13; Provided that such dispute shall be registered within 7 working days of the said determination. In the event of a dispute being declared, the vote weights of the previous year shall apply until the dispute is resolved.

## (8) MEETING PROCEDURE

- (a) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed by the Chairperson immediately after confirmation thereof.
- (b) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation, be submitted in writing as a prerequisite to any debate or decision in respect thereof.

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- (iv) to appoint sub-committees and *ad hoc* sub-committees of the Executive Committee;
- (v) to consider recommendations, including the ratification of agreements referred to it by Chambers, submitted to it by other committees, sub-committees and *ad hoc* sub-committees;
- (vi) to identify research to be undertaken in terms of clause 4(6);
- (vii) to prepare the agenda and supportive documentation for the Annual General Meeting; and.
- (viii) to deal with all matters relating to staffing

**(b) Finance Committee**

The functions of the Finance Committee are:

- (i) to investigate, control and monitor the financial matters of the Council;
- (ii) to advise and make recommendations on financial matters of the Council;
- (iii) to submit on a monthly basis a report to the Executive Committee on the financial position of the Council; and
- (iv) to submit annually to the Executive Committee, 60 days prior to the Annual General Meeting, a report on the financial matters of the Council for the year ending 31 December.

**(c) Legal Committee**

The functions of the Legal Committee are:

- (i) to attend to such matters referred to it by Council, committees of Council or the *General Secretary*;
- (ii) to monitor applications for the condonation of late registration of disputes and advise Council accordingly;
- (iii) to advise and make recommendations to Council, committees of Council or the *General Secretary* on any matters which have legal implications for Council;
- (iv) to receive regular reports from the *General Secretary* on the status of disputes referred to the Council, including the condonation of the late registration of dispute; and

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- (v) to determine administrative procedures and criteria relating to the above.
- (6) The number of members of the Executive, Finance and Legal Committees will be determined at the Annual General Meeting by majority vote of the Council each year. The composition of the *trade union* representation to the Executive and Finance Committees must be proportional to their respective vote weights. In respect of all other committees the composition of the *trade union* representation will be proportional to their respective vote weights unless otherwise agreed to by the *trade unions*.

### CHAPTER 3

#### 12. PROVINCIAL CHAMBERS

- (1) The Council shall in every Province referred to in Section 103 of the Constitution, 1996 (Act 108 of 1996), establish a Provincial Chamber ("Chambers") of the Council, which shall be the bargaining or consultative forums in a specific province.

- (2) Chambers established in terms of sub-clause (1) shall not be a *juristic* person.

(3) **SCOPE OF CHAMBERS**

Chambers shall function in a specific province and deal with matters referred or delegated to Chamber by the Council, as well as matters which fall exclusively under its jurisdiction.

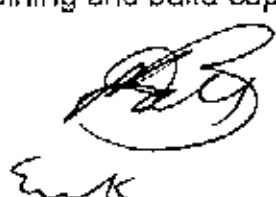
(4) **OBJECTIVES OF CHAMBERS**

The objectives of Chambers shall be:

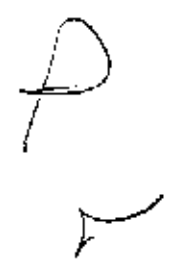
- (a) to maintain and promote labour peace;
- (b) to prevent and resolve labour disputes;
- (c) to perform dispute resolution functions;
- (d) to promote collective bargaining within the scope of its powers;
- (e) to conduct research, analyse and survey education, subject to approval by the Council; and
- (f) to promote training and build capacity.

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**(5) FUNCTIONS OF CHAMBERS**

The functions of Chambers will be:

- (a) to deal with such matters referred or delegated to Chambers by the Council;
- (b) to conclude agreements on matters pertaining only to that Province; Provided that no collective agreement concluded in a Chamber may conflict with a collective agreement concluded in the Council;
- (c) to deal with matters emanating from the agreed dispute resolution procedure of Council which fall within its competency;
- (d) to refer matters which fall outside its scope, which matters should be dealt with by the Council or the PSCBC, to the *General Secretary*; and
- (e) to refer agreements reached within Chambers to the Council, for ratification in accordance with clause 5 (8).

**(6) PARTIES TO CHAMBERS**

The parties to Chambers shall be the *employer and trade unions* in the province, admitted to the Council in terms of the provisions of clause 6.

**(7) APPOINTMENT OF REPRESENTATIVES AND OBSERVERS**

- (a) The *employer*, shall be represented in the Chambers by such persons *the employer may* from time to time appoint, subject to a maximum of one (1) representative for each representative of a *trade union* in the Chamber: Provided that the *employer*, shall be entitled to have a number of observers equal to its number of representatives.
- (b) The composition of the representation of *trade unions* to any Chamber shall be on the basis of proportionality in terms of the vote weights applicable in the Chamber, subject to:
  - (i) the norm being 10 representatives;
  - (ii) *trade unions* being entitled to a number of observers equal to the number of representatives.
  - (iii) *trade unions* being admitted and represented in Council; and
  - (iv) the norm with regard to the number of representatives being increased in order to allow a trade union which fails to qualify on the basis of proportionality for one of the 10 representatives in Chamber, having one representative in the Chamber.

- (c) Parties to the Chambers shall make the names of their representatives, and observers available to the *Secretary* within 30 days of the Annual General Meeting of the Chambers. *Trade union* representatives and observers shall be members registered in terms of their constitutions, or full-time officials. Employer representatives and observers shall be full-time officials employed in terms of the Public Service Act, 1994 (as amended) or the Employment of Educators Act, 1998.
- (d) A party may at any time withdraw any of its representatives or observers in the Chambers by giving written notice to the *Secretary*.
- (e) Should a vacancy arise in the Chambers as a result of the withdrawal, resignation, death or disqualification of a representative or an observer, the vacancy shall be filled by the party who previously appointed the relevant representative or observer and by giving written notice to the *Secretary*.
- (f) Should a party's membership of a Chamber or Council be terminated, its representatives shall vacate their seats.
- (g) Parties to the Chambers may co-opt persons to give expert advice, assistance or evidence on matters being discussed in the Chambers. Provided that –
- (i) where reasonably possible, the *Secretary* be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
  - (ii) a *trade union* or the *employer* shall not be allowed to co-opt more than one person at a time to address, advise or assist the Chambers on a specific matter; and
  - (iii) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

## (8) APPOINTMENT OF OFFICE-BEARERS AND STAFF

### (a) Chairperson and Vice-chairperson

- (i) At the Annual General Meeting of the Chambers, unless otherwise agreed, the parties shall elect a Chairperson from nominations submitted to the *Secretary* in writing, 14 working days prior to the meeting. At this meeting the outgoing Chairperson shall act as presiding officer. A Vice-Chairperson shall be nominated by the employer party.

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- (ii) A person, other than a representative or observer of the parties, who has consented in writing to his or her nomination, may also be nominated as Chairperson.
- (iii) All nominations shall be sent to parties by the Secretary, 7 working days prior to the meeting referred to in (i) above.
- (iv) The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should there be an equal number of votes cast for two or more candidates, the acting Chairperson shall write the names of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared the elected Chairperson.
- (v) The Chairperson or Vice-Chairperson shall hold office for a term of 12 months unless removed by a decision of the Chamber or the Council. The Chairperson or Vice-Chairperson so removed, or any past Chairperson or Vice-Chairperson, may be re-elected or nominated as the case may be.
- (vi) The Chairperson shall preside over all meetings of the Chambers.
- (vii) The Chairperson shall –
- (aa) enforce order at all meetings at which he or she is present, in accordance with normal meeting procedure;
- (bb) sign the minutes of a meeting after confirmation; and
- (cc) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson.
- (viii) Whenever the Chairperson is not available, the Vice-Chairperson shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- (ix) Whenever the Chairperson or the Vice-Chairperson is not available or unable to perform their duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- (x) The Chairperson or the Vice-Chairperson, shall not be entitled to vote on any matter. Provided that if the Vice-Chairperson has not been replaced by another representative of that party to the Chamber, such Vice-Chairperson shall be entitled to vote on

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any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairperson.

- (xi) The term of office of a Chairperson or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Chambers or the Council consequent to a resolution to that effect.
- (xii) The Council may from time to time determine a honorarium payable to the Chairperson of the Chambers.

(b) **Staff**

- (i) The Council shall, after consultation with the relevant Chambers, appoint a *Secretary* to the Chambers.
- (ii) The *Secretary* shall be responsible for:
  - (aa) all meetings of the Chambers and recording of minutes of meetings;
  - (bb) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Chambers and the Council;
  - (cc) correspondence of the Chambers;
  - (dd) keeping an accurate filing system;
  - (ee) general office administration;
  - (ff) submitting statements of the financial position of the Chambers whenever required to do so by the Council or the *General Secretary*;
  - (gg) the implementation of the vote weights determined in accordance with the provisions of Clause 10(7);
  - (hh) keeping in safe custody at the offices of the Chamber, for a period of not less than three years:
    - (A) a copy of the approved minutes of every meeting of the Chambers, duly signed and dated by the Chairperson who presided at such meeting; and
    - (B) the statements referred to in subparagraph (ff) and all records in relation thereto.

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- (ii) compiling the annual report of the Chambers, and such report approved by the Chambers shall be submitted to the by no later than 15 February of each year;
  - (jj) providing the Council and/or *General Secretary* with such information as required;
  - (kk) referring all agreements reached in the Chambers to the Council; and
  - (ll) performing such other duties and functions as the Council or the *General Secretary* may from time to time direct.
- (9) **THE MANNER IN WHICH OFFICE BEARERS AND STAFF MAY BE REMOVED FROM OFFICE**

The provisions of clause 9 shall apply with the necessary effect thereto.

(10) **MEETINGS OF THE CHAMBERS AND THEIR COMMITTEES.**

(a) **Meetings of the Chambers and their Committees:**

- (i) The Chambers shall meet at least 4 times per year, one of which shall be the Annual General Meeting, in which event the *Secretary* shall give at least 14 days written notice, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted; Provided that the Annual General Meeting shall be held within 30 days of the Annual General Meeting of Council.
- (ii) In respect of committees of the Chamber, the provision of paragraph (a) (i) above shall apply.

(b) **Special Meetings**

Special meetings shall be called by the *Secretary* upon a written request by any party to the Chambers; Provided that the *Secretary* shall consult, prior to the calling of such a meeting, with the parties to the Chambers.

(c) **Notice of Meeting**

At least 14 days written notice shall be given, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted. It shall be deemed that due notice had been given to a party, if notice of any meeting was given by-

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- (i) the Secretary of the Chambers serving notice on any representative of the party concerned;
- (ii) the posting of a registered letter containing the notice to the party, at the registered address; or
- (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice had been transmitted to and received by the addressee.

(d) **Quorum of a Meeting**

- (i) A quorum of a meeting of the Chambers shall be those *trade unions* representing 50% + 1 and the *employer*, Provided that –
  - (aa) proper notice in terms of paragraph (c) above has been given to all of the parties; and
  - (bb) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- (ii) If, within a further 30 minutes after the 30 minutes referred to in sub-paragraph (bb) above of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in paragraph (c) above, shall again be given to all parties to the Chambers.

(e) **Voting**

- (i) The *employer* has a collective vote of 50% which shall be exercised by its representatives and the admitted *trade unions* the other 50 % collectively.
- (ii) *Trade union* representatives shall vote on the basis of their vote weights as determined by Council for such Chambers.
- (iii) The voting shall be by show of hands, unless the party requests a ballot, in which event the voting shall be by way of secret ballot.
- (iv) The *Secretary* shall act as electoral officer.

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(f) **Vote Weight**

The provisions of clause 10(7) shall apply.

(g) **Meeting Procedure**

- (i) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed and dated by the Chairperson immediately after confirmation thereof.
- (ii) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation be submitted in writing as a prerequisite to any debate or decision in respect thereof.
- (iii) The Chairperson shall rule on any procedural matters, which are not regulated in this constitution.
- (iv) Representatives and observers shall be entitled to attend meetings of the Chambers but observers shall not take part in debates, or vote.
- (v) A person who is not a representative may be allowed to address the Chambers at the request of a party and with the concurrence of the Chambers.
- (vi) Every meeting of the Chambers shall be conducted in private unless the Chambers otherwise decide.
- (vii) The Secretary shall keep minutes of the proceedings at Chamber meetings in such a manner as decided by the Chambers, and shall be forwarded by the Secretary to all parties within a period of 20 days after a meeting.

(h) **Agreements of Chambers**

- (i) Agreements of Chambers determined by way of voting shall be on the basis of a vote of the *employer* on the one side and a majority vote of the *trade unions* on the other side.
- (ii) The provisions of clause 14(2) shall apply with the necessary effect thereto.

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**(11) FINANCIAL MATTERS OF THE CHAMBERS**

- (a) The annual budget submitted to the Annual General Meeting of Council in terms of clause 10(2)(c) shall make provision for Chambers and shall include such expenses as the Council may agree to from time to time.
- (b) Accounts in respect of approved expenditure shall be submitted to the *General Secretary* by the *Secretary*, for settlement.
- (c) The *Executive Committee* may approve a petty cash for the Chambers, and shall be administered by the *Secretary*.
- (d) Funds required for a petty cash account shall –
  - (i) be kept safely in such a manner as the Council may determine from time to time;
  - (ii) be provided by the drawing of a cheque; and
  - (iii) not exceed the limit determined by the Council.
- (e) The *Secretary* shall prepare and submit quarterly to the *General Secretary*, statements of the income and expenditure.

**CHAPTER 4****NEGOTIATION AND DISPUTE RESOLUTION PROCEDURES****13. APPLICATION**

- (1) These procedures apply to all *disputes* that arise within the scope of the Council except disputes in respect of those matters that:
  - (a) are regulated by uniform rules, norms and standards that apply across the public service;
  - (b) apply to terms and conditions and conditions of service that apply to two or more sectors.
  - (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;

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- (d) are not capable of being determined by the Council as the employer or employers in the Council do not have the requisite authority to resolve the dispute; or
  - (e) must, in terms of the Act, be dealt with by the CCMA.<sup>1</sup>
- (2) Any jurisdictional dispute between the PSCBC and the Council as to whether these procedures or the PSCBC's procedures apply must be referred to the Dispute Resolution Committee established in terms of section 38(1) of the Act for conciliation and arbitration.
- (3) Despite the provisions of sub-clauses 13(1)(a) to 13(1)(d), all individual rights disputes must be dealt with by the Council.

#### 14. DISPUTES OF INTEREST

##### (1) NEGOTIATION PROCEDURES FOR PARTIES TO THE COUNCIL ON MATTERS OF MUTUAL INTEREST

- (a) Any party may submit proposals for the conclusion of a collective agreement in the Council.
- (b) Within 7 days of the submission of the proposals the *General Secretary* must serve copies of the proposals on the parties to the Council.
- (c) The Chairperson of the Council must call a meeting of the Executive Committee, within 10 days of the *General Secretary* receiving the proposals.
- (d) The Executive Committee must set the agenda for the next meeting of the Council. Should the Executive Committee be of the view that some of the issues submitted to the Council should not be included on the agenda the matter will be referred to the Council for a decision. The Council will decide whether these issues must be included on the agenda, or whether to refer them to the relevant forum.

<sup>1</sup> The following disputes are not dealt with by the ELRC. They must, in terms of the Act, be dealt with by the CCMA.

- a) Disclosure of information – sections 16 and 189 of the Act
- b) Organisation 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 – section 86 and 94 of the Act

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- (e) If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion, of an item on the agenda of the Council, that party may refer the matter to the Dispute Resolution Committee established in terms of section 38(1) of the Act.
- (f) At the first meeting of the Council, the Council must try to agree on a negotiation process which may include the following issues:
- (i) the submission of counter proposals;
  - (ii) the establishment of a negotiation committee;
  - (iii) the appointment of a conciliator, if necessary, to facilitate the negotiations and chair the meetings; and
  - (iv) the time table for negotiations.
- (g) In the event of the Council not agreeing a negotiating procedure, the parties must, within two days, commence negotiations in the Council.
- (h) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Council, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
- (i) Subject to sub-clause 14(1)(f), if a dispute is declared by any one of the parties the *General 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 try to get agreement on:
- (i) further conciliation meetings to settle the dispute;
  - (ii) the referral of the dispute to voluntary arbitration; and
  - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.
- (j) If no collective agreement exists the conciliator must try to get agreement on:
- (i) rules about the conduct of a strike or lockout, if applicable; and
  - (ii) picket rules, if applicable.
- (k) If the *dispute* is not settled, the parties to the *dispute* may exercise their rights in terms of the Act.
- (l) At least seven days notice must be given by any one of the parties to the Council in the case of a lawful strike or lockout.

  
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- (m) 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 14(1)(f):
  - (i) require the employer not to implement unilaterally the change to terms and conditions of employment; or
  - (ii) 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; and
  - (iii) the employer must comply with this requirement.
- (n) If the *dispute* must be referred to arbitration, the procedures contained in clause 16(2) apply.

**(2) NEGOTIATING PROCEDURE FOR PARTIES TO A CHAMBER ON MATTERS OF MUTUAL INTEREST**

- (a) Any party to a Chamber may submit proposals for the conclusion of a collective agreement in a Chamber.
- (b) Within 7 days of the submission of the proposals, the Secretary of the Chamber must serve copies of the proposals on the parties to the Council.
- (c) At the first meeting of the Chamber after the submission of the proposals, the Chamber must try to agree on a negotiating process and time table.
- (d) In the event of the Chamber not agreeing to a negotiating procedure, the parties must, within 2 days, commence negotiations in the Chamber.
- (e) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Chamber, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
- (f) The provisions of clauses 14(1)(i) to 14(1)(n) apply with the necessary changes required by the context.

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**(3) PROCEDURE FOR MUTUAL INTEREST DISPUTES IN RESPECT OF NON-PARTIES TO THE COUNCIL**

- (a) In this clause a dispute means any disputes of interest, other than one contemplated in clauses 14(1) and 14(2) above, between the employer or employers and a non-party to the Council, which concerns a matter of mutual interest contemplated in section 134 of the Act.
- (b) If there is a dispute about whether or not a matter is a matter contemplated in section 134 of the Act the dispute must be referred to expedited arbitration in terms of clause 16(2).
- (c) 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:
  - (i) within 14 days of the request; and
  - (ii) before notice is given in terms of section 64(1) of the Act.
- (d) If the parties do not conclude a collective agreement by the expiry of the 30 day period, any party may declare a dispute. The *General Secretary* must convene a dispute meeting that the conciliator must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
  - (i) further conciliation meetings to settle the dispute;
  - (ii) the referral of the dispute to voluntary arbitration; and
  - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.
- (e) If no collective agreement exists the conciliator must try to get agreement on:
  - (i) rules about the conduct of a strike or lockout, if applicable, and
  - (ii) picketing rules, if applicable.
- (f) If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
- (g) At least seven days notice must be given by any one of the parties to the Council in the case of a lawful strike or lockout.
- (h) 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 14(3)(d):

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- (i) require the employer not to implement unilaterally the change to terms and conditions of employment;
- (ii) 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; and
- (iii) the employer must comply with this requirement.

## 15. DISPUTES OF RIGHT

- (1) In this clause a dispute means any dispute, other than a mutual interest dispute contemplated in clause 15, that must be referred to the Council for:
  - (a) conciliation<sup>2</sup>;
  - (b) arbitration<sup>3</sup>; or
  - (c) conciliation and arbitration<sup>4</sup>.
- (2) If the dispute is one that is contemplated in terms of clause 15(1)(a), the conciliation procedure contained in sub-clause 16(1) applies
- (3) If the dispute is one that is contemplated in terms of clause 15(1)(b), the procedure contained in sub-clause 16(2) applies.
- (4) If the dispute is one that is contemplated in terms of clause 15(1)(c), the following procedure applies:
  - (a) A party to a dispute may refer the dispute in writing to the *General Secretary* within 90 days of becoming aware of the matter.
  - (b) Despite clause 15(4)(a) a party may refer in writing a dispute about a dismissal to the *General Secretary* within 30 days of the date of the dismissal.
  - (c) The party who refers the dispute must satisfy the *General Secretary* that a copy of the referral has been served on all the other parties to the dispute.

<sup>2</sup> Disputes contemplated are those that must be conciliated by the Council and may be referred to the Labour Court for adjudication. For example, dismissals for operational requirements or automatically unfair dismissals or dismissals for participating in an unprotected strike section 191(5)(b) Schedule 7, item 2(1)(a) unfair labour practice disputes.

<sup>3</sup> Disputes concerning the interpretation of the Constitution, subject to clause 20(1).

<sup>4</sup> Disputes contemplated are those disputes that the council must conciliate and arbitrate. For example, dismissals for misconduct and incapacity – see section 191(5)(a) item 2(1)(b) to (d) of Schedule 7 – unfair labour practice disputes. Section 23 – disputes arising out of the interpretation or application of a collective agreement.

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- (d) If the *General Secretary* is satisfied that the referral has been properly served, the *General Secretary* must:
- (i) appoint an arbitrator;
  - (ii) set the matter down for arbitration within 30 days of the referral;
  - (iii) appoint a conciliator; and
  - (iv) set the matter down for conciliation no later than 4 days before the arbitration.
- (e) The timeframe referred to in clause 15(4)(d)(ii) may be extended by the *General Secretary* where there is a condonation application relating to that dispute.
- (5) The *General Secretary* may appoint the same person to conciliate and arbitrate the dispute if that person is a member of both panels appointed in terms of clause 16(4).
- (6) The provision of clauses 16(1)(e) to 16(1)(g) and 16(2)(h) to 16(2)(l) apply with the necessary changes required by the context.

## 16. CONCILIATION AND ARBITRATION PROCEDURES

### (1) CONCILIATION BY THE COUNCIL

- (a) A party to a dispute may refer a dispute in writing to the *General Secretary* of the Council as contemplated in clause 15(4).
- (b) The party who refers a dispute to the Council must satisfy the *General Secretary* that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the *General Secretary* is satisfied that the referral has been properly served, the *General Secretary* must:
- (i) appoint a conciliator to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.

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- (d) If the parties to a dispute have agreed on a particular conciliator, the *General Secretary* must appoint the person agreed upon if that person is available to conciliate disputes within the 30 day period or any agreed period. If the parties do not agree upon a conciliator the *General Secretary* shall appoint the conciliator.
- (e) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
- (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute immediately if the parties request the conciliator to do so.
- (f) In the conciliation proceedings a party to the dispute may appear in person and/or be represented only by a co-employee or 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.
- (g) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may:
- (i) dismiss the matter;
  - (ii) continue with the conciliation in the absence of the party; or
  - (iii) adjourn the conciliation to a later date.

## (2) ARBITRATIONS BY THE COUNCIL

- (a) A party to a dispute may refer the dispute in writing to the *General Secretary*.
- (b) The party who refers a dispute to the Council must satisfy the *General Secretary* that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the parties to a dispute have agreed on an arbitrator or arbitrators, the *General Secretary* must appoint the person or persons agreed upon. The onus for reaching an agreement about who is to be the arbitrator

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rests with the parties. Upon an application by a party the *General Secretary* may appoint more than one arbitrator provided that the nature of the issue in dispute and/or the financial implications of the dispute justifies this.

- (d) Should the parties not agree upon the arbitrator within 10 days of the date of the referral, the *General Secretary* shall appoint an arbitrator.
- (e) If the *General Secretary* is satisfied that the referral has been properly served the *General Secretary* must appoint the arbitrator or arbitrators to arbitrate the dispute
- (f) The arbitrator may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
- (g) The *General Secretary* must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.
- (h) 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.
- (i) Subject to clause 16(2)(j), in any arbitration proceedings, a party to the dispute may appear in person and/or be represented only by a legal practitioner, a co-employee or by a member, office bearer or official of that party's trade union or an employee of a national department or a provincial administration.
- (j) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the educator's conduct or capacity, the parties, despite subclause 16(2)(i), are not entitled to be represented by a legal practitioner in the arbitration proceedings unless:
  - (i) the arbitrator and all the other parties consent; or
  - (ii) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) the public interest; and

*Arbitrator*



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- (dd) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (k) If the party to the dispute fails to appear in person, or to be represented at the arbitration proceedings the arbitrator may –
- (i) dismiss the matter; or
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date.
- (l) Within 14 days of the conclusion of the arbitration proceedings –
- (i) the arbitrator must issue an arbitration award with reasons signed by all the arbitrators;
  - (ii) the *General 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.
  - (iii) on good cause shown, the *General Secretary* may extend the period within which the arbitration award and the reasons are to be filed.

### (3) COSTS

- (a) Subject to sub-clause 16(3)(b), the Council will pay the costs of the arbitrators' arbitration proceedings.
- (b) If an arbitrator finds that a dismissal is procedurally unfair the arbitrator may charge the employer an arbitration fee<sup>5</sup>.
- (c) Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- (d) If the arbitrator is satisfied that a party has acted unreasonably, wasted costs or referred the dispute to arbitration without reasonable cause, the arbitrator may, on application by either party, make an appropriate order for costs, including the costs of the arbitration.
- (e) Costs awarded by the arbitrator may include –
- (i) the costs of the arbitration,

<sup>5</sup> Section 140(2) of the Act provides this power to commissioners of the UCMA. This is a comparable power provided to arbitrators appointed by the Council.

- (ii) legal and professional costs and disbursements;
- (iii) other expenses which a party has incurred in the conduct of the dispute; and
- (iv) expenses of witnesses.

#### (4) PANELS OF CONCILIATORS AND ARBITRATORS

- (a) At its annual general meeting the Council must appoint, from nominations received from the parties, for a period of one year –
  - (i) a panel of conciliators to conciliate disputes;
  - (ii) a panel of arbitrators to arbitrate disputes.
- (b) In making these appointments the Council must ensure that the panels–
  - (i) are drawn from each of the nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of educators employed in the national and provincial departments in the various provinces;
  - (ii) have skill and experience in labour relations, knowledge about the education sector and knowledge or experience in conciliation and arbitration;
  - (iii) are broadly representative of South African society.
- (c) All conciliators and arbitrators will conduct themselves in accordance with the Code of Conduct in Schedule 1.
- (d) The Council may remove a member of the panels from office because of incapacity.
- (e) 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.
- (f) A member of the panel, whose term of office expires, will be eligible for re-appointment.
- (g) If the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the CCMA must appoint a suitably qualified person to fill the vacancy.

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**(5) TIME PERIODS AND CONDONATION**

- (a) Any late referral or application may be condoned on good cause shown, by an arbitrator appointed for that purpose. Such an arbitrator must be appointed by the *General Secretary* from the agreed panel of arbitrators.
- (b) Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- (c) If a party does not comply with the timeframes set in this constitution because it is involved in resolving the matter through the grievance procedures, then this will constitute good cause for condonation.
- (d) An arbitrator adjudicating a condonation application must determine the application, as far as it is reasonably possible, by means of written submissions from the parties.

**CHAPTER 5.**

**STRIKES, LOCK-OUTS, PICKETING AND PROTEST ACTION**

17. (1) Every employee has the right to strike and every employer has recourse to lock-out if:
- (a) the issue in dispute has been referred to the Council;
  - (b) the Council has issued a certificate stating the dispute remains unresolved, or a period of 30 days, which may be extended by agreement, has lapsed, since the referral was received by the Council; and
  - (c) 7 days notice of the commencement of the strike or lock-out has been given to the *employer* or the *trade unions*, as the case may be, and the Council.
- (2) Parties shall comply with a code or codes of practice as provided for by the *Act* or as contained in any collective agreement.

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**CHAPTER 6.**

**FINANCIAL MATTERS OF THE COUNCIL**

- 18. (1) On or before the 15<sup>th</sup> day of September of each year, the various committees of Council must submit their inputs on the budget for the following year to the *General Secretary*. A draft budget must then be submitted to a special meeting of the Executive Committee via the Finance Committee.
- (2) The budget of Council shall also make provision for the administration and functioning of Chambers
- (3) The *General Secretary*, shall, during the first week of December of each year, submit to a special meeting of Council an annual budget which must be approved at such a meeting.
- (4) The expenses of the Council shall be met from a fund or funds, which shall be raised by levies on *employers* and *employees*; Provided that such levies may be revised and adjusted by the Council from time to time.
- (5) The *employer* shall pay monthly, per *employee*, an amount agreed to by the parties to the Council into the fund or funds referred to in sub-clause (4) above.
- (6) The *employer* shall deduct monthly per *employee* a levy agreed to by the parties to the Council which shall be paid into the fund or funds referred to in sub-clause (4) above.
- (7) All monies received on behalf of the Council shall be deposited to the credit of the Council with a registered bank approved by the Council.
- (8) Monies received by the Council from levies imposed in terms of sub-clauses (4), (5) and (6) above shall firstly be applied to meet the monthly expenditure budget of the Council, and monies not so applied shall:
  - (a) at the discretion of Council, be used for Council activities including research and development, training and other activities that enhance collective bargaining; or
  - (b) be invested in accordance with section 53(5) of the Act.
- (9) All disbursements to be made from the funds of the Council shall be approved by the Council and shall be paid in any legal tender.
- (10) Funds required for a petty cash account shall --
  - (a) be kept safely in such a manner as the Council may determine from time to time;

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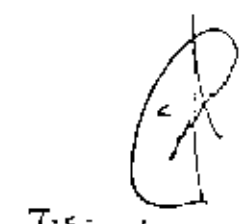
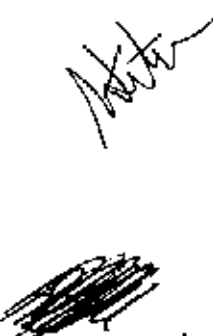
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- (b) be provided by the drawing of a cheque; and
  - (c) not exceed the limit determined by the Council.
- (11) A financial report of the books of Council shall be prepared by the Finance Committee of Council as at the end of June each year, in accordance with accepted accounting practice, showing monies received and expenditure incurred over the preceding six months. A full audit of the books of Council must be prepared as at the end of December of each year.
- (12) The *General Secretary* shall, prior to the Annual General Meeting of each year, in respect of the previous financial year, prepare the financial statements of the Council in accordance with accepted accounting practice, showing moneys received and expenditure incurred.
- (13) The financial year of the Council shall be from 1 January of a particular year to the last day of December of the same year.
- (14) Certified copies of the audited statements and of the auditor's report thereon, shall be made available for inspection at the office of the Council to the parties who shall be entitled to make copies of both the statements and of the auditor's report.
- (15) All the statements as well as the auditor's report shall be included in the annual report of the Council.
- (16) Certified copies of statements and of the auditor's reports referred to in sub-clauses (14) and (15) above shall be transmitted to the *Registrar*, within 30 days after the close of the period covered by the statements.

## CHAPTER 7

### 19. AMENDMENT OF THE CONSTITUTION

- (1) The Council may amend this constitution at any time by either :-
- (a) a unanimous vote on a resolution without prior notice; or
  - (b) a resolution adopted by two thirds of the vote weight of the *trade unions* to the Council on the one side and the employer on the other after at least -



- (i) one month's notice to the *General Secretary*, and
- (ii) two weeks' notice to parties to the Council.

## 20. INTERPRETATION

- (1) Any dispute relating to the interpretation or application of this constitution shall be resolved by a decision of Council by two-thirds of the vote weight of the trade unions to the Council on the one side and the employer on the other, and failing such vote, the dispute shall be referred to arbitration in terms of the provisions of clause 15(1)(b).
- (2) The decision of the arbitrator shall be final and binding.

## CHAPTER 8

### 21. SEAT OF THE COUNCIL

- (1) The *domincilium citandi et executandi* of the Council shall be 162 West Street, Centurion 0046, Gauteng, Republic of South Africa.

### 22. WINDING UP

- (1) At a special meeting called for that purpose the Council may decide by resolution to wind up the Council.
- (2) Upon adoption of a resolution to wind up, the *General Secretary* must :-
  - (a) apply immediately to the Labour Court for an order giving effect to the resolution; and
  - (b) deliver the Council's books of account and its assets, including all funds and investments, to the liquidator appointed by the Labour Court.
- (3) Upon adoption of a resolution to wind up, each party to the Council remains liable for unpaid liabilities to the Council as at the date on which the resolution for winding up was adopted.

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- (4) If all the liabilities of the Council have been discharged, the Council must transfer any remaining assets to a bargaining council to be decided upon by the parties to the Council. If no agreement can be reached then the proceeds must be paid to the Commission for Conciliation, Mediation and Arbitration (CCMA).

## CHAPTER 9

### 23. DEFINITIONS

- (1) Unless otherwise specified, any expression used in this Constitution that is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995) has the same meaning as in the Act.
- (2) "**Act**" means the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) "**Arbitrator**" means an arbitrator appointed in terms of clause 16(4) above.
- (4) "**Conciliator**" means a conciliator appointed by the Council in terms of clause 16(4) above.
- (5) "**dispute**" means a dispute that exists in respect of
- (a) matters that are regulated by uniform rules, norms and standards that apply to the education sector; or
  - (b) matters that apply to terms and conditions of service that apply to the education sector; or
  - (c) matters that are assigned to the State as employer in the education sector.
- (6) "**Employee**" means an educator as defined in the Employment of Educators Act, 1998.
- (7) "**Employer**" means the employer as defined in the Employment of Educators Act, 1998.
- (8) "**General Secretary**" means the official appointed in terms of clause 8(2)(a).
- (9) "**Membership**" means the paid-up membership on stop-order with the employer and registered in terms of the Act and this constitution
- (10) "**Member of the Executive Council**" means the Member of the Executive Council entrusted with the portfolio of education in terms of sections 132 and 133 of the Constitution of the Republic of South Africa, 1993. (Act No. 108 of 1996)

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- (11) **"Minister"** means the Minister of Education.
- (12) **"Official audited membership"** means the audit of membership, as at 31 December, of a registered or admitted *trade union* which is required in terms of the provisions of this constitution and which is confirmed by the official auditors of the Council in an annual audit for the Annual General Meeting.
- (13) **"Provincial Head of Education"** means the most senior official responsible for education in a province appointed by the Member of the Executive Council.
- (14) **"Public Service Co-ordinating Bargaining Council (PSCBC)"** means the PSCBC established in terms of the Act.
- (15) **"Registrar"** means the Registrar as defined in the Act.
- (16) **"Secretary"** means the official appointed in a Chamber in terms of clause 12(9)(b)(i).
- (17) **"Trade union"** means a trade union as defined in *the Act*, including two or more trade unions acting jointly as a single party.

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### SCHEDULE 1

## CODE OF CONDUCT FOR CONCILIATORS AND ARBITRATORS

### 1. PURPOSE

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

### 2. GENERAL ATTRIBUTES OF CONCILIATORS AND ARBITRATORS

- (1) In order for conciliation, mediation and arbitration processes to be seen to be fair and just, conciliators and arbitrators must:
  - (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 appointments 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;
  - (g) Support sound labour relations in the education sector.

### 3. CONFLICT OF INTEREST AND DISCLOSURE

- (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.

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- (2) Conciliators and arbitrators appointed to intervene in any matter should, before accepting, disclose this to the *General Secretary* of the Council:
- (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 these 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.

#### 4. HEARING CONDUCT

- (1) Conciliators and arbitrators should conduct proceedings fairly, diligently and in an even-handed manner.
- (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.
- (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) Agreements by the parties for the use of mechanical recording should be respected by arbitrators.

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- (5) In determining whether to conduct an *ex parte* hearing, an arbitrator must consider the relevant legal, contractual and other pertinent circumstances.
- (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.
- (7) In the 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.
- (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 *General Secretary* of the Council.

**5. POST-HEARING**

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

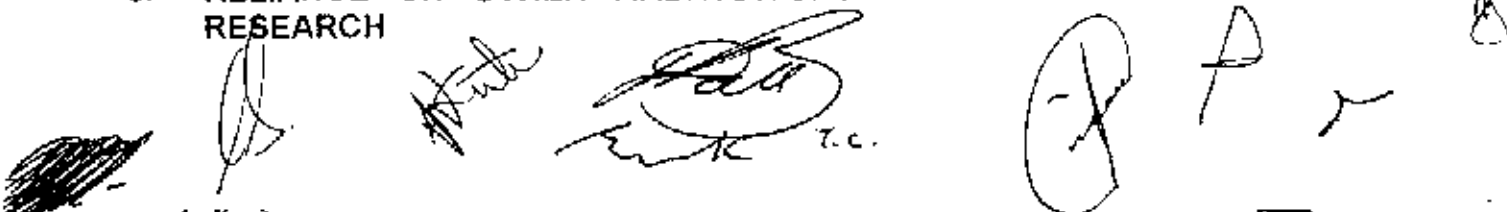
**6. CONFIDENTIALITY**

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.

**7. JURISDICTION**

- (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.
- (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.

**8. RELIANCE ON OTHER ARBITRATORS' AWARDS AND INDEPENDENT RESEARCH**



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.

9. AVOIDANCE OF DELAYS

- (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.
- (2) Conciliators and arbitrators should co-operate with the parties and the Council to avoid delays.
- (3) On completion of a hearing, arbitrators must adhere to the time limits for issuing an award.

10. FEES AND EXPENSES

- (1) Conciliators and arbitrators should be governed by the fee structure of the Council and should not enter into any arrangements with the parties regarding fees.
- (2) Conciliators and arbitrators must maintain adequate records to support charges for services and expenses and must account timeously to the Council.

11. COMPETENCY

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

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