

Res. 1

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**MOTION: TO ADOPT A CONSTITUTION FOR THE EDUCATION
LABOUR RELATIONS COUNCIL AND TO AMEND AND
SUPPLEMENT THE FIRST AGREEMENT REFERRED TO
IN SECTION 21(7) OF THE EDUCATION LABOUR
RELATIONS ACT 146 OF 1993.**

- 1.1 The Education Labour Relations Act, 1993, came into operation on 20 October 1993.
- 1.2 The founding meeting of the Education Labour Relations Council will commence on 1 March 1994, and will:
- 1.2.1 appoint a chairman and a secretary and relieve the interim chairman and the secretary of their duties;
 - 1.2.2 arrange for the administration of the Council in terms of section 13 of the Act;
 - 1.2.3 deal with applications for admission and registration submitted to it in terms of sections 10 and 11 of the Act;
 - 1.2.4 adopt a constitution for the Council; and

1.2.5 reconstitute in terms of its adopted constitution after the above duties have been completed.

1.3 Section 21(7) of the Act provides that:

1.3.1 the existing provisions and measures with regard to matters referred to in section 12(1) shall be deemed to constitute the contents of the first agreement of the Council; and

1.3.2 these provisions and measures shall remain valid and binding until other agreements (including amendments to existing agreements) on the said matters have been concluded in terms of the Act and the Constitution of the Council.

1.4 Such existing provisions and measures include:

1.4.1 arrangements for the collection of funds;

1.4.2 arrangements for access to premises and information;

1.4.3 the professional registration of some educators;

1.4.4 arrangements with regard to co-operative schemes administered by employee parties for the benefit of their members.

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1.5 Section 12(5) of the Act, further contemplates agreements of the Council providing for:

1.5.1 deductions which employers are required or permitted to make; from remuneration payable to employees;

1.5.2 the registration of professional educators;

1.5.3 the regulation of other matters of mutual interest.

1.6 The Constitution of the Republic of South Africa, 1993, which will come into operation on 27 April 1994, provides that certain laws will continue in force until replaced or amended.

2. The employee parties to the Council agree that -

2.1 the budget of the council should be met from a fund which shall be raised by agreement between the parties; Provided that in principle all employers and employees as defined in the Act shall contribute to the said fund;

- 2.2 there is a need for effective arrangements with regard to the collection of membership fees and other funds and access to premises and information.

- 3. The employee parties further agree that -
 - 3.1 a national professional registration body must be established and administered in terms of a constitution agreed upon by them;
 - 3.2 the said constitution be submitted to the Council for ratification so that the said body may be properly funded by the Council as an integral part of its expenditure budget;
 - 3.3 the Minister be requested by the Council to recognise the registration body in terms of section 2(1)(c) of Act 76 of 1984;
 - 3.4 the registration body should eventually take over all existing registers; and
 - 3.5 the TFC should retain all functions currently performed in terms of Act 39 of 1967 until a code of conduct and minimum criteria for entry to the profession have been negotiated and agreed upon in terms of the constitution of the said registration body and have become operative.

SUMMARY OF AMENDMENTS TO THE DRAFT CONSTITUTION
OF THE EDUCATION LABOUR RELATIONS COUNCIL.
(DRAFT AS DISCUSSED ON 17th FEBRUARY 1994)

Note: Insertions in text are indicated by _____

Deletions from the text are indicated by []

2. Definitions

- (b) "chamber" means a chamber of the council established in terms of clause [11] 12 of this constitution, and section 9(1)(j) of the Act;

3. Constitutional scope

- (2) [This] The contents of this constitution shall be supplementary to vested rights and legitimate expectations in terms of any other applicable law, convention or practice.

5. Powers of the council

- (e) to establish a pension fund, provident fund, medical scheme and any other [similar] funds or schemes; and

7. Appointment of representatives and substitutes

- (6) A representative or alternate may resign by giving written notice [of] to the secretary and the party who appointed him.

8. Chairman and vice-chairmen

- (14) The council shall from time to time determine a honorarium payable to the chairman of the council provided that, should it become necessary or desirable to retain the services of the chairman on a full time basis, the council shall determine the salary and other conditions of employment of the chairman by agreement.

10. Meetings, resolutions and agreements of the council

- (3) (f) the annual report of the Council [and the secretary];

- (4) In addition the council shall [also] meet at a date and venue to be determined by the chairman within 30 days, at the written request, setting out the reasons for such request, of any party to the council based on reasonable grounds, unless a meeting has already been scheduled to take place within 30 days as from date of such request and the urgency of the matter does not warrant such meeting.

- (22) (e) (i) unless the employee parties agree otherwise, the secretary shall determine the paid-up membership of parties at least 30 days before the annual general meeting and shall forthwith notify all parties in writing of his determination and for the purposes of the formulae contained in sub-clause (22) (b)(i) and (ii), the paid-up membership thus determined shall be used to calculate the weight of the vote cast by any party in terms of the above formulae until the next annual general meeting.
- (ii) should an agreement between the employee parties as contemplated in (i) above require the secretary to perform specific administrative tasks in respect of an election by individual employees who are members of one or more employee parties as to which party should represent them in the council, the secretary shall perform such specific administrative tasks and the council shall pay all costs incidental thereto from its expenditure budget.
- (iii) For the purposes of (i) and (ii) above, a motion passed amongst the employee parties to the council shall constitute an agreement.

12. Chambers

(8) A resolution or settlement of a chamber shall be regarded as a resolution or settlement of the council within such region until set aside or varied in terms of sub-clause [(8)] (7), or by the relevant chamber itself.

14. Negotiation procedures on matters of mutual interest

(5) Where one or more parties to the council decides that further negotiations will not secure an agreement, the party or parties may advise the council that they are in dispute in which event, unless such parties specifically agree to the contrary, the secretary shall, within 7 days appoint a mediator who is available, from the panel of mediators agreed to by the council to mediate in the dispute [unless the parties to the dispute agree to voluntary arbitration]: Provided that such dispute shall not preclude the remaining parties from concluding an agreement: Provided further that, although such agreement shall be binding on [any] a party or parties in dispute, the existence of such agreement shall not preclude the latter parties from pursuing the dispute or disputes as set out in this constitution or the Act and such an[d] agreement shall be deemed not to be an agreement for the purposes of section 15(1)(a) of the Act, in respect of the latter parties.

- (6) The mediator shall commence with mediation within 7 days from his appointment, in terms of the following procedure:
- (i) The mediator shall conduct a thorough investigation into the dispute, and for the purposes of this investigation, the mediator shall hear argument and/or evidence on behalf of all parties to the dispute.
 - (ii) After hearing argument and/or evidence, the mediator shall:-
 - (a) make a finding on any disputes of fact; and
 - (b) express a view as to what, in his opinion, would constitute the most equitable settlement of the disputes before him.
 - (iii) The mediator shall only disclose his finding on the disputes of fact and his opinion as to what would constitute the most equitable settlement to either of the parties on the date on which it is deemed that the dispute is incapable of settlement by the council referred to in (7) below.

(iv) This finding merely expresses an opinion and will not be regarded as an award on the dispute which is the subject of the mediation.

15. Arbitration on certain matters

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(1) (a) [(iv) any dispute of fact;]

[(b) any matter subject to arbitration in terms of the Act, this constitution or any agreement;]