

**EDUCATION LABOUR RELATIONS COUNCIL**

**RESOLUTION NO. 6 OF 2000**

**AMENDMENTS TO THE CONSTITUTION  
OF COUNCIL**



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## **RESOLUTION NO. 6 OF 2000**

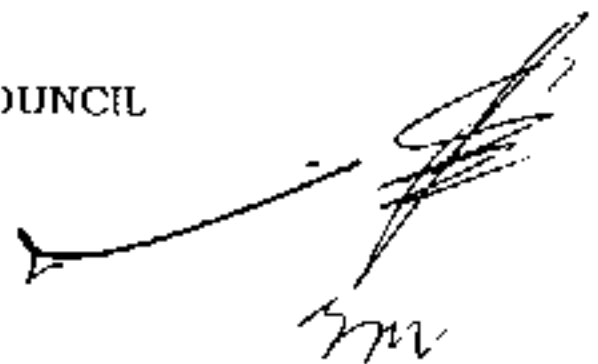
### **AMENDMENTS TO THE CONSTITUTION OF COUNCIL**

#### **Parties to the council note:**

1. The recommendations of the Registrar of Labour.
2. Technical errors identified in the Constitution.
3. The lack of clarity about the manner in which decisions of the Council are arrived at.
4. The lack of clarity about the determination of vote weights of Provincial Chambers.
5. The lack of clarity of the conciliation and arbitration of rights disputes in clauses 15 and 16.
6. The lack of clarity on the role of the Grievance Procedure prior to invoking the dispute resolution measures.
7. The introduction of the new computerised Case Management System for the administration of the disputes of Council and the need to cater for prescribed forms and the synchronised timeframes, with the PSCBC and the system

#### **Parties agree to the following amendments to the Constitution of Council:**

- 1.** To renumber clauses [4(1)(a) to 4(j)] to now read 4(1) to 4(10)  
  
To insert a new clause 4(6) after the new clause 4(5) or the old clause 4(e), which will now read as follows:  
  
4(6) to grant exemptions to parties and non-parties from collective agreements, where appropriate;
- 2.** To change the numbering of the old clauses [5(a) to 5(j)] to now read 5(1) to 5(10).



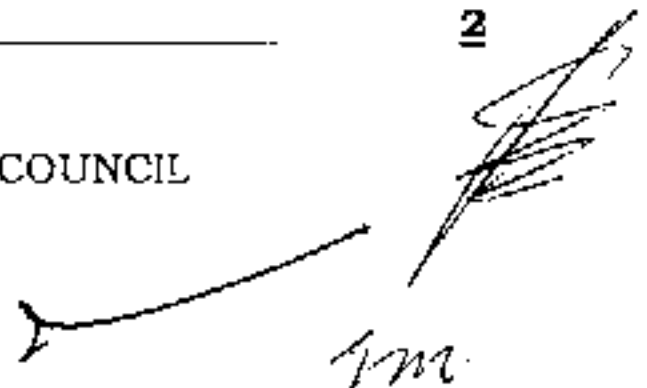
3. To the deletion of the old clause [10 (2)(c)(ix)] from matters to be dealt with at the Annual General Meeting and rewrite the clause, appropriately, as a new clause **5(11)** under the heading **POWERS OF COUNCIL**, which shall now read:

**5(11) To appoint a panel of conciliators and arbitrators, or an accredited agency/agencies, in terms of the provisions of the Act.**

4. To amend clause 6(7) by deleting “[sub-clauses (2), (3), (4) and (6)]” and replacing with “**clause 6(2), (3), (4) and (6)**”
5. To amend clause 8(1)(h)(v) by deleting the words “[counter sign cheques on the]” and replace with the words “**be one of the signatories to**”
6. To the deletion of clause [10(2)(b)].

(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.]

7. To amend clause 10(5)(a)(i), by substituting the reference to “[sub-clause 5]” with “**clause 10(4)**”.
8. To amend clause 10(5)(b), by substituting the reference to “[sub-clause 10(5)(a)(ii)]” with “**clause 10(5)(a)(ii)**”.
9. To amend clause 10(5)(b), by substituting the reference to “[sub-clause 10(4)]” with “**clause 10(4)**”.
10. To amend clause 10(6)(b), by substituting the reference to “[sub-clause 10(7)]” with “**clause 10(7)**”.
11. To amend clause 10(7)(d), by substituting the word “[that]” in between the words “more” and “once” with “**than**”.



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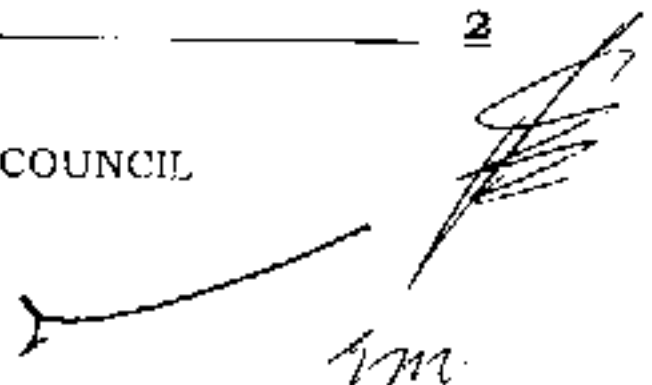
3. To the deletion of the old clause [10 (2)(c)(ix)] from matters to be dealt with at the Annual General Meeting and rewrite the clause, appropriately, as a new clause 5(11) under the heading **POWERS OF COUNCIL**, which shall now read.

**5(11) To appoint a panel of conciliators and arbitrators, or an accredited agency/agencies, in terms of the provisions of the Act.**

4. To amend clause 6(7) by deleting “[sub-clauses (2), (3), (4) and (6)]” and replacing with “clause 6(2), (3), (4) and (6)”
5. To amend clause 8(1)(h)(v) by deleting the words “[counter sign cheques on the]” and replace with the words “be one of the signatories to”
6. To the deletion of clause [10(2)(b)].

(h) [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.]

7. To amend clause 10(5)(a)(i), by substituting the reference to “[sub-clause 5]” with “clause 10(4)”.
8. To amend clause 10(5)(b), by substituting the reference to “[sub-clause 10(5)(a)(ii)]” with “clause 10(5)(a)(ii)”.
9. To amend clause 10(5)(b), by substituting the reference to “[sub-clause 10(4)]” with “clause 10(4)”.
10. To amend clause 10(6)(b), by substituting the reference to “[sub-clause 10(7)]” with “clause 10(7)”.
11. To amend clause 10(7)(d), by substituting the word “[that]” in between the words “more” and “once” with “than”.



12. To amend clause 10(7)(e), by substituting the reference to "[clause 13]" with "chapter 4".

13. To insert a new clause 10(7)(f) after the existing clause 10(7)(e) which will read:

"(f) Subject to clauses 10(7)(a) to (e) above, the General Secretary must also calculate the vote weights of trade union parties to the respective provincial chambers. The provincial chamber vote weights is calculated as the ratio of the trade union's paid-up membership within that province to the total number of paid-up members of all trade unions which are members to that provincial chamber".

14. To insert a new clause 10(9), after the existing 10(8), which will read:

"(9) Decisions of Council

(a) Unless otherwise agreed, all proposals must be submitted in writing and be read by the chairperson as a prerequisite to any debate or decision in respect thereof.

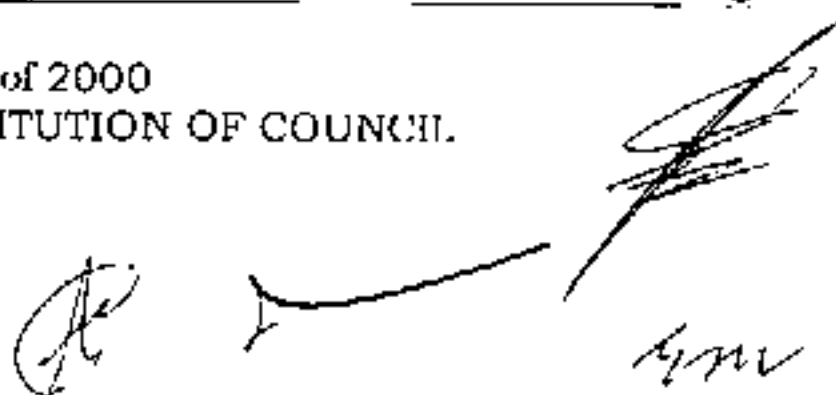
(b) No proposal shall be considered unless it has been duly seconded.

(c) Subject to the Act and this Constitution, all matters that form the subject of a proposal shall be decided by a majority vote on the employer side together with a majority vote on the employee side.

(d) No decision taken at a meeting of the Council shall be invalidated by the absence of any party concerned if it was properly notified of such meeting in the manner prescribed in clause 10(4) above.

(e) A decision of the Council will be regarded as a collective agreement in terms of the Act and is binding on all the parties to the Council.

(f) All decisions of the Council, that have an impact on parties to the Council, must be reduced to writing and signed by the parties to the Council.



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**(g) The Council may, in terms of section 30(I)(k) of the Act, determine a procedure for exemption from Collective Agreements.**

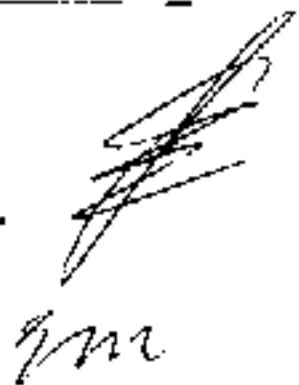
15. To amend clauses 11(2), (3) and (4) by substituting the reference to "[sub-clause 11(1)]" with "**clause 11(1)**".
16. To amend clause 11(5)(a)(vi), by substituting the reference to "[clause 4(6)]" with "**clause 4(7)**".
17. Add a new clause **11(7)** after the existing clause 11(6) which will read:
- "(7) All decisions of executive committee shall be taken by consensus. In the event of consensus not being arrived at, the matter shall be referred to the Council for a decision."**
18. To amend clause 12(2), by substituting the reference to "[sub-clause (1)]" with "**clause 12(1)**".
19. To amend clause 12(8)(a)(iii), by substituting the reference to "[i]" with "**clause 12(8)(a)(i)**".
20. To amend clause 12(5)(e), by substituting the reference to "[clause 5(h)]" with "**clause 5(8)**".
21. To delete the existing clause 12|11|(a)

**(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.]**

and replace with the new clause 12(11)(a) which shall now read as follows:

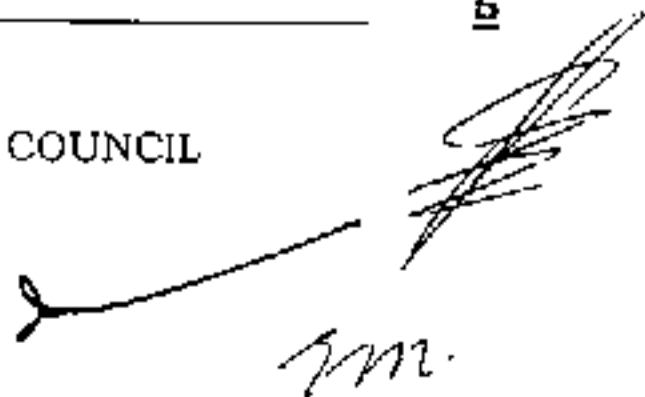
**The annual budget submitted to the Council in terms of clauses 18(1) and (2) shall make provision for chambers and shall include such expenses as the Council may agree to from time to time.**

22. To amend clause 13(1)(b), by deleting the words "[and conditions]"
23. To amend clause 13(3), by substituting the reference to "[sub-clauses]" with "**clauses**".
24. To amend clause 14(1)(i), by substituting the reference to "[clause 14(1)(f)]" with "**clause 14(1)(h)**".



25. To amend clause 14(1)(m), by substituting the reference to "[clause 14(1)(f)]" with "clause 14(1)(h)".
26. To amend clause 14(1)(g), by inserting the word "on" between the words "agreeing" and "a", in line 1.



  
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27. To delete the existing Clause 15 and substitute with the new Clause 15, which shall read as follows:

"15. DISPUTES OF RIGHT

- (1) In this clause a dispute means any dispute, other than a mutual interest dispute contemplated in clause 14, that must be referred to the Council for:
- (a) conciliation<sup>1</sup>;
- (b) arbitration<sup>2</sup>; or
- (c) conciliation and arbitration<sup>3</sup>.
- (2) If the dispute is one that is contemplated in terms of clause 15(1)(a), the
- (3) conciliation procedure contained in clause 16(1) applies.
- (4) If the dispute is one that is contemplated in terms of clause 15(1)(b), the  
procedure contained in clause 16(2) applies.
- (5) If the dispute is one that is contemplated in terms of clause 15(1)(c), the  
procedure contained in clause 16(3) applies."

<sup>1</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>2</sup> Disputes concerning the interpretation of the Constitution subject to clause 20(1).

<sup>3</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.



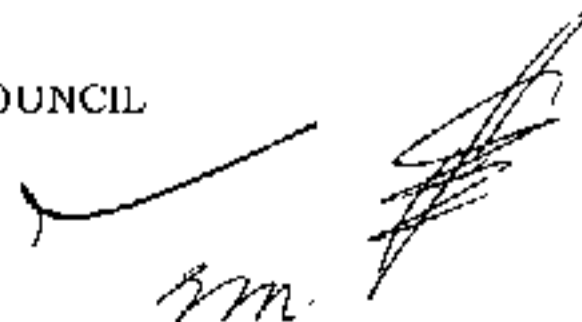


28. To delete the whole of the existing Clause 16 and substitute with the new **Clause 16**, which shall read as follows:

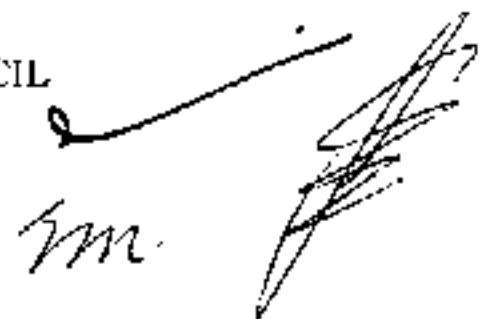
**“16. CONCILIATION AND ARBITRATION PROCEDURES**

**(1) CONCILIATION BY THE COUNCIL**

- (a) Subject to clause 16 (1)(b), a party to a dispute may refer a dispute, as contemplated in clauses 15(1)(a) and 15(2), in writing, on appropriate forms as prescribed by Council, to the General Secretary for conciliation of that dispute.
- (b) The referral must be made within 45 days of becoming aware of the dispute, subject to the proviso that a party may not refer a Schedule 7 item 2(1)(a) unfair labour practice dispute before invoking the grievance procedure and allowing at least 30 days for resolution thereof.
- (c) 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.
- (d) In the event of a Schedule 7 item 2 (1)(a) unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.
- (e) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that the referral has been properly served, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
- (i) appoint a conciliator to attempt to resolve the dispute through conciliation within 45 days of the date of the registration;
- (ii) decide the date, time and venue of the conciliation meeting; and
- (iii) notify the parties to the dispute of these details.



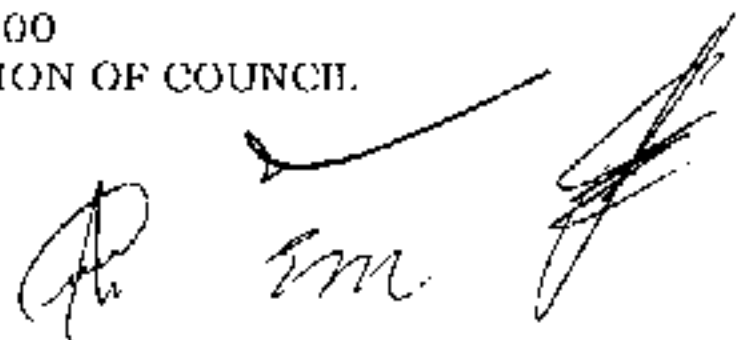
- (f) If the parties to a dispute have agreed on a particular conciliator, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within the 45 day period or any agreed period. If the parties do not agree upon a conciliator the General Secretary shall appoint the conciliator.
- (g) 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.
- (h) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
- (i) 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.
- (j) At the conclusion of the conciliation, the Conciliator must either:
- (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator. OR
  - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND



- (iii) issue the *General Secretary* of Council, not later than two (2) ordinary days thereof, with the original documents, as required by 16 (1)(j)(i) and (ii) above, OR
- (iv) if the parties requested the conciliator to arbitrate the dispute, having had regard to the Council's policy on arbitrations, issue the *General Secretary* with an arbitration award with reasons, within 14 days of conclusion of the proceedings, and it must be signed by the conciliator/arbitrator.
- (k) After the conclusion of the conciliation, the Council will not process the dispute any further, unless at the request of both parties to further explore conciliation or voluntary arbitration through Council.
- (l) If an arbitration award is issued in terms of either clause 16 (1) (j)(iv) or clause 16 (1)(k), the *General Secretary* must serve a copy of the award on each party to the dispute within 14 days of conclusion of the proceedings or as soon thereafter as possible.

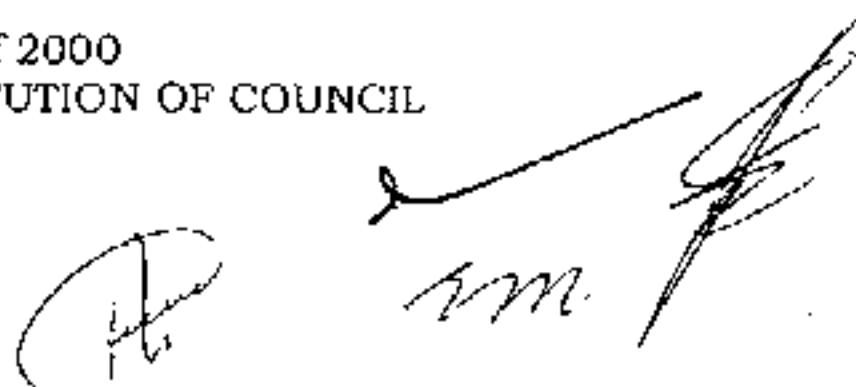
(2) ARBITRATIONS BY THE COUNCIL

- (a) Subject to clause 16(2)(b), a party to a dispute, as contemplated in clauses 15 (1)(b) and 15 (3), may refer the dispute, in writing, on the appropriate forms as prescribed by Council, to the *General Secretary* for arbitration of that dispute.
- (b) The referral must be made within 45 days of becoming aware of the dispute.
- (c) 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.
- (d) 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 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.
- (e) Should the parties not agree upon the arbitrator, as contemplated in clause 16(2)(d), within 10 days of the date of the



registration of the dispute, the General Secretary shall appoint an arbitrator.

- (f) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that referral has been properly served the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
- (i) appoint the arbitrator or arbitrators to arbitrate the dispute;
  - (ii) set the matter down for arbitration within 45 days of the registration of the dispute.
- (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 may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
- (i) 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
- (j) the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (k) In any arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.
- (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.

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(l) Within 14 days of the conclusion of the arbitration proceedings:-

(i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.

(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) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.

(3) CONCILIATION AND ARBITRATION BY THE COUNCIL

(a) Subject to clause 16(3)(b), a party to a dispute, as contemplated in clauses 15(1)(c) and 15(4), may refer the dispute in writing, on the appropriate forms as prescribed by Council, to the General Secretary for conciliation and arbitration of that dispute.

(b) The referral must be made within 90 days of becoming aware of the dispute, subject to the proviso that a party may not refer a dispute, except a dismissal dispute, before invoking the grievance procedure and allowing at least 30 days for resolution thereof.

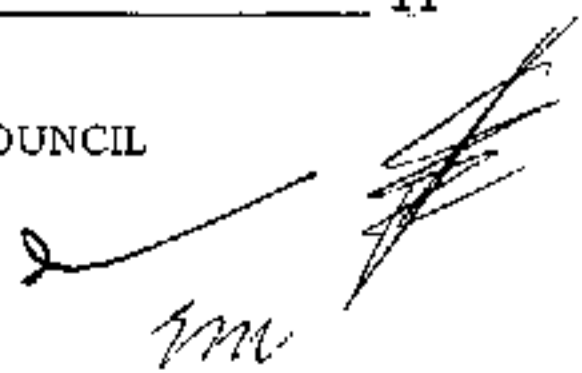
(c) Notwithstanding clause 16(3)(b), a dispute about a dismissal must reach the General Secretary within 45 days of the employee being informed of the dismissal.

(d) 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.

(e) The party who refers the dispute, other than a dismissal dispute, must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.

(f) If the General Secretary is satisfied that the dispute is a dispute in terms of its Constitution and that the referral has been properly served, the General Secretary must register the dispute, by recording it in a Dispute Register, and thereafter:

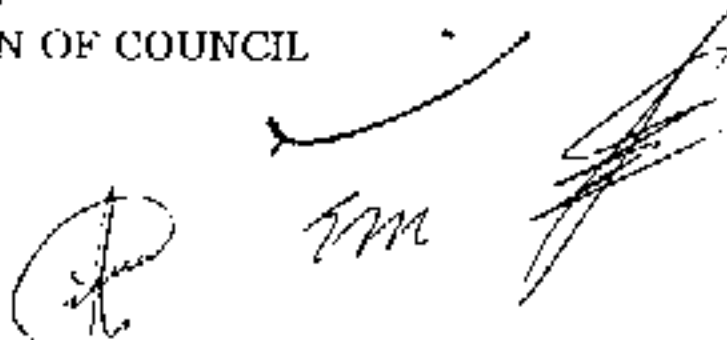
(i) appoint an arbitrator;



- (ii) set the matter down for arbitration within 45 days of registering the dispute;
- (iii) appoint a conciliator; and
- (iv) set the matter down for conciliation no less than 14 days before the arbitration.
- (g) 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(6).
- (h) The timeframes, referred to in clauses 16(3)(h) and (c), may be extended by the General Secretary, where there is a successful condonation application, relating to the late referral of the dispute.

#### CONCILIATION

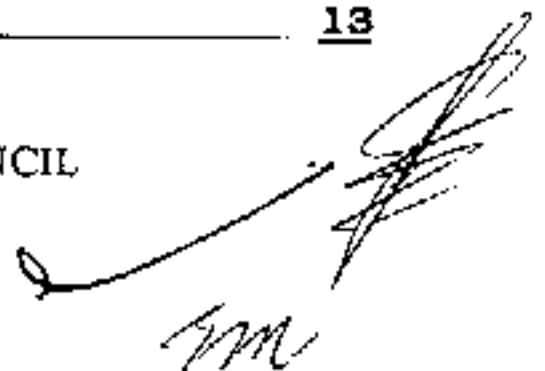
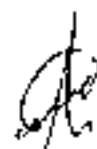
- (i) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
  - (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute immediately if the parties request the conciliator, in writing on the Council's prescribed forms, to do so.
- (j) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
- (k) 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.



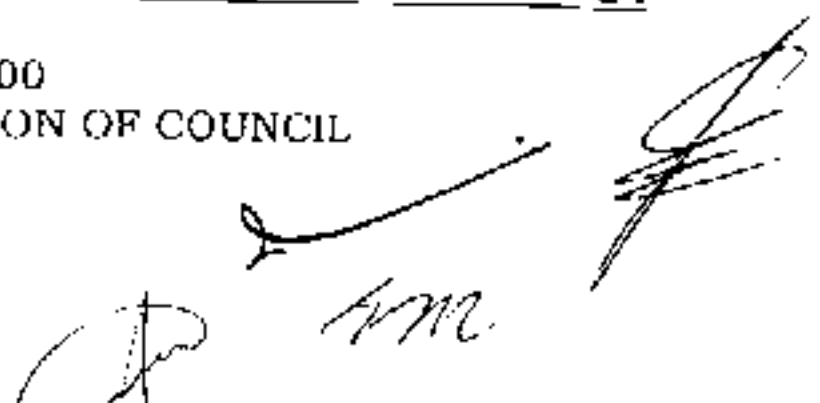
- (l) At the conclusion of the conciliation, the Conciliator must either:
- (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator, OR
  - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND
  - (iii) issue the General Secretary of Council, not later than two (2) ordinary days thereof, with the original documents as required by clauses 16 (3)(l) (i) and (ii) above, OR
  - (iv) if the parties agreed to immediate arbitration, in terms of clause 16(3)(i)(iv), having regard to the Council's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings and it must be signed by the conciliator/arbitrator.
- (m) In the event of immediate arbitration, the General Secretary must within 14 days of conclusion of the proceedings or as soon thereafter as possible serve a copy of the award on the parties.
- (n) If the dispute remains unresolved at the end of conciliation, the referring party must indicate in writing, within 4 working days, on appropriate forms as prescribed by Council, that the scheduled arbitration must proceed. The "Outcome Form for a Dispute referred to the ELRC for Conciliation", referred to in clause 16(3)(l)(ii), must be attached to the application for arbitration.

#### ARBITRATION

- (o) In respect of pre-arbitration pleadings, the onus rests with the parties to address this matter, prior to the date of the already scheduled for arbitration, of the said dispute.
- (p) The arbitrator may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.



- (q) 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.
- (r) Subject to clause 16(3)(s), in these arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.
- (s) 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 clause 16(3)(r), are not entitled to be represented by a legal practitioner in these 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
    - (dd) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (t) 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.

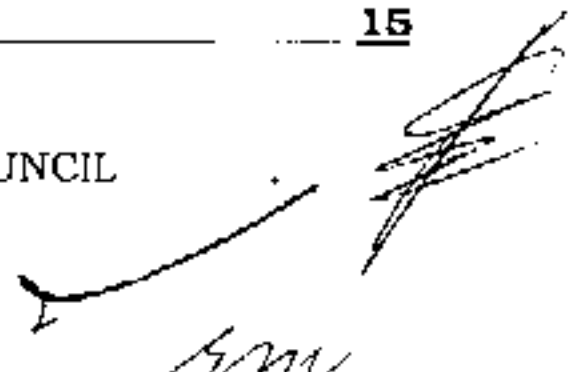
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- (u) Within 14 days of the conclusion of the arbitration proceedings –
- (i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.
  - (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) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.

(4) RECORDING OF CONCILIATION AND ARBITRATION PROCEEDINGS

- (a) The Council will not provide any recording facilities at conciliation or its related activities.
- (b) Subject to clause 16(4)(c), the Council shall, upon request, provide mechanical recording facilities, at the cost of Council, for arbitration proceedings.
- (c) The General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in Council.
- (d) The Council will not provide any transcripts of such recordings, unless the requesting party is willing to cover the costs of Council related to the production of such transcripts.
- (e) The Council shall keep the mechanical recordings, in a place determined by the General Secretary, and such recordings may only be available to the parties for a period not exceeding 180 ordinary days, from the date of its production.
- (f) The mechanical recording and the transcript shall be the property of the Council.
- (g) The Council reserves the right to destroy the recordings after the 180 ordinary days, referred to in clause 16(4)(c).

  
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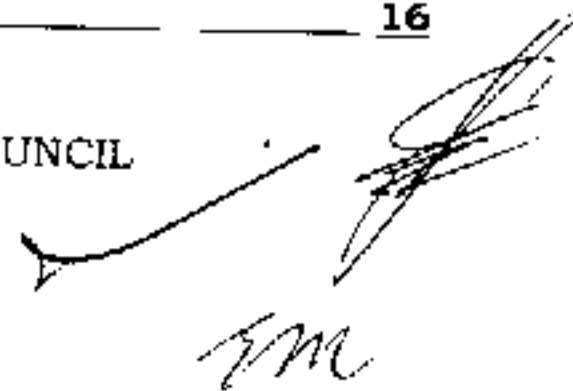
(5) COSTS

- (a) Subject to clause 16(5)(b), the Council shall pay the costs of the proceedings of conciliation and arbitration, in terms of Council's Policy.
- (b) If an arbitrator finds that a dismissal is procedurally unfair the arbitrator may charge the employer an arbitration fee<sup>1</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 or Council 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;
  - (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.

(6) PANELS OF CONCILIATORS AND ARBITRATORS

- (a) Subject to the Act, the Council may, at any of its meetings, for a period of one year at a time, appoint from nominations received from the parties:
- (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

<sup>1</sup> Section 140(2) of the Act provides this power to commissioners of the CCMA. This is a comparable power provided to arbitrators appointed by the Council



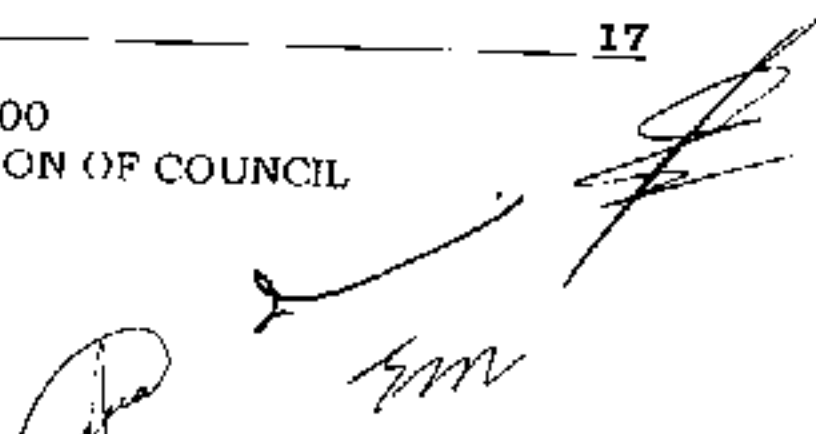
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employed in the national and provincial departments in the various provinces;

- (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, subject to the Act, 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, may 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 who must appoint a suitably qualified person to fill the vacancy.

(7) EXTENTION OF TIME PERIODS AND CONDONATION

- (a) The Council may require the referring party to set out in writing, on the appropriate forms as prescribed by the Council, the application for condonation of a late referral of a dispute.
- (b) 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.
- (c) Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- (d) 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.

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(e) 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.

29. To amend clauses 18(5) and (6) by substituting the reference to "[sub-clause (4)]" with "clause 18(4)".
30. To amend clause 18(8) by substituting the reference to "[sub-clauses (4), (5) and (6)]" with "clauses 18(4), (5) and (6)".
31. To amend clause 18(16) by substituting the reference to "[sub-clauses (14) and (15)]" with "clauses 18(14) and (15)".
32. To insert new clause 18(10) after the existing clause 18(9) with the following:  
"18(10) The signatories on a cheque shall be one from the Secretariat and one from amongst the chairperson or vice chairpersons."  
And to change the numbering of the old clauses 18(10) to (16) to now read clauses 18(11) to (17).
33. To amend clause 18(16) by deleting the words "[close of the period covered by the statements]" and replace with "approval of the said statements and reports at the Annual General Meeting."
34. To the deletion of the number "[162]", in clause 21(1), and replace with "261".
35. To the deletion of the word "[Street]", in clause 21(1), and replace with "Avenue".
36. To the deletion of the word "[mediation]", in clause 2 of Schedule 1.
37. To the deletion of the word "[DISCLOSUER]", in clause 3 of Schedule 1, and replace with the correct spelling of the word, DISCLOSURE.
38. To the deletion of the letter "[n]", in clause 4(2) of Schedule 1, and replace with the word "no".

### 39. ADOPTION AND DATE OF IMPLEMENTATION

- 39.1 The amended constitution of the Council is adopted and implemented on the date of signing in Council.
- 39.2 The amended constitution be referred to the Registrar of Labour, in terms of the *Act*.



**40. SCOPE OF THE AGREEMENT**

This agreement applies to and shall bind.

40.1 the Employer; and

40.2 all Employees of the Employer, as defined in the Employment of Educators Act, 1998 (as amended), whether such employees are members of trade union parties to this agreement or not.

**41. DISPUTE RESOLUTION**

Any dispute arising from the provisions of this agreement shall be referred to the Council for resolution.

Thus done and signed at CENTURION on this the 19<sup>th</sup> day of APRIL 2000.

On behalf of the STATE as the EMPLOYER

DEPARTMENT	NAME	SIGNATURE
<u>Education</u>	<u>D. Daniels</u>	<u>[Signature]</u>

On behalf of the EMPLOYEE parties

DEPARTMENT	NAME	SIGNATURE
<u>UNION</u>		
<u>NAPTOSH</u>	<u>ELIENI M. BINEHA</u>	<u>[Signature]</u>
<u>SITULA</u>	<u>J.C. KLOPPER</u>	<u>[Signature]</u>
<u>SADTY</u>	<u>W.M. MADISHA</u>	<u>[Signature]</u>

[Signature] [Signature]

**NOTES TO THE AMENDMENTS TO CLAUSES 15 AND 16 OF CHAPTER 4 OF  
THE CONSTITUTION OF THE ELRC**

**A. DISPUTES OF RIGHT in terms of clause 15**

1. In clause 15(1): [**clause 14**] is changed to now read **clause 15**.

2. Delete clause 15(4) and replace with new 15(4) which reads:

**"If the dispute is one that is contemplated in terms of clause 15(1)(c), the procedure contained in clause 16(3) applies"**

3. Clause 15(5) is deleted and moved to 16 3(h) with the change in clause numbering.

4. Clause 15(6) is deleted, as there is no longer a need for it, because 16(1), (2) and (3) now deal with the matter in detail.

**B. CONCILIATIONS in terms of clause 16(1)**

5. In clause 16(1)(a) provision is now made for prescribed forms, that are required by our new computerised Case Management System that is to be utilised for Dispute Resolution.

6. In clause 16(1)(b), the provision for timeframes and changed from [30] days to **45** days.

7. The provision that grievance procedure, must first be invoked in the event of a scheduled 7-item 2 (1)(a) unfair labour practice dispute, is drafted into clause 16(1)(b).

8. The new clause 16(1)(c) is a repeat of old 16(1)(b).

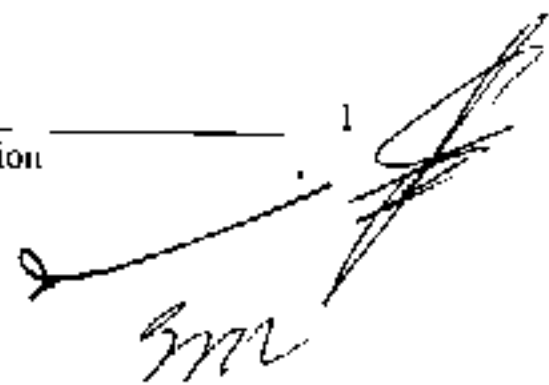

9. The new clause 16(1)(d) prescribed that the grievance procedure must be invoked prior to referral in a discrimination dispute.

10. The new 16(1)(e) is a re-write of the old 16(1)(c) but includes the condition that

**"the dispute is a dispute in terms of the ELRC constitution"**

and it also provides for the **"registration of the dispute"**.

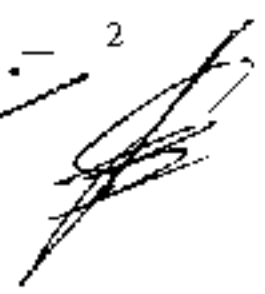
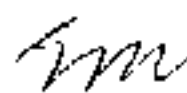
11. The new clause 16(1)(f) is a repeat of the old clause 16(1)(d).



12. The new clause 16(1)(g) is a repeat of the old clause 16(1)(e).
13. The new clause 16(1)(h) is a repeat of the old clause 16(1)(f) as amended removing [only by or co-employee].
14. The new clause 16(1)(i) is a repeat of the old clause 16(1)(g).
15. The new clause 16(1) (j),(k) and (l) are additional clauses for the following reasons:
  - That it specifies what action will follow at the conclusion of conciliation
  - That it includes a provision for voluntary arbitration, under the auspices of the Council.

### C. ARBITRATIONS in terms of clause 16(2)

16. The new clause 16(2)(a) is a repeat of the old clause 16(2)(a), however, it requires prescribed forms.
17. The new clause 16(2)(b) is included because the provision for timeframe was lacking
18. The new clause 16(2)(c) is a repeat of the old clause 16(2)(b).
19. The new clause 16(2)(d) is a repeat of the old clause 16(2)(c)
20. The new clause 16(2)(e) is a repeat of the old clause 16(2)(d) with the amendment of “[from date of referral] to “the date of registration””.
21. As in 16(1)(e), the new clause 16(2)(f) provides for the General Secretary to exercise a discretion as to whether “the dispute is a dispute in terms of the constitution” of the FLRC and to register the dispute. It replaces the old 16(2)(c).
22. The new clause 16(1)(f) is a repeat of the old clause 16(1)(d).
23. The new clause 16(2)(h) is a repeat of the old clause 16(2)(h).
24. The new clause 16(2)(I) is a repeat of the old clause 16(2)(h).
25. The new clause 16(2)(j) is a repeat of the old clause 16(2)(I) but excluding the words [subject to clause 16(2)(j)] and [a co-employee or]
26. The new clause 16(2)(k) is a repeat of the old clause 16(2)(k).



27. The new clause 16 (2)(l) is a repeat of the old clause 16(2)(l). It, however, provides that the arbitrator must have regard to the council's policy on arbitration.

**C. CONCILIATIONS AND ARBITRATIONS in terms of the new clause 16(3).**

28. The new clause 16(3)(a) is a repeat of 16(1)(a) and the old clause 15(4)(a), however, includes the requirement of prescribed forms.

29. The new clause 16(3)(b) deals with time-frames and includes the condition that the grievance procedure must first be invoked, before a Council attends to dispute, except in the case of a dismissal dispute.

30. The new clause 16(3)(c) deals with time-frames for dismissal disputes and is a re-write of the old clause 15(4)(d).

31. The new clause 16(3)(d) is a repeat of the old clause 15(4)(c).

32. The new clause 16(3)(e) provides for the compulsory invoking of the grievance procedure.

33. The new clause 16(3)(f) is a repeat of the old clause 15(4)(d) and it includes the provision for the General Secretary to discern whether the dispute is a dispute in terms of the constitution and also provides for the registration of a dispute.

34. The new clause 16(3)(g) is a repeat of the old clause 15(5), which dealt with the appointment of conciliators and or arbitrators.

35. The new 16(3)(h) is a repeat of the old 15(4)(e) with adjustments to appropriate sub-clauses.

36. The new clauses 16(3)(i), (j), (k) and (l) set out the duties of the conciliator. This replaces the old 15(6).

37. The new clause 16(3)(m) provides for the duties of the General Secretary if the parties agree to immediate arbitration after conciliation.

38. The new clause 16(3)(n) requires the use of prescribed form to refer the matter to arbitration.

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39. The new clause 16(o), (p), (q), (r), (s), (t) and (u) deal with arbitrations and introduce a few new concepts:

- The new clause 16(3)(o) provide for pre-arbitration pleadings
- The new clause 16(3)(p) enables the arbitrator to attempt conciliation if the parties agree

40. In the remaining clauses the arbitration provisions, are a repeat of the arbitration clauses from the old clause 16 (2).  
There is however, a change reflected in 16(3)(u) requiring the arbitrator to have regard to the council's policy on arbitrations.

### C. COSTS

41. Delete the old 16(3)(a) which read:

**["Subject to clause 16(5)(b), the Council will pay the costs of the arbitrators' arbitration proceedings."]**

and replace with the new 16(5)(a) which shall read:

**"Subject to clause 16(5)(b), the Council shall pay the costs of the proceedings of conciliation and arbitration, in terms of the Council's Policy."**

42. Insert the words **"or Council"** in between the words "party" and "make", in clause 16(5)(d).

### D. RECORDING OF CONCILIATION AND ARBITRATION PROCEEDING.

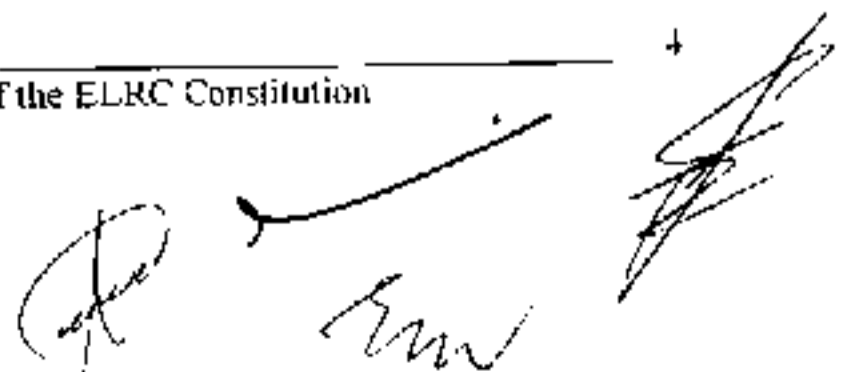
43. The new 16(4)(a) to (g) deal with the above.

44. These are new provisions and are self-explanatory and build on ideas enunciated at EXCO.

### E. PANEL OF CONCILIATORS AND ARBITRATORS

45. To delete clause 16 (4) and replace it by clause 16 (6).

Clause 16(6)(a) to read.



"Subject to the Act, the Council may, at any of its meetings, for a period of one year at a time, appoint from nominations received from parties-

(i) a panel of conciliators to conciliate disputes;

(ii) a panel of arbitrators to arbitrate disputes.

46. To amend clause 16(6)(e) by the insertion of the words "subject to the Act" between "may" and "appoint"

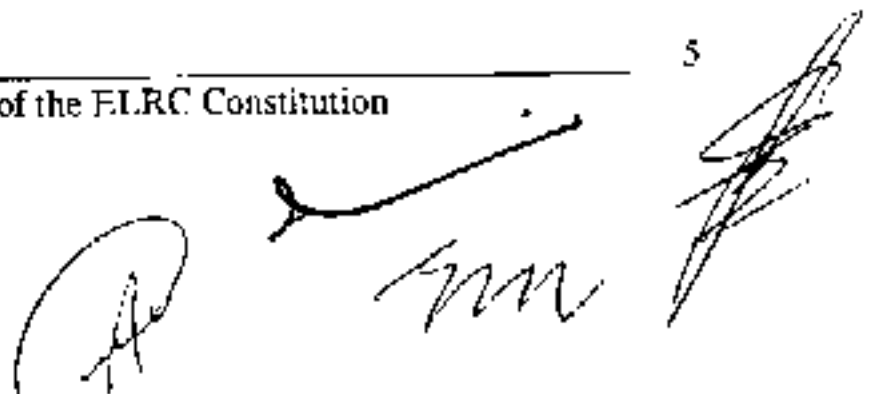
47. To amend clause 16(6)(f) to read:

"A member of a panel, whose term of office expires, [will] may be eligible for re-appointment"

#### F. EXTENSION OF TIME PERIODS AND CONDONATION.

48. The new clause 16 (7)(a) has been added to include the requirement of a prescribed form.

49. It should be noted that the heading has changed from 'time-period, and condonation' to 'extension of time periods and condonation', as this reflects more appropriately the substance of the paragraph

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