

# **EDUCATION LABOUR RELATIONS COUNCIL**

Established in terms of the S (37)(2) of the LRA of 1995 as amended



**elrc**


EDUCATION LABOUR  
RELATIONS COUNCIL

**23 AUGUST 2016**

**CONSTITUTION:**

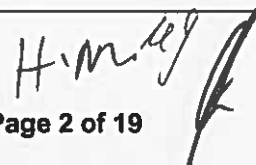
**PART D**

***SCHEDULES***

*H.M. 10/8* 

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## **SCHEDULE 1: PROTOCOL**

### **FOR OFFICE BEARERS, MEMBERS AND REPRESENTATIVES OF THE EXECUTIVE COMMITTEE AND ITS SUB COMMITTEES**

#### **1. INTRODUCTION**

- 1.1. The policy making and implementation process within the ELRC is by nature sensitive. The need for objectivity and credibility is essential.
- 1.2. The purpose of this document is to enable the ELRC to:
  - 1.2.1. Prevent conflict of interest and unethical behaviour by *office bearers and members*;
  - 1.2.2. Ensure that the *Council* functions efficiently and effectively;
  - 1.2.3. Give effect to *this Constitution of the Council*;
  - 1.2.4. Adopt principles of good corporate governance in line with King reports on Corporate Governance;
  - 1.2.5. Regulate the relations amongst *Council members*;
  - 1.2.6. Assist in maintaining the good governance of the *Council*;
  - 1.2.7. Provide guidance to all *office bearers and members* on matters of professional conduct and general practice.
- 1.3. It is expected that *office bearers and members* shall conduct themselves in a thoughtful, competent, well prepared, and impartial way at all times while representing ELRC.
- 1.4. It will be expected of *office bearers and members* to be impartial, promote equity and maintain high ethical principles, thereby conforming to the ELRC Code of Conduct.
- 1.5. Violation of any part of the Code of Conduct will result in *Council* responding appropriately.
- 1.6. *Members and office bearers* should exclude themselves for any other reason not listed in the Code of Conduct, which may represent an actual perceived conflict of interest.

#### **2. BIAS**

*Members and office bearers* shall:

- 2.1 Not advance either personal agendas or the parochial interests of their organisations to which they may be affiliated in the conduct of activities by attempting to apply personal or partisan interpretations of principles.

- 2.2 Examine the facts as they exist and not be influenced by prejudice, reputation, media accounts, etc., about an issue under discussion or decision-making.
- 2.3 Exclude themselves from participating in activities if, to their knowledge, there is some predisposing factor that could prejudice them with respect to an issue under discussion or decision-making; and
- 2.4 Exclude themselves from activities if they are philosophically opposed to or are on record as having made generic criticism about a specific issue.

**3. GIFTS/GRATITUDES**

- 3.1. *Members or office bearers* shall not request or accept any gifts of substance from institutions or individuals for work done that forms part of their normal activities within the ELRC.
- 3.2. If the giving of small tokens is important to an institution's or individual's culture, *members or office bearers* may accept these tokens from the institution or individual. If unsure, *members or office bearers* should err on the side of declining gifts of any kind.
- 3.3. *Members or office bearers* shall not expect elaborate hospitality during pre-visits or visits.
- 3.4. *Members or office bearers* shall use restraint in any expenditures charged to institutions or individuals, and shall abide by the guidelines of normal travelling reimbursement procedures.
- 3.5. In all instances all potential offers of gifts or gratitude's should be declared in writing to *Council* and may only be accepted with the official permission of the *Council*.

**4. CONFLICT OF INTEREST AND DISCLOSURE**

- 4.1 The duty to disclose rests on the *office bearer and member*.
- 4.2 *Members or office bearers* shall not participate in any decision-making capacity if they have an active association with an institution, professional organisation, or individual that is being under discussion or consideration.
- 4.3 An *office bearer and member* must disclose any interest or relationship that is likely to affect the *office bearer's* and *member's* impartiality or which might create a perception of partiality.
- 4.4 An *office bearer and member* nominated and/or appointed to serve the *Council* in any matter should, before accepting such appointment, disclose this to the *Council*:
  - 4.4.1 Any direct or indirect financial or personal interest in this matter;
  - 4.4.2 Any existing or past financial, business, professional, family or social relationship which is likely to affect impartially or may lead to a reasonable perception of partiality or bias;

- 4.4.3 If the circumstances requiring disclosure are unknown to an *office bearer* and/or *member* prior to accepting an appointment, disclosure must be made when the *office bearer* and *member* becomes aware of these circumstances.

## 5. CONSULTING

When considering or accepting a consulting or similar arrangement for private purposes with an institution or organization, an *office bearer* and/or *member* may not pose as an agent of the ELRC.

## 6. CONFIDENTIALITY

- 6.1 Confidentiality and the respect of confidentiality are an essential part of the workings of ELRC.
- 6.2 *Members* or relevant *office bearers* may have access to sensitive information in order to conduct their work.
- 6.3 *Members* and *office bearers* must protect the confidentiality of this information. The duty to respect protection of confidentiality on any issue is permanent. No *member* or *office bearer* shall at any time disclose confidential information to anyone not entitled to receive such information.
- 6.4 indicated otherwise, *members* and *office bearers* shall treat as confidential all elements of ELRC activities acquired through – documents, interviews, discussions, interpretation and analyses.
- 6.5 *Members* and *office bearers* shall not discuss in public places the particulars or specifics of any issue or case.
- 6.6 Information disclosed to an *office bearer* and *member* in any matter on behalf of the *Council* in confidence by a party during the course of the business of the *Council*, should be kept by the *office bearers* and *members* 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. GOVERNANCE AND MANAGEMENT

- 7.1 Both *members* and *office bearers* clearly understand the different responsibilities and role-play within the organization.
- 7.2 *Members* shall be engaged in policy making and laying down principles of operation within the ELRC.
- 7.3 On the other hand, it is the responsibility of the Secretariat to implement the policies and principles to the best of their ability, under the guidance of the *General Secretary*.
- 7.4 *Members* and *officer bearers* are therefore expected to refrain from:
- 7.4.1 Interfering in the day-to-day execution of duties by the Secretariat;
- 7.4.2 Getting involved in operational execution and decision-making

where the advice from *the General Secretary* has not been requested;

- 7.4.3 Requesting information from the Secretariat which is not regarded as part of the normal information expected to be shared with *members* and *office bearers*, and
- 7.4.4 Requesting favours from staff as this could be seen as compromising the secretariat.

## 8. LOGISTICAL ARRANGEMENTS

- 8.1 Arrangements are made in such a way that all *members* enjoy the full benefit of meetings they attend and have time to discharge their responsibilities.
- 8.2 *Members* and *office bearers* are expected to abide by the procedures and policies that govern the provision of goods and services.

## 9. COUNCIL ASSETS, GOODS AND SERVICES

- 9.1 Assets, property and services provided by the *Council* may be utilized solely for the purpose for which it is intended and for the advancement of *Council* activities;
- 9.2 These may not be used for private purposes;
- 9.3 It is the responsibility of the *office bearers* to maintain the assets to the highest standard expected by the *Council*.

## 10. THE STATUS OF THE COMMITTEE DECISIONS

*Members* and *office bearers* accept that:

- 10.1 The decisions of the Councillors and Sub-Committees are subject to the final ratification of the *Council*;
- 10.2 Any decision or action of a Committee shall be reported to the *Council* for consideration and may be ratified, set aside or varied by the *Council*;
- 10.3 The *Council*, by delegating any function, shall not divest any of its powers nor shall it be relieved of any function or duty that it may have delegated; and
- 10.4 These provisions, in context, apply to Sub-Committees and task teams established by a committee of *Council*.

## 11. DELEGATION OF THE COUNCIL POWERS AND FUNCTIONS

The *office bearer* and *member* accepts that:

- 11.1 The *Council* may:
  - 11.1.1 Contract with any person or an accredited agency to perform any function of the *Council* on its behalf, whether for reward or otherwise;
  - 11.1.2 Attach conditions to a delegation and may amend or revoke a

delegation at any time;

11.1.3 Delegate a function or any matter to a Committee, which may be performed by any *member* or *office bearer* as authorized by the *Council*, unless the terms of that delegation prevent the Committee from doing so; and

11.1.4 Vary or set aside any decision made by a person acting in terms of any delegation made.

11.2 The *Council*, by delegating any function, is not divested of any of its powers, nor is it relieved of any function or duty that it may have delegated.

## 12. REMUNERATION AND ALLOWANCES OF MEMBERS AND OFFICE BEARERS

12.1 The remuneration, allowance and any other terms and conditions of the *Council* are determined by the Executive Committee as delegated as delegated by Council

12.2 An *office bearer* and *member* is bound by the fee structure of the *Council* and should not enter into any other arrangements with the Secretariat regarding fees.

12.3 An *office bearer* and *member* must maintain adequate records (e.g. source documents) to support charges and or claims for *services* and expenses and must account timeously to the *General Secretary*

## 13. RESIGNATIONS AND/OR REMOVAL OF OFFICE BEARERS AND MEMBERS

13.1 A *member* of the *Council* may resign by giving notice to the *Council*.

13.2 The *Council*, acting on the advice of the Accounting Officer/*General Secretary* and or any committee, may remove a *member* of the *Council* from office for:

13.2.1 Misconduct

13.2.2 Incapacity

13.2.3 Negligence

13.3 The *Council* must fill a vacancy in the *Council* as soon as is practicable. In the meantime, the *Council's* proceedings and decisions continue to be valid.

13.4 Upon the termination of service, or if required by the *Council*, all goods and or assets and or any documents in the *office bearer's* and *member's* possession which belong to the *Council* shall forthwith be returned by the *members* or *office bearers* to the Accounting Officer/*General Secretary*.

## 14. SUPPORT TO BE PROVIDED BY THE ELRC TO MEMBERS AND OFFICE BEARERS

14.1 The ELRC shall endeavour to provide adequate support to enable the *members* or *office bearers* to perform strictly the *Council's* business subject to finances available.

- 14.2 Should a *member* require support in addition to those referred to in clause 14.1 above, then the *General Secretary* would have to decide on such a request in between meetings of the *Executive Committee*.

## 15. LIMITATION OF LIABILITY

- 15.1 The following shall remain the sole, absolute and exclusive property of the *Council*;
- 15.1.1 All books, brochures, drawings, photographs, member lists, research documentation;
  - 15.1.2 Schedules and the like which disclose, or tend to disclose, any information relating to the business or other activities of the *Council* or its *employees* or parties or *members* or suppliers;
  - 15.1.3 Skill, know-how and techniques of work or processes and
  - 15.1.4 Any other property as determined by the *Council*
- 15.2 The *members* and *office bearers* are obliged to disclose and cede to the *Council*;
- 15.2.1 Any discovery;
  - 15.2.2 Invention; and or
  - 15.2.3 Process or improvement
- In procedure made or discovered by the *office bearer* or *members* in the course and scope of his service to the *Council* in connection with or in any way affecting or relating to the business of the *Council* or which is capable of being used or adapted for use by the *Council* or in connection with the *Council's* business.
- 15.3 Such as contemplated in clause 15 above, shall belong to and be the sole, absolute and exclusive property of the *Council*.
- 15.4 No consideration shall be payable, by the *Council*, to the *office bearers* and *members* (in respect of the following that the *office bearers and members* shall assign to the *Council*) any copyright in all present and future works eligible for copyright, including, without limitation, literary or artistic works of which he/she may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his/her service to the *Council*.

## 16. IRREGULAR CONDUCT

- 16.1 The *office bearers* and *members* are obliged to immediately report, to the *General Secretary*, the following acts by fellow *office bearers, members, officials* and/or representatives of *Council* and/or any other person:
- 16.1.1 Theft;
  - 16.1.2 Fraud;
  - 16.1.3 Malicious damage to *Council* property;



16.1.4 Abuse of *Council* property or facilities; and

16.1.5 Other criminal act/s

16.2 If the acts as contemplated in clause 9 above apply to the conduct of the *General Secretary*, then the *office bearers* and *members* are obliged to report such to the Executive Committee of *Council*.

16.3 Other than the acts contemplated in clause 10 above, the *office bearers* and *members* accepts that the *General Secretary* is the Accounting Officer of the *Council* and shall, upon request of the *General Secretary* and/or *Council*, account for any function being performed on behalf of the *Council* to a prescribed forum.

## 17. DISCLOSURE OF INFORMATION

17.1 Pursuant to clause 6 above, the *office bearers* and *members* shall, at all times:

17.1.1 Keep such information confidential, and

17.1.2 Not make copies of or take extracts from any of the aforesaid documents.

17.2 The items, as contemplated in clauses 17.1.1 and 17.1.2, will not be removed from the business premises of the *Council* without the permission of the *General Secretary* and/or the *Council*.

17.3 Except for the obligations in terms of clauses 9 and 10 above, the *office bearer* and *member* shall not disclose any information, and/or act(s) of person(s) and/or group(s), as contemplated in clause 13 above, to any other person(s) and/or group(s), inclusive of those contemplated in clause 13 above.

17.4 Notwithstanding clause 14 above, the *office bearer* and *member* is obliged to make a disclosure upon official request of *Council*. Notwithstanding clause 14 above and excluding the obligations to clause 10 above, the *office bearer* and *member* is obliged to make a disclosure upon official request in terms of the applicable law.

## 18. GENERAL ATTRIBUTES OF AN OFFICE BEARER AND MEMBER

In order for the governance responsibilities of *office bearers* and *members* to be fair and just, an *office bearer* and *member* must:

18.1 At all times act with the utmost good faith towards the *Council*.

18.2 Not fraternise with employees, clients, officials, suppliers and, tenants of the *Council*.

18.3 Undertake to act in a fair and impartial manner to all persons or groups contemplated in clause 11 & 12 of *this Constitution*: General Provisions (Part A).

## ELRC CONSTITUTION

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- 18.4 Act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of the *office bearer* and *members* functions;
- 18.5 Conduct him or herself in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
- 18.6 Not solicit favour for him or herself. This shall not however preclude a *office bearer* and *members* from indicating a willingness to serve in any capacity;
- 18.7 Accept nominations and or appointments if the *office bearer* and *member* believes that he or she is available to attend to the tasks as required and is competent to undertake the assignment;
- 18.8 Avoid entering into any financial, business or social relationship which is likely to affect the *office bearer* and *member* impartiality or which might reasonably create a perception or partiality or bias;
- 18.9 Not influence any of the employees, officials, representatives and parties in the *Council* by improper means, which includes the giving of gifts or other inducements; and support sound labour relations in the *Council*;
- 18.10 Conduct the business of the *Council* fairly, diligently and in an even-handed manner;
- 18.11 Be patient and courteous to the parties and their representatives and should encourage similar behaviour by all participants in any proceeding;
- 18.12 Before proceeding in absence of any party, be satisfied that the absent party had been given adequate notice of the time, place and purpose of the meeting, conference and or workshop.
- 18.13 Not delegate his/her duty as appointed or assigned by the *Council* in any matter to any other person without prior notice to and the consent of the *Council*.
- 18.14 Observe faithfully both the limitation and inclusions of the terms of reference under which he/she serves.
- 18.15 Have the duty to plan work schedules in a manner that ensures that commitments to the *Council* are fulfilled timeously.
- 18.16 Co-operate with the officials, parties and the *Council* to avoid delays.
- 18.17 Decline any nomination and/or appointment if he/she is of the view that the task is beyond his/her competence.
- 18.18 If appointed as chairperson by the *Council*, avoid casual contact with any of the parties or their representatives while handling a matter.

## **SCHEDULE 2:**

### **ADDRESSES AND OFFICE HOURS OF COUNCIL**

#### **1. ADDRESSES**

- 1.1 The Physical address of *the Council* is: 261 West Avenue, Centurion, Gauteng, 0046
- 1.2 The postal address, telephone, fax numbers and e-mail address of the *Council* are:
- ELRC, Private Bag X126, Centurion, 0046
- Tel: (012) 663-7446
- Fax: (012) 643 1601 (Dispute Resolution)
- E-Mail: [elrc.gs@elrc.org.za](mailto:elrc.gs@elrc.org.za) (General)  
[admin.dispute@elrc.org.za](mailto:admin.dispute@elrc.org.za) (Disputes)

#### **2. OFFICE HOURS**

The Office of the *Council* shall be open:

- 2.1 on the following days: every Monday to Friday, excluding:
- 2.1.1 public holidays;
- 2.1.2 the days between 16 December and the Sunday at least 18 days thereafter, including both such *days*;
- 2.2 during the following hours 8:00 to 16:30 or as determined by the *Council*.

## **SCHEDULE 3:**

### **CODE OF GOOD PRACTICE FOR *PANELLISTS***

#### **1. PURPOSE**

The purpose of this code is to:

- 1.1 Assist in maintaining the good repute of the conciliation, mediation and arbitration processes.
- 1.2 Provide guidance to all *panellists* on matters of professional conduct and practice generally.

#### **2. GENERAL ATTRIBUTES OF A *PANELLIST***

In order for conciliation, mediation and arbitration processes to be seen to be fair and just, a *panellist* must:

- 2.1 act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of the *panellist's* functions;
- 2.2 conduct him or herself in a manner that is fair to all parties and not be influenced by fear of criticism or by self-interest;
- 2.3 not solicit appointments for him or herself. This shall not however preclude a *panellist* from indicating a willingness to serve in any capacity;
- 2.4 accept appointments only if the *panellist* believes that he/she is available to conduct the process promptly and is competent to undertake the assignment;
- 2.5 avoid entering into any financial, business or social relationship which is likely to affect his/her impartiality or which might reasonably create a perception of partiality or bias;
- 2.6 not influence any of the parties in *disputes* by improper means, including by the giving of gifts or other inducements;
- 2.7 support sound labour relations in the education sector.

#### **3. CONFLICT OF INTEREST AND DISCLOSURE**

- 3.1 A *panellist* should disclose any interest or relationship that is likely to affect the *panellist's* impartiality or which might create a perception of partiality. The duty to disclose rests on the *panellist*.
- 3.2 A *panellist* appointed to intervene in any matter should, before accepting, disclose this to the *General Secretary*:
  - 3.2.1 any direct or indirect financial or personal interest in the matter;
  - 3.2.2 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;

- 3.2.3 the circumstances requiring disclosure are unknown to a *panellist* prior to accepting appointments; disclosure must be made when the *panellist* knows these circumstances. The disclosure in this regard could in arbitration proceedings, include witnesses who may have a relationship with the *panellist*;
- 3.2.4 after appropriate disclosure a *panellist* may serve, if both parties so desire, but should withdraw if the *panellist* believes that a conflict of interest exists irrespective of the view expressed by the parties;
- 3.2.5 in the event where there is no consensus on whether a *panellist* should withdraw or not, a *panellist* should not withdraw if the following circumstances exist:
  - 3.2.5.1 if the terms of reference provide for a procedure to be followed for determining challenges to the *panellist* then those procedures should be followed;
  - 3.2.5.2 if a *panellist*, after carefully considering the matter, determines that the reason for the challenge is not substantial and that the *panellist* 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

- 4.1 A *panellist* should conduct proceedings fairly, diligently and in an even-handed manner.
- 4.2 A *panellist* should have no contact with any of the parties or their representatives while handling a matter without the presence or consent of the other parties.
- 4.3 A *panellist* should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings.
- 4.4 A *panellist* acting as *arbitrator* must respect agreements reached by the parties for the use of mechanical recording, provided that such agreement does not place the *panellist* under an obligation regarding supplying recording equipment or a medium upon which the hearing is to be recorded.
- 4.5 A *panellist* acting as *arbitrator* must consider the relevant legal, contractual and other pertinent circumstances in determining whether to conduct a hearing in the absence of one of the parties.
- 4.6 A *panellist* must be satisfied before proceeding in the absence of one of the parties that the absent party had been given adequate notice of the time, place and purpose of the hearing.
- 4.7 In the event of more than one a *panellist* acting as either a *conciliators*, mediators or *arbitrators*, the *panellists* should afford each other a full

opportunity to participate in the proceedings.

- 4.8 A *panellist* should not delegate his/her duty to intervene in any matter to any other person without prior notice to and the consent of the *General Secretary*.
- 4.9 A panellist may not represent any of the parties in any process.

## 5. POST-HEARING

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

## 6. CONFIDENTIALITY

Information disclosed to a *panellist*, acting as a *conciliator*, in confidence by a *party* during the course of conciliation, should be held by the *panellist* in the strictest confidence and should not be disclosed to the other *party* or person, unless authority is obtained for such disclosure.

## 7. JURISDICTION

- 7.1 A *panellist* must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which the *panellist* serves.
- 7.2 A *panellist* must accept a direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, as relieving the *panellist* of any further jurisdiction in respect of such issues.

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

When issuing an advisory or binding award a *panellist* may have regard to other *arbitrators'* awards, decided cases or independent research but must assume full responsibility in each matter for the decision reached.

## 9. AVOIDANCE OF DELAYS

- 9.1 A *panellist* has the duty to plan work schedules in a manner that ensures that

commitments to the *Council* are fulfilled timeously.

9.2 A *panellist* should co-operate with the parties and the *Council* to avoid delays.

9.3 A *panellist* acting as an *arbitrator* must, on completion of a hearing, adhere to the time limits prescribed for issuing an award.

## 10. FEES AND EXPENSES

10.1 A *panellist* should be governed by the fee structure of the *Council* and should not enter into any arrangements with the parties regarding fees.

10.2 A *panellist* must maintain adequate records to support charges for *services* and expenses and must account timeously to the *General Secretary*.

## 11. COMPETENCY

A *panellist* should decline appointment if he/she is of the view that the matter is beyond his/her competence.

## **SCHEDULE 4:**

### **POWERS OF DESIGNATED AGENTS OF BARGAINING COUNCILS**

1. The *General Secretary* may enter any workplace or any other place where an *employer* carries on business or keeps employment records, that is not a home, in order to monitor or enforce compliance with a collective agreement concluded in the *Council* and or its *Provincial Chambers*.
2. The *General Secretary* may only enter a home or any place other than a place referred to in paragraph 1:
  - 2.1. with the consent of the owner or occupier; or
  - 2.2. if authorised to do so by the Labour Court in terms of paragraph 3.
3. The Labour Court may issue an authorisation contemplated in paragraph 2.2 only on written application by the *General Secretary* who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with a collective agreement concluded in the *Council*.
4. If it is practicable to do so, the *employer* and a *Trade Union* representative must be notified that the designated agent is present at a workplace and of the reason for the agent's presence.
5. In order to monitor or enforce compliance with a collective agreement the *General Secretary* may:
  - 5.1. require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure to be under oath or affirmation;
  - 5.2. inspect and question a person about any record or document to which a collective agreement relates;
  - 5.3. copy any record or document referred to in paragraph 5.2 or remove these to make copies or extracts;
  - 5.4. require a person to produce or deliver to a place specified by the *General Secretary* any record or document referred to in paragraph 5.2 for inspection;
  - 5.5. question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in paragraphs 1 and 2;
  - 5.6. inspect or question a person about any work performed; and



- 5.7. perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
6. The *General Secretary* may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
7. The *General Secretary* must:
  - 7.1. produce on request a copy of the authorisation referred to in paragraph 3;
  - 7.2. provide a receipt for any record or document removed in terms of paragraph 5.5; and
  - 7.3. return any removed record, document or item within a reasonable period.
8. Any person who is questioned by the *General Secretary* in terms of item 5 must answer all relevant questions lawfully put to that person truthfully and to the best of that person's ability.
9. An answer by any person to a question by the *General Secretary* in terms of this item may be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
10. Every *employer* and each *employee* must provide any facility and assistance at a workplace that is reasonably required by the *General Secretary* to perform effectively the designated agent's functions.
11. The *General Secretary* may apply to the Labour Court for an appropriate order against any person who:
  - 11.1. refuses or fails to answer all relevant questions lawfully put to that person truthfully and to the best of that person's ability;
  - 11.2. refuses or fails to comply with any requirement of the designated agent in terms of this item; or
  - 11.3. hinders the designated agent in the exercise of the agent's powers in terms of this item.
12. The *General Secretary* may for the purposes of giving effect to this schedule appoint a *panellist* or other persons to perform the functions of the designated agent or labour inspector. Such delegation shall be in writing.
13. For the purpose of this Schedule, a collective agreement is deemed to include any basic condition of employment, which constitutes a term of a contract of employment, in terms of section 49(1) of the *BCEA*.

## DEFINITIONS

Unless the context indicates otherwise,

- (1) **'Arbitrator'** means a *panellist* who has been appointed to conduct an arbitration, and includes a tribunal of more than one *panellist*, if such tribunal is appointed in terms of *these procedures*;
- (2) **'BCEA'** means the Basic Conditions of Employment Act 75 of 1997;
- (3) **'Conciliator'** means a *panellist* who has been appointed to conduct conciliation;
- (4) **'Council'** means the Education Labour Relations Council;
- (5) **'Days'** is defined in clause 38.8 of *this Constitution: General Provisions (Part A)*
- (6) **'Dispute'** means a *dispute* that exists in respect of:
  - (i) matters that are regulated by uniform rules, norms and standards that apply to the education sector; or
  - (ii) matters that apply to terms and conditions of service that apply to the education sector; or
  - (iii) matters that are assigned to the State as *employer* in the education sector and includes an alleged *dispute*
- (7) **'Employee'** means an educator as defined in the Employment of Educators Act 76 of 1998;
- (8) **'Employer'** means the State in its capacity as *employer* as defined in the Employment of Educators Act 76 of 1998;
- (9) **'General Secretary'** means the official appointed in terms of *this Constitution*.
- (10) **'Executive Committee'** means the decision making body which comprises of 6 persons representing the *employer* and 6 persons representing the *Trade Unions* shared proportionately in terms of the vote weights determined by the *General Secretary*.
- (11) **'Members'** means those persons who have been appointed/nominated to the *Executive Committee* but do not hold office.
- (12) **'Office Bearer'** means a person(s) who hold office in the *Executive Committee* e.g. Chairperson, Deputy Chairperson etc.
- (13) **'PFMA'** means the Public Finance Management Act 1 of 1999;
- (14) **'Panellist'** means a member of the Panel established in terms of clause 63 of *this Constitution: Dispute Resolution Procedures (Part C)* and, where reference is made to a *panellist's* functions regarding *disputes*, means a *panellist* appointed to conciliate, arbitrate or conciliate and arbitrate a *dispute*;
- (15) **'Provincial Chamber'** means the Chamber of a given province.
- (16) **'the Act'** means the Labour Relations Act, 1995 (Act 66 of 1995), as amended;
- (17) **'this Constitution'** means the constitution of the *Council*;
- (18) **'Trade Union'** means an association of *employees* whose principal purpose is to

regulate relations between *employees* and *employers*, which is registered in terms of *the Act*, and includes a *Combined Trade Union Party*, unless inconsistent with the context.

## **INTERPRETATION**

- (1) Any other expression used in this procedure that is defined in *the Act* shall have the same meaning as in *the Act*, except that, if such expression is defined in *this Constitution*, it shall have the same meaning as in *this Constitution*.
- (2) Words used in singular in this procedure shall also be read as in plural.