EDUCATION LABOUR RELATIONS COUNCIL

Established in terms of the S (37)(2) of the LRA of 1996 as amended

COLLECTIVE AGREEMENT

NO. 1 OF 2006

16 MARCH 2006

CONSTITUTION
COLLECTIVE AGREEMENT NO. 1 OF 2006

CONSTITUTION

1. PURPOSE OF THIS AGREEMENT

The purpose of this agreement is to amend the constitution of the ELRC to incorporate changes that have been legislated in the Labour Relations Act and to ensure compliance with the Public Finance Management Act.

2. SCOPE OF THIS AGREEMENT

This agreement applies to and binds:

2.1 The employer, and

2.2 All the employees of the employer as defined in the Employment of Educators Act, 1998, whether such employees are members of trade union parties to this agreement or not.

3. THE PARTIES TO COUNCIL NOTE AS FOLLOWS:

3.1 The Labour Relations Act, No. 66 of 1995, as amended by the Labour Relations Amendment Act of 2002;

3.2 The experiences of the Council in expedited dispute resolution processes conducted under the auspices of the Council.

4. THE PARTIES TO COUNCIL THEREFORE AGREE AS FOLLOWS:

4.1 That Collective Agreement No. 6 of 2000 shall lapse and be replaced by this Collective Agreement upon this agreement taking effect; and

4.2 That this Collective Agreement shall comprise of the following:

4.2.1 Annexure A – Constitution: General Provisions

4.2.2 Annexure B – Constitution: Negotiation, Consultation & Dispute Resolution Procedures

4.2.3 Annexure C – Constitution: Schedules

[Signature]
5. DISPUTE RESOLUTION

Any dispute arising from the application or interpretation of this collective agreement shall be referred to the Council for resolution in terms of its dispute resolution procedures.

6. DATE OF IMPLEMENTATION

This agreement shall, in respect of parties and non-parties, come into effect on the 1st April 2006.

7. SIGNING OF THIS COLLECTIVE AGREEMENT

Thus done and signed at Centurion on this the 16th day of March 2006

ON BEHALF OF THE STATE AS THE EMPLOYER:

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ON BEHALF OF THE EMPLOYEE PARTIES:

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EDUCATION LABOUR RELATIONS COUNCIL
Established in terms of the S (37)(2) of the LRA of 1995 as amended

ANNEXURE A

16 MARCH 2006

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GENERAL PROVISIONS
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CHAPTER 1: INTRODUCTORY PROVISIONS

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

2. Juristic person
   2.1. The Council is a juristic person.
   2.2. 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. Accounting authority
   3.1. The Council is the accounting authority as envisaged in the PFMA. The Council delegates the discharging of its governance and other obligations to the Executive Committee; and
   3.2. The Executive Committee may delegate any of its powers or functions to any committee, sub-committee and or ad hoc committee of the Council, or the General Secretary.

4. Accounting Officer
   Subject to any applicable law, the General Secretary is the Accounting Officer of the Council.

5. Legislative framework
   5.1. The Council is a bargaining council that is deemed to be established in terms of section 37(3)(b) of the Labour Relations Act, No. 66 of 1995 (hereinafter referred to as "the Act") as read with Schedule 1 of the Act.
   5.2. The Council, as a public institution, shall in terms of its governance and financial management, operate in terms of the PFMA.

6. Constitutional scope
   The registered scope of the Council extends to the State in its capacity as employer and those employees in respect of which the Employment of Educators Act, 1998, applies.

7. Objectives of the Council
   Subject to the provisions of the Act, the objectives of the Council shall be:
COLECTIVE AGREEMENT NO. 1 OF 2006

7.1. to maintain and promote labour peace in education;
7.2. to prevent and resolve labour disputes in education and to perform dispute resolution functions in terms of section 51 of the Act;
7.3. to promote collective bargaining in relation to all matters of mutual interest and to conclude and enforce Collective Agreements;
7.4. to grant exemptions to parties and non-parties from Collective Agreements, where appropriate;
7.5. to conduct research, analysis and survey education nationally and internationally, and to promote training and capacity building in education;
7.6. to develop proposals for submission to the PSCBC, the CCMA and NEDLAC), or any other appropriate forum on labour policy and labour legislation that may affect education;
7.7. to confer on workplace forums matters for consultation;
7.8. to consider and deal with any other matters that may affect the interests of the parties; and
7.9. to extend the services and functions of the Council to other educational sectors.

8. Powers of the Council

The Council shall have the following powers:
8.1. to conclude contracts;
8.2. to mortgage, pledge or otherwise encumber any of its movable or immovable property;
8.3. to borrow, lend and invest money;
8.4. to take part in any form of consultation, litigation and dispute resolution proceedings;
8.5. to promote and establish training and education schemes;
8.6. 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;
8.7. 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;
8.8. to amalgamate with other Sectoral Bargaining Councils in the Public Service, if so agreed to by such other Sectoral Bargaining Council and the PSCBC;
8.9. to exercise any other powers that may be necessary or desirable to achieve the objectives of the Council and which shall include the authority and power to overrule matters which had been dealt with in a Provincial Chamber and which are in conflict with the provisions of this Constitution or any national agreement;
8.10. to delegate such matters as the Council may deem necessary to any Provincial Chamber, committee or sub-committee of the Council for conclusion and subject to any conditions which the Council may attach thereto;

8.11. to refer such matters as the Council may deem necessary to any Provincial Chamber;

8.12. to appoint a panel of conciliators and arbitrators or an accredited agency/agencies in terms of the provisions of the Act; and

8.13. to provide support services within the sector.

9. Parties to the Council

9.1. Parties

9.1.1. The parties to the Council shall be the State in its capacity as employer and registered Trade Unions that have members who fall within the registered scope of the Council and are admitted to the Council in terms of the provisions of this Constitution.

9.1.2. Any employer organisation registered in terms of the Act, may apply in writing to the Council to be admitted as a party.

9.2. Rights of admitted parties

Parties admitted to Council have the right to:

9.2.1. appoint representatives to the Council;

9.2.2. nominate representatives to any committee of the Council;

9.2.3. receive notices of meetings;

9.2.4. attend meetings, where applicable;

9.2.5. table proposals at any meeting;

9.2.6. vote in any Council meeting, with its vote weight as determined in terms of clause 18;

9.2.7. exercise organisational rights provided for in section 19 of the Act.

9.3. Admission

9.3.1. Any Trade Union or 2 or more Trade Unions acting together (referred to as a Combined Trade Union Party) may apply to the General Secretary for admission to the Council, provided that such Trade Union or Combined Trade Union Party meets the threshold requirement of 50 000 members within the registered scope of the Council.

9.3.2. A Trade Union or Combined Trade Union Party applying for membership to the Council, must submit:

(a) A copy of its constitution, fully updated with all amendments as registered and duly authenticated by the signature of its
Chief Executive Officer;

(b) A certified copy of the Trade Union’s or, in the case of a Combined Trade Union Party each individual Trade Union’s certificate of registration;

(c) The full names of the Trade Union’s Chief Executive Officer, or in the case of a Combined Trade Union Party each individual Trade Union’s Chief Executive Officer and the permanent street and postal addresses, the full telephone number(s), the full tele-fax number(s) and any other electronic or digital address of its head office;

(d) Any other information on which the Trade Union or Combined Trade Union relies for support of its application; and

(e) Proof that the Trade Union or Combined Trade Union Party satisfies the threshold requirements, including certified copies of the employer’s remittances of dues to the Trade Union concerned, or in the case of a Combined Trade Union Party, certified copies of the employer’s remittances of dues to each individual Trade Union;

(f) In the case of a Combined Trade Union Party, the agreement between the constituent Trade Unions addressing material aspects of their acting together arrangement, including

(i) the single Trade Union under whose name that Combined Trade Union Party will be admitted;

(ii) the allocation of agency fees between the Trade Unions.

(iii) proof that the period of validity of the agreement shall be for at least one calendar year from date of agreement.

9.3.3. Within 90 days of receipt of the application for admission to the Council, the General Secretary must, taking into account the requirements for admission as set out in clause 9.3.2 above:

(a) using the membership figures as at the end of the month preceding the month in which the application is made, verify the membership claims of the Trade Union or Combined Trade Union Party and, if satisfied that the threshold for membership has been met by the Trade Union or Combined Trade Union Party calculate the Vote Weight to be accorded to the Trade Union or Combined Trade Union Party; and,

(b) make a recommendation to Council, on whether the Trade Union or Combined Trade Union Party’s application for
admission should be accepted and what vote weight should be accorded to it and to all the other already admitted parties to the Council.

9.3.4. The Council must:

(a) decide whether to accept or reject the General Secretary’s recommendation;

(b) record, if applicable, its reasons for refusing admission to any applicant;

(c) if it admits the applicant Trade Union, or applicant Combined Trade Union Party, amend the Vote Weights of the Parties to the Council accordingly.

9.3.5. Within one month of a Council decision:

(a) to admit a party the General Secretary must issue such party with a certificate stating that it has been so admitted; or

(b) to refuse admission, the General Secretary must inform such party in writing of the Council’s decision and the reasons for the refusal.

9.4. Combined Trade Union Parties

9.4.1. If a Combined Trade Union Party is admitted to the Council in terms of clause 9.3.1, or if Trade Unions combine in terms of clause 9.4.2, the constituent Trade Unions will be represented in the Council as a single party and in the name of the Trade Union referred to in the agreement required by clause 9.3.2 or 9.4.2 (as the case may be), also for purposes of calculating their vote weight, and will at all times act as such single party.

9.4.2. Any Trade Union with members falling within the scope of the Council may join an admitted Trade Union (including an admitted Combined Trade Union Party) to form a Combined Trade Union Party, whether such Trade Union previously formed part of an admitted Combined Trade Union Party or not. Such Combined Trade Union Party must inform the General Secretary of such combination and supply him or her with the agreement between the constituent Trade Unions addressing material aspects of their acting together arrangement, including the elements listed in clauses 9.3.2(f)(i) to 9.3.2(f)(iii). The General Secretary must determine the vote weight of the Trade Union in terms of clause 18.

9.4.3. When the composition of the Trade Unions belonging to such Combined Trade Union Party changes by the withdrawal or expulsion of a previous member of the Combined Trade Union Party in terms of the agreement referred to in clause 9.3.2(f), the remaining member(s) of such Combined Trade Union Party must,
within one month of such change:

(a) notify the General Secretary of this change;

(b) where a Trade Union under whose name the Combined Trade Union Party was admitted, withdraws or is expelled, advise the General Secretary of the name of the Trade Union under whose name the Combined Trade Union Party will be known and submit to the General Secretary any new or amended agreement between the constituent parties dealing with the matters referred to in clause 9.3.2(f).

(c) The vote weight of such Combined Trade Union Party shall be recalculated by the General Secretary to cater for the new situation that arises from the Trade Union or Combined Trade Union Party’s admission, withdrawal or expulsion.

(d) The General Secretary shall at the next sitting of the Council inform the Council of the change and make a recommendation regarding the amendment of the vote weights arising from this change.

(e) The Council must amend the vote weight of the parties accordingly.

9.4.4. Where the General Secretary receives a notice referred to in clause 9.4.3, he or she shall then act in terms of clause 9.5.4.

9.5. Register of Trade Union Parties

9.5.1. The General Secretary must:

(a) maintain a register of admitted Trade Unions; and

(b) regarding a Combined Trade Union Party, record the names of the Trade Unions forming part of such party and, when informed or becomes aware that the composition of that Combined Trade Union Party has changed as provided for in clause 9.4.3, record such change.

9.5.2. Within one month of:

(a) the adoption by a Trade Union of a resolution to amend its name;

(b) registration by the Registrar of Labour Relations of a Trade Union’s name change;

(c) the adoption by an admitted Trade Union of a resolution to amalgamate with any other admitted Trade Union to form a new Trade Union; and

(d) registration by the Registrar of such amalgamation; the Trade Union shall notify the General Secretary in writing of such change.
9.5.3. The General Secretary must monitor the process of name change or amalgamation referred to in clause 9.5.2 and, when becoming aware that the Registrar has registered such name change or amalgamation, amend the register accordingly. If the relevant Trade Union has not informed the General Secretary as provided in clause 9.5.2, the General Secretary shall obtain written confirmation of such fact from the Trade Union concerned or from the Registrar before amending the register.

9.5.4. When the General Secretary amends the register regarding an amalgamation he or she must also:

(a) add the vote weight allocated to the constituent Trade Unions as determined in clause 18; and

(b) issue a notice to all the parties to the Council accordingly.

Such amalgamated Trade Union party shall have such combined votes from the date of the General Secretary’s notice referred to in clause 9.5.4(b).

9.5.5. Where a Trade Union that amalgamated with an admitted Trade Union was not, prior to the amalgamation, an admitted Trade Union, the membership of the previously unadmitted Trade Union shall not affect the vote weight of the amalgamated Trade Union, until the vote weights are adjusted.

9.5.6. Once the register is amended as provided for in clause 9.5.4:

(a) any amalgamated Trade Union shall, regarding each Trade Union that amalgamated, be responsible within the Council for all obligations of such Trade Union prior to amalgamation; and

(b) any Trade Union that changed its name shall be responsible within the Council for all obligations of such Trade Union prior to the name change.

9.5.7. The register shall be deemed to have been amended from the date of such amalgamation or name change, as the case may be.

9.6. Termination of membership

9.6.1. The General Secretary must terminate the membership of an admitted Trade Union when:

(a) he/she receives a notice of resignation of such membership of the Trade Union;

(b) it dissolves, winds up in terms of its constitution or is liquidated;

(c) the Registrar withdraws the Trade Union’s registration; or

(d) it no longer complies with the admission requirements, including the threshold requirement, prescribed in this
9.6.2. Subject to clause 9.6.1, the continued membership of the Trade Union to the Council shall be reviewed by the General Secretary quarterly in terms of clause 18.

9.6.3. Termination of a Trade Union's membership to the Council in terms of clause 9.6.1 may, upon written notice to the Council, be initiated by:

(a) The General Secretary following the review of membership figures as set out in clause 9.6.2; or

(b) Any party to the Council.

9.6.4. Within two weeks of the termination of the membership of an admitted Trade Union in terms of clause 9.6.1, the vote weight of the admitted Trade Unions must be adjusted by an agreement in terms of clause 17.5.2, with the changes required by the context. In the event of there being no consensus among admitted Trade Unions by the end of this period, the General Secretary shall calculate the vote weight by no later than two weeks after the expiry of this period, and the provisions of clause 17.5.3 shall then apply, with the changes required by the context.

9.6.5. The Council must consider any proposal from a party to the Council to terminate the membership of a Trade Union. In considering termination in such circumstances, the Trade Union must be afforded one month to submit written representations to the Council as to why its membership should not be terminated.

9.6.6. If the membership of a Trade Union is terminated and such a Trade Union disputes the termination, the dispute may be referred to the CCMA in terms of the Dispute Resolution Procedures.

10. Invitees to Council

10.1. Council may further invite persons or bodies to attend Council meetings.

10.2. If the Council invites a party as provided for in clause 10.1, the Council must also, at any time, decide whether such party shall have the right to speak in Governance Meetings of the Council.

10.3. The chairperson and/or members of the Audit Committee may be called upon to address meetings of the Council and/or the Executive Committee.
CHAPTER 2: STRUCTURES AND MEETINGS OF THE COUNCIL

11. Appointment of representatives

11.1. The employer shall be represented in the Council by such persons as the employer may from time to time appoint. The number of employer representatives shall not exceed the number of Trade Union representatives in the Council.

11.2. 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 (one) representative.

11.3. Parties to the Council shall make the names of their representative/s available to the General Secretary 30 days prior to 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.

11.4. A party may at any time withdraw any of its representatives in the Council by giving written notice to the General Secretary.

11.5. Should a vacancy arise in the Council as a result of the withdrawal, resignation or death of a representative, the party who previously appointed the relevant representative, by giving written notice to the General Secretary, shall fill the vacancy.

11.6. Should a party's membership of the Council be terminated, its representatives shall vacate their seats.

11.7. 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:

11.7.1. 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;

11.7.2. 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

11.7.3. the person co-opted will only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

11.8. The Executive Committee shall comprise 5 persons representing the employer and 5 persons representing the Trade Unions shared proportionately in terms of the vote weights determined by the General Secretary.

11.9. The Performance Sub-Committee shall comprise the Chairperson and Deputy
Chairperson with the Chairperson being the Convenor.

11.10. The General Secretary shall be an ex officio non-voting member of all governance committees and sub-committees.

11.11. The Chief Financial Officer shall be the convenor and a member of the Bid Evaluation Sub - Committee.

12. Appointment of office bearers

The Council shall, at its Annual General Meeting, elect a Chairperson and two Deputy-Chairpersons. One Deputy-Chairperson shall be elected from the Trade Unions and the other from the employer.

12.1. Chairperson and Deputy-Chairpersons

(a) The outgoing Chairperson shall preside over the Annual General Meeting of the Council, provided that the General Secretary shall preside over the election of the Chairperson and Deputy-Chairpersons.

(b) The General Secretary shall request nominations for a new Chairperson and Deputy-chairpersons for the forthcoming term of office, to reach him 30 days prior to the Annual General Meeting.

(c) A person other than a representative of the parties who has consented in writing to his or her nomination may also be nominated as Chairperson.

(d) All nominations shall be sent to parties at least 14 days prior to the Annual General Meeting.

(e) During the Annual General Meeting the General Secretary shall formally introduce the candidates before voting commences in terms of the provisions of clause 17.4. 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 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 of the papers out of the container. The candidate whose name is so drawn shall be declared as the elected Chairperson.

(f) 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.

(g) The provisions of clauses 12.1(a) to 12.1(e) shall, with the changes required by the context, apply in respect of the election of two Deputy-Chairpersons of the Council: Provided that one shall be elected from the employer and the other from the Trade Unions: Provided further that the Deputy-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.

(h) The Chairperson shall preside over all meetings of the Council. The Chairperson shall:

(i) subject to clauses 12.1(j) and 12.11(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) in a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson; and

(iv) counter-sign cheques on the Council's banking account.

(i) Whenever the Chairperson is not available, one of the Deputy-Chairpersons shall act as the Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.

(j) Whenever the Chairperson and the Deputy-Chairpersons are 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, and the Deputy-Chairpersons, shall not be entitled to vote on any matter: Provided that if any of the Deputy-Chairpersons have not been replaced by another representative of that party to the Council, such Deputy-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 Deputy-Chairpersons.

(l) The term of office of a Chairperson and Deputy-Chairpersons, the duration of which must not exceed two years at a time, may be terminated by written notice of either such Chairperson or Deputy-Chairperson, or by the Council consequent to a decision to that effect.

(m) The Council may from time to time determine a honorarium payable to the Chairperson of the Council in accordance with the Treasury Regulations: 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 conditions of such engagement of the Chairperson by agreement.

13. Removal of office bearers

13.1. Any office-bearer may be removed from office by the Council for incapacity, serious neglect of duty or misconduct, subject to fair procedure, in terms of the Council's protocol for office bearers, members and representatives of the Executive Committee, as set out in Schedule 1 of this Constitution.
13.2. Vacancies occurring as a result of the removal from office of an office-bearer shall be filled in terms of clause 12.

14. General Secretary and Staff

14.1. The Council shall appoint a General Secretary.

14.2. The Council shall determine the terms and conditions of employment, of the General Secretary.

14.3. Subject to the provisions of the PFMA and this Constitution, the General Secretary, as the Accounting Officer of the Council, shall be responsible for the sound management and administration of the Council including:

(a) All meetings of the Council and its committees and recording of minutes of meetings;

(b) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Council;

(c) correspondence of the Council;

(d) keeping an accurate filing system;

(e) general office administration;

(f) 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;

(g) submitting statements of the financial position of the Council whenever required to do so by the Council;

(h) countersigning cheques on the Council's banking account;

(i) 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;

(j) calculating the voting percentages of parties to the Council;

(k) keeping in safe custody at the offices of the Council, for a period of not less than 3 (three) years or in terms of the Council’s financial policy:

(i) a copy of the approved minutes of every meeting of the Council and its committees, duly signed by the Chairperson who presided at such meeting;

(ii) a copy of the approved minutes of every meeting of a Provincial Chamber, duly signed by the Chairperson who presided at such meeting;

(iii) the statements referred to in clause 19 and all records in relation thereto; and
(iv) all past Constitutions of the Council;

(l) entering into agreements regarding matters listed in this clause 14.3.

(m) appointment of the Provincial Secretaries and other part-time or full-time personnel as he or she may deem necessary, subject to the budget, staff structure and policies as adopted by the Council; or

(n) appointing such other staff as may be necessary, and be responsible for all staff employed by the Council, including the discipline and termination of employment;

(o) providing the Registrar with such information as required in terms of the provisions of the Act;

(p) providing the Auditor General and the Minister and any related body with such information as required in terms of the provisions of the PFMA;

(q) liaising with the Department of Labour, the CCMA or any other Dispute Resolution Forum with any relevant matter;

(r) determining the duties and functions of the staff employed in the Council;

(s) compiling the annual report of the Council;

(t) receiving and processing of all disputes in terms of approved policy and procedures of the Council and is the designated agent of the Council in terms of the Act;

(u) certification of arbitration awards for purposes of enforcement as envisaged in Section 143 of the Act.

(v) performing such other duties and functions as this Constitution, including its schedules and annexures, provides or as the Council may from time to time direct.

14.4. Unless otherwise determined by the Council, the General Secretary may delegate any of his/her functions to any of the staff of the Council.

14.5. The General Secretary is the designated agent of the Council and has the powers and responsibilities as set down Schedule 4 of this Constitution: Schedules (Annexure C)

14.6. The General Secretary must act impartially and in accordance with this Constitution and the decisions of the Council's constitutional structures. The General Secretary is accountable to the Council via the Executive Committee.

14.7. The General Secretary may be removed from office by the Council for incapacity, serious neglect of duty or misconduct, subject to just administrative action and fair labour practice.
15. Meetings of the Council

15.1. Council Meetings

The Council shall meet at least once a year at such venue, date and time as may be determined by the General Secretary, or as agreed to in terms of the Council year planner. Provided that one such meeting must be the Annual General Meeting.

15.2. Annual General Meeting

15.2.1. The Council shall hold its Annual General Meeting during the month of July each year.

15.2.2. Unless otherwise agreed to, the following matters shall be dealt with at the Annual General Meeting, in the following order:

(a) Welcome
(b) Presentation of credentials of Councillors
(c) Minutes of the previous Annual General Meeting
(d) Matters arising ex-minutes, other than those covered by the agenda
(e) Annual Report of the Council by the Accounting Officer in terms of the PFMA, including the financial statements of the previous financial year, which financial year shall run from 1 April to 31 March;
(f) The independent report of the Auditor-General in respect of the financial statements referred to in clause 15.2.2(e);
(g) The independent report of the Audit Committee, in terms of the PFMA;
(h) Adoption of the Annual Report of the Council, including the financial statements;
(i) The levies to be imposed on educators;
(j) The appointment of members of the Audit Committee;
(k) The appointment of a Chairperson of the Audit Committee;
(l) The appointment of members of the Executive Committee;
(m) The election of the Chairperson and Deputy-Chairpersons; and

(n) Closure

15.3. Special Governance Meetings of Council, the Executive Committee and the Audit Committee

15.3.1. Special meetings shall be called by the General Secretary upon a written request by:
16. Governance Committees of the Council

16.1. General

16.1.1. As indicated in clause 3 the Executive Committee performs the function of the Council as the accounting authority as envisaged in the PFMA.

16.1.2. The Executive Committee may, from time to time, establish committees and may, subject to such conditions as it may determine, delegate any of its functions to any such committee.

16.1.3. The Executive Committee may, from time to time, activate the convening of any sub-committee.

16.1.4. Any committee established in terms of clause 16.1.2, shall consist of equal numbers of representatives of Trade Unions and the employer.

16.1.5. In all committees the composition of the Trade Union representation will be proportional to their respective vote weights unless otherwise agreed to by the majority of Trade Unions.

16.1.6. Members of governance committees, excluding co-opted experts and the Audit Committee, must be members of Council.

16.1.7. Members of the Audit Committee shall be made up of five persons, as required in terms of sections 51(1)(a)(ii), 76(4)(d) and 77(a) of the PFMA and:

(a) may not be members of the Council;
(b) must be financially literate and
(c) must comprise of at least three persons who are independent of the parties to the Council.

16.1.8. Committees established in terms of clause 16.1.2 must submit regular written reports via the General Secretary to the Executive Committee the Council, as the case may be.

16.1.9. A Committee established in terms of clause 16.1.2 may co-opt experts to render assistance, provided that where such co-option has financial implications prior approval must be obtained from the
Executive Committee or the Council.

16.1.10. In respect of the procurement of goods and services that are meant to enhance the negotiation process and in order to ensure the procurement is in terms of the Supply Chain Management in terms of the PFMA and its regulations, the Treasury Regulations, and any other relevant legislation, a Bid Specification Sub-committee, a Bid Evaluation Sub-Committee and a Bid Adjudication Sub-Committee shall be constituted by the Accounting Officer.

16.1.11. The Bid Specification and Bid Adjudication Sub-committees shall be constituted of the Accounting officer, as the chairperson, a secretariat staff and an equal number of representatives of Trade Unions and the employer, to the maximum of two on either side.

16.1.12. The Bid Evaluation Sub-committee shall be constituted of the secretariat and be chaired by a nominee of the Accounting Officer.

16.1.13. No persons, representing the parties to the Council, shall be members of more than one of any of the three Bid Sub-committees.

16.1.14. In respect of the Bid Adjudication Sub-Committee:

(a) The Bid Adjudication Sub-Committee shall be composed of secretariat staff and an equal number of representatives of Trade Unions and the employer.

(b) The General Secretary shall be the Chairperson.

(c) The Accounting Officer (General Secretary) shall make the final determination on the award of the bid and accordingly advise the Executive Committee.

(d) All members of the Committee shall adhere to confidentiality and shall declare their financial and other related interest with respect to each procurement.

(e) Any member who has an interest in a particular bid may not participate in the adjudication of such a bid.

16.2. The Audit Committee

16.2.1. The Audit Committee:

(a) has explicit authority to investigate matters within its powers, as identified in the written terms of reference.

(b) must be provided with the resources it needs to investigate such matters and shall have full access to information.

(c) must safeguard all the information supplied to it within the ambit of the law; and

(d) must report and make recommendations to the Accounting Officer, but the Accounting Officer retains responsibility for implementing such recommendations.
16.2.2. In addition to the above, the audit committee must, in the annual report of the institution, comment on:

(a) the effectiveness of internal control systems;
(b) the quality of the yearly management and quarterly reports submitted in terms of the PFMA and the Division of Revenue Act; and
(c) its evaluation of the annual financial statements.

16.2.3. The Audit Committee must review the quarterly reports of the Accounting Officer and make recommendations to the Executive Committee on the acceptability of such reports.

16.2.4. Should a report to the Audit Committee, whether from the internal audit function or any other reliable source, implicate the Accounting Officer in fraud, corruption or gross negligence, the chairperson of the Audit Committee must promptly report this to the relevant executive authority, the Executive Committee and Council as the case may be.

16.2.5. The Audit Committee may communicate any concerns it deems necessary to the executive authority, the relevant treasury and the Auditor-General.

16.2.6. The Audit Committee must meet at least annually with the Auditor-General to ensure that there are no unresolved issues of concern.

16.2.7. The Audit Committee must table an independent report at the Annual General Meeting.

16.2.8. The functions of the Audit Committee, subject to sections 76(4)(d) and 77 of the PFMA and clause 3.1.10 of the Treasury Regulations issued in terms of the PFMA, are to review:

(a) the effectiveness of the internal control systems;
(b) the effectiveness of the internal audit function;
(c) the risk areas of the institution’s operations to be covered in the scope of internal and external audits;
(d) the adequacy, reliability and accuracy of the financial information provided to management and other users of such information;
(e) any accounting and auditing concerns identified as a result of internal and external audits;
(f) the institution’s compliance with legal and regulatory provisions; and
(g) the activities of the internal audit function, including its annual work programme, co-ordination with the external auditors, the reports of significant investigation and the responses of management to specific recommendations.
16.2.9. The Audit Committee shall comprise of 5 representatives, a minimum of 3 must be independent of the parties to Council.

16.2.10. The Chairperson shall be appointed from and by the independent representatives.

16.2.11. The term of office of members of the Audit Committee shall be three years and is not renewable.

16.3. The Executive Committee

16.3.1. The Executive Committee shall be accountable to the Council and shall have the following functions:

(a) to attend to such matters referred to it by the Council, committees of the Council or the General Secretary;

(b) to advise the Council on policy related to the governance of the Council;

(c) to perform the accounting authority functions of the Council;

(d) to receive quarterly reports, from the General Secretary, on the management of the Council; to interact with such and to advise the General Secretary, committees and the Council accordingly;

(e) to ratify the appointment of an acting General Secretary, made by the General Secretary, during his absence from work; and to appoint an acting General Secretary when the post is vacant;

(f) to receive a report by the Auditor-General and the General Secretary on the Management findings for the period under review;

(g) to plan and ensure, together with the General Secretary, the continuous evaluation of the Council and its performance;

(h) to develop and approve a budget and strategic plan for the Council;

(i) to recommend the appointment of the General Secretary to the Council;

(j) to determine standing orders for all sub-committees and ad hoc sub-committees;

(k) to appoint ad hoc sub-committees; and

(l) to identify and to make recommendations to the Council on research to be undertaken in terms of clause 7.5.

16.3.2. All decisions of the Executive Committee shall be decided by a simple majority of the parties on either side.
16.4. Sub-committees of the Executive Committee

16.4.1. The following sub-committees shall be constituted from time to time:

(a) Investment Sub-Committee;
(b) Budget Sub-Committee;
(c) Human Resource Sub-Committee;
(d) Legal Sub-Committee;
(e) Bid-Specification Sub-Committee
(f) Bid-Evaluation Sub-Committee;
(g) Bid-Adjudication Sub-Committee;
(h) Finance Sub-Committee; and
(i) Interview Sub-Committee

16.4.2. The number and members of each sub-committee, except the performance sub-committee, will be determined by the Executive Committee by a simple majority of the parties.

16.4.3. The composition of each Trade Union representation to governance committees must be proportional to its respective vote weight.

16.5. Investments Sub-Committee

16.5.1. to monitor the investment portfolios of the Council;

16.5.2. to ensure the investments of the Council are effected in accordance with Treasury regulations and any applicable legislation;

16.6. Budget Sub-Committee

16.6.1. to receive a draft budget and strategic plan from the General Secretary; to interact with such and to advise the Executive Committee accordingly;

16.6.2. to make recommendations on the review of the budget.

16.7. Human Resource Sub-Committee

The functions of the Human Resource Committee are:

16.7.1. upon request to assist and or to conduct interviews, and to recommend the appointment of certain categories of employees to the General Secretary, the Executive Committee and the Council, as the case may be;

16.7.2. to receive and interact with grievances of the staff against the General Secretary and to advise the General Secretary and the Executive Committee;

16.7.3. to consider and to develop proposals on matters that may impact on human resource policy regarding the Council staff; and to advise the General Secretary and the Executive Committee, as the case may be.
be:

16.8. Legal Sub-Committee
The functions of the Legal Sub-Committee are:
16.8.1. to attend to such legal matters referred to it by the Executive Committee or the General Secretary; and
16.8.2. to recommend to the General Secretary and the Executive Committee on policy matters and in respect of dispute prevention and resolution;

16.9. Bid Specification Sub-Committee
The function of the Bid Specification Sub-Committee is:
16.9.1. To deal with procurement above R 500 000.00 or any other limit prescribed by the National Treasury.
16.9.2. To determine the specification of goods and services that is to be procured.

16.10. Bid Evaluation Sub-Committee
The functions of the Bid Evaluation Committee are:
16.10.1. To deal with procurement above R 500 000.00 or any other limit prescribed by the National Treasury.
16.10.2. To evaluate bids by verifying the ability/capability of a bidder to execute the relevant contracts.
16.10.3. To verify tax clearance certificates issued to a bidder by the South African Revenue Service.
16.10.4. To submit a report and recommendation(s) regarding the award of the bid(s) to the adjudication committee

16.11. Bid Adjudication Sub-Committee
The functions of the Bid Adjudication Sub-Committee are:
16.11.1. To deal with procurement above R 500 000.00 or any other limit prescribed by the National Treasury.
16.11.2. To verify whether the highest scoring bidder has the capability and resources to carry out the contract as offered in the bid.
16.11.3. To select the best bid taking into account all the relevant legislation
16.11.4. To make a recommendation to the Accounting Officer on the best bid
16.11.5. To maintain a proper filing system of documents and minutes for record and audit purposes
16.12. Finance Sub-Committee
The functions of the Finance Sub-Committee are:
16.12.1. To interact with the quarterly and annual reports, of the Accounting Officer, including its financial statements; and,
16.12.2. To advise the General Secretary and the Executive Committee accordingly.
16.12.3. To consider and to develop proposals on matters that may impact on the financial policy of the Council; and to advise the General Secretary and the Executive Committee, as the case may be.

16.13. Interview Sub-Committee
The functions of the Interview Sub-Committee are:
16.13.1. upon request, to assist and or to conduct interviews, and
16.13.2. To recommend the appointment of certain categories of employees to the General Secretary, the Executive Committee and the Council, as the case may be.

17. General provisions on meetings
This clause applies to all Governance Meetings.

17.1. Notice of Meeting
17.1.1. At least 14 days written notice of a meeting of the Executive Committee or its Sub - Committees shall be given, setting out the time, date, venue and business to be transacted. However a shorter notice period may be agreed to by a preceding meeting;
17.1.2. Representatives should be given at least 5 days' notice, or such shorter period as provided in clause 17.1.1, of the venue of such a meeting.
17.1.3. It shall be deemed that due notice had been given to a party, if notice of any meeting was given by:
(a) the General Secretary or duly delegated staff of the Council serving notice on any representative of the party concerned;
(b) posting of a registered letter containing the notice to the party, at the registered address; or
(c) tele-faxing the notice to the office, provided that the tele-fax receipt shows that the notice has been transmitted to and received by the addressee.

17.2. Quorum of meetings
17.2.1. A quorum of meetings of the Council or its committees, except the Audit Committee, shall be at least those Trade Unions representing
50% + 1 and the employer: Provided that:

(a) proper notice in terms of clause 17.1 has been given to all of the parties; and

(b) 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.

17.2.2. The quorum of the Audit Committee shall be 3 members of which 2 must be independent.

17.2.3. If, within an hour 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. At such adjourned meeting, the parties present shall form a quorum: All parties may be given 2 days notice of the adjourned meeting as a courtesy.

17.3. Meeting procedure

17.3.1. Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting.

17.3.2. The minutes must be signed by the Chairperson and the General Secretary immediately after confirmation thereof.

17.3.3. 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.

17.3.4. The Chairperson shall rule on any procedural matter that is not regulated in this Constitution.

17.3.5. A person who is not a representative may be allowed to address the Council at the request of a party or the General Secretary and with the concurrence of the Council.

17.3.6. Every meeting of the Council shall be conducted in private unless the Council decides otherwise.

17.3.7. The General Secretary shall keep minutes of the proceedings at meetings and shall forward the said minutes to all parties within a period of 14 days after a meeting.

17.4. Voting

17.4.1. The employer shall have a collective vote, which shall be exercised by its representatives.

17.4.2. Trade Union representatives shall vote on the basis as determined in terms of clause 18.

17.4.3. In the Audit Committee the voting shall be by show of hands and a
majority of members present. A simple majority will take the decision.

17.5. Decisions of Council and liability of Executive Committee and Audit Committee Members

17.5.1. All proposals must be submitted in writing prior to a meeting and be read by the proposer or the Chairperson as a prerequisite to any debate or decision in respect thereof.

17.5.2. No proposal shall be considered unless it has been duly seconded.

17.5.3. 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.

17.5.4. Subject to the quorum requirements of clause 17.2, 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 16.9.

17.5.5. All decisions of the Council must be properly recorded in the minutes of such a meeting.

17.5.6. In respective of governance, a representative or member is personally responsible for any decision that he or she supports in the Council, the Executive Committee or Audit Committee.

18. Vote Weights

Vote weight of parties in the Council and its Provincial Chamber

18.1. The employer shall have 50% of the vote weight in the Council and its committees and the admitted Trade Unions the other 50% according to each trade union’s membership. Collectively the trade unions cannot exceed 50% representation.

18.2. 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 Provincial Chambers based on the PERSAL monthly remittances for the end of December of the previous year and as referred to in the Act.

18.3. In the event of there being no consensus among admitted Trade Unions in the Council on the vote weight, the General Secretary must calculate the vote weight, as at 31st December of the previous year, by no later than 15th March of each year and make recommendations to the Council using:

18.3.1. the monthly remittances referred to in clause 18.2 as at the end of March of the previous year; and

18.3.2. the recommendations of the official consultant auditors of the Council.
The vote weight that the General Secretary must calculate is the ratio of the Trade Unions' 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.

18.4. For the purposes of calculating the vote weight, dual and multiple membership shall be included in the total membership figures of each of the relevant Trade Unions in terms of the Official audited membership: 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.

18.5. 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: Provided that such dispute shall be registered within five days of the said determination. In the event of a dispute being declared, the vote weights of the previous year shall only apply until the dispute is resolved, if there is no Collective Agreement on the vote weights.

18.6. Subject to clauses 18.1 to 18.5, the General Secretary must also calculate the vote weights of Trade Union parties to the respective Provincial Chambers. The Provincial Chamber vote weight is calculated as the ratio of the Trade Unions' membership within that province to the total number of paid-up members of all Trade Unions, which are members to that Provincial Chamber.

18.7. Notwithstanding the provisions of clauses 18.1 to 18.5 above, in the event of any changes occurring in the membership of any of the admitted parties to the Council during the course of the year and/or in the event of any new Trade Union or Combined Trade Union Party being admitted to the Council in terms of clause 9.3.4 above, the vote weights of all the parties shall be accordingly amended to give effect to such changes and/or new admissions.
CHAPTER 3: PROVINCIAL CHAMBERS

19. Establishment of Provincial Chambers


19.2. A Provincial Chamber established in terms of clause 19.1 shall not be a juristic person, and shall operate as a committee of the Council.

20. Scope of Provincial Chambers

20.1. A Provincial Chamber shall function in the province within which it is established and shall deal with matters referred or delegated to that Provincial Chamber by the Council, as well as matters that fall exclusively under its jurisdiction.

21. Objectives of the Provincial Chamber

The objectives of a Provincial Chamber must be, within the province for which it has been established:

21.1. to maintain and promote labour peace;

21.2. to mutually prevent and resolve labour disputes;

21.3. to promote collective bargaining within the scope of its powers;

21.4. to conduct research, analyse and survey education, subject to approval by the Council; and

21.5. to promote training and build capacity, subject to prior approval by the Council.

22. Functions of the Provincial Chamber

The functions of Provincial Chamber must be:

22.1. to deal with such matters referred or delegated to that Provincial Chamber by the Council;

22.2. to conclude Collective Agreements on matters pertaining only to that Province: Provided that no Collective Agreement concluded in a Provincial Chamber may conflict with a Collective Agreement concluded in the Council;

22.3. to act as a forum for consultation between the employer and the Trade Unions in that Province;

22.4. to deal with matters emanating from the agreed dispute resolution procedure of the Council which fall within its competency;

22.5. 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
23. Parties to the *Provincial Chamber*

The parties to the *Provincial Chamber* shall be the *employer* and *Trade Unions* in the province, admitted to the *Council* in terms of the provisions of clause 9.

24. Appointment of representatives

24.1. The *employer*, must be represented in the *Provincial Chambers* by such persons as the *employer* may from time to time appoint, subject to a maximum of 1 (one) representative for each representative of a *Trade Union* in the *Provincial Chamber*. Provided that the *employer*, shall be entitled to have a number of observers equal to its number of representatives.

24.2. The composition of the representation of *Trade Unions* to any *Provincial Chamber* shall be on the basis of proportionality in terms of the vote weights applicable in the *Provincial Chamber*, subject to:

(a) the norm being 10 representatives;
(b) *Trade Unions* being entitled to a number of observers equal to the number of representatives; and
(c) *Trade Unions* being admitted and represented in the *Council*.

24.3. Parties to the *Provincial Chamber* shall make the names of their representatives, and observers available to the *Provincial Secretary* within 30 days of the meeting referred to in clause 28.1 of this *Constitution*. *Trade Union* representatives and observers shall be *members* registered in terms of their constitutions, or full-time or part-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.

24.4. A party may at any time withdraw any of its representatives or observers in the *Provincial Chamber* by giving written notice to the *Provincial Secretary*.

24.5. Should a vacancy arise in the *Provincial Chamber* 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 *Provincial Secretary*.

24.6. Should a party's *membership* of a *Provincial Chamber* or the *Council* be terminated, its representatives must vacate their seats.

24.7. Parties to the *Provincial Chamber* may co-opt persons to give expert advice, assistance or evidence on matters being discussed in the *Provincial Chamber*. Provided that:

24.7.1 where reasonably possible, the *Provincial 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;

24.7.2 *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 *Provincial Chamber* on a
specific matter; and
24.7.3 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.

25. Appointment of office bearers

25.1. Chairperson and Deputy-Chairperson

25.1.1. At the first meeting of the Provincial Chamber in a calendar year,
unless otherwise agreed, the parties shall elect a Chairperson and
Deputy-Chairperson from nominations from admitted parties
submitted to the Provincial Secretary in writing, 14 days prior to the
meeting. At this meeting the Provincial Secretary shall act as
presiding officer.

25.1.2. 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.

25.1.3. The Provincial Secretary shall send all nominations to parties five
days prior to the meeting referred to in clause 25.1.1

25.1.4. Any functions to be exercised by the Provincial Secretary in terms of
this clause 25.1 may, if the Provincial Secretary has not been
appointed or is not present or available, be fulfilled by the General
Secretary or any other person designated by the General Secretary.

25.1.5. 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 presiding
officer 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.

25.1.6. The Chairperson or Deputy-Chairperson shall hold office for a term
of 12 months unless removed by a decision of the Provincial
Chamber or the Council. The Chairperson or Deputy-Chairperson so
removed, or any past Chairperson or Deputy-Chairperson, may be
re-elected or nominated as the case may be.

25.1.7. The Chairperson shall preside over all negotiating meetings of the
Provincial Chamber except when a Facilitator is appointed.

25.1.8. The Chairperson shall:
(a) enforce order at all meetings at which he or she is present,
in accordance with normal meeting procedure;
(b) sign the minutes of a meeting after confirmation; and
(c) at a meeting, perform such other duties as by usage and
custom pertain to the office of Chairperson.
25.1.9. Whenever the Chairperson is not available, the Deputy-Chairperson shall act as Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.

25.1.10. Whenever the Chairperson or the Deputy-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.

25.1.11. The Chairperson or the Deputy-Chairperson, shall not be entitled to vote on any matter: Provided that if the Deputy-Chairperson has not been replaced by another representative of that party to the Provincial Chamber, such Deputy-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 Deputy-Chairperson.

25.1.12. The term of office of a Chairperson or Deputy-Chairperson may be terminated by written notice of either such Chairperson or Deputy-Chairperson, by the Provincial Chamber or the Council consequent to a decision to that effect.

26. Provincial Secretary

26.1. The Provincial Secretary shall be responsible for:

26.1.1. Convening meetings of the relevant Provincial Chamber and the recording of minutes of meetings;

26.1.2. Keeping a petty cash book of account in accordance with generally accepted accounting practice and the instructions of the General Secretary, and the policies of the Council;

26.1.3. Correspondence of the relevant Provincial Chamber;

26.1.4. Keeping an accurate filing system;

26.1.5. General office administration;

26.1.6. The implementation of the vote weights as determined by the General Secretary;

26.1.7. Keeping in safe custody at the offices of the relevant Provincial Chamber, for a period of not less than three years:

(a) A copy of the approved minutes of every meeting of the relevant Provincial Chamber, duly signed and dated by the Provincial Secretary and the Chairperson who presided at such meeting; and

26.1.8. Provide the Council and/or the General Secretary with such information required;

26.1.9. Referring all Collective Agreements reached in the relevant Provincial Chamber to the Council for ratification;
26.1.10. The Provincial Secretary shall submit accounts in respect of approved expenditure to the General Secretary for settlement.

26.1.11. The Provincial Secretary shall administer the petty cash.

26.1.12. The Provincial Secretary shall develop and submit to Stanco a draft budget and operational plan of the relevant Provincial Chamber, for the following financial year by 1st May and to the General Secretary by 31st May.

26.1.13. Funds required for a petty cash account shall:
   (a) be kept safely in such a manner as the General Secretary may determine from time to time; and
   (b) not exceed the limit determined by the General Secretary.

26.1.14. The Provincial Secretary must provide
   (a) on a quarterly basis within three days of the end of a particular quarter a consolidated report on the organisational performance of the Provincial Chamber;
   (b) on an annual basis an annual report by no later than 15th April of each year.

26.1.15. The Provincial Secretary shall take cognizance of the provisions of the PFMA and comply with its requirements.

26.1.16. The General Secretary shall prepare and submit quarterly statements of the expenditure to the Provincial Secretary.

26.1.17. Performing such other duties and functions as the Council or the General Secretary may from time to time direct.

27. Removal of office bearers

   The provisions of clause 13 shall apply, with the changes required by the context.

28. Special Meeting of the Provincial Chamber

28.1. The Provincial Chamber must annually hold a meeting during the period 01st September to 30th November, in order to deal with the following:

28.1.1. The report of the Accounting Officer as presented by the Provincial Secretary, on the Provincial Chamber and its activities of the previous year.

28.1.2. Other matters on the previous Provincial Chamber agenda.

28.2. At the first meeting of a Provincial Chamber in each calendar year, unless otherwise agreed, the parties shall elect a Chairperson and a Deputy Chairperson from written nomination submitted to the Provincial Secretary, by parties to that Provincial Chamber.

28.3. All nominations contemplated in clause 28.2 above must, unless otherwise
agreed, be received by the Secretary 14 days prior to the meeting at which such elections would occur.

29. Standing sub-committee (STANCO)

29.1. There is hereby established a Standing Sub-Committee (STANCO). The composition of Stanco shall be the leaders of the admitted parties or their nominees;

29.2. The STANCO shall be held at least once a quarter as determined by the General Secretary or as agreed with the Provincial Chamber. The following matters shall be dealt with at the STANCO meeting:

29.2.1. Welcome
29.2.2. Presentation of credentials of STANCO representatives;
29.2.3. Minutes of the previous meeting;
29.2.4. Matters arising from such minutes, other than those covered by the agenda;
29.2.5. Report of the Accounting Officer, presented by the Provincial Secretary, of the previous quarter on the activities of the Provincial Chamber and covering the recommendations of any task team, ad hoc committee and or workshop of Provincial Chamber;
29.2.6. Other competent matters identified prior to meeting;
29.2.7. Date of next meeting as per year planner;
29.2.8. Closure.

29.3. Parties to the Provincial Chamber shall make the names of their leader representatives and nominees available to the Provincial Secretary in January of each calendar year.

29.4. The Provincial Secretary shall be a non-voting member and convenor of the Stanco.

29.5. A party may at any time withdraw any of its representatives or nominee from the Stanco by giving notice to the Provincial Secretary.

29.6. Should a vacancy arise in the Stanco 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 nominee and by giving written notice to the Provincial Secretary.

29.7. Should a party's membership of a Provincial Chamber or the Council be terminated, its representatives and nominees must vacate their seats.

29.8. Special meetings: The Provincial Secretary shall, upon a written request by the employer or any Trade Union party to the Provincial Chamber, call special Provincial Chamber meetings; Provided that the Provincial Secretary believes that such meeting may be quorate; And provided that the General Secretary has
agreed to such special Provincial Chamber meeting.

30. General provisions on meetings of the Provincial Chamber

30.1. Notice of Meeting

30.1.1. At least 14 days' written notice shall be given, or such shorter period agreed to by all parties or agreed to at a previous meeting, setting out the time, date and business to be transacted; and at least four days' written notice, or such shorter period agreed to, of the venue.

30.1.2. It shall be deemed that due notice had been given to a party, if notice was given by:

(a) the Provincial Secretary of the Provincial Chamber serving notice on any representative of the party concerned;

(b) the posting of a registered letter containing the notice to the party, at the registered address; or

(c) Tele-faxing the notice to the office, provided that the tele-fax receipt shows that the notice had been transmitted to and received by the addressee.

30.2. Quorum of a Meeting

30.2.1. A quorum of a meeting of the Provincial Chamber shall be those Trade Unions representing 50% + 1 and the employer. Provided that:

(a) proper notice in terms of clause 30.1 has been given to all of the parties; and

(b) 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.

30.2.2. A quorum of a Stanco must be any or those Trade Unions representing 50% + 1 and the employer.

30.2.3. If, within the first hour 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. All parties may be given 2 days notice of the adjourned meeting as a courtesy.

30.3. Voting in Provincial Chamber and Stanco

30.3.1. The employer has a collective vote of 50% that shall be exercised by its representatives and the admitted Trade Unions the other 50% collectively.
30.3.2. *Trade Union* representatives shall vote on the basis of their vote weights as determined by the *Council* for such *Provincial Chamber*.

30.3.3. The voting shall be by show of hands, unless a party requests a ballot, in which event the voting shall be by way of secret ballot.

30.3.4. The *Provincial Secretary* shall act as electoral officer.

30.4. **Vote weight**

The provisions of clause 18 shall apply, with the changes required by the context.

30.5. **Meeting procedure**

30.5.1. 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.

30.5.2. 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.

30.5.3. The Chairperson shall rule on any procedural matters, which are not regulated in *this Constitution*.

30.5.4. Representatives and observers shall be entitled to attend meetings of the *Provincial Chamber* but observers shall not take part in debates, or vote.

30.5.5. A person who is not a representative may be allowed to address the *Provincial Chamber* at the request of a party and with the concurrence of the *Provincial Chamber*.

30.5.6. Every meeting of the *Provincial Chamber* shall be conducted in private unless the *Provincial Chamber* decides otherwise.

30.5.7. The *Provincial Secretary* shall keep minutes of the proceedings at *Provincial Chamber* meetings in such a manner as decided by the *General Secretary*, and shall be forwarded by the *Provincial Secretary* to all parties within a period of 14 days after a meeting.
CHAPTER 4: ACCOUNTING RESPONSIBILITIES

31. General

31.1. As provided for in clause 3 of this Constitution, the Executive Committee is the accounting authority on behalf of the Council, and as provided for in clause 4 the General Secretary is the Accounting Officer.

31.2. The financial and reporting year of the Council shall be from 1st April of a particular year to 31st March of the next year.

31.3. Quarterly and annual reports must be prepared, as provided for in the PFMA and, insofar as they relate to financial matters, shall be in accordance with treasury guidelines or accepted accounting practice, showing monies received and expenditure incurred over the relevant period.

31.4. Budget

31.4.1. On or before the 15th day of June of each year, the various committees of the Council must submit their inputs on the budget for the following three years to the General Secretary.

31.4.2. The budget of the Council shall also make provision for the administration and functioning of Provincial Chambers.

31.4.3. A draft budget must then be submitted to a meeting of the Executive Committee via the budget review process.

31.4.4. The Budget Sub-Committee shall interact with the budget.

31.4.5. The General Secretary shall, during the last two weeks of August of each year, submit to a special meeting of the Executive Committee an annual budget, with multi-year projections, which must be approved as submitted or in an amended form at such a meeting.

31.5. Receipts

31.5.1. The expenses of the Council shall be met from a fund or funds, which shall be raised by levies on employers and employees. Levies may be revised and adjusted by the Council from time to time.

31.5.2. 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 clause 31.5.1.

31.5.3. 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 clause 31.5.1.

31.5.4. 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.

31.5.5. Monies received by the Council from levies imposed in terms of
clauses 31.5.1, 31.5.2 and 31.5.3 shall firstly be applied to meet the monthly expenditure budget of the Council, and monies not so applied shall, subject to treasury regulations:

(a) at the discretion of the 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 and the PFMA.

31.6. Disbursement and petty cash

31.6.1. All disbursements to be made from the funds of the Council shall be approved and or ratified by the General Secretary and shall be paid in any legal tender.

31.6.2. Funds required for a petty cash account shall:

(a) be kept safely in such a manner as the General Secretary may determine from time to time;

(b) be provided by the drawing of a cheque; and

(c) not exceed the limit determined by the General Secretary.

32. Accounting Officer

32.1. A full audit of the books of the Council must be prepared as at 31st March of each year.

32.2. The General Secretary shall, prior to the Annual General Meeting of each year, in respect of the previous financial year, prepare the financial statements and a report on the activities of the Council against the business plan and in terms of the PFMA.

32.3. Certified copies of the audited financial 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.

32.4. All the statements as well as the auditor's report shall be included in the annual report of the Council.

32.5. The General Secretary shall present his/her report at the Annual General Meeting of the Council.

32.6. Certified copies of financial statements and of the auditor's reports referred to in clauses 32.3 and 32.4 shall be transmitted to the Executive Authority as envisaged by the PFMA, the Registrar and the National Treasury or any other body or forum or committee as the case may be, within 90 days after the close of the period covered by the statements.

32.7. The General Secretary shall present and distribute the annual report as envisaged by the PFMA.

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[Signature]
32.8. The General Secretary shall, within 30 days after the end of each quarter, present quarterly reports as at the preceding quarter including a financial statement and a report on the performance of the Council against the objectives set in an operational and strategic plan.

32.9. Quarters run from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March.
CHAPTER 5: GENERAL PROVISIONS

33. Negotiations, Consultations and Dispute Resolution Procedures

33.1. The negotiations, consultations and dispute resolution procedures are contained in Annexure B of this Constitution.

33.2. Any amendment to Annexure B must be dealt with in terms of this Constitution.

34. Amendment of this Constitution

34.1. The Council may amend this Constitution at any time by 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:

34.1.1. one month's notice to the General Secretary; and

34.1.2. two weeks' notice to parties to the Council.

35. Seat of the Council

35.1. The seat and domicilium citandi et executandi of the Council shall be:

261 West Avenue,
Centurion
0046,
Gauteng,
Republic of South Africa

36. Winding Up

36.1. At a special meeting called for that purpose, the Council may decide by resolution to wind up the Council.

36.2. Upon adoption of a resolution to wind up, the General Secretary must:

36.2.1. apply immediately to the Labour Court for, amongst others, an order giving effect to the resolution; and

36.2.2. deliver the Council's books of account and its assets, including all funds and investments, to the liquidator appointed by the Labour Court.

36.3. 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.

36.4. 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 CCMA.
37. Interpretation

37.1. Any dispute relating to the interpretation or application of this Constitution shall be resolved by a decision of the 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 the Council's Negotiations and Dispute Resolution Procedures.

37.2. The decision of the arbitrator shall be final and binding.

38. Definitions

Unless otherwise specified, any expression used in this Constitution that is defined in the Labour Relations Act 66 of 1995 has the same meaning as in the Act:

38.1. 'Accounting Officer' shall mean the same as General Secretary;

38.2. '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;

38.3. 'BCEA' means the Basic Conditions of Employment Act 75 of 1997;

38.4. 'CCMA' means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act No.66 of 1995.

38.5. 'Chief Executive Officer' means, in the case of a Trade Union, the person finally responsible for administrative matters in that Trade Union, irrespective of the terms used within that Trade Union to name that position;

38.6. 'Combined Trade Union Party' shall mean two or more Trade Unions acting together as a single party for the purposes of clause 9.3.1

38.7. 'Conciliator' means a panellist who has been appointed to conduct a conciliation;

38.8. 'Consultation' means a meaningful joint consensus seeking process.

38.9. 'Days' means:

38.9.1. if the number of days referred to is more than 5, calendar days including Saturdays, Sundays and public holidays;

38.9.2. if the number of days referred to is 5 or less, then calendar days excluding Saturdays, Sundays and public holidays;

Provided that the term:

38.9.3. excludes the first and includes the last such day;

38.9.4. excludes the days that the Council's offices are closed as provided in clause 2.1 of Schedule 2 of this Constitution: Schedules (Annexure C); and

38.9.5. excludes the last such day if it falls on a Saturday, Sunday, or any day referred to in clause 38.9.4; and

CONSTITUTION: GENERAL PROVISIONS, ANNEXURE A
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38.9.6.  'day' has a similar meaning

38.10.  'Dispute' means a dispute that exists in respect of:
38.10.1. matters that are regulated by uniform rules, norms and standards that apply to the education sector; or
38.10.2. matters that apply to terms and conditions of service that apply to the education sector; or
38.10.3. matters that are assigned to the State as employer in the education sector and includes an alleged dispute;

38.11.  'Dispute Resolution Procedures', the Council's Dispute Resolution Procedures as adopted by the Council by Collective Agreement;

38.12.  'Employee' means an educator as defined in the Employment of Educators Act 76 of 1998;

38.13.  'Employer' means the State in its capacity as employer as defined in the Employment of Educators Act 76 of 1998;

38.14.  '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.

38.15.  'General Secretary' means the official appointed in terms of clause 14.1 or, with respect to any period that he or she is not available, any person appointed as acting General Secretary by the General Secretary or the Executive Committee.

38.16.  'Governance Meeting' means a meeting of the Council where any of the issues listed in clauses 15 and 16 are discussed;

38.17.  'Member(s)' means those persons who have been appointed/nominated to the Executive Committee but do not hold office.

38.18.  'Membership' means the paid-up membership on stop order with the employer and registered in terms of the Act and this Constitution.

38.19.  'Minister' means the Minister of Education;


38.21.  'Office Bearers' means a person(s) who hold office in the Executive Committee e.g. Chairperson, Deputy Chairperson etc.

38.22.  'Official audited membership' means the audit of membership, as at 31 March, 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;

38.23.  'PFMA' means the Public Finance Management Act 1 of 1999;
38.24. 'Provincial Chamber' means the Chamber of a province.

38.25. 'PSCBC' means the Public Service Coordinating Bargaining Council established in terms of the Act;

38.26. 'Public Service' means [the service referred to in section 1(1) of the Public Service Act, 1994 (promulgated by Proclamation 103 of 1994) and includes any organizational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 of that Act] the national departments, provincial administrations, provincial departments and organizational components contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), but excluding:

38.26.1. the members of the South African National Defence Force;
38.26.2. the National Intelligence Agency; and
38.26.3. the South African Secret Service.'

38.27. 'Party/Parties' means organization(s) and / or individual(s);

38.28. 'Registrar' means the Registrar as defined in the Act.

38.29. 'Provincial Secretary' means the official appointed in a Provincial Chamber in terms of clause 14.3(m).

38.30. 'Serve' shall mean:
38.30.1. to effect personal service of the notice on the party concerned; or
38.30.2. to post a registered letter containing the notice to the office of the party concerned; or
38.30.3. to tele-fax the notice to the office of the party concerned provided that the tele-fax receipt shows that the notice has been transmitted to the addressee; or
38.30.4. to hand the notice to an official of a Trade Union party or a head of department of person delegated by that department;

38.31. 'the Act' means the Labour Relations Act No. 66 of 1995.

38.32. 'this Constitution' means the constitution of the Council;

38.33. '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.
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EDUCATION LABOUR RELATIONS COUNCIL
Established in terms of the S (37)(2) of the LRA of 1995 as amended

ANNEXURE B

16 MARCH 2006

CONSTITUTION:
NEGOTIATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES
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CONSTITUTION: NEGOTIATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES

ANNEXURE B

16 MARCH 2006
PART 1: NEGOTIATION AND CONSULTATION

1. Negotiation and consultation procedures on matters of mutual interest: National

1.1. The Executive Committee shall each year agree on a schedule of meetings for the purposes of negotiation and consultation.

1.2. Any party may:

   1.2.1. submit proposals for consultation or for the conclusion of a Collective Agreement in the Council and

   1.2.2. request, in writing, a Special consultation or negotiating meeting of the Council to deal with such matter.

1.3. Within five days of the submission of the proposals or request the General Secretary must serve copies of the proposals or requests on the parties to the Council.

1.4. Within 14 days of receiving the proposals or the written request for such a meeting, the General Secretary must, after consulting in writing with other parties and receiving an assurance of a quorum, call a Special Consultation or Negotiation meeting of the Council;

1.5. Any party to the Council may, prior to the holding of the next Consultation or Negotiating meeting of the Council, request in writing that an item/matter be placed on the agenda of such meeting. The Consultation or Negotiating meeting will decide whether these issues must be included on the agenda, or whether to refer them to the relevant forum.

1.6. If a majority party does not agree with the decision of the meeting with regard to the exclusion, or inclusion, of an item on the agenda of the Council, that party may refer the matter to the General Secretary for resolution in terms of the provisions of the Dispute Resolution Procedures.

1.7. At the first or Special negotiating or consultation meeting of the Council, the parties must try to agree on a negotiation or consultation process which may include the following issues:

   1.7.1. the submission of counter proposals;

   1.7.2. the establishment of a negotiation committee or task team;

   1.7.3. the appointment of a panellist, if necessary, to facilitate the negotiations or consultations and chair the meetings; and

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1.7.4. the timetable for negotiations or consultations.

1.8. In the event of the parties not agreeing on a negotiating or consultation procedure, the parties must, within seven days, commence negotiations or consultations in the Council.

1.9. If the parties do not conclude a Collective Agreement dealing with all the proposals referred to the Council after the expiry of 30 days after the matter was first included on the agenda of the negotiating meeting, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute. Where the parties to the dispute have agreed to extend the negotiation period, any party may declare a dispute at any time during such extended period only if, in its view, negotiations have failed and the party holding such view has informed all the other parties, in writing, of its view.

1.10. Subject to clause 1.7 if any one of the parties declares a dispute the General Secretary must take the steps as set out in the applicable provisions of the Dispute Resolution Procedures.

1.11. Notwithstanding any provision to the contrary in this Constitution, an employee party to a dispute regarding an alleged unilateral change to terms and conditions of employment may immediately refer such dispute to the General Secretary in terms the Dispute Resolution Procedures.

2. Negotiating task teams: National

2.1. The negotiating meeting of the Council may from time to time, for the purposes of negotiations and consultation, establish task teams and may, subject to such conditions as it may determine, refer any matter of mutual interest for investigation, fact finding or research and for such task team to consider such matter of mutual interest for recommendation to the Council. A task team so established is referred to below as 'a task team'.

2.2. A task team shall consist of at least one representative per party admitted to the Council, subject to the Trade Union party meeting the threshold set in clause 9.3 of this Constitution: General Provisions (Annexure A).

2.3. A task team must submit regular written reports to the Council.

2.4. A task team may co-opt experts to render assistance: Provided that where such co-option has financial implications prior consultation with the General Secretary must occur to appropriate funds from the relevant Budget vote.


3.1. Unless otherwise agreed to, all proposals must be submitted in writing and read by the proposing party or the Chairperson as a prerequisite to any debate.
or resolution thereof.

3.2. Any proposal of substance shall be referred to as a "Draft Collective Agreement of the Council". The General Secretary shall allocate a provisional number to each Draft Collective Agreement, which shall apply until the requirements of clause 3.7.3 are complied with, as follows: "Draft Collective Agreement No x of y", where y is the year in which the proposal is first submitted to the Council, and x is a capital letter of the alphabet allocated sequentially in one year relative to the date of the first submission to the Council.

3.3. Decisions in respect of matters of negotiation shall be by way of Collective Agreements of the Council.

3.4. A draft Collective Agreement shall be put to the vote, and it shall be considered approved only when a vote of the employer on the one side and a majority vote of the Trade Unions on the other side is cast in favour of its adoption.

3.5. A Collective Agreement of the Council must comply with the provisions of the Act.

3.6. The General Secretary shall ensure that a draft Collective Agreement adopted by the Council in terms of clause 3.4.

3.6.1. is reduced to writing;

3.6.2. is presented within 30 days of the Council adopting the draft Agreement for signature to at least the Chief Executive Officer (or his or her delegate) of each of the parties that voted for the Draft Agreement during the relevant Council meeting; and

3.6.3. if signed within such period by sufficient parties to comply with clause 3.4, is circulated to all parties within five days of signing of the agreement by the last party to ensure compliance with that clause;

3.6.4. if not signed within such time period by sufficient parties to comply with clause 3.4, table the Draft Agreement at the next negotiating meeting of the Council to confirm the parties' position regularly; Provided that, if there is no majority support at that Council meeting for the Draft Resolution:

(a) it falls away;

(b) or by agreement of the Council it can be reopened for discussion or negotiation;

3.6.5. if there is majority support for the Draft Agreement at a Council meeting referred to in clause 3.6.4, take the steps provided for in
3.7. The following requirements and procedure shall apply regarding a Collective Agreement of the Council:

3.7.1. It must be reduced to writing and it will take effect only on the date on which sufficient parties to the Council have signed the agreement to comply with the requirements for the adoption of a Collective Agreement in clause 3.1;

3.7.2. Each party signing a draft Collective Agreement of the Council shall note the date on which it signs the Draft Collective Agreement and place where it is signed in the vicinity of its signature, although failure to do so shall not invalidate the Collective Agreement.

3.7.3. The date of the Collective Agreement of the Council shall be the first date on which the agreement has been signed by sufficient parties to comply with the majority provision of clause 3.4. The General Secretary shall insert such date as the date of the Collective Agreement at the end of the Agreement.

3.7.4. The General Secretary shall allocate a number to each Collective Agreement of the Council that is signed as provided in clause 3.7.3 as follows: the Agreement shall be numbered “Collective Agreement No x of y”, where y is the year in which clause 3.7.3 is complied with, and x is a number allocated sequentially in one year relative to the date on which clause 3.7.3 is complied with.

3.8. Unless the Collective Agreement provides to the contrary:

3.8.1. such agreement applies to employees of employers that are not members of the signatory Trade Unions, subject to the requirements of the Act;

3.8.2. any dispute arising from the interpretation and implementation of such agreement may be referred to the Council to be resolved in terms of the Dispute Resolution Procedures;

and this clause 3.8 is therefore deemed to form part of such Collective Agreement.

4. Finalisation of matters of consultation: National and Provincial

4.1. All proposals must be submitted in writing and read by the proposing party, upon direction of the Chairperson, as a prerequisite to any debate or finalisation thereof.

4.2. Finalisation in respect of matters of consultation may be by way of a record in
the minutes of the meeting of the Council or the Provincial Chamber in a verbal or written record of understanding, as the case may be.

4.3. The finalisation of the matter of consultation shall be by way of a meaningful joint consensus seeking process between the employer on the one side and any or all of the Trade Unions on the other side.

4.4. If the parties are unable to deal with all the proposals referred to the Council or Chamber by the expiry of 30 days after the matter was first included on the agenda of the consultation meeting, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute. Where the parties to the dispute have agreed to extend the negotiation period, any party may declare a dispute at any time during such extended period or thereafter.

4.5. Subject to clause 1.7 if any one of the parties declares a dispute, the General Secretary must take the steps as set out in clause 10.1 of annexure B of this Constitution and the applicable provisions of the Dispute Resolution Procedures.

5. Negotiation and consultation procedures on matters of mutual interest: Provincial:

5.1. Any party to a Provincial Chamber may submit proposals for the conclusion of consultations or a Collective Agreement in a Provincial Chamber.

5.2. Within five days of the submission of the proposals, the Provincial Secretary must serve copies of the proposals on the parties to the Provincial Chamber.

5.3. At the first negotiating or consultation meeting of the Provincial Chamber after the submission of the proposals, the parties must try to agree on a negotiating or consultation process and timetable.

5.4. In the event of the parties not agreeing to a negotiating or consultation procedure, the parties must, within seven days, commence negotiations or consultation in the Provincial Chamber.

5.5. If the parties do not conclude a Collective Agreement or finalise consultation by the expiry of 30 days after the matter was first included on the agenda of the Provincial Chamber, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.

5.6. The provisions of clause 1.10 apply with the changes required by the context.
6. Negotiation and consultation meetings of the Provincial Chamber and its task teams

6.1. Negotiation and consultation meetings of a Provincial Chamber and its task teams

6.1.1. The Provincial Chamber shall meet at least 2 times per year.

6.1.2. The Provincial Chamber shall be held on dates determined by the Council, or the General Secretary and the Provincial Chamber, as the case may be.

6.1.3. The Provincial Secretary shall give at least 14 days or such shorter period agreed to by all parties, written notice, setting out the time, date and business to be transacted, and at least four days' notice or such shorter period agreed to, of the venue of the meeting.

6.1.4. The Provincial Chamber meeting may from time to time, for the purposes of negotiations and consultation, establish task teams (referred to as 'a task team') and may, subject to such conditions as it may determine, refer any matter of mutual interest for investigation, fact finding, research and or for such task team to consider such matter of mutual interest for recommendation to Provincial Chamber.

6.1.5. A task team shall consist of at least one representative per party admitted to the Council, subject to the Trade Union party meeting the threshold set in clause 9.3 in this Constitution: General Provisions (Annexure A).

6.1.6. A task team must submit regular written reports to Provincial Secretary on behalf of the Provincial Chamber.

6.1.7. A task team may:

(a) co-opt experts to render assistance;

(b) request the General Secretary to appointment of a facilitator to facilitate the work of the task team; provided that where such co-option or appointment of a facilitator has financial implications prior consultation with the General Secretary must occur so that funds from the relevant Budget vote are appropriated.

6.1.8. If the task team does not agree on the facilitator within four days of its request to appointment a facilitator, the Provincial Secretary in consultation with the General Secretary may nominate the facilitator.
6.1.9. In respect of task teams of the Provincial Chamber, the Provincial Secretary shall give at least 14 days written notice, or such shorter period agreed to by all parties, setting out the time, date and business to be transacted; and at least four days' written notice, or such shorter period agreed to, of the venue.

6.2. Collective Agreements: Provincial Chambers

6.2.1. Decisions in respect of matters of negotiations shall be by way of Collective Agreements of the Provincial Chamber.

6.2.2. The determination of a Collective Agreement shall be by way of voting and 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.

6.2.3. A Collective Agreement of a Provincial Chamber must comply with the provisions of this procedure and the Act.

6.2.4. All Collective Agreements of a Provincial Chamber must:

(a) be reduced to writing;
(b) duly signed by the parties to that agreement;
(c) contain a procedure for any dispute arising from the interpretation and implementation of that agreement to be referred to the Council to be resolved in terms of its Dispute Resolution Procedures;
(d) include a provision that the Collective Agreement has no force or effect until it has been ratified by the Council, and may not be implemented until such time that it has; Provided that omission of such clause does not invalidate the agreement, while the requirement of prior ratification and prohibition of implementation before such ratification remains;

6.2.5. The provisions of clause 3 shall apply with the changes required by the context.

6.2.6. The General Secretary must peruse any Collective Agreement received from a Provincial Secretary and make a recommendation at the first negotiating meeting of the Council following such receipt (provided that it is received in time for the notice provision for Council meetings to be complied with) as to whether the Provincial Chamber's Collective Agreement:

(a) falls within the Provincial Chamber's jurisdiction; and
(b) is in conflict with the law or any Collective Agreement of the Council.

6.2.7. Before making such recommendation the General Secretary may request legal opinion, provided he or she complies with the time frames of clause 6.2.6.

6.2.8. The Council must, at its meeting referred to in clause 6.2.6 decide:

(a) whether to ratify the Collective Agreement or not; or

(b) ratify the Collective Agreement conditional on amendments being affected; or

(c) refer the matter for a legal opinion in this regard, in which case it must decide the matter as expeditiously as possible.

6.2.9. If the Council does not decide on the Collective Agreement as provided for in clause 6.2.8 the Provincial Secretary concerned may request the General Secretary to convene a special meeting of the Council to consider the matter.

6.2.10. The Council must make a decision on the Collective Agreement within 60 days of receipt of the Collective Agreement by the General Secretary.

6.2.11. When the Council has made a decision referred to in clause 6.2.8, the General Secretary must inform the relevant Provincial Secretary of the decision within 10 days of such decision.

6.2.12. When the Council has made a decision referred to in clause 6.2.8(b) the General Secretary shall engage with the Provincial Chamber to attempt to effect the amendment and, if it is affected, must certify that the Council has ratified the Collective Agreement.

7. General provisions in respect of negotiation & consultation meetings: National and Provincial

7.1. Notice of Meeting

7.1.1. At least 14 days notice shall be given of any negotiation or consultation meeting;

7.1.2. Should any party wish to call a meeting without having to give 14 days notice, such meeting can only be called if in the opinion of the General Secretary or Provincial Secretary, it is convenient to hold such a meeting. The General Secretary's or Provincial Secretary's
decision in this regard is final;

7.1.3. It shall be deemed that due notice had been given to a party, if notice was given by:

(a) the General Secretary or Provincial Secretary serving notice on any representative of the party concerned;

(b) the posting of a registered letter containing the notice to the party, at the registered address; or

(c) tele-faxing the notice to the office, provided that the tele-fax receipt shows that the notice had been transmitted to and received by the addressee.

7.2. Quorum of a Meeting

7.2.1. A quorum of a negotiating meeting of the Council and the Provincial Chamber shall be those Trade Unions representing 50% + 1 and the employer. Provided that:

(a) proper notice in terms of clause 7.1 has been given to all of the parties; and

(b) 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.

7.2.2. If, within a further 30 minutes after the 30 minutes referred to in clause 7.2.1(b) 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 clause 7.1, shall again be given to all parties to the Council and Provincial Chamber.

7.3. Voting

7.3.1. The employer has a collective vote of 50% that shall be exercised by its representatives and the admitted Trade Unions the other 50% collectively.

7.3.2. Trade Union representatives shall vote on the basis of their vote weights as determined by the General Secretary for such Provincial Chamber.

7.3.3. 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.

7.3.4. The General Secretary or the Provincial Secretary shall act as electoral officer as the case may be.

7.4. Vote weight

The provisions of clause 18 of this Constitution: General Provisions (Annexure A) shall apply, with the changes required by the context.

7.5. Meeting procedure

7.5.1. 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 adoption thereof.

7.5.2. 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.

7.5.3. The Chairperson shall rule on any procedural matters, which are not regulated in this Constitution.

7.5.4. Representatives are entitled to attend any negotiating meeting of the Council or Provincial Chamber as the case may be.

7.5.5. Representatives and observers shall be entitled to attend meetings of the Provincial Chamber but observers shall not take part in debates, or vote.

7.5.6. A person who is not a representative may be allowed to address the Council or Provincial Chamber at the request of a party and with the concurrence of the meeting.

7.5.7. Every negotiating meeting of the Council and the Provincial Chamber shall be conducted in private unless the Provincial Chamber otherwise decide.

7.5.8. The General Secretary shall keep minutes of the proceedings for Council and shall forward such to all parties within 14 days after such meeting.

7.5.9. The Provincial Secretary shall keep minutes of the proceedings at the Provincial Chamber in such a manner as decided by the General Secretary and the minutes shall be forwarded to all parties within 14 days after such meeting.
7.6. Applicability of the Procedures contained in this Part:

The procedures contained in this Part 1 apply, with the changes required by the context, to Negotiation and Consultation.
PART 2: INTRODUCTION TO Dispute Resolution Procedures

8. Application

8.1. These procedures apply to all disputes that arise within the scope of the Council except disputes in respect of those matters that:

8.1.1. are regulated by uniform rules, norms and standards that apply across the Public Service;

8.1.2. apply to terms and conditions of service that apply to two or more sectors.

8.1.3. fall within the jurisdiction of the PSCBC;

8.1.4. 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

8.1.5. are not contemplated in clauses 10 – 14, 28 & 29

8.2. Despite the provisions of clauses 8.1.1 to 8.1.4, the Council must deal with all individual rights disputes, in the first instance.

8.3. A dispute of right declared in terms of a collective agreement concluded in the PSCBC may be referred to the ELRC, if the employer is the same as the employer in the ELRC.

8.4. Panellists, in the ELRC, arbitrating disputes referred to in clause 8.3 are bound by the jurisprudence, in as far as such jurisprudence binds panellists of the PSCBC itself.

9. Jurisdictional disputes between the Council and the PSCBC

If there is a jurisdictional dispute between two or more bargaining councils in the Public Service, including the PSCBC, any party to the dispute may refer the dispute to the CCMA.

1 The following disputes are not dealt with by the ELRC unless the parties agree otherwise in terms of clause 28: closed shop disputes (section 26 of the Act); workplace forum disputes (section 86 and 94 of the Act). If there is no such agreement, they must be dealt with by the CCMA.
PART 3: Disputes of interest

10. Procedures applicable to all mutual interest disputes

10.1. A party who may refer a dispute of mutual interest to the General Secretary for conciliation in terms of Council's Constitution or these procedures, may do so by completing the ELRC Form E1 and filing it with the Council:

10.1.1. in case of a referral in terms of clause 1.10 or clause 11 of these procedures, within 6 months from the date on which any party referred a dispute in terms of clause 10.1;

10.1.2. in case of a referral in terms of clause 12.1 of these procedures, within 6 months from the date upon which the employer has implemented unilaterally the change to terms and conditions of employment, or that it has come to the notice of the employee party that the employer intended to implement such change unilaterally (whichever is the later).

10.2. The provisions of Part 5 of these procedures apply to the conciliation to be conducted in terms of this clause 10.

10.3. If the dispute is not settled on the first date of the conciliation, the panellist must try to get agreement on:

10.3.1. further conciliation meetings to settle the dispute within the 30 day conciliation period or thereafter;

10.3.2. the referral of the dispute to voluntary arbitration; or

10.3.3. which panellist is to be appointed to arbitrate the dispute, if the dispute must be referred to arbitration.

10.4. If no settlement is reached and if no Collective Agreement covering the issues listed here exists, the panellist must try to facilitate agreement on:

10.4.1. rules about the conduct of a strike or lockout, if applicable; and

10.4.2. picketing rules, if applicable.

10.5. If the dispute is about a refusal to bargain or consult, a party to the dispute may request the panellist to issue an advisory award and:

10.5.1. the panellist must issue the advisory award within 14 days of the request; and
10.5.2. no party may give notice in terms of section 64(1) of the Act before this award is given, provided the award is given within the period provided in clause 10.5.1.

10.6. If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.

10.7. After the conclusion of the conciliation the Council will usually not process the dispute any further, unless at the written request of a party for further conciliation or for an advisory arbitration award by the Council.

10.8. If a party has made a written request for an advisory arbitration award, the procedures in clause 25 apply in respect of the arbitration hearing.

11. Procedure for mutual interest disputes in respect of non-parties to the Council

11.1. Application of this clause:

11.1.1. In this clause a dispute means any dispute of mutual interest, other than one contemplated in clauses 1 and 5, 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.

11.1.2. 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 arbitration in terms of clause 25.

11.1.3. Disputes involving the employer or employers on one side and parties and non-parties to the Council on the other may be consolidated in terms of clause 58, provided that all parties to the relevant disputes agree thereto.

11.2. Negotiations

11.2.1. Any non-party to the Council may make a proposal in writing on a mutual interest issue to the employer.

11.2.2. The employer may make a proposal in writing on a mutual interest issue to a non-party.

11.2.3. The parties may negotiate with each other about such proposal.

11.2.4. If the parties do not conclude a Collective Agreement within 30 days of the date on which the proposal has been made in terms of this clause 11.2, any party may declare a dispute by referring a dispute to the Council in terms of these procedures.
12. Unilateral change to terms and conditions of employment

12.1. Notwithstanding the other provisions of these procedures or this Constitution, any employee party to a dispute regarding an alleged unilateral change to terms and conditions of employment may refer such dispute to the General Secretary in terms of clause 10.

12.2. Regarding such a dispute the employee party may on ELRC Form E1 require of the employer, for the 30-day conciliation period:

12.2.1. not to implement unilaterally the change to terms and conditions of employment; or

12.2.2. if the employer has already implemented the change unilaterally, to restore the terms and conditions of employment that applied before the change; and

12.2.3. the employer must comply with this requirement.

12.3. The employer must comply with a requirement in terms of subsection (4) within 48 hours of service of the referral on the employer.

12.4. If the employer fails to comply with it, the employee party may refer the matter for arbitration, and the procedures contained in clause 25 shall apply with the changes required by the context.

13. Strikes, lock-outs, picketing and protest action

13.1. Every employee has the right to strike and every employer has recourse to lock-out if:

13.1.1. the issue in dispute has been referred to the General Secretary and remains unresolved;

13.1.2. the Council has issued ELRC Form E3 stating that the dispute remains unresolved;

13.1.3. or a period of 30 days has lapsed after the referral was received by the Council. (The period of 30 days may be extended by agreement.

13.1.4. seven 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.

13.2. Parties shall comply with codes of practice as provided for by the Act or as contained in any Collective Agreement of the Council.

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13.3. The *employer* must keep a record of the prescribed details of any strike lockout or protest action involving *employees*. The *employer* must submit those records by completing LRA Form 9.2 and submitting it to the *Registrar* of Labour Relations.
PART 4: DISPUTES OF RIGHT: GENERAL

14. Dispute of right

14.1. In this clause, a dispute means any dispute other than a mutual interest dispute contemplated in clauses 10 to 11 that a party must or may elect to refer to the General Secretary in terms of a statute or in terms of this collective agreement for:

14.1.1. conciliation;

14.1.2. arbitration;

14.1.3. conciliation and arbitration;

14.1.4. conciliation-arbitration;

14.1.5. expedited joint conciliation and arbitration;

14.1.6. disciplinary hearings in the form of an arbitration.

14.2. Subject to clause 14.3, any party to a dispute may elect to refer such dispute:

14.2.1. to Council for arbitration, in addition to Council conciliation that is already provided for in terms of the Act, if the dispute concerns:

(a) a dismissal that is alleged to be automatically unfair;

(b) a dismissal based on the employer's operational requirements as contemplated in Sections 189 and 189A of the Act;

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2 For example, in case of a dispute regarding an operational requirements dismissal of a single employee following a consultation procedure that applied to that employee only, the employee can elect in terms of section 191(12) of the Act to refer the dispute to Council arbitration or to the Labour Court.

3 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 participating in an unprotected strike.

4 Disputes concerning the interpretation of the Council's constitution, subject to clause 38.1 of this Constitution.

5 Disputes contemplated are those disputes that the Council must conciliate and arbitrate. For example, all disputes that are not contemplated by section 191(5)(a).

6 Disputes contemplated are those disputes that the Council must set for conciliation-arbitration. For example, dismissals for misconduct and incapacity — see section 191(5)(a) — unfair labour practice disputes.

7 Disputes contemplated include a collection of disputes which may otherwise be referred to conciliation-arbitration. For example, multiple disputes concerning promotions and appointments.

8 This process is normally invoked by written consent of both the employer and the employee.
14.2.2. for conciliation and arbitration, where the dispute concerns:

(a) disclosure of information (sections 16 and 189 of the Act);
(b) organisational rights (Part III part A of the Act);
(c) an agency shop (section 25 of the Act);
(d) picketing (section 69 of the Act);
(e) Alleged unfair discrimination in terms of the Employment Equity Act, subject to clause 14.7;

14.2.3. for a compliance order in terms of clause 23 regarding:

(a) any dispute concerning a contract of employment, irrespective whether a basic condition of employment set in the BCEA constitutes a term of that contract; or
(b) any dispute regarding the alleged non-compliance with a provision of the BCEA, subject to clause 14.5.

14.3. If the dispute relates to any act or omission of the School Governing Body acting in terms of s 6(3) of the Employment of Educators Act 76 of 1996 with regard to appointments, promotions and transfers insofar as it affects the right of educators to a fair labour practice, any party to such dispute may refer it to the General Secretary for conciliation-arbitration.

14.3.1 The party referring the dispute need not, in the interests of expedition, invoke or exhaust the internal grievance procedure before referring such dispute.

14.3.2 Should the dispute involve a defect in the recommendation, or involve a failure to make a recommendation, to the Head of the Department in terms of s 6(3)(a) of the Employment of Educators Act 76 of 1998 and should the matter proceed to arbitration:

14.3.2.1 the arbitrator shall be required to determine whether the recommendation or non recommendation of the

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3 Section 6 of the Employment of Educators Act 76 of 1998 refers to Appointments, Promotions and Transfers. Section 6(2) of the Employment of Educators Act 76 of 1998 provides that this collective agreement can supersede the procedure laid down in section 6(3) of the same Act. The procedure outlined here is only introduced in cases where a dispute has been referred to the General Secretary by one or more parties aggrieved by the outcome resulting from the application of section 6(3) of the Employment of Educators Act. In that case, this clause will apply.
employee(s) was procedurally and/or substantively fair;

14.3.2.2 the arbitrator may on good cause shown and if it is in the interests of justice substitute the decision of the SGB with his/her own in which case the decision of the arbitrator shall then be accepted as the decision of the SGB and shall be accepted by the Head of Department in terms of s 3(a) of the Employment of Educators Act 76 of 1998;

14.3.2.3 the parties may agree to supplement or amend the terms referred to in clauses 14.3.2.1 and 14.3.2.2, but such agreement must be reduced to writing and signed by all the parties to the dispute.

14.3.3 The General Secretary must set down the dispute for resolution within 30 days of it being referred to the Council and may utilise the expedited process referred to in clause 29 hereinafter.

14.3.4 The conciliation-arbitration process must be completed within 30 days of it being established.

14.4. If a dispute had already been referred for conciliation, arbitration, or conciliation-arbitration to another forum with jurisdiction to conduct such process(es), it cannot thereafter be referred to the General Secretary for the same process(es) unless that forum refers the dispute to the General Secretary.

14.5. If a dispute had already been referred for conciliation, arbitration, or conciliation-arbitration, to another forum which has no jurisdiction to conduct such process(es), it can thereafter be referred to the General Secretary for the same process(es) provided that the dispute is withdrawn from that forum or that forum has determined that it has no jurisdiction.

14.6. If any party to a dispute regarding the alleged non-compliance with a provision of the BCEA had already referred a complaint in that regard to the Department of Labour or any of its labour inspectors, it cannot thereafter be referred to the General Secretary in terms of these procedures.

14.7. The following applies to a dispute regarding unfair discrimination referred to in clause 14.2.2:

14.7.1. in circumstances where any party to the dispute refers it to the General Secretary for conciliation and arbitration, the parties to the Council hereby waive the right to have the dispute referred to the
Labour Court;

14.7.2. a non-party to the Council that refers such a dispute to the General Secretary for conciliation and arbitration thereby waives the right to have the dispute referred to the Labour Court; and

14.7.3. where any party to such dispute is not the referring party or a party to the Council, such party’s consent shall be required before the Council will have jurisdiction to conciliate and arbitrate the dispute.

15. Exhausting of internal procedures

15.1. A party may not refer a dismissal dispute, where the dismissal has been appealed against unless:

15.1.1. The appeal had not been concluded by the employer within 45 days; and

15.1.2. The employer had been served with 7 days written notice to remedy the default.

15.2. A party may not refer a dispute, except a dismissal dispute before invoking the grievance procedure relating to that dispute and allowing 45 days for the resolution thereof.

15.3. In the case of promotions, appointments and transfers, there is no compulsion to invoke a grievance procedure.

16. Time Periods for the referral of a Dispute

16.1. A party may refer a dispute to the General Secretary:

16.1.1. In the case of a dismissal dispute

(a) Within 45 days of the date of dismissal, or if it is a later date, within 45 days of the employer making a final decision to dismiss or uphold the dismissal; or

(b) Within 52 days of the date on which the employee serves on the employer written notice to conclude an appeal lodged against a dismissal.

16.1.2. In the case of an unfair labour practice dispute

(a) Within 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice, or if it is a later date, within 90 days of the date on which the
employee became aware of the act or omission.

16.1.3. In the case of promotions, appointments and transfers, in terms of clause 14.3, within 30 days from the date on which the employee:

(a) became aware of a defect during the sifting, shortlisting or interview phases, or

(b) became aware or was informed of the recommendation, whichever is the later date, or

(c) became aware or was informed of the appointment, whichever is the later date, or

(d) became aware or was informed of the transfer, whichever is the later date.

16.1.4. In the case of other disputes which require the employers grievance procedure to be invoked, the dispute may not be referred, unless:

(a) The employee as invoked the grievance procedure, and

(b) An outcome has been rendered; or

(c) in the event of the grievance procedure having been invoked and an outcome had not been rendered at least 45 days from the date on which the grievance was lodged.

16.1.5. In the case of promotions, appointments and transfers, where there is no compulsion to invoke the grievance procedure, within 30 days on which the dispute arose.

16.1.6. In the case where the applicant, in terms of clause 16.1.5, invoked the grievance procedure, within 30 days from the date on which the applicant ended participation in the grievance procedure.

16.1.7. In the case of any other dispute within 45 days of the date on which the dispute arose.

17. Condonation

17.1. On good cause shown, the General Secretary may permit the employee to refer a dispute after the relevant time limits in clause 16 has expired.
18. Jurisdiction to Conciliate

18.1. The following applies to all disputes that must be conciliated:

18.1.1. If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the panellist must require the referring party to prove that the Council has jurisdiction to conciliate the dispute through conciliation.

18.1.2. A panellist holding a jurisdictional hearing in terms of this clause 18 must decide all jurisdictional points that come to the panellist's knowledge during the conciliation.

18.1.3. Before ruling on a jurisdictional point, the panellist must require the referring party to prove that the Council has the necessary jurisdiction to resolve the dispute through conciliation and give the other party to the dispute an opportunity to present evidence and argument in this regard.

19. Pre-Arbitration meeting

19.1. When the conciliation proceedings are brought to a close, in the event that all or some aspects of the dispute remain unresolved, the panellist conciliating the dispute must immediately facilitate a pre-arbitration meeting.

19.2. If a matter is referred to con-arb, the parties may convene a pre-arbitration meeting at least ten days prior to the con-arb hearing.

19.3. The panellist chairing the pre-arbitration meeting or the General Secretary should rule, if it is appropriate to do so, that such meeting should be held by way of a teleconference, rather than in person by the panellist and parties. The Council shall then bear the cost of the teleconference.

19.4. The General Secretary or the panellist may direct the parties themselves to hold a pre-arbitration meeting. If the parties were directed to hold a pre-arbitration meeting, the parties must supply the General Secretary and the panellist a copy of the pre-arbitration minute. Clause 19.5 then applies.

19.5. The pre-arbitration meeting shall, amongst others, attend to:

(a) any means by which the dispute may be settled;

(b) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered (with a copy for each of the parties, the panellist and one to be used by the witnesses);

(c) facts that are common cause;
(d) facts that are in dispute;
(e) the issue/s that the panellist is required to decide;
(f) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
(g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will serve as evidence of what they appear to be;
(h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
(i) which party must begin;
(j) the necessity for any on-the-spot inspection;
(k) securing the attendance at the arbitration of any witness(es);
(l) the resolution of any preliminary points that are intended to be taken;
(m) the exchange of witness statements;
(n) expert evidence;
(o) any other means by which the proceedings may be shortened;
(p) an estimate of the time required for the hearing;
(q) the right of representation; and
(r) whether an interpreter is required and, if so, for how long and for which language(s).

19.6. The panellist must keep a written record of the decisions made during the pre-arbitration proceedings, referred to as the pre-arbitration minute.

19.7. In the event for whatever reason the parties are unable to engage in pre-arbitration proceedings, the onus, thereafter, rests with the parties:

19.7.1. to address this matter without the assistance of the Council, prior to the date already scheduled for arbitration, of the said dispute;

19.7.2. to keep a written record of the decisions made during pre-arbitration proceedings (the pre-arbitration minute); and

19.7.3. to supply the pre-arbitration minute to the panellist at the
commencement of the arbitration.

20. Statement of case

20.1. If, in the view of the panellist, or the General Secretary it is necessary for the referring party/applicant to submit a written Statement of Case setting out the factual and legal issues relating to the dispute he/she may direct such party to so submit a written Statement of Case. If a Statement of Case is submitted, the other parties/respondents will be required to submit a written Response to the Statement of Case. Should a party that submits the Statement of Case or the Response to the Statement of Case not be legally represented, then such party shall not be unduly restricted to the issues raised in the Statement of Case or Response.

20.2. A notice in terms of clause 20.1 must specify the time-period within which:

20.2.1. the referring party must draft and deliver a statement of case; and

20.2.2. the other party must draft and deliver an answering statement.

20.3. If a party does not submit its statement of case as provided for in clause 20.1 the panellist may make an order that the panellist considers appropriate.

20.4. Where parties were directed to hold a pre-arbitration meeting in terms of clause 19.4 the panellist may, after receiving a pre-arbitration minute, and up to 9 days before the date set down for arbitration:

20.4.1. direct the General Secretary to set the matter down for arbitration on a later date than the date for which the arbitration was set down in terms of clause 26.1.5(b); and/or

20.4.2. direct the parties to hold a further pre-arbitration meeting.

20.5. If a party fails to attend a pre-arbitration meeting chaired by a panellist in terms of clauses 19.1 or 19.2, or which the parties were directed to hold in terms of clause 19.4, the panellist may deal with the matter in terms of clause 53, which applies with the changes required by the context.

20.6. Should all the parties to the dispute agree the panellist may attempt to resolve the dispute through further conciliation.

21. Substantive provision on unfair dismissals and unfair labour practices

The substantive provisions of any applicable statute on unfair dismissals and unfair labour practices, as worded at any given time, apply as substantive provisions of these procedures.
22. Interpretation and application of Collective Agreements

A party to a dispute about the interpretation or application of a Collective Agreement may refer such dispute to conciliation and arbitration in terms of these procedures.

23. Enforcement of Collective Agreements and of BCEA provisions

23.1. The General Secretary may promote, monitor and enforce compliance with any Collective Agreement of the Council, within the scope of the Council and in terms of this section 33 and section 33A of the Act.

23.2. For the purposes of this clause 23, a Collective Agreement of the Council is deemed to include:

23.2.1. any basic condition of employment which constitutes a term of a contract of employment of any employee covered by the Collective Agreement in terms of section 49(1) of the BCEA; and

23.2.2. subject to clause 14.5, any other basic condition in the BCEA applicable to an employee falling within the scope of the Council where such employee’s employer is a party to the Council;

23.2.3. the rules of any fund or scheme established by the Council.

23.3. Where the General Secretary acts in terms of this clause 23 and the matter also involves the interpretation or application of a Collective Agreement, this clause 23 applies to the exclusion of clause 15.

23.4. The General Secretary may, in terms of this clause 23, issue an order requiring any person, bound by a Collective Agreement, to comply within a specified period.

23.5. The General Secretary may refer any unresolved dispute concerning compliance with any provision of a Collective Agreement to arbitration by a panellist appointed by the Council or the CCMA, as the case may be.

23.6. A panellist, conducting an arbitration in terms of this clause 23 and section 33 of the Act, has the powers of a Commissioner in terms of section 142 of the Act, read with the changes required by the context.

23.7. Section 138 of the Act, read with the changes required by the context, applies to any arbitration conducted in terms of this section.
PART 5: CONCILIATION

24. Conciliation

24.1. How to request conciliation

24.1.1. A party must refer a dispute contemplated in clauses 14.1.1 or 28.1.1 to the Council for conciliation by delivering a completed ELRC Form E1.

24.1.2. The referring party must:

(a) sign ELRC Form E1 in accordance with clause 45;

(b) attach to ELRC Form E1 written proof, in accordance with clause 46, that ELRC Form E1 was served on the other parties to the dispute;

(c) if ELRC Form E1 is filed out of time, attach an application for condonation in accordance with clause 50;

(d) in the event of an unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that clause 24.2 has been complied with.

24.1.3. The General Secretary may refuse to accept a referral form until clause 24.1.2 has been complied with.

24.2. Time period for referring a dispute to conciliation

The referral must be made within the period provided for in clause 15 read with 16 and 26.1.2, read with the changes required by the context.

24.3. What the Council must do when it receives a referral

If clause 24.1 and 24.2 have been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

24.3.1. appoint a panellist to attempt to resolve the dispute through conciliation within the 30-day conciliation period;

24.3.2. decide the date, time and venue of the conciliation meeting; and

24.3.3. notify the parties to the dispute of these details.
24.4. Appointment of Conciliator

24.4.1. If the parties to a dispute have agreed on a particular panellist to conciliate and any of the parties to the dispute has informed the General Secretary of such agreement within four days of the date on which the Council had received the referral, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within 30-day conciliation period or a longer period as agreed to between the parties to the dispute.

24.4.2. Should the parties not agree upon the panellist within four days of the date on which the Council had received the referral, the General Secretary shall appoint a panellist to conciliate.

24.5. The Council may seek to resolve a dispute before conciliation

The General Secretary, a delegated member of the Council staff or a panellist may contact the parties by telephone or other means before the commencement of the conciliation to seek to resolve the dispute.

24.6. Who may attend a conciliation and what happens if a party fails to attend

24.6.1. A conciliation may only be attended by:

(a) the parties to a dispute; and

(b) 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.

24.6.2. The parties to a dispute must attend conciliation in person, unless all the parties to the dispute agree differently.

24.6.3. If a party is represented at the conciliation but fails to attend in person, the panellist may:

(a) continue with the proceedings and issue a certificate; or

(b) deal with the dispute in terms of clause 53.

24.7. Duties of the Conciliator

24.7.1. The panellist appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:

(a) mediating the dispute;
(b) conducting a fact-finding exercise;

(c) making a recommendation to the parties, which may be in the form of an advisory award; and

(d) arbitrating the dispute immediately if the parties request the panellist, by written agreement, to do so.

24.7.2. At the conclusion of the conciliation, the panellist must:

(a) if the dispute is resolved, draw up a written agreement between the parties, which must be duly signed by the parties, OR

(b) if the dispute remains unresolved, issue the parties with a copy of ELRC Form E3 as provided in clause 24.9;

AND

(c) issue the General Secretary, not later than four days thereof, with the original documents, as referred to in (a) or (b).

24.8. Conciliation proceedings may not be disclosed

24.8.1. Conciliation proceedings are private and confidential and are conducted on “without prejudice” basis so that no party may refer to statements made at conciliation proceedings during any subsequent proceedings unless the parties have so agreed in writing.

24.8.2. Neither the panellist dealing with the conciliation process nor anybody else attending the conciliation hearing may be called as a witness during any subsequent proceedings to give evidence about what transpired during the conciliation process; provided that any person may be called to testify:

(a) as to the existence or not of a written agreement between the parties concluded during the conciliation,

(b) whether a party had signed such agreement,

(c) regarding any ruling by the panellist, including one contemplated in clause 53.1.
24.9. Issuing a Conciliation Certificate of Outcome

24.9.1. Should it not be possible to settle the matter during the conciliation or, if no conciliation is held within the 30-day conciliation period, the panellist must issue the prescribed Conciliation Certificate of Outcome, ELRC Form E3, in respect of that dispute.

24.9.2. The panellist must determine the true nature of the dispute referred to conciliation.

24.10. Further conciliation

The Council may offer to appoint a panellist to assist the parties to resolve through further conciliation a dispute that has been referred to the Council and in respect of which:

24.10.1. a certificate has been issued in terms of clause 24.9 stating that the dispute remains unresolved; or

24.10.2. the period contemplated in clause 24.3.1 has elapsed and may appoint a panellist to conciliate if all the parties to the dispute agree.

24.11. Steps by Council after conclusion of the conciliation

24.11.1. After the conclusion of the conciliation, the Council will not process any dispute of mutual interest any further, unless a request is received from all the parties to the dispute to further explore conciliation or voluntary arbitration through the Council.

24.11.2. If an arbitration advisory award is issued in terms of clause 24.11.1, 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 as possible thereafter.
PART 6: ARBITRATION

25. Arbitration

25.1. How to request an arbitration

25.1.1. A party must refer a dispute contemplated in clauses 14.1.2 or 28.1.2 to the Council for arbitration by filing a completed ELRC Form E1.

25.1.2. The referring party must:

(a) sign the referral form in accordance with clause 45;

(b) attach to the referral form written proof, in accordance with rule 47, that the referral form was served on the other parties to the dispute;

(c) if the referral form is filed out of time, attach an application for condonation in accordance with clause 50;

(d) satisfy the General Secretary that clause 26.1.2 has been complied with in the event of an unfair labour practice dispute.

25.1.3. The General Secretary may refuse to accept a referral form until clause 24.1.2 has been complied with.

25.2. What the Council must do when it receives a referral

If clause 24.1.2 has been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

25.2.1. appoint an panellist to arbitrate the dispute within 45 days of the date on which the Council received the referral;

25.2.2. decide the date, time and venue of the arbitration; and

25.2.3. notify the parties to the dispute of these details.

25.3. Appointment of a panellist(s) to arbitrate

25.3.1. If the parties to a dispute have agreed on a particular panellist to arbitrate and have informed the General Secretary of such agreement within four days of the date on which the Council had received the referral, the General Secretary must appoint the panellist agreed upon, provided that such panellist is available to
arbitrate the dispute within the 45 day-period or a longer period as agreed to between the parties to the dispute.

25.3.2. Upon an application by a party the General Secretary may appoint more than one panellist to arbitrate, provided that the nature of the issue in dispute and/or the financial implications of the dispute justify this.

25.4. Who may represent a party in arbitration

25.4.1. Subject to clause 25.4.2, an employee party to the dispute may appear in the arbitration proceedings 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.

25.4.2. 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 an employee's conduct or capacity, the parties are not entitled to be represented by a legal practitioner in these arbitration proceedings unless:

   (a) the panellist and all the other parties consent; or

   (b) the panellist concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:

      (i) the nature of the questions of law raised by the dispute;

      (ii) the complexity of the dispute;

      (iii) the public interest; and

      (iv) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.

25.5. Parties must prepare and copy documents for arbitration

25.5.1. If the parties to a dispute do not reach agreement on the bundle(s) of documents to be made available at an arbitration hearing in terms of clause 19.5, each party shall ensure that the documents that it wishes to submit to the arbitration is collated in a bundle in chronological order with each page numbered, and that it makes the necessary copies of such bundle, as follows:
one for the *panellist*, or for each *panellist* if more than one
*panellist* hears the matter, one for each *party* and one to be used
as the witnesses’ copy.

25.5.2. It is the responsibility of the *parties* and not of the *Council* to
reproduce documents for arbitration. The *Council* may reproduce
documents for the arbitration at the cost for the *parties*.

25.6. **Further powers of a *panellist* acting as *Arbitrator***

25.6.1. The *panellist* may attempt to resolve the *dispute* through
conciliation at any time, provided all the *parties* to the *dispute*
agree.

25.6.2. The *panellist* 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. In
this respect the *panellist* may make any other direction to the
*parties* concerning the conduct of the arbitration.

25.7. **Jurisdiction to arbitrate***

If at any stage during arbitration proceedings it becomes apparent that there is
a jurisdictional issue that had not been determined the *panellist* must require
the referring *party* to prove that the *Council* has the necessary jurisdiction to
resolve the *dispute* through arbitration.

25.8. **Award***

25.8.1. Within 14 *days* of the conclusion of the arbitration proceedings
the *panellist(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 *panellist* or *panellists*, as the case may be.

25.8.2. Within four *days* of receipt of the award from the *panellist* 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.

25.8.3. The *General Secretary* may, on good cause shown, extend the
period within which the arbitration award is to be issued.

25.8.4. An award issued in terms of *these procedures* shall be final and
binding.
PART 7: CONCILIATION AND ARBITRATION

26. Conciliation and Arbitration

26.1. Referral and appointment of panellists

26.1.1. Subject to clause 26.1.2, a party to a dispute contemplated in clauses 14.1.3 or 28.1.3 may refer the dispute in writing on ELRC Form E1 to the General Secretary for conciliation and arbitration of that dispute.

26.1.2. Unless the parties to the dispute had agreed differently in writing, the referral must reach the General Secretary in terms of clause 16.

26.1.3. A dispute referred to in clause 16.1.2(a) is deemed to exist only if a demand has been made, and has been communicated to the other party and such party has been given an opportunity to settle the matter.

26.1.4. A party that refers a dispute referred to in clause 14.1.2 must satisfy the General Secretary that:

(a) the grievance procedure had been invoked at least 45 days prior to the referral and that the grievance had not been settled; and,

(b) that a copy of the referral has been served on all the other parties to the dispute.

26.1.5. If the General Secretary is satisfied that clause 26.1.4 has been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

(a) appoint an panellist to conduct the arbitration, subject to clause 25.3. The panellist must attempt to conciliate the matter before commencing with the arbitration (Arb-Con);

(b) set the matter down for arbitration within 45 days of registering the dispute;

(c) set the matter down for conciliation not less than 14 days before the arbitration.

26.1.6. The timeframes referred to in clause 16 may be extended by the
General Secretary, where there is a successful condonation application, relating to the late referral of that dispute.

26.2. Conciliation

26.2.1. The provisions of clauses 24.4 to 24.11 apply to conciliation in terms of this Part 7, with the changes required by the context.

26.2.2. If all or some aspects of the dispute remain unresolved when the conciliation proceedings are brought to a close the panellist conciliating the dispute must immediately facilitate a pre-arbitration meeting as provided for in clause 19, unless the referring party confirms in writing to the Conciliator on the day of the conciliation that the party does not wish to proceed to arbitration;

26.3. Arbitration

The provisions of clauses 25.4 to 25.8 must apply to arbitrations conducted in terms of this Part 7.
PART 8: CON – ARB

27. Provisions applicable to the con-arb process

The following provisions shall apply to con-arb process:

27.1. When a matter has been referred to the Council as a con-arb, the matter shall be set down as an arbitration hearing. The panellist must:

27.1.1. attempt to resolve the matter by conciliation;

27.1.2. if the matter remains unresolved, issue a certificate of outcome; and

27.1.3. immediately thereafter continue with the arbitration hearing

27.2. Despite any other provision in the Act or these procedures, the panellist must commence the arbitration immediately after certifying that the dispute remains unresolved if the dispute concerns:

27.2.1. the dismissal of an employee for any reason relating to probation;

27.2.2. any unfair labour practice relating to probation;

27.2.3. any other dispute contemplated in clauses 14.1.3 or 28.1.3.

27.3. The General Secretary must give the parties at least 21 days notice in writing that a matter has been scheduled for con-arb.

27.4. The General Secretary must postpone a con-arb hearing at the written request of a party provided that:

27.4.1. such request is received by the General Secretary at least 7 days prior to the hearing

27.4.2. the con-arb hearing is rescheduled within 21 days from the date on which the dispute was initially set down for hearing; and

27.4.3. any further postponements must be dealt with in terms of the provisions of these procedures applicable to postponements of arbitrations hearings.

27.5. If a party fails to appear or be represented at a hearing scheduled in terms of this Part the panellist must proceed with the matter on the date specified in the notice issued in terms of clause 27.3 and issue an award, notwithstanding the party’s failure to appear or be represented at that hearing, unless the panellist
is satisfied that there are adequate reasons for that party's absence.

27.6. The provisions of the Act and these procedures that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.

27.7. If the arbitration does not commence on the date specified in terms of the notice issued in this Part, the General Secretary must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of clause 52.
PART 9: REFERRAL OF A DISPUTE BY AGREEMENT

28. Provisions applicable

The following provisions shall apply:

28.1. If all the parties to any mutual interest dispute contemplated in clause 10 or 11 or any other labour dispute not listed in clause 14 agree thereto in writing, the Council may:

28.1.1. conciliate such dispute;

28.1.2. arbitrate such dispute;

28.1.3. conciliate and arbitrate such dispute.

28.2. Any such dispute may include one that must otherwise, in terms of the Act or any other statute, be determined by the Labour Court or by the CCMA.

28.3. A written agreement to arbitrate a dispute referred to in this clause 28 must be concluded by completing and signing the appropriate part of ELRC Form E1.

28.4. The General Secretary may, within 14 days of receiving such referral, refuse to accept such referral for conciliation and arbitration or both, by informing all the parties to the dispute of such decision.

28.5. If the dispute is one that must or may be referred to conciliation in terms of clause 28.1.1 of these procedures, the conciliation procedure of clause 24 applies.

28.6. If the dispute is one that must or may be referred to arbitration in terms of clause 28.1.2, the arbitration procedure of clause 25 applies.

28.7. If the dispute is one that must or may be referred to conciliation and arbitration in terms of clause 28.1.3 of the procedure of clauses 26.1 to 26.3 applies.

28.8. Notwithstanding any provisions to the contrary the General Secretary may determine that any dispute referred to the Council by agreement may be resolved by any other alternate method contained in this dispute procedure.

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10 For example a dismissal dispute where an employee has been dismissed because the employee refused to join, was refused membership of, or was expelled from, a Trade Union party to a closed shop agreement (s 26(5)(b) of the Act).

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28.9. If the *dispute* is one that may be referred in terms of clause 14.2.3 for a compliance order, clause 23 applies.
PART 10: EXPEDITED DISPUTE RESOLUTION

29. General Provisions Applicable

The following provisions shall apply to the expedited dispute resolution process:

29.1. The General Secretary, subject to clause 29.2 or a Collective Agreement of the Council including its Provincial Chambers may refer any collection of disputes that may otherwise be referred to the General Secretary, for expedited joint conciliation and arbitration.

29.2. A collection of disputes that may be referred to the General Secretary for expedited joint dispute resolution are disputes that:

29.2.1. have arisen within the same province;

29.2.2. involve matters of mutual interest or that are arbitrable in terms of clause 14;

29.2.3. involve the application of similar legal principles or facts; and

29.2.4. would be more economically and effectively resolved as compared to such disputes being processed individually in terms of the provisions of these procedures that would otherwise apply.

29.3. When referring a collection of disputes in terms of clause 29 the General Secretary must publish a notice in this regard in any circulars, bulletins or gazettes.

29.4. A notice referred to in clause 29.3 shall include the following:

29.4.1. a description of the category of cases that shall be subject to such procedure ("the published category");

29.4.2. an invitation to any party or individual employee who may have a dispute falling within the published category to refer such dispute to the Council by a specified expiry date ("the expiry date");

29.4.3. the address(es) and fax number(s) where such referrals must be delivered or faxed;

29.5. All parties and employees must refer further disputes falling within the published category to the Council by the expiry date. After the expiry date no dispute falling within the published category may be referred to the Council, provided that the General Secretary may allow a party on good cause shown to refer a dispute after the expiry date.
30. Procedures applicable

The following clauses will apply to disputes contemplated in this Part, read with the changes required by the context:

30.1. regarding conciliations, clause 18;

30.2. regarding arbitration, clause 19.5 to 19.7;

30.3. regarding service and filing of documents, the provisions of clauses 42 to 51;

30.4. regarding procedures that apply to both conciliations and arbitrations, the provisions of clauses 52 to 65;

30.5. regarding applications, the panellist may dispense with the provisions of clause 66;

30.6. regarding other ancillary matters, the provisions of clauses 67 to 71 will apply.

31. Conciliators and Arbitrators

31.1. Appointment of a co-ordinator and a panel of Conciliators and Arbitrators

31.1.1. The General Secretary must appoint a panel of Conciliators and Arbitrators and the co-ordinator.

31.1.2. The General Secretary must inform the employer and the representative Trade Unions of the appointment of the panel of Conciliators and Arbitrators and the co-ordinator, as contemplated in clause 31.1.1.

31.2. Mandate of Conciliators and Arbitrators

The mandate and responsibilities of Conciliators and Arbitrators shall be:

31.2.1. to conciliate and arbitrate the disputes as a team or individually where appropriate;

31.2.2. in collaboration with the General Secretary, to agree on a list of cases to be dealt with in this process;

31.2.3. to identify issues that are common to the disputes;

31.2.4. to conciliate and or arbitrate the disputes collectively or individually as provided for in this procedure;

31.2.5. to determine the procedures to be followed in order to resolve the disputes as fairly and quickly as possible.
31.2.6. to forward to the General Secretary all records of the proceedings within 14 days of the conclusion of the proceedings.

32. Representation of the parties at the expedited conciliation and arbitration

32.1. This clause must be read together with clause 53 of these procedures.

32.2. The applicant must appear in person at the expedited conciliation and thereafter at the expedited pre-arbitration and expedited arbitration if applicable.

32.3. The employer will appoint officials in its employ to represent the employer during this process.

32.4. Subject to clause 32.1., above, the Trade Union representatives will be entitled to represent all of its affected member(s), if mandated to do so.

32.5. Individual employees/non members of Trade Union parties may only be represented in person.

32.6. Despite clause 25.4.1 the parties are not entitled to be represented by a legal practitioner in these expedited joint conciliation and arbitration proceedings unless:

32.6.1. the panellist and all the other parties consent thereto, in writing; or

32.6.2. the panellist concludes, in writing, that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:

(a) the nature of the questions of law raised by the dispute;

(b) the complexity of the dispute;

(c) the public interest; and

(d) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.

33. Mandate of the parties and enforceability of agreements and awards

33.1. Participation in this process by officials of the employer is, in itself, proof that they are duly mandated to bind the employer during the conciliation and arbitration processes and that any agreement reached by the parties or any arbitration award will be enforceable against the employer, subject to legal remedies.

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33.2. Participation in this intervention by Trade Unions officials is, in itself, proof that they are duly mandated to bind the Trade Union during the conciliation and arbitration processes and that any agreement reached by the parties or any arbitration award will be enforceable against the Trade Union, subject to legal remedies.

33.3. Representative Trade Unions and or individual employees will ensure that the Dispute Referral Forms are completed and duly signed by the grievant. The signature of the grievant, recorded on the Dispute Referral Form, will confirm that any agreement reached or any arbitration award will be binding and enforceable against the grievants, subject to legal remedies.

34. Identification and registration of disputes for this process

34.1. The General Secretary shall identify the category of disputes that qualify to be dealt with in terms of this procedure.

34.2. The Trade Union’s parties and or individuals must submit completed and signed Dispute Referral Forms to the Council for registration on or before the date determined by the General Secretary.

34.3. The disputes will be registered in terms of the expedited Dispute Resolution Procedures of the Council, subject to the proviso that time frames for referring these disputes have been waived by the parties.

35. Collective expedited conciliation of disputes

35.1. The General Secretary will, with reference to the representative Trade Unions, the employer and the Co-ordinator of the panel of Conciliators and Arbitrators, determine the period for the dispute meetings and shall call the first conciliation the first workshop.

35.2. The objectives of the conciliation workshop will, amongst others, be:

35.2.1. to identify complications and/or dispute issues which are common to all or most of the cases referred to the Council for resolution through this process;

35.2.2. to facilitate broad in principle agreement between the parties aimed at resolving complications and/or issues in dispute that are common to all or most of the cases referred;

35.2.3. to resolve through collective expedited conciliation as many of the referred cases as possible;

35.2.4. to identify all outstanding cases, which, in view of the parties are likely to be resolved through conciliation and agree on appropriate processes to achieve that end.

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35.3. The remaining *days* will be set down and spaced, by the Co-ordinator of the panel of *Conciliators* and *Arbitrators*, in such a way to ensure that the process is completed by the date specified by the *General Secretary*, except for those matters which may be affected by possible labour court reviews.

35.4. The next step in the process will be to resolve as many of the *disputes* as possible through collective joint conciliation and thereafter, where necessary, through individual conciliation.

35.5. It is anticipated that the expedited *dispute* resolution process, conciliation and arbitration, should not exceed a total number of *days* determined by the *General Secretary*.

35.6. The *General Secretary* may, after considering the written request and motivation by the Co-ordinator, extend the date that has already been determined.

35.7. At the conclusion of each conciliation, the *panellist* must either:

35.7.1. draw up a written agreement between the *parties* if the *dispute* is resolved; such agreement must be duly signed by the *parties*, AND

35.7.2. issue the *parties* with ELRC Form E3, AND

35.7.3. if the *parties* are present when the *panellist* issues ELRC Form E3 and if the *dispute*:

(a) may be arbitrated by the *Council* in terms of clause 14, the *panellist* should preferably enquire whether the referring *party* intends to refer the *dispute* for *Council* arbitration;

(b) may be arbitrated by the *Council* in terms of clause 25, the *panellist* should preferably enquire whether any of the *parties* intends to refer the *dispute* for *Council* arbitration;

and, if so, facilitate the completion and signing of ELRC Form E14;

35.7.4. issue the *General Secretary* of Council, not later than four *days* thereof, with the original documents as required by clauses 35.7.1 to 35.7.3.

35.8. The *General Secretary* will, with reference to the co-ordinator compile a list of cases and or issues to be referred to arbitration.
36. Expedited pre-arbitration meetings

36.1. In regard to cases not resolved, working from the list referred to in clause 35.8, the panellists will facilitate pre-arbitration meetings between the parties, the primary purposes of which will be:

36.1.1. to identify issues which were resolved during conciliation and which are relevant to the cases referred to arbitration, and

36.1.2. to attempt to find further areas of agreement so that the remaining issues in dispute for arbitration can be curtailed as far as possible.

36.2. Each matter being referred to arbitration shall be subject to an individual pre-arbitration meeting under the auspices and with the assistance of one of the panellists, unless the General Secretary decides otherwise.

36.3. The following, among others, shall be attended to during such pre-arbitration meetings:

36.3.1. the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered (with a copy for each of the parties, the panellist and one to be used by the witnesses);

36.3.2. facts that are common cause;

36.3.3. facts that are in dispute;

36.3.4. the issue/s that the panellist is required to decide;

36.3.5. the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will serve as evidence of what they appear to be;

36.3.6. as far as possible, which witnesses each party to the dispute will call;

36.3.7. any other means by which the proceedings may be shortened; and

36.3.8. whether an interpreter is required and, if so, for how long and for which languages.

36.4. The provisions of clauses 19.5 and 19.7 will further apply regarding pre-arbitration meetings, read with the changes required by the context.
37. Expedited arbitration proceedings

37.1. The appointed panellists will determine the procedure to be followed in order to resolve the disputes as fairly and as quickly as possible with a minimum of legal formalities, subject to the proviso that the rules of natural justice must be applied.

37.2. A single panellist will arbitrate each matter referred to arbitration, unless the parties and the General Secretary agree otherwise, subject to the understanding that the panellists will confer with one another to ensure conformity in the application of legal principles.

38. Recording of the expedited arbitration

38.1. Despite clause 62, the Council will not provide any recording facilities for these arbitrations.

38.2. Hand written notes kept by the panellists will constitute a record of the proceedings.

39. Administration

39.1. The General Secretary shall ensure that secretarial services and administrative support is provided during conciliation and arbitration proceedings.

39.2. The employer and the representative Trade Unions must provide one person each for liaison with the General Secretary and the Co-ordinator, of the panel of Conciliators and Arbitrators, to facilitate the administration of the expedited dispute resolution process.

39.3. Any correspondence given to the representatives, referred to in clause 39.2., shall be deemed to be served on the applicant and the respondent.

40. Finality

40.1. The General Secretary’s decision is final and binding.

40.2. No person may apply to any court of law to review the General Secretary’s decision until the resolution of the dispute has been concluded in the Council through conciliation and/or arbitration, as the case may be.
PART 11: DISCIPLINARY HEARINGS IN THE FORM OF AN ARBITRATION

41. Provisions Applicable

41.1. The employer with the written consent of the employee, or the employee with the written consent of the employer, may require the General Secretary to conduct an enquiry in the form of an arbitration into allegations about the conduct or capacity of that employee.

41.2. When the General Secretary receives a referral in terms of clause 41.1 the General Secretary must convene an arbitration, which will take the place of the internal disciplinary enquiry.

41.3. The request must be in the prescribed form ELRC Form E12.

41.4. The General Secretary of the Council must appoint, on receipt of the application on the prescribed form, a panellist and set the date of hearing, within 60 days; provided that the employer provides proof:

41.4.1. of advising the employee, in writing, of the allegation and, where clause 41.1 applies, the possibility of the mandatory sanction of dismissal;

41.4.2. of serving on the employee the referral to the General Secretary of the Council for pre-dismissal arbitration.

41.5. The provisions of clause 25.4 shall apply to such arbitration, with the exception that the employee may also be represented in the arbitration proceedings by a co-employee.

41.6. The panellist arbitrating in terms of this clause 41 must, in light of the evidence presented and by reference to the criteria of fairness in the Act, direct what action, if any, should be taken against the employee. The provisions of clause 29 shall not apply to such proceedings and the issue of jurisdiction may be considered at any time.

41.7. The provisions on pre-arbitration meetings in clause 19 shall apply with the changes required by the context.
PART 12: SERVICE AND FILING OF DOCUMENTS

42. How to contact the Council

42.1. The addresses, telephone and tele-fax number of the offices of the Council are listed in Schedule 2 of this Constitution: Schedules (Annexure C).

42.2. Documents may only be filed with the Council at the addresses or tele-fax numbers listed in Schedule 2 of this Constitution: Schedules (Annexure C).

43. When are the offices of the Council open

43.1. The offices of the Council are open on the days and hours as indicated in Schedule 2 of this Constitution: Schedules (Annexure C), unless alternative arrangements to the contrary

43.2. Documents may only be filed with the Council during the hours referred to in clause 43.1, unless otherwise agreed to in writing by the General Secretary.

43.3. Notwithstanding clause 43.2 documents may be tele-faxed or electronically transmitted by means of any permissible law.

44. How to calculate time periods

44.1. For the purpose of calculating any period of time in terms of these procedures:

44.1.1. "days" mean:

(a) if the number of days referred to is more than 5, calendar days including Saturdays, Sundays and public holidays;

(b) if the number of days referred to is 5 or less, calendar days excluding Saturdays, Sundays and public holidays; and

44.1.2. the first day is excluded and the last day is included, subject to clauses 44.2 and 44.3.

44.2. When calculating time periods the days listed in clause 2.1 of Schedule 2 of this Constitution: Schedules (Annexure C) are excluded.

44.3. The last day of any period must be excluded if it falls on a Saturday, Sunday, or any day referred to in clause 44.2.

44.4. The term "day" has a similar meaning to the term "days", as defined in this clause 44.
45. Who may sign documents and referral forms

45.1. A document that a party must sign in terms of these procedures may be signed:

45.1.1. on behalf of an employee party, subject to clause 45.3, by:

(a) the affected employee(s); or
(b) a legal practitioner; or
(c) a member, office bearer or official of that party's Trade Union;

45.1.2. on behalf of the employer by:

(a) an employee delegated by the employer; or
(b) a legal practitioner.

45.2. Where a legal practitioner or a member, office bearer or official of that party's Trade Union signs a document on behalf of more than one employee, a list must be attached containing the names of the employees who have mandated such persons to sign on their behalf.

45.3. If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing must be attached to the document, containing:

45.3.1. the names of the employees who have mandated the employee to sign on their behalf;

45.3.2. such employees' signatures.

46. How to serve documents on other parties

46.1. A party must serve a document on the other parties:

46.1.1. by handing a copy of the document to

(a) the person concerned; or
(b) a representative authorised in writing to accept service on behalf of the person; or
(c) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or
place of employment premises at the time; or

(d) a person identified in clause 46.2;

46.1.2. by leaving a copy of the document at:

(a) an address chosen by the person to receive service; or

(b) any premises in accordance with clause 46.3;

46.1.3. by tele-fax or any other electronic means permissible by law during the normal working office hours of the party on whom a document is being served, unless otherwise agreed to in writing by that party;

46.1.4. by sending a copy of the document by registered post or telegram to the last-known address of the party or an address chosen by the party to receive service.

46.2. A document may also be served on:

46.2.1. a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;

46.2.2. an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;

46.2.3. a Trade Union or employers’ organisation by handing a copy of the document to a responsible employee or official at the main office of the Trade Union or employers’ organisation or its office in the magisterial district in which the dispute arose;

46.2.4. a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;

46.2.5. a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;

46.2.6. a statutory body, by handing a copy to the secretary or similar
officer or *member* of the board or committee of that body, or any person acting on behalf of that body;

46.2.7. the State or a province, a state department or a provincial department, a minister, premier or a *member* of the executive committee of a province by handing a copy to a responsible *employee* at the head office of the *party* or to a responsible *employee* at any office of the State Attorney;

46.2.8. by any other means authorised by the *Council*.

46.3. If no person identified in clause 46.2 is willing to accept *service*, *service* may be affected by affixing a copy of the document to:

46.3.1. the main door of the premises concerned or;

46.3.2. if this is not accessible, a post-box or other place to which the public has access.

46.4. The *General Secretary* or a *panellist* may order *service* in a manner other than prescribed in this clause 46.

47. **How to prove a document was served**

47.1. A *party* must prove to the *General Secretary* or a *panellist* that a document was *served* in terms of the procedures, by providing the *General Secretary* or the *panellist* with:

47.1.1. a copy of proof of mailing the document by registered post to the other *party*; or

47.1.2. a copy of the telegram communicating the document to the other *party*; or

47.1.3. a copy of the tele-fax transmission report indicating the successful transmission to the other *party* of the whole document;

47.1.4. if a document was *served* by hand:

(a) a copy of a receipt signed by, or on behalf of, the other *party* clearly indicating the name and designation of the recipient and the place, time and date of *service*; or

(b) a statement confirming *service* signed by the person who delivered a copy of the document to the other *party* or left it at any premises.

47.2. If proof of *service* in accordance with clause 47.1 is provided, it is presumed,
until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.

47.3. Notwithstanding the provisions of this clause 47, the General Secretary or the panellist has a discretion to make any order as to service that such person deems fit.

47.4. The General Secretary or a panellist may accept proof of service in a manner other than prescribed in this clause 47, as sufficient.

48. How to file documents with the Council

48.1. A party must file documents with the Council:

48.1.1. by handing the document to a designated officer at the office of the Council at an address listed in Schedule 2 of this Constitution: Schedules (Annexure C);

48.1.2. by sending a copy of the document by registered post to the office of the Council at an address listed in Schedule 2 of this Constitution: Schedules (Annexure C); or

48.1.3. by faxing or e-mailing the document to the Council at a number listed in Schedule 2 of this Constitution: Schedules (Annexure C).

48.2. Regarding clause 48.1.1, a party can obtain information as to who are designated officers from the Council’s reception.

48.3. A document is filed with the Council when:

48.3.1. the document is handed to a designated officer of the Council;

48.3.2. a document sent by registered post is received by the Council; or

48.3.3. the transmission of a fax is completed.

48.4. A party must only file the original of a document sent by fax, if requested to do so by the Council or a panellist. A party must comply with a request to file an original document within 14 days of the request.

49. When documents sent by registered post are presumed to be received

Any document or notice sent by registered post by a party or the General Secretary is presumed, until the contrary is proved, to have been received by the person to whom it was sent nine days after it was posted.
50. How to seek condonation for documents delivered late

50.1. This clause applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these procedures.

50.2. A party must apply for condonation, in terms of clause 66, when delivering the document to the Council. The General Secretary may require the parties to do so on ELRC Form E2.

50.3. An application for condonation must set out the grounds for seeking condonation and must include details of the following:

50.3.1. the degree of lateness;
50.3.2. the reasons for the lateness;
50.3.3. the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
50.3.4. any prejudice to the other party; and
50.3.5. any other relevant factors.

50.4. The General Secretary may assist a referring party to comply with this clause.

51. Condonation for failure to comply with time frames

The General Secretary or a panellist may condone any failure to comply with the time frames in these procedures, on good cause shown. An application for condonation must be made in terms of clause 50.
PART 13: PROCEDURES THAT APPLY TO BOTH CONCILIATION AND ARBITRATION

52. Where conciliation or arbitration must take place and how the parties should be notified

52.1. The General Secretary shall notify parties of:

52.1.1. the date and time of a conciliation or an arbitration at least 10 days before such process is due to be held;

52.1.2. the venue where the conciliation or arbitration proceedings will be held at least four days before such process is due to be held;

unless otherwise agreed by the parties.

52.2. A dispute will be conciliated or arbitrated in the province in which the cause of action arose, unless otherwise decided by the General Secretary after giving the parties to the dispute opportunity to comment.

52.3. The conciliation and arbitration proceedings shall be held at a venue to be determined by the General Secretary, which shall preferably be at the employee’s workplace or the premises of the Trade Union concerned unless otherwise agreed upon by the parties concerned.

52.4. All communication concerning the date, the venue and any other logistics by the parties and the panellist should be done through the General Secretary. If any arrangements are made directly among the parties, or between the parties and the panellist, the General Secretary must confirm these before the date of the conciliation or arbitration before they take effect.

53. What happens if a party fails to attend proceedings before the Council

53.1. If a party to the dispute fails to appear in person or to be represented at conciliation or arbitration proceedings, or at a pre-arbitration meeting held in terms of clause 19, the panellist must attempt to contact the party and establish the party’s whereabouts, and then may:

53.1.1. dismiss the matter; or

53.1.2. continue with the proceedings in the absence of the party; or

53.1.3. issue an order of costs, in terms of clause 64, and adjourn the proceedings to a later date; or
53.1.4. in exceptional circumstances and on good cause shown, adjourn the proceedings to a later date.

53.2. A panellist must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of clause 53.1.

53.3. In exercising a discretion in terms of subrule (2), a commissioner should take into account, amongst other things-

53.3.1. whether the party has previously failed to attend a conciliation in respect of that dispute;

53.3.2. any reason given for that party’s failure to attend;

53.3.3. whether conciliation can take place effectively in the absence of that party;

53.3.4. the likely prejudice to the other party of the commissioner’s ruling;

53.3.5. any other relevant factors.

53.4. If a matter is dismissed, the General Secretary must send a copy of the ruling to the parties.

54. Objections to representatives appearing before the Council.

54.1. If a party to the dispute objects to the representation of another party to the dispute or the panellist suspects that the representative of a party does not qualify in terms of these procedures, the panellist must determine this issue.

54.2. The panellist may call upon the representative to establish why the representative should be permitted to appear in terms of these procedures.

54.3. A representative must tender any documents requested by the panellist, in terms of clause 54.2, including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a Trade Union or employers’ organisation.

55. How a conciliation or arbitration hearing can be postponed

55.1. A formal application in writing for a postponement must be made:

55.1.1. if the parties cannot agree in terms of clause 55.4 whether an arbitration or conciliation should be postponed; or

55.1.2. if the request for a postponement is made within 14 days before the scheduled date of the conciliation or arbitration;
55.1.3. in the circumstances described in clause 55.5;

and the party applying for such postponement must serve a copy of the application for postponement on all other parties to the dispute, and file proof of such service with the General Secretary at least four days before the scheduled date of the conciliation or arbitration.

55.2. The General Secretary will decide whether to:

55.2.1. grant the request for a postponement on the written documents presented; or

55.2.2. convene a formal hearing before a panellist.

55.3. A panellist may condone non-compliance with clause 55.1 only in exceptional circumstances and on good cause shown.

55.4. Postponements will be granted without the need for the parties to appear if both of the following conditions are met:

55.4.1. if all the parties to the dispute agree in writing to the postponement; and

55.4.2. if the request for the postponement is received by the General Secretary at least nine days prior to the scheduled date of the conciliation or arbitration, as the case may be.

55.5. If the parties had already requested a postponement of the proceedings one time in terms of clause 55.4, any further request for postponement must be made in terms of clause 55.1.

55.6. These provisions do not affect the right of a party to make an application for a postponement at a scheduled hearing.

56. How to join or substitute parties to proceedings

56.1. The General Secretary or a panellist may join any number of persons as parties in proceedings, if the right to relief depends on substantially the same question of law or fact.

56.2. A panellist may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

56.3. When the Council requests from any party information as to whether any person has a substantial interest in the subject matter of specific proceedings, that party must comply by providing the Council with the full name, PERSAL number, full contact details and the interest of that person.
56.4. A panellist may make an order in terms of clause 56.2:

56.4.1. of the panellist’s own accord;

56.4.2. on application by a party; or

56.4.3. if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

56.5. An application in terms of these procedures must be made in terms of clause 66.

56.6. When making an order in terms of clause 56.2, a panellist may:

56.6.1. give appropriate directions as to the further procedure in the proceedings; and

56.6.2. make an order of costs in accordance with these rules.

56.7. If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the General Secretary for an order substituting that party for an existing party, and a panellist may make such order or give appropriate directions as to the further procedure in the proceedings.

56.8. An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously, delivered, unless the person concerned or that person’s representative is already in possession of the documents.

56.9. Subject to any order made in terms of clauses 56.6 or 56.7, a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

56.10. A person that has been joined or who has been substituted for an existing party is bound by any decision made by the Council, the General Secretary or the panellist as if the person had been a party to the proceedings from their inception, unless the panellist rules otherwise.

57. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the General Secretary or a panellist may, on application and on notice to the parties concerned, correct the error or defect.

58. When disputes may be consolidated or hearing separated

The General Secretary or a panellist, of the General Secretary’s or panellist’s own
accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings, or it may order separate hearings to be held in respect of separate disputes.

59. Payment of witness fees to subpoenaed witnesses

59.1. A witness subpoenaed in any proceedings in the Council is entitled to a fee in accordance with the tariff of allowances prescribed and published by notice in the Government Gazette in terms of Section 142 (7) of the Act.

59.2. Where such witness is an employee of the State such witness shall not be paid an allowance for the time that the witness was required to be available to give evidence during such proceedings, unless the witness can show that the witness will not be paid for such time. Such a witness may, however, claim the prescribed fees regarding travel and subsistence expenses.

59.3. The party calling for the subpoena of a witness shall be responsible for the payment of the prescribed allowances for the witness.

59.4. The General Secretary may, on good cause shown, waive the requirements of clause 59.3 and approve the payment of witness fees from the Council's own funds.

60. How an applicant may withdraw a matter

60.1. The applicant may withdraw a matter by filing a notice of withdrawal on the General Secretary on prescribed Form ELRC E16.

60.2. The applicant shall inform the General Secretary in writing if the dispute had been resolved between the parties and if any settlement agreement has been reached, such written settlement agreement must be attached to the Notice of Withdrawal.

60.3. From a date 14 days after a matter had been withdrawn an applicant will be barred from reinstating a referral. If the applicant wants the matter to be processed again, the applicant must then re-refer it as a new dispute.

61. How to have a subpoena issued

61.1. Any party who requires the General Secretary or a panellist to subpoena a person, must file a completed subpoena form, ELRC Form E10, together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.

61.2. A party requesting the General Secretary to waive the requirement for the party to pay witness fees must set out the reasons for the request in writing at the time of requesting the General Secretary to issue a subpoena in respect of that witness.
61.3. An application in terms of clause 61.1 must be filed with the General Secretary at least 14 days before the arbitration hearing, or as directed by the panellist hearing the arbitration.

61.4. The General Secretary or a panellist may refuse to issue a subpoena if:

61.4.1. the party does not establish why the evidence of the person is necessary;

61.4.2. the party to be subpoenaed does not have a reasonable period in which to comply with the subpoena;

61.4.3. the General Secretary or a panellist is not satisfied that the party has arranged to pay the witness fees and the reasonable travel costs of the person subpoenaed.

61.5. A subpoena must be served on the witness subpoenaed:

61.5.1. by the person who has requested the issue of the subpoena or by the Sheriff, at least nine days before the scheduled date of the arbitration;

61.5.2. and if so directed by the General Secretary, accompanied by payment of the prescribed witness fees for one or more days in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs.

61.6. If a subpoena is served upon the witness by way of fax, the person requesting the subpoena shall ensure that that witness is telephoned or otherwise contacted to establish whether the subpoenaed person has received the subpoena, and shall serve a written statement to this effect with the General Secretary and the panellist. This note must include the date of the call, details of the person making the call and of the people to whom the person spoke in this regard, and of the content of the call.

61.7. Any party who requires the Council to subpoena a person should bear the costs of service of the subpoena on that person. That party may apply to the General Secretary to waive this clause and to pay the cost of service, providing full motivation. Where exceptional circumstances are present, the General Secretary may grant this request.

61.8. Clauses 61.4.3 and 61.5.2 do not apply if the General Secretary has waived the requirement to pay witness fees.

62. How conciliation and arbitration proceedings must be recorded

62.1. English shall be the language of the record of all dispute proceedings, although
or another medium is used.

62.9. Except where the parties make their own arrangements for mechanical or electronic recording, the Council shall keep any mechanical recordings made of arbitration proceedings in a place determined by the General Secretary, and such recordings may only be available to the parties for a period not exceeding 180 days from the date that the hearing ended.

62.10. A party may request a copy of the transcript of a record or a portion of a record kept in terms of this clause 62, on payment of the costs of the transcription.

62.11. The person who makes the transcript of the record must certify that it is correct. The transcript of a record so certified as correct is presumed to be correct unless the Labour Court decides otherwise.

62.12. Such mechanical or electronic recording and the transcript shall be the property of the Council.

62.13. The Council reserves the right to destroy the recordings after the 180 days referred to in clause 62.9.

63. What are the powers of panellists

63.1. A panellist appointed to attempt to resolve a dispute may:

63.1.1. subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;

63.1.2. subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the panellist to be questioned or to produce that book, document or object;

63.1.3. call, and if necessary subpoena, any expert to appear before the panellist to give evidence relevant to the resolution of the dispute;

63.1.4. call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the dispute;

63.1.5. administer an oath or accept an affirmation from any person called to give evidence or be questioned;

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11 Clause 63 applies by virtue of section 128(3)(a) of the Act, which empowers an accredited Council to confer on any person appointed by it to resolve a dispute the powers of a Commissioner in terms of section 142 of the Act read with the changes requires by the context.
a panellist acting as an Arbitrator shall be free to record proceedings in the language that it was conducted, provided that all key participants, including parties and representatives, understand that language.

62.2. Any party to a dispute may request the General Secretary to provide the services of an interpreter. Such request must be made in writing at least 14 days prior to the hearing.

62.3. The General Secretary will not provide any recording facilities at conciliation or its related activities.

62.4. The General Secretary shall keep a record of:

62.4.1. any evidence given in an arbitration hearing;

62.4.2. any sworn testimony given in any proceedings before the General Secretary; and

62.4.3. any arbitration award or ruling made by a panellist.

62.5. Subject to clause 62.6, the General Secretary shall, upon request, provide mechanical or electronic recording facilities, at the cost of the Council, for arbitration proceedings.

62.6. The General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in the Council.

62.7. The parties may make arrangements for mechanical or electronic recording of the arbitration proceedings.

62.8. If the parties or the Council do not make such arrangements the panellist shall keep notes or make a mechanical or electronic recording of the proceedings, in the panellist's discretion, as follows:

62.8.1. if the panellist keeps notes of the proceedings, these notes may be by legible hand-written notes and must reflect the panellist's understanding of the essence of the proceedings and the evidence given, but need not be a verbatim record of the proceedings; or

62.8.2. if the panellist makes a mechanical or electronic recording the panellist or, if the parties so agree, one of the parties shall provide the necessary equipment and devices, including the medium upon which the recording will be done such as cassette or other tapes. The panellist shall submit copies of the recording, in the medium through which it is recorded, to the General Secretary, and the Council shall reimburse the panellist for any cost incurred in procuring such medium, whether cassette tapes
63.1.6. at any reasonable time, but only after obtaining the necessary written authorisation:

(a) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; and

(b) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and

(c) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement; and

63.1.7. inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Council.

63.2. A subpoena issued for any purpose in terms of clause 63.1 must be signed by the General Secretary and must:

63.2.1. specifically require the person named in it to appear before the panellist;

63.2.2. sufficiently identify the book, document or object to be produced; and

63.2.3. state the date, time and place at which the person is to appear.

63.3. The written authorisation referred to in clause 63.1.6:

63.3.1. if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 13 of the Constitution, and then only on the application of the panellist setting out under oath or affirmation the following information:

(a) the nature of the dispute;

(b) the relevance of any book, document or object to the resolution of the dispute;

(c) the presence of any book, document or object on the premises; and

(d) the need to enter, inspect or seize the book, document or object; and
63.3.2. in all other cases, may be given by the *General Secretary*.

63.4. The owner or occupier of any premises that a *panellist* is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that a *panellist* requires to enter those premises and to carry out the inspection or seizure.

63.5. The *panellist* must issue a receipt for any book, document or object seized in terms of clause 63.4.

63.6. The law relating to privilege, classified information or any other protection from disclosure or discovery, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any document, book or object in terms of this section.

63.7. A *panellist* determining the admissibility of evidence in terms of clause 63.3 must require the party relying on privilege, non disclosure of classified information, or on any other protection from disclosure or discovery, to prove the inadmissibility of such evidence.

63.8. A person commits contempt of the *Council*

63.8.1. if, after having been subpoenaed to appear before the *panellist*, the person without good cause does not attend at the time and place stated in the subpoena;

63.8.2. if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the *panellist*;

63.8.3. by refusing to take the oath or to make an affirmation as a witness when a *panellist* so requires;

63.8.4. by refusing to answer any question fully and to the best of that person's knowledge and belief subject to clause 63.6;

63.8.5. if the person, without good cause, fails to produce any book, document or object specified in a subpoena to a *panellist*;

63.8.6. if the person wilfully hinders a *panellist* in performing any function conferred by or in terms of the Act;

63.8.7. if the person insults, disparages or belittles a *panellist*, or prejudices or improperly influences the proceedings or improperly anticipates the *panellist*'s award;

63.8.8. by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
63.8.9. by doing anything else in relation to the Council that, if done in relation to a court of law, would have been contempt of court.

63.9. A panellist may:

63.9.1. make a finding that a party is in contempt of the Council for any of the reasons set out in clause 63.8;

63.9.2. refer the panellist's finding, together with the record of the proceedings, to the Labour Court for its decision in terms of clause 63.11.

63.10. Before making a decision in terms of clause 63.11, the Labour Court:\textsuperscript{12}

63.10.1. must subpoena any person found in contempt to appear before it on a date determined by the Court;

63.10.2. may subpoena any other person to appear before it on a date determined by the Court; and

63.10.3. may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person's right to represent a party in the Council and the Labour Court be suspended.

63.11. The Labour Court may confirm, vary or set aside the finding of a panellist.

63.12. If any person fails to appear before the Labour Court pursuant to a subpoena issued in terms of clause 63.10.1, the Court may make any order that it deems appropriate in the absence of that person.

63.13. When the provisions of section 142 of the Act is amended, the powers conferred on panellists in this clause 63 must be read as if it had been amended to the same extent as the amendment to that section, read with the changes required by the context.

64. Costs

64.1. Subject to clause 62.6, the Council will pay the costs of the conciliation or arbitration proceedings, including the cost of the venue (if any), the fee of the panellist and the expenses incurred by the panellist in terms of the Council's fee policy.

64.2. Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.

\textsuperscript{12} The provisions of clauses 63.9.2 to 63.12 apply by virtue of section 142(9)(b) and 142(10) to (12) read with section 128(3)(a), and are repeated here merely for the sake of completeness.
64.3. If a panellist finds that a dismissal is procedurally unfair the panellist may charge the employer an arbitration fee.\footnote{Section 140(2) of the Act provides this power to Commissioner of the CCMA. This is a comparable power provided to panellists appointed by the Council.}

64.4. If, at any time during the proceedings, the panellist is satisfied that:

64.4.1. a party, or a person who represented that party in the proceedings, acted in a manner seriously compromising the proceedings the panellist may make an appropriate order of costs against the party or person compromising the proceedings. Such order may also relate to the costs of the Council referred to in clause 64.1;

64.4.2. the referral to the Council was made or defended vexatiously or without reasonable cause, the panellist may make an appropriate order of costs;

64.4.3. the unreasonable conduct of a party has led to wasted costs for another party of the Council, the panellist may, on application of the latter party or, regarding the costs of the Council, on the panellist’s own initiative, make an appropriate order of costs.

64.5. An example of circumstances applicable to clause 64.4.3 is where such party applied for a postponement outside of the time-periods provided for in clauses 55 and was nevertheless granted such postponement despite not bring such application as soon as was reasonably possible.

64.6. The procedure that the panellist must follow, in respect of pursuing the intent of clauses 64.3 to 64.4.3, shall be by:

64.6.1. informing both parties of the intention to do so; and

64.6.2. giving both parties an opportunity to make representations on the issue.

64.7. Costs awarded by the panellist may include:

64.7.1. the costs of the conciliation and / or arbitration;

64.7.2. legal and professional costs and disbursements;

64.7.3. other expenses which a party has incurred in the conduct of the dispute; and

64.7.4. expenses of witnesses.
65. Taxation of Bills of Cost

65.1. The General Secretary may appoint a panelist as taxing officer to perform the functions of a taxing officer in terms of these procedures.

65.2. The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Council, on Schedule A of the prescribed Magistrate Court tariff, in terms of the Magistrates Court Act, no 32 of 1944, unless the parties have agreed upon a different tariff.

65.3. At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that in the taxing officer's opinion is necessary to properly determine any matter arising from the taxation.

65.4. Any person requesting a taxation must complete ELRC Form E11 and must satisfy the taxing officer:

65.4.1. of that party's entitlement to be present at the taxation; and

65.4.2. that party liable to pay the bill has received notice of the date, time and place of the taxation.

65.5. Despite clause 65.4, notice need not be given to a party:

65.5.1. who failed to appear or to be represented at the hearing; or

65.5.2. who consented in writing to the taxation taking place in that party's absence.

65.6. Any decision by a taxing officer is subject to review by the Labour Court.

66. How to bring an application

66.1. This clause 66 applies to any:

66.1.1. application for joinder, substitution, variation or rescission;

66.1.2. application in a jurisdictional dispute;

66.1.3. other preliminary or interlocutory application.

66.2. An application must be brought on notice to all persons who have an interest in the application.

66.3. The party bringing the application must sign the notice of application in accordance with clause 45 and must state:

66.3.1. the title of the matter;
66.3.2. the case number assigned to the matter by the General Secretary;

66.3.3. the relief sought;

66.3.4. the address at which the party delivering the document will accept delivery of all documents and proceedings;

66.3.5. that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within 14 days after the application has been delivered to it;

66.3.6. that the application may be heard in the absence of a party that does not comply with clause 66.3.5;

66.3.7. a schedule listing the documents that are material and relevant to the application.

66.4. The application must be supported by an affidavit. The affidavit must clearly and concisely set out:

66.4.1. the names, description and addresses of the parties;

66.4.2. a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;

66.4.3. a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document; and

66.4.4. if the application is filed outside the relevant time period, grounds for condonation in accordance with clause 51;

66.4.5. if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these procedures.

66.5. Further steps by the parties:

66.5.1. Any party opposing the application may deliver a notice of opposition and an answering affidavit within 14 days from the day on which the application was served on that party.

66.5.2. The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it.

66.5.3. The replying affidavit must address only issues raised in the
answering affidavit and may not introduce new issues of fact or law.

66.6. A panellist may permit the affidavits referred to in this clause to be substituted by a written statement.

66.7. In an urgent application, the General Secretary or a panellist may:

66.7.1. dispense with the requirements of this clause 66; and

66.7.2. only grant an order against a party that has had reasonable notice of the application.

66.8. The General Secretary must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

66.9. The General Secretary must notify the parties of the date, time and place of the hearing of the application.

66.10. Applications may be heard on a motion roll.

66.11. Despite this clause, the General Secretary or a panellist may determine an application in any manner it deems fit.

66.12. A panellist may, on good cause shown, condone non-compliance with this clause 66.

67. Making a Settlement Agreement an Arbitration Award14

67.1. The Council may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Council, an arbitration award.

67.2. For the purposes of clause 67.1, a settlement agreement signed by both parties is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a party is entitled to refer to arbitration in terms of either section 74(4) or 75(7).15

68. How an arbitration award can be certified and enforced

68.1. An application to have an arbitration award certified in terms of section 143(3) read with section 51(8) must be made on or contain the information in ELRC Form E8.

14 The provisions of clause 64 apply by virtue of section 142A read with section 51(8) and are repeated here merely for the sake of completeness.

15 Respectively being a dispute in (a) an essential service or (b) a maintenance service.
68.2. Any arbitration award that has been so certified that orders the payment of an amount of money, may be executed:

68.2.1. by using the warrant of execution in ELRC Form E8; or

68.2.2. by a warrant of execution prescribed in the Rules for the Conduct of Proceedings in the High Court.

68.3. For the purposes of this clause 68 an arbitration award includes an award of costs, a taxed bill of costs in respect of an award of costs and any arbitration fee that the Council may charge.

68.4. The provisions of clause 68.2 are limited in their applicability to the State as the employer as legislation prevents the attachment of property belonging to the State as an employer.

68.5. Notwithstanding, the provisions of these procedures, a party is not prevented from applying to the Labour Court for an order to make any arbitration award or any settlement agreement an order of the Court, or for an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of the Act.

69. Effect of arbitration awards

69.1. An arbitration award issued by an panellist under the auspices of the Council is final and binding and may be made an order of the Labour Court in terms of section 158(1)(c) of the Act, unless it is an advisory arbitration award.

69.2. If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise.

70. Variation and rescission of arbitration awards

70.1. How to apply to vary or rescind arbitration awards or rulings

70.1.1. An application for the variation or rescission of an arbitration award or ruling must comply with clause 66.

70.1.2. Such application must be made within 14 days of the date on which the applicant became aware of the arbitration award or ruling.

70.1.3. A ruling made by a panellist which has the effect of a final order, will be regarded as a ruling for the purposes of this clause 70.
70.2. The Council's powers to vary or rescind an award

Any panellist who has issued an arbitration award or ruling or any other panellist appointed by the General Secretary for that purpose, may on that panellist's own accord or, on application by any affected party, vary or rescind an arbitration award or ruling:

(a) erroneously sought or erroneously made in the absence of any party affected by that award or ruling;

(b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of the ambiguity, error or omission; or

(c) granted as a result of a mistake common to the parties to the proceedings.

71. Review of arbitration awards

71.1. Any party to a dispute who alleges a defect in any arbitration proceedings, conducted under the auspices of the Council, may apply to the Labour Court for an order setting aside the arbitration award:

71.1.1. within six weeks of the date that the award was served on the applicant, unless the alleged defect involves corruption; or

71.1.2. if the alleged defect involves corruption, within six weeks of the date that the applicant discovers the corruption.

71.2. A defect referred to in clause 71.1, means:

71.2.1. that the panellist under the auspices of the Council:

(a) committed misconduct in relation to his/her duties as a panellist;

(b) committed a gross irregularity in the conduct of the arbitration proceedings; or

(c) exceeded his/her powers; or

71.2.2. that an award has been improperly obtained.

71.3. The party referring an award for review to the Labour Court must simultaneously forward to the General Secretary of the Council any such application or papers.

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16 The provisions of clauses 71.1, 71.2, 71.6 and 71.7 apply by virtue of section 145 read with section 51(8) and are repeated here merely for the sake of completeness.
71.4. Such application or papers must be served on the General Secretary of the Council at the physical address provided in Schedule 2 of this Constitution: Schedules (Annexure C).

71.5. The provisions of clause 62 regarding recording of proceedings shall apply to records required for a review application.

71.6. The Labour Court may:

71.6.1. stay the enforcement of the award pending its decision;

71.6.2. on good cause shown condone the late filing of an application in terms of clause 71.1.

71.7. If the award is set aside, the Labour Court may:

71.7.1. determine the dispute in the manner it considers appropriate; or

71.7.2. make any order it considers appropriate about the procedures to be followed to determine the dispute.
PART 14: GENERAL

72. How panellists are appointed and terminated

72.1. Subject to the Act, the Council may at any of its meetings for a period as determined by Council, appoint to the Council's panel of dispute resolvers, called panellists, from nominations received from the parties.

72.2. In making these appointments the Council must ensure that the panel:

72.2.1. is 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;

72.2.2. has panellists with skill and experience in labour relations, knowledge about the education sector and knowledge or experience in conciliation and arbitration;

72.2.3. is broadly representative of South African society.

72.3. A person appointed to the panel may act as panellist only if the panellist:

72.3.1. has concluded a Contract of Work, as prescribed by the Council;

72.3.2. has accepted the relevant Fee Policy of the Council;

72.3.3. considers him or herself bound by the Code of Conduct in Schedule 3 of this Constitution: Schedules (Annexure C).

72.3.4. is accredited by the CCMA

72.4. An error, omission or oversight committed in good faith regarding the appointment of a panellist or the requirements of clause 72.3 shall not invalidate anything done by a panellist or by a putative panellist in terms of these procedures.

72.5. The Council may remove a member of the panel from office because of breach of contract.

72.6. The Council may, subject to the Act, appoint a new member to the panel.

72.7. A member of the panel whose term of office expires is eligible for re-appointment.

72.8. Notwithstanding the provisions of Clause 72.3, the General Secretary may further appoint any person who is not on the panel of the Council, to fulfil any
functions of a panellist in these procedures. A person so appointed shall be deemed, for the purposes of such appointment, to be a panellist of the Council.

73. Maintenance of a dispute register

73.1. The General Secretary shall maintain a dispute register regarding every dispute that is received by the Council, whether the dispute is properly referred or not.

73.2. In this register it must be recorded how the dispute is processed, including whether it is referred back to the referring party or whether it is cross-referred to another forum.

74. Issue of forms

74.1. The General Secretary may design and issue forms to give effect to these procedures, and may withdraw or replace such forms at any time by giving notice to the parties.

74.2. Any person completing any such form must comply with the instructions contained in the form. If the instructions contained in such form conflict with the provisions of these procedures, these procedures will apply in preference.

75. Referral of disputes to the Labour Court for adjudication

75.1. Despite any other provision of these procedures, the General Secretary on his/her own, or on application by any party to a dispute, may refer any dispute that is arbitrable in terms of these procedures to the Labour Court for adjudication.

75.2. An application referred to in clause 75.1 must be made at least nine days before the date on which the matter has been set down for arbitration.

75.3. In deciding whether to refer a dispute to the Labour Court, the General Secretary should consider:

75.3.1. the nature of the dispute;

75.3.2. whether there are questions of law raised by the dispute;

75.3.3. the complexity of the dispute;

75.3.4. whether there are conflicting arbitration awards that need to be resolved;

75.3.5. the public interest.

75.4. When considering whether the dispute should be referred to the Labour Court,
the General Secretary must give the parties to the dispute and the panellist who attempted to conciliate the dispute an opportunity to make representations.

75.5. The General Secretary must notify the parties to the dispute of the decision. The General Secretary’s decision is final and binding. No person may apply to any court of law to review the General Secretary’s decision until the dispute has been arbitrated or adjudicated, as the case may be.

75.6. If the General Secretary decides:

75.6.1. that the matter should be referred to the Labour Court, the General Secretary must refer the dispute to the Labour Court within 45 days of the date of the General Secretary’s decision or the end of the conciliation of the dispute, whichever is the later;

75.6.2. that the matter should not be referred to the Labour Court, the General Secretary must set the matter down for arbitration.

75.7. When referring the dispute to the Labour Court, the General Secretary may supplement the parties’ papers.

76. Definitions

Unless the context indicates otherwise,

76.1. ‘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;

76.2. ‘BCEA’ means the Basic Conditions of Employment Act 75 of 1997;

76.3. ‘CCMA’ means the Commission for Conciliation, Mediation and Arbitration;

76.4. ‘Chief Executive Officer’ means, in the case of a Trade Union, the person finally responsible for administrative matters in that Trade Union, irrespective of the terms used within that Trade Union to name that position;

76.5. ‘Combined Trade Union Party’ shall mean two or more Trade Unions acting together as a single party.

76.6. ‘Conciliator’ means a panellist who has been appointed to conduct a conciliation;

76.7. ‘Consultation’ means a meaningful joint consensus seeking process.

76.8. ‘Council’ means the Education Labour Relations Council;
76.9. *Days* is defined in clause 44;

76.10. *Dispute* means a dispute that exists in respect of:

76.10.1. matters that are regulated by uniform rules, norms and standards that apply to the education sector; or

76.10.2. matters that apply to terms and conditions of service that apply to the education sector; or

76.10.3. matters that are assigned to the State as employer in the education sector and includes an alleged dispute

76.11. *Dispute Resolution Procedures*, the Council's Dispute Resolution Procedures as adopted by the Council by Collective Agreement;

76.12. *Employee* means an educator as defined in the Employment of Educators Act 76 of 1998;

76.13. *Employer* means the State in its capacity as employer as defined in the Employment of Educators Act 76 of 1998;

76.14. *File* means the delivery or transmission of documents to the relevant Council, as provided for in clause 48, and "filing and filed" shall have a similar meaning;

76.15. *General Secretary* means the General Secretary of the Council, appointed in terms of this Constitution;

76.16. *Executive Committee* means the decision making body which comprises of 5 persons representing the employer and 5 persons representing the Trade Unions shared proportionately in terms of the vote weights determined by the General Secretary.

76.17. *Labour Dispute* means any dispute related to the employment relationship between the employer and an employee in the Public Service in relation to clause 28.

76.18. *Mutual interest dispute* means a dispute about any matter of mutual interest and shall include a dispute regarding, amongst others, a refusal to bargain (as contemplated in section 64(2)), wages, terms and conditions of employment, between:

76.18.1. on the one side:

(a) one or more Trade Unions;

(b) one or more employees; or

(c) one or more Trade Unions and one or more employees;
and

76.18.2. on the other side, the employer;

76.19. ‘Operational requirements’ means requirements based on the economic, technological, structural, or similar needs of the employer.

76.20. ‘Panellist’ means a member of the Panel established in terms of clause 72 and, where reference in made to a panellist’s functions regarding disputes, means a panellist appointed to conciliate, arbitrate or conciliate and arbitrate a dispute;

76.21. ‘Parties’ means organisations and / or individuals;

76.22. ‘Party’ means any party to proceedings before the Council;

76.23. ‘PSCBC’ means the Public Service Coordinating Bargaining Council established in terms of the Act;

76.24. ‘Provincial Chamber’ means the Provincial Chamber of a given province.

76.25. ‘Provincial Secretary’ means the official appointed in a Provincial Chamber in terms of clause 14.3(m) of this Constitution: General Provisions (Annexure A).

76.26. ‘Public Service’ means [the service referred to in section 1(1) of the Public Service Act, 1994 (promulgated by Proclamation 103 of 1994) and includes any organizational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 of that Act] the national departments, provincial administrations, provincial departments and organizational components contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), but excluding:

76.26.1. the members of the South African National Defence Force;

76.26.2. the National Intelligence Agency; and

76.26.3. the South African Secret Service.

76.27. ‘Registrar’ means the registrar as defined in the Act.

76.28. ‘Serve’ means the delivery or transmission of documents to the other parties to a dispute, as provided for in clause 46, and “serving and served” shall have a similar meaning;

76.29. ‘the Act’ means the Labour Relations Act, 1995 (Act 66 of 1995), as amended;

76.30. ‘the Constitution’ means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
76.31. ‘these Procedures’ means this document, constituting the Dispute Resolution Procedures of the Council; and

76.32. ‘this Constitution’ means the constitution of the Council;

76.33. ‘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.

76.34. ‘30-day conciliation period’ means the 30-day conciliation period in terms of any provision of these procedures, calculated from the date on which the Council receives a referral for conciliation, or for conciliation and arbitration.

77. Interpretation

77.1. 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.

77.2. Words used in singular in this procedure shall also be read as in plural.
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CONSTITUTION: NEGOTIATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES

ANNEXURE B

16 MARCH 2006
EDUCATION LABOUR RELATIONS COUNCIL

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

ANNEXURE C

16 MARCH 2006

CONSTITUTION:

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CONSTITUTION: SCHEDULES, ANNEXURE C

16 MARCH 2006
SCHEDULE 1:
PROTOCOL

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

1. INTRODUCTION

1.1. The policymaking 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:
(a) Prevent conflict of interest and unethical behaviour by *office bearers* and *members*;
(b) Ensure that the *Council* functions efficiently and effectively;
(c) Give effect to *this Constitution* of the *Council*;
(d) Comply with the *PFMA*; and
(e) Regulate the relations amongst *Council members*;
(f) Assist in maintaining the good governance of the *Council*;
(g) 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/GRATUITIES

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:

(a) Any direct or indirect financial or personal interest in this matter;

(b) 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;

(c) 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.

CONSTITUTION: SCHEDULES, ANNEXURE C
16 MARCH 2006
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:

(a) Interfering in the day-to-day execution of duties by the Secretariat;
(b) Getting involved in operational execution and decision-making where the advice from the General Secretary has not been requested;
(c) 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

[Signature]
(d) 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:

(a) Contract with any person or an accredited agency to perform any function of the Council on its behalf, whether for reward or otherwise,

(b) Attach conditions to a delegation and may amend or revoke a delegation at any time;

(c) 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

Constitution: Schedules, Annexure C

16 March 2006
(d) 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 Minister annually in terms of the National Treasury Regulations and after consultation with the Minister of Finance.

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:
   (a) Misconduct
   (b) Incapacity
   (c) 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;

(a) All books, brochures, drawings, photographs, member lists, research documentation;

(b) 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;

(c) Skill, know-how and techniques of work or processes and

(d) Any other property as determined by the Council

15.2 The members and office bearers are obliged to disclose and cede to the Council;

(a) Any discovery;

(b) Invention; and or

(c) 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 5 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:

(a) Theft;

(b) Fraud;

(c) Malicious damage to Council property;

(d) Abuse of Council property or facilities; and

(e) 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:

(a) Keep such information confidential, and

(b) Not make copies of or take extracts from any of the aforesaid documents.

17.2 The items, as contemplated in clauses 17.1(a) and 17.1(b), 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 (Annexure A).

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 of 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 satisfies 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.

CONSTITUTION: SCHEDULES, ANNEXURE C
16 MARCH 2006
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) 663-9604 (Reception)  (012) 663 1601 (Dispute Resolution)
       E-Mail: dispute.res.hod@elrc.co.za

2. OFFICE HOURS
   The Office of the Council shall be open:
   2.1 on the following days: every Monday to Friday, excluding:
       (a) public holidays;
       (b) the days period between Good Friday and the Sunday eight days later, including both such days; and
       (c) the days between 16 December and the Sunday at least 18 days thereafter, including both such days;
   2.2 during the following hours 08:30 to 16:00; 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:

(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) 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;

(d) 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;

(e) 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:

i. if the terms of reference provide for a procedure to be followed for determining challenges to the panellist then those procedures should be followed;

ii. 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

[Signature]
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 panelist 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 (Annexure 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 72 of this Constitution: Negotiation, Consultation and Dispute Resolution Procedures (Annexure B) 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.