COLLECTIVE AGREEMENT
NUMBER 5 OF 2008

16 SEPTEMBER 2008

FURTHER EDUCATION AND TRAINING COLLEGES SECTOR BARGAINING UNIT
EDUCATION LABOUR RELATIONS COUNCIL

COLLECTIVE AGREEMENT NUMBER 5 OF 2008

FURTHER EDUCATION AND TRAINING COLLEGES SECTOR
BARGAINING UNIT

1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to establish a bargaining and dispute resolution forum for the FETC sector:

(1) To create a bargaining unit for the FETC sector, within the ELRC; and

(2) To be the bargaining and dispute resolution forum as envisaged in the LRA.

2. SCOPE OF THIS AGREEMENT

This agreement applies to and shall bind:

(1) All employees of the Department, as defined in the Employment of Educators Act, 1998 (as amended) who are members of trade union parties in this agreement;

(2) All employees of the Department, as defined in the Employers of Educators Act 1998 (as amended) who are not members of the trade union parties that are signatories to this agreement but who are to be joined in this process; and

(3) All employers as envisaged in the FETC Act No. 16 of 2006, whether they are signatories or not to this agreement.

(4) All employees as envisaged in the FETC Act No. 16 of 2006, who are members of trade union parties that are signatories to this agreement; and

(5) All employees as envisaged in the FETC Act No. 16 of 2006, who are not members of trade union parties that are signatories to this agreement but who are to be joined in this process.
3. NOTING

(1) The FETC Act No. 16 of 2006 removes educators of this sector from the Employers of Educators Act 1998 (as amended) and creates the FETC as an independent sector within public education.

(2) In giving effect to the FETC Act No. 16 of 2006 in section 54(3), Collective Agreement No. 5 of 2007 requires the ELRC to create a bargaining unit for this sector before 1\textsuperscript{st} January 2008.

(3) Collective Agreement number 5 of 2007 of the ELRC was concluded by:

(a) The STATE, as represented by the Department of Education;
(b) Both educator trade unions in the ELRC, i.e. combined trade unions South African Democratic Teachers' Union and Suid-Afrikaanse Onderwyserunie; and
(c) All 50 further education and training colleges as the new employer.

(4) The ELRC constitution in clause 6.2 empowers the ELRC to establish the bargaining unit envisaged in Collective Agreement 5 of 2007; the clause reads:

"The Council may, by a resolution (collective agreement)\textsuperscript{1} of Council, extend the scope to include other educational sectors including small and medium enterprises in the education sector"

4. AGREEMENT

Having regard to what has been stated above, the parties agree as follows:

(1) That the negotiating forum in Annexure A of the ELRC constitution, as certified by the Registrar of Labour Relations, shall be deemed to be the General Bargaining Unit of the ELRC;

(2) That Annexure B of the ELRC constitution shall be applicable to the FETC Bargaining Unit as established by this collective agreement; and

(3) That, subject to 4(4) below, the FETC Bargaining Unit of the ELRC is established as per "Annexure A" of this collective agreement.

\textsuperscript{1} In the ELRC constitution a resolution is concluded by way of a collective agreement.

Collective Agreement Number 5 of 2008
Further Education and Training Colleges Sector Bargaining Unit

\textsuperscript{\textcopyright}
(4) **Interim vote weight**

In the light of the unforeseen administrative problems experienced with regard to the determination of the vote weights pertaining to the admitted trade unions to Council for 2008, and that it is the wish of the parties to establish a FETC Bargaining Unit under the auspices of the ELRC, the parties agree as follows:

(a) Not to implement Clauses 11.4.3 and 11.4.9 of the FETC Constitution immediately, but to implement said clauses at such a time as the vote weights can objectively and accurately be determined and until finalised by way of a collective agreement being concluded on the matter in the Council;

(b) That the vote weights of trade unions in the ELRC for 2008 be utilised in the interim.

5. **DISPUTE RESOLUTION**

If there is a dispute about the interpretation or application of this agreement shall be resolved in terms of the dispute resolution procedure of the Council.

6. **DATE OF IMPLEMENTATION**

This agreement shall come into effect on 1 January 2008.

7. **DEFINITIONS**

(1) "**Constitution**" means the constitution of the Education Labour Relations Council;

(2) "**Council**" means the Education Labour Relations Council;

(3) "**College**" means the College established in terms of the Further Education and Training Colleges Act number 16 of 2006;

(4) "**Agreement**" means this Agreement together with any annexure/s, as amended from time to time;

(5) "**Employee(s)**" means an employee in the employ at the College, either on a permanent, temporary or fixed-term contract basis, and includes those employees who were employed in terms of the Employment of Educators Act of 1998 and the Public Service Act, of
the Department whose jobs are affected by the transfer of the educational function in the College;

(6) "Parties" means parties to this agreement;

(7) "Trade Unions" means registered recognized trade unions in the Council that are party to this agreement;

(8) "FETC" means Further Education and Training Colleges;

(9) "Collective Agreement No. 5 of 2007" means Further Agreement on the Transfer of Employees from the Department of Education to individual FET Colleges

8. SIGNATORIES TO THIS AGREEMENT

Thus done and signed on 16th September 2008 at CENTURION.

ON BEHALF OF THE STATE AS THE EMPLOYER

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ON BEHALF OF THE EMPLOYEE PARTIES

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ANNEXURE A

16 SEPTEMBER 2008

FETC BARGAINING UNIT:
NEGOTIATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES
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1. The registered scope of the FETC Bargaining Unit extends to employers and those employees in respect of which the Further Education and Training Colleges Act, Number 16 of 2006, “FETC Act”, applies.

2. The FETC Bargaining Unit shall function as the bargaining and dispute resolution forum for the FETC sector at a national level only.

3. The FETC Bargaining Unit shall be constituted as a committee of the Council dealing with matters exclusive to that sector.
PART 2: ADMISSION OF PARTIES TO THE FETC BARGAINING UNIT

4. The trade unions admitted to the Council shall be the trade unions admitted to the Bargaining Unit.

5. The Employers Organisation representing the majority of the colleges in the sector as envisaged in the “FETC Act” duly registered by the Registrar of Labour Relations, shall be the Employer admitted to this Council, in respect of this sector.

6. Such employer (referred to in clause 5 above) shall be the employer participant in the Bargaining Unit.
PART 3: NEGOTIATION AND CONSULTATION

7. Negotiation and consultation procedures on matters of mutual interest.

7.1. The Council shall prior to each year agree on a schedule of meetings for the purposes of negotiation and consultation.

7.2. Any party may:

7.2.1. submit proposals for consultation or for the conclusion of a Collective Agreement in the FETC Bargaining Unit and

7.2.2. request, in writing, a Special consultation or negotiating meeting of the FETC Bargaining Unit to deal with such matter.

7.3. Within 5 (five) days of the submission of the proposals or request, the General Secretary must serve copies of the proposals or request on the parties to the FETC Bargaining Unit.

7.4. Within 14 (fourteen) 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 FETC Bargaining Unit;

7.5. Any party to the FETC Bargaining Unit may, prior to the holding of the next Consultation or Negotiating meeting of the FETC Bargaining Unit, 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.

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

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

7.7.1. the submission of counter proposals;

7.7.2. the establishment of a negotiation committee or task team;
7.7.3. the appointment of a panellist, if necessary, to facilitate the negotiations or consultations and chair the meetings; and

7.7.4. the timetable for negotiations or consultations.

7.8. In the event of the parties not agreeing on a negotiating or consultation procedure, the parties must, within 7 (seven) days, commence negotiations or consultations in the FETC Bargaining Unit.

7.9. If the parties do not conclude a Collective Agreement dealing with all the proposals referred to the FETC Bargaining Unit after the expiry of 30 (thirty) 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.

7.10. Subject to clause 7.7 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.

7.11. Notwithstanding any provision to the contrary in these procedures, 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.

8. Negotiating task teams

8.1. The negotiating meeting of the FETC Bargaining Unit 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 FETC Bargaining Unit. A task team so established is referred to below as 'a task team'.

8.2. A task team shall consist of at least one representative per party admitted to the FETC Bargaining Unit, subject to the Trade Union party meeting the threshold set in clause 9.3 of the ELRC Constitution: General Provisions, as certified by the Registrar of Labour Relations.

8.3. A task team must submit regular written reports to the FETC Bargaining Unit.

8.4. 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.

9. Collective Agreements of the FETC Bargaining Unit

9.1. 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.

9.2. Any proposal of substance shall be referred to as a “Draft Collective Agreement of the FETC Bargaining Unit”. The General Secretary shall allocate a provisional number to each Draft Collective Agreement, which shall apply until the requirements of clause 9.7.3 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 FETC Bargaining Unit, and x is a capital letter of the alphabet allocated sequentially in one year relative to the date of the first submission to the FETC Bargaining Unit.

9.3. Decisions in respect of matters of negotiation shall be by way of Collective Agreements of the FETC Bargaining Unit.

9.4. A Draft Collective Agreement shall be put to the vote, and it shall be considered approved only when a majority vote of the employers on the one side and a majority vote of the Trade Unions on the other side are cast in favour of its adoption.

9.5. A Collective Agreement of the FETC Bargaining Unit must comply with the provisions of the Act.

9.6. The General Secretary shall ensure that a Draft Collective Agreement adopted by the FETC Bargaining Unit in terms of clause 9.4.

9.6.1. is reduced to writing;

9.6.2. is presented within 30 (thirty) days of the FETC Bargaining Unit adopting the Draft Collective 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 Collective Agreement during the relevant FETC Bargaining Unit meeting;

9.6.3. if signed within such period by sufficient parties to comply with clause 9.4, is circulated to all parties within 5 (five) days of signing of the agreement by the last party to ensure compliance with that clause;

9.6.4. if not signed within such time period by sufficient parties to comply with clause 9.4, table the Draft Collective Agreement at the next negotiating meeting of the FETC Bargaining Unit to confirm the
parties' position regularly; Provided that, if there is no majority support at that FETC Bargaining Unit meeting for the Draft Collective Agreement:

9.6.4.1. it falls away;

9.6.4.2. or by agreement of the FETC Bargaining Unit it can be reopened for discussion or negotiation.

9.6.5. if there is majority support for the Draft Collective Agreement at a FETC Bargaining Unit meeting referred to in clause 9.6.4, take the steps provided for in clauses 9.6.1 to 9.6.4.

9.7. The following requirements and procedure shall apply regarding a Collective Agreement of the FETC Bargaining Unit:

9.7.1. It must be reduced to writing and it will take effect only on the date on which sufficient parties to the FETC Bargaining Unit have signed the Draft Collective Agreement to comply with the requirements for the adoption of a Collective Agreement in clause 9.1;

9.7.2. Each party signing a Draft Collective Agreement of the FETC Bargaining Unit 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;

9.7.3. The date of the Collective Agreement of the FETC Bargaining Unit shall be the first date on which the Draft Collective Agreement has been signed by sufficient parties to comply with the majority votes as provided for in clause 9.4. The General Secretary shall insert such date as the date of the Collective Agreement at the end of the Agreement; and

9.7.4. The General Secretary shall allocate a number to each Collective Agreement of the FETC Bargaining Unit of the Council that is signed as provided in clause 9.7.3 as follows: the Agreement shall be numbered “Collective Agreement No x of y”, where y is the year in which clause 9.7.3 is complied with, and x is a number allocated sequentially in one year relative to the date on which clause 9.7.3 is complied with.

9.7.5. The Collective Agreement of the FETC Bargaining Unit may not be implemented until ratified by the General Bargaining unit of the Council as envisaged in Annexure A of the ELRC constitution as approved by the Registrar of Labour Relations and confirmed in this Council collective agreement number 6 of 2007.
9.8. Unless the Collective Agreement provides to the contrary:

9.8.1. such Collective Agreement applies to employers and employees of employers that are not members of the signatory employers and Trade Unions, subject to the requirements of the Act;

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

9.8.3. provision must be made for exemptions from collective agreements;

9.8.4. and this clause 9.8 is therefore deemed to form part of such Collective Agreement.

10. Finalisation of matters of consultation

10.1. 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.

10.2. Finalisation in respect of matters of consultation may be by way of a record in the minutes of the meeting of the FETC Bargaining Unit in a verbal or written record of understanding, as the case may be.

10.3. 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.

10.4. If the parties are unable to deal with all the proposals referred to the FETC Bargaining Unit by the expiry of 30 (thirty) 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.

10.5. Subject to clause 7.7 if any one of the parties declares a dispute, the General Secretary must take the steps as set out in clause 13.1 of these procedures and the applicable provisions of the Dispute Resolution Procedures.

11. General provisions in respect of negotiation & consultation meetings

11.1. Notice of Meeting

11.1.1. At least 14 (fourteen) days notice shall be given of any negotiation
or consultation meeting;

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

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

11.1.3.1. the General Secretary serving notice on any representative of the party concerned;

11.1.3.2. the posting of a registered letter containing the notice to the party, at the registered address; or

11.1.3.3. 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.

11.2. Quorum of a Meeting

11.2.1. A quorum of a negotiating meeting of the FETC Bargaining Unit shall be those Trade Unions representing 50% + 1 and the employer representing 50% + 1: Provided that:

11.2.1.1. proper notice in terms of clause 11.1 has been given to all of the parties; and

11.2.1.2. if, within 30 (thirty) 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.

11.2.2. If, within a further 30 minutes after the 30 minutes referred to in clause 11.2.1.2 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 11.1, shall again be given to all parties to the FETC Bargaining Unit.

11.3. Voting

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

11.3.2. The *employer* and the *Trade Union* representatives shall vote on the basis of their vote weights as determined by the *General Secretary*.

11.3.3. 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.

11.3.4. The *General Secretary* shall act as electoral officer as the case may be.

11.4. Vote weight

11.4.1 The admitted employer/s shall have 50% of the vote weight in the *FETC Bargaining Unit* and its committees and the admitted *Trade Union/s* the other 50 % divided according to their membership.

11.4.2 Collectively the employer/s and trade union/s cannot exceed 50% representation each.

11.4.3 The vote weight of the admitted trade union shall be as per Clause 18 of the *ELRC Constitution: General Provisions*. The vote weight of trade unions shall be calculated on the same principles of the calculation of provincial chambers of the *Council*, i.e. the vote weights of the Trade Unions shall be calculated in respect of the membership of the FETC Sector.

Vote weight of employer parties in the *FETC Bargaining Unit*

11.4.4 The admitted employer/s in the *FETC Bargaining Unit* may, during February of each year, reach consensus on the vote weights in respect of the *FETC Bargaining Unit* based on the monthly remittances for the end of December of the previous year and as referred to in the *Act*.

11.4.5 In the event of there being no consensus among admitted employer/s in the *FETC Bargaining Unit* on the vote weight, the *General Secretary* must calculate the vote weight, as at 31 December of the previous year, by no later than 15 March of each year and make recommendations to the *FETC Bargaining Unit* using:

(a) the monthly remittances referred to in clause 0 as at the end of 31st December of the previous year; and

(b) the recommendations of the official consultant auditors of the *Council*.
11.4.6 The vote weight of an employer that the General Secretary must calculate must be determined by dividing the number of applicable employees of such an employer by the total number of all applicable employees, which are members of this FETC Bargaining Unit. This ratio must be expressed as a percentage. If two or more employers are acting jointly they will be treated as a single entity for purposes of calculating their vote weight.

11.4.7 If an employer/s 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 5 (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, and only if there is no Collective Agreement on the vote weights.

11.4.8 Notwithstanding the provisions of clauses 11.4.1 to 11.4.5 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 employer being admitted to the Council in terms of clause 9.3.4 of the ELRC Constitution: General Provisions, the vote weights of all the parties shall be accordingly amended to give effect to such changes and/or new admissions.

Vote weight of trade union parties in the FETC Bargaining Unit

11.4.9 The principle used to calculate the vote weight in the Provincial Chambers shall be the principle used to determine the vote weight in the FETC Bargaining Unit, i.e. the vote weights of the Trade Unions shall be calculated in respect of the membership of the FETC Sector.

11.5. Meeting procedure

11.5.1. 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.

11.5.2. 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.

11.5.3. The Chairperson shall rule on any procedural matters, which are
not regulated in these procedures.

11.5.4. Representatives are entitled to attend any negotiating meeting of the FETC Bargaining Unit as the case may be.

11.5.5. A person who is not a representative may be allowed to address the FETC Bargaining Unit at the request of a party and with the concurrence of the meeting.

11.5.6. Every negotiating meeting of the FETC Bargaining Unit shall be conducted in private unless the FETC Bargaining Unit decides otherwise.

11.5.7. The General Secretary shall keep minutes of the proceedings for FETC Bargaining Unit and shall forward such to all parties within 14 (fourteen) days after such meeting.

11.6 The Chairperson of the FETC Bargaining Unit meetings shall:

11.6.1 Be elected annually at the first meeting of the FETC Bargaining Unit to preside over all its meetings.

11.6.2 Be non-partisan and shall have no vote.

11.6.3 Any party may propose a candidate for position of chairperson provided the proposal is supported by the other side (in this case one party or the other party refers to the employee party or employer party as the context requires).

11.7 Appointment of representatives

11.7.1 The employer shall be represented in the FETC Bargaining Unit 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 FETC Bargaining Unit.

11.7.2 The Trade Unions admitted to the FETC Bargaining Unit shall have 10 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.

11.7.3 Parties to the FETC Bargaining Unit shall make the names of their representative/s available to the General Secretary at least 30 days prior to the Annual General Meeting of the Council. Trade Union representatives shall be members registered in terms of their constitutions, or full-time officials. Employer representatives shall consist of those persons representing such employers in an employers organisation/s.
11.7.4 A party may at any time withdraw any of its representatives in the FETC Bargaining unit by giving written notice to the General Secretary.

11.7.5 Should a vacancy arise in the FETC Bargaining unit 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.

11.7.6 Should a party's membership of the FETC Bargaining unit be terminated, its representatives shall vacate their seats.

11.7.7 Parties to the FETC Bargaining unit may co-opt persons to give expert advice, assistance or evidence to the FETC Bargaining unit on matters being discussed in the FETC Bargaining unit: Provided that:

11.7.7.1 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;

11.7.7.2 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 FETC Bargaining unit on a specific matter; and

11.7.7.3 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.
PART 3: INTRODUCTION TO Dispute Resolution Procedures

12. Application

12.1. These procedures apply to all disputes that arise within the scope of the FETC Bargaining Unit except disputes in respect of those matters that:

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

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

12.1.3. 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

12.1.4. are not contemplated in clauses 13 – 17, 31 & 32

12.2. Despite the provisions of clauses 12.1.1 to 12.1.3, the Council must deal with all individual rights disputes, in the first instance.

12.3. A dispute of right declared in terms of a Collective Agreement concluded in the PSCBC must be referred to the Council, if the employer is the same as the employer/s in the FETC Bargaining Unit.

12.4. Panellists, in the Council, arbitrating disputes referred to in clause 7.7 are bound by the jurisprudence, in as far as such jurisprudence binds panellists of the PSCBC itself.

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1 The following disputes are not dealt with by the ELRC unless the parties agree otherwise in terms of clause 31: 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 4: Disputes of Interest

13. Procedures applicable to all mutual interest disputes

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

13.1.1. in case of a referral in terms of clause 7.10 or clause 14 of these procedures, within 6 months from the date on which any party referred a dispute in terms of clause 13.1;

13.1.2. in case of a referral in terms of clause 15.1 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).

13.2. The provisions of Part 5 of these procedures apply to the conciliation to be conducted in terms of this clause 13.

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

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

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

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

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

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

13.4.2. picketing rules, if applicable.

13.5. 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:

13.5.1. the panellist must issue the advisory award within 14 days of the request; and
13.5.2. 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 13.5.1.

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

13.7. After the conclusion of the conciliation the General Secretary 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.

13.8. If a party has made a written request for an advisory arbitration award, the procedures in clause 28 apply in respect of the arbitration hearing.

14. Procedure for mutual interest disputes in respect of non-parties to the FETC Bargaining Unit

14.1. Application of this clause:

14.1.1. In this clause a dispute means any dispute of mutual interest, other than one contemplated in clause 7, between the employer or employers and a non-party to the FETC Bargaining Unit, which concerns a matter of mutual interest contemplated in section 134 of the Act.

14.1.2. 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 28.

14.1.3. Disputes involving the employer or employers on one side and parties and non-parties to the FETC Bargaining Unit on the other may be consolidated in terms of clause 61, provided that all parties to the relevant disputes agree thereto.

14.2. Negotiations

14.2.1. Any non-party to the FETC Bargaining Unit may make a proposal in writing on a mutual interest issue to the employer.

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

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

14.2.4. 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 14.2, any party may declare a dispute by referring a
dispute to the Council in terms of these procedures.

15. Unilateral change to terms and conditions of employment

15.1. Notwithstanding the other provisions of these procedures, 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 13.

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

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

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

15.2.3. the employer must comply with this requirement.

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

15.4. If the employer fails to comply with it, the employee party may refer the matter for arbitration, and the procedures contained in clause 28 shall apply with the changes required by the context.

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

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

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

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

16.1.3. 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; and

16.1.4. 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.
16.2. Parties shall comply with codes of practice as provided for by the Act or as contained in any Collective Agreement of the FETC Bargaining Unit.

16.3. 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 5: DISPUTES OF RIGHT: GENERAL

17. Dispute of right

17.1. In this clause, a dispute means any dispute other than a mutual interest dispute contemplated in clauses 13 to 14 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:

17.1.1. conciliation;
17.1.2. arbitration;
17.1.3. conciliation and arbitration;
17.1.4. conciliation-arbitration;
17.1.5. expedited joint conciliation and arbitration; or
17.1.6. disciplinary hearings in the form of an arbitration.

17.2. Any party to a dispute may elect to refer such dispute:

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

17.2.1.1. a dismissal that is alleged to be automatically unfair;
17.2.1.2. a dismissal based on the employer's operational

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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.
requirements as contemplated in Sections 189 and 189A of the Act;

17.2.2. for conciliation and arbitration, where the dispute concerns:

17.2.2.1. disclosure of information (sections 16 and 189 of the Act);

17.2.2.2. organisational rights (Part III part A of the Act);

17.2.2.3. an agency shop (section 25 of the Act);

17.2.2.4. picketing (section 69 of the Act); or

17.2.2.5. Alleged unfair discrimination in terms of the Employment Equity Act, subject to clause 17.6;

17.2.3. for a compliance order in terms of clause 26 regarding:

17.2.3.1. 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

17.2.3.2. any dispute regarding the alleged non-compliance with a provision of the BCEA, subject to clause 17.4.

17.3. 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.

17.4. 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.

17.5. 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.

17.6. The following applies to a dispute regarding unfair discrimination referred to...
in clause 17.2.2:

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

17.6.2. a non-party to the FETC Bargaining Unit 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

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

18. Exhausting of internal procedures

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

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

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

18.2. 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.

19. Time Periods for the referral of a Dispute

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

19.1.1. In the case of a dismissal dispute

19.1.1.1. 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

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

19.1.2. In the case of an unfair labour practice dispute
19.1.2.1. 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.

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

19.1.3.1. The employee as invoked the grievance procedure, and

19.1.3.2. An outcome has been rendered; or

19.1.3.3. 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.

19.1.4. 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.

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

20. Condonation

20.1. On good cause shown, the General Secretary may condone the employee to refer a dispute after the relevant time limits in clause 19 has expired.

21. Jurisdiction to Conciliate

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

21.1.1. 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.

21.1.2. A panellist holding a jurisdictional hearing in terms of this clause 21 must decide all jurisdictional points that come to the panellist's knowledge during the conciliation.

21.1.3. 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.

22. Pre-Arbitration meeting

22.1. 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.

22.2. 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.

22.3. 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.

22.4. 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 22.5 then applies.

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

22.5.1.1. any means by which the dispute may be settled;

22.5.1.2. 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);

22.5.1.3. facts that are common cause;

22.5.1.4. facts that are in dispute;

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

22.5.1.6. the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;

22.5.1.7. 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;

22.5.1.8. whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the
affidavit;
22.5.1.9. which party must begin;
22.5.1.10. the necessity for any on-the-spot inspection;
22.5.1.11. securing the attendance at the arbitration of any witness(es);
22.5.1.12. the resolution of any preliminary points that are intended to be taken;
22.5.1.13. the exchange of witness statements;
22.5.1.14. expert evidence;
22.5.1.15. any other means by which the proceedings may be shortened;
22.5.1.16. an estimate of the time required for the hearing;
22.5.1.17. the right of representation; and
22.5.1.18. whether an interpreter is required and, if so, for how long and for which language(s).

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

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

22.7.1. to address this matter without the assistance of the Council, prior to the date already scheduled for arbitration, of the said dispute;
22.7.2. to keep a written record of the decisions made during pre-arbitration proceedings (the pre-arbitration minute); and
22.7.3. to supply the pre-arbitration minute to the panellist at the commencement of the arbitration.

23. Statement of case

23.1. 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.

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

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

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

23.2. 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.

23.3. Where parties were directed to hold a pre-arbitration meeting in terms of clause 22.4 the panellist may, after receiving a pre-arbitration minute, and up to 9 days before the date set down for arbitration:

23.3.1. 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 29.1.5.3; and/or

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

23.4. If a party fails to attend a pre-arbitration meeting chaired by a panellist in terms of clauses 22.1 or 22.2, or which the parties were directed to hold in terms of clause 22.4, the panellist may deal with the matter in terms of clause 56, which applies with the changes required by the context.

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

24. 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.

25. 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.

26. Enforcement of Collective Agreements and of BCEA provisions

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

26.2. For the purposes of this clause 26, a Collective Agreement of the FETC Bargaining Unit is deemed to include:

26.2.1. 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;

26.2.2. subject to clause 17.4, any other basic condition in the BCEA applicable to an employee falling within the scope of the FETC Bargaining Unit where such employee's employer is a party to the FETC Bargaining Unit; and

26.2.3. the rules of any fund or scheme established by the FETC Bargaining Unit.

26.3. Where the General Secretary acts in terms of this clause 26 and the matter also involves the interpretation or application of a Collective Agreement, this clause 26 applies to the exclusion of clause 18.

26.4. The General Secretary may, in terms of this clause 26, issue an order requiring any person, bound by a Collective Agreement, to comply within a specified period.

26.5. 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.

26.6. A panellist, conducting an arbitration in terms of this clause 26 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.

26.7. Section 138 of the Act, read with the changes required by the context, applies to any arbitration conducted in terms of this section.
PART 6: CONCILIATION

27. Conciliation

27.1. How to request conciliation

27.1.1. A party must refer a dispute contemplated in clauses 17.1.1 or 31.1.1 to the Council for conciliation by delivering a completed ELRC Form E1.

27.1.2. The referring party must:

27.1.2.1. sign ELRC Form E1 in accordance with clause 48;

27.1.2.2. attach to ELRC Form E1 written proof, in accordance with clause 49, that ELRC Form E1 was served on the other parties to the dispute;

27.1.2.3. if ELRC Form E1 is filed out of time, attach an application for condonation in accordance with clause 20.1;

27.1.2.4. in the event of an unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that clause 27.2 has been complied with.

27.1.3. The General Secretary may refuse to accept a referral form until clause 27.1.2 has been complied with.

27.2. Time period for referring a dispute to conciliation

The referral must be made within the period provided for in clause 18 read with 19 and 29.1.2, read with the changes required by the context.

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

If clause 27.1 and 27.2 have been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

27.3.1. mira moto establish jurisdiction;

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

27.3.3. decide the date, time and venue of the conciliation meeting; and
27.3.4. notify the parties to the dispute of these details.

27.4. Appointment of Conciliator

27.4.1. 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.

27.4.2. 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.

27.5. 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.

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

27.6.1. A conciliation may only be attended by:

27.6.1.1. the parties to a dispute; and

27.6.1.2. 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.

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

27.6.3. 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 56.

27.7. Duties of the Conciliator

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

27.7.1.1. mediating the dispute;

27.7.1.2. conducting a fact-finding exercise;

27.7.1.3. making a recommendation to the parties, which may be in the form of an advisory award; and

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

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

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

27.7.2.2. if the dispute remains unresolved, issue the parties with a copy of ELRC Form E3 as provided in clause 27.9;

AND

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

27.8. Conciliation proceedings may not be disclosed

27.8.1. 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.

27.8.2. 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:

27.8.2.1. as to the existence or not of a written agreement between the parties concluded during the conciliation;
27.8.2.2. whether a party had signed such agreement; and

27.8.2.3. regarding any ruling by the panellist, including one contemplated in clause 56.1.

27.9. Issuing a Conciliation Certificate of Outcome

27.9.1. 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.

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

27.10. Further conciliation

The General Secretary 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:

27.10.1. a certificate has been issued in terms of clause 27.9 stating that the dispute remains unresolved; or

27.10.2. the period contemplated in clause 27.3.12 has elapsed and may appoint a panellist to conciliate if all the parties to the dispute agree.

27.11. Steps by General Secretary after conclusion of the conciliation

27.11.1. After the conclusion of the conciliation, the General Secretary 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.

27.11.2. If an arbitration advisory award is issued in terms of clause 27.11.1, 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 7: ARBITRATION

28. Arbitration

28.1. How to request an arbitration

28.1.1. A party must refer a dispute contemplated in clauses 17.1.2 or 31.1.2 to the Council for arbitration by filing a completed ELRC Form E1.

28.1.2. The referring party must:

28.1.2.1. sign the referral form in accordance with clause 48;

28.1.2.2. attach to the referral form written proof, in accordance with rule 50, that the referral form was served on the other parties to the dispute;

28.1.2.3. if the referral form is filed out of time, attach an application for condonation in accordance with clause 53; and

28.1.2.4. satisfy the General Secretary that clause 29.1.2 has been complied with in the event of an unfair labour practice dispute.

28.1.3. The General Secretary may refuse to accept a referral form until clause 27.1.2 has been complied with.

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

If clause 27.1.2 has been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

28.2.1. mira moto establish jurisdiction;

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

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

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

28.3. Appointment of a panellist(s) to arbitrate

28.3.1. 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.

28.3.2. 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.

28.4. Who may represent a party in arbitration

28.4.1. Subject to clause 28.4.2, 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.

28.4.2. 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:

28.4.2.1. the panellist and all the other parties consent; or

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

28.4.2.2.1. the nature of the questions of law raised by the dispute;

28.4.2.2.2. the complexity of the dispute;

28.4.2.2.3. the public interest; and

28.4.2.2.4. the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.

28.5. Parties must prepare and copy documents for arbitration

28.5.1. 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 22.5, 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.

28.5.2. 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.

28.6. Further powers of a panellist acting as Arbitrator

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

28.6.2. 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.

28.7. 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.

28.8. Award

28.8.1. 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.

28.8.2. 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.

28.8.3. The General Secretary may, on good cause shown, extend the period within which the arbitration award is to be issued.
28.8.4. An award issued in terms of *these procedures* shall be final and binding.
PART 8: CONCILIATION AND ARBITRATION

29. Conciliation and Arbitration

29.1. Referral and appointment of panellists

29.1.1. Subject to clause 29.1.2, a party to a dispute contemplated in clauses 17.1.3 or 31.1.3 may refer the dispute in writing on ELRC Form E1 to the General Secretary for conciliation and arbitration of that dispute.

29.1.2. Unless the parties to the dispute had agreed differently in writing, the referral must reach the General Secretary in terms of clause 19.

29.1.3. A dispute referred to in clause 19.1.2.1 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.

29.1.4. A party that refers a dispute referred to in clause 17.1.2 must satisfy the General Secretary that:

29.1.4.1. the grievance procedure had been invoked at least 45 days prior to the referral and that the grievance had not been settled; and

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

29.1.5. If the General Secretary is satisfied that clause 29.1.4 has been complied with, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

29.1.5.1. mira moto establish jurisdiction;

29.1.5.2. appoint an panellist to conduct the arbitration, subject to clause 28.3. The panellist must attempt to conciliate the matter before commencing with the arbitration (Arb-Con);

29.1.5.3. set the matter down for arbitration within 45 days of registering the dispute; and

29.1.5.4. set the matter down for conciliation not less than 14 days before the arbitration.
29.1.6. The timeframes referred to in clause 19 may be extended by the General Secretary, where there is a successful condonation application, relating to the late referral of that dispute.

29.2. Conciliation

29.2.1. The provisions of clauses 27.4 to 27.11 apply to conciliation in terms of this Part 7, with the changes required by the context.

29.2.2. 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 22, 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;

29.3. Arbitration

The provisions of clauses 28.4 to 28.8 must apply to arbitrations conducted in terms of this Part 7.
PART 9: CONCILIATION – ARBITRATION

30. Provisions applicable to the conciliation-arbitration process

The following provisions shall apply to conciliation-arbitration process:

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

30.1.1. attempt to resolve the matter by conciliation;
30.1.2. if the matter remains unresolved, issue a certificate of outcome;

and

30.1.3. immediately thereafter continue with the arbitration hearing

30.2. 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:

30.2.1. the dismissal of an employee for any reason relating to probation;
30.2.2. any unfair labour practice relating to probation; and
30.2.3. any other dispute contemplated in clauses 17.1.3 or 31.1.3.

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

30.4. The General Secretary must postpone a conciliation-arbitration hearing at the written request of a party provided that:

30.4.1. such request is received by the General Secretary at least 7 days prior to the hearing;
30.4.2. the con-arb hearing is rescheduled within 21 days from the date on which the dispute was initially set down for hearing; and
30.4.3. any further postponements must be dealt with in terms of the provisions of these procedures applicable to postponements of arbitrations hearings.

30.5. 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 30.3 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.

30.6. 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 conciliation-arbitration proceedings.

30.7. 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 55.
PART 10: REFERRAL OF A **Dispute by Agreement**

31. Provisions applicable

The following provisions shall apply:

31.1. If all the parties to any **mutual interest dispute** contemplated in clause 13 or 14 or any other labour **dispute** not listed in clause 17 agree thereto in writing, the Council may:

31.1.1. conciliate such **dispute**;

31.1.2. arbitrate such **dispute**;

31.1.3. conciliate and arbitrate such **dispute**.

31.2. Any such **dispute** may include one that must otherwise, in terms of the Act or any other statute, be determined by the Labour Court\(^9\) or by the CCMA.

31.3. A written agreement to arbitrate a **dispute** referred to in this clause 31 must be concluded by completing and signing the appropriate part of ELRC Form E1.

31.4. 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.

31.5. If the **dispute** is one that must or may be referred to conciliation in terms of clause 31.1.1 of these **procedures**, the conciliation procedure of clause 27 applies.

31.6. If the **dispute** is one that must or may be referred to arbitration in terms of clause 31.1.2, the arbitration procedure of clause 28 applies.

31.7. If the **dispute** is one that must or may be referred to conciliation and arbitration in terms of clause 31.1.3 of the procedure of clauses 29.1 to 29.3 applies.

31.8. 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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\(^9\) 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).
31.9. If the *dispute* is one that may be referred in terms of clause 17.2.3 for a compliance order, clause 26 applies.
PART 11: EXPEDITED DISPUTE RESOLUTION

32. General Provisions Applicable

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

32.1. The General Secretary, subject to clause 32.2 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.

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

32.2.1. have arisen within the same province;

32.2.2. involve matters of mutual interest or that are arbitrable in terms of clause 17;

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

32.2.4. 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.

32.3. 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.

33. Procedures applicable

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

33.1. regarding conciliations, clause 21;

33.2. regarding arbitration, clause 22.5 to 22.7;

33.3. regarding service and filing of documents, the provisions of clauses 45 to 54;

33.4. regarding procedures that apply to both conciliations and arbitrations, the provisions of clauses 55 to 68;

33.5. regarding applications, the panellist may dispense with the provisions of clause
33.6. regarding other ancillary matters, the provisions of clauses 67 to 71 will apply.

34. **Conciliators and Arbitrators**

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

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

34.1.2. 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 29.1.1.

34.2. Mandate of Conciliators and Arbitrators

The mandate and responsibilities of Conciliators and Arbitrators shall be:

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

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

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

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

34.2.5. to determine the procedures to be followed in order to resolve the disputes as fairly and quickly as possible; and

34.2.6. to forward to the *General Secretary* all records of the proceedings within 14 days of the conclusion of the proceedings.

35. **Representation of the parties at the expedited conciliation and arbitration**

35.1. This clause must be read together with clause 50 of these procedures.

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

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

35.4. Subject to clause 30.1., above, the Trade Union representatives will be entitled to represent all of its affected member(s), if mandated to do so.

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

35.6. Despite clause 28.4.1 the parties are not entitled to be represented by a legal practitioner in these expedited joint conciliation and arbitration proceedings unless:

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

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

35.6.2.1. the nature of the questions of law raised by the dispute;

35.6.2.2. the complexity of the dispute;

35.6.2.3. the public interest; and

35.6.2.4. the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.

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

36.1. 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.

36.2. Participation in this intervention by Trade Union 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.

36.3. 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.

37. Identification and registration of disputes for this process

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

37.2. 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.

37.3. 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.

38. Collective expedited conciliation of disputes

38.1. 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.

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

38.2.1. 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;

38.2.2. 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;

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

38.2.4. 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.

38.3. 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.

38.4. 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.

38.5. 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.

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

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

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

38.7.2. issue the parties with ELRC Form E3, AND

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

38.7.3.1. may be arbitrated by the Council in terms of clause 17, the panellist should preferably enquire whether the referring party intends to refer the dispute for Council arbitration;

38.7.3.2. may be arbitrated by the Council in terms of clause 28, 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;

38.7.4. issue the General Secretary of Council, not later than four days thereof, with the original documents as required by clauses 38.7.1 to 38.7.3.

38.8. The General Secretary will, with reference to the co-ordinator compile a list of cases and or issues to be referred to arbitration.

39. Expedited pre-arbitration meetings

39.1. In regard to cases not resolved, working from the list referred to in clause 38.8, the panellists will facilitate pre-arbitration meetings between the parties, the primary purposes of which will be:
39.1.1. to identify issues which were resolved during conciliation and which are relevant to the cases referred to arbitration; and

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

39.2. 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.

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

39.3.1. 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);

39.3.2. facts that are common cause;

39.3.3. facts that are in dispute;

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

39.3.5. 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;

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

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

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

39.4. The provisions of clauses 22.5 and 22.7 will further apply regarding pre-arbitration meetings, read with the changes required by the context.

40. Expedited arbitration proceedings

40.1. 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.

40.2. 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.

41. Recording of the expedited arbitration

41.1. Despite clause 65, the Council will not provide any recording facilities for these arbitrations.

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

42. Administration

42.1. The General Secretary shall ensure that secretarial services and administrative support is provided to the Co-ordinator of the panel of Conciliators and Arbitrators.

42.2. Each party (employer and trade unions) must nominate one person to receive all notices for the expedite roll.

42.3. Any correspondence given to the representatives, referred to in clause 37.2., shall be deemed to be served on the applicant and the respondent.

43. Finality

43.1. The General Secretary's decision is final and binding.

43.2. 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 12: DISCIPLINARY HEARINGS IN THE FORM OF AN ARBITRATION

44. Provisions Applicable

44.1. 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.

44.2. When the General Secretary receives a referral in terms of clause 44.1 the General Secretary must convene an arbitration, which will take the place of the internal disciplinary enquiry.

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

44.4. The General Secretary 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:

44.4.1. of advising the employee, in writing, of the allegation and, where clause 44.1 applies, the possibility of the mandatory sanction of dismissal;

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

44.5. The provisions of clause 28.4 shall apply to such arbitration, with the exception that the employee may also be represented in the arbitration proceedings by a co-employee.

44.6. The panellist arbitrating in terms of this clause 44 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 32 shall not apply to such proceedings and the issue of jurisdiction may be considered at any time.

44.7. The provisions on pre-arbitration meetings in clause 22 shall apply with the changes required by the context.
PART 13: SERVICE AND FILING OF DOCUMENTS

45. How to contact the Council

45.1. The addresses, telephone and tele-fax number of the offices of the Council are listed in Schedule 2 of the ELRC Constitution: Schedules.

45.2. Documents may only be filed with the Council at the addresses or tele-fax numbers listed in Schedule 2 of the ELRC Constitution: Schedules.

46. When are the offices of the Council open

46.1. The offices of the Council are open on the days and hours as indicated in Schedule 2 of the ELRC Constitution: Schedules, unless alternative arrangements to the contrary

46.2. Documents may only be filed with the Council during the hours referred to in clause 46.1, unless otherwise agreed to in writing by the General Secretary.

46.3. Notwithstanding clause 46.2 documents may be tele-faxed or electronically transmitted by means of any permissible law.

47. How to calculate time periods

47.1. For the purpose of calculating any period of time in terms of these procedures:

47.1.1. "days" mean:

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

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

47.1.2. the first day is excluded and the last day is included, subject to clauses 47.2 and 47.3.

47.2. When calculating time periods the days listed in clause 2.1 of Schedule 2 of the ELRC Constitution: Schedules are excluded.

47.3. The last day of any period must be excluded if it falls on a Saturday, Sunday, or any day referred to in clause 47.2.
47.4. The term "day" has a similar meaning to the term "days", as defined in this clause 47.

48. **Who may sign documents and referral forms**

48.1. A document that a *party* must sign in terms of these *procedures* may be signed:

48.1.1. on behalf of an *employee party*, subject to clause 48.3, by:

48.1.1.1. the affected *employee(s)*; or

48.1.1.2. a legal practitioner; or

48.1.1.3. a *member*, office bearer or official of that *party's* *Trade Union*;

48.1.2. on behalf of the *employer* by:

48.1.2.1. a *employee* delegated by the *employer*; or

48.1.2.2. a legal practitioner.

48.2. 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.

48.3. 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:

48.3.1. the names of the *employees* who have mandated the *employee* to sign on their behalf;

48.3.2. such *employees'* signatures.

49. **How to serve documents on other parties**

49.1. A *party* must *serve* a document on the other *parties*:

49.1.1. by handing a copy of the document to

49.1.1.1. the person concerned; or

49.1.1.2. a representative authorised in writing to accept
service on behalf of the person; or

49.1.1.3. 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

49.1.1.4. a person identified in clause 49.2;

49.1.2. by leaving a copy of the document at:

49.1.2.1. an address chosen by the person to receive service; or

49.1.2.2. any premises in accordance with clause 49.3;

49.1.3. 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;

49.1.4. 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.

49.2. A document may also be served on:

49.2.1. 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;

49.2.2. 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;

49.2.3. 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;

49.2.4. 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;

49.2.5. a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;

49.2.6. 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;

49.2.7. 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;

49.2.8. by any other means authorised by the Council.

49.3. If no person identified in clause 49.2 is willing to accept service, service may be affected by affixing a copy of the document to:

49.3.1. the main door of the premises concerned or;

49.3.2. if this is not accessible, a post-box or other place to which the public has access.

49.4. The General Secretary or a panellist may order service in a manner other than prescribed in this clause 49.

50. How to prove a document was served

50.1. 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:

50.1.1. a copy of proof of mailing the document by registered post to the other party; or

50.1.2. a copy of the telegram communicating the document to the other party; or

50.1.3. a copy of the tele-fax transmission report indicating the successful transmission to the other party of the whole document;

50.1.4. if a document was served by hand:

50.1.4.1. 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

50.1.4.2. 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.

50.2. If proof of service in accordance with clause 50.1 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.

50.3. Notwithstanding the provisions of this clause 50, the General Secretary or the panellist has a discretion to make any order as to service that such person deems fit.

50.4. The General Secretary or a panellist may accept proof of service in a manner other than prescribed in this clause 50, as sufficient.

51. How to file documents with the Council

51.1. A party must file documents with the Council:

51.1.1. 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);

51.1.2. by sending a copy of the document by registered post to the office of the Council at an address listed in Schedule 2 of the ELRC Constitution: Schedules; or

51.1.3. by faxing or e-mailing the document to the Council at a number listed in Schedule 2 of the ELRC Constitution: Schedules

51.2. Regarding clause 51.1.1, a party can obtain information as to who are designated officers from the Council’s reception.

51.3. A document is filed with the Council when:

51.3.1. the document is handed to a designated officer of the Council;

51.3.2. a document sent by registered post is received by the Council; or

51.3.3. the transmission of a fax is completed.

51.4. 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
52. 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.

53. How to seek condonation for documents delivered late

53.1. This clause applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these procedures.

53.2. A party must apply for condonation, in terms of clause 69, when delivering the document to the Council. The General Secretary may require the parties to do so on ELRC Form E2.

53.3. An application for condonation must set out the grounds for seeking condonation and must include details of the following:

53.3.1. the degree of lateness;
53.3.2. the reasons for the lateness;
53.3.3. the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
53.3.4. any prejudice to the other party; and
53.3.5. any other relevant factors.

53.4. The General Secretary may assist a referring party to comply with this clause.

53.5. All condonations shall be determined on the papers.

54. 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 53.
PART 14: PROCEDURES THAT APPLY TO BOTH CONCILIATION AND ARBITRATION

55. Where conciliation or arbitration must take place and how the parties should be notified

55.1. The General Secretary shall notify parties of:

55.1.1. the date and time of a conciliation or an arbitration at least 10 days before such process is due to be held;

55.1.2. 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.

55.2. 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.

55.3. 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.

55.4. 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.

56. What happens if a party fails to attend proceedings before the Council

56.1. 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 22, the panellist must attempt to contact the party and establish the party's whereabouts, and then may:

56.1.1. dismiss the matter; or

56.1.2. continue with the proceedings in the absence of the party; or

56.1.3. issue an order of costs, in terms of clause 67, and adjourn the
proceedings to a later date; or

56.1.4. in exceptional circumstances and on good cause shown, adjourn the proceedings to a later date.

56.2. 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 56.1.

56.3. In exercising a discretion in terms of subrule (2), a commissioner should take into account, amongst other things-

56.3.1. whether the party has previously failed to attend a conciliation in respect of that dispute;

56.3.2. any reason given for that party’s failure to attend;

56.3.3. whether conciliation can take place effectively in the absence of that party;

56.3.4. the likely prejudice to the other party of the commissioner’s ruling;

56.3.5. any other relevant factors.

56.4. If a matter is dismissed, the General Secretary must send a copy of the ruling to the parties.

57. Objections to representatives appearing before the Council.

57.1. 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.

57.2. The panellist may call upon the representative to establish why the representative should be permitted to appear in terms of these procedures.

57.3. A representative must tender any documents requested by the panellist, in terms of clause 57.2, including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a Trade Union or employers’ organisation.

58. How a conciliation or arbitration hearing can be postponed

58.1. A formal application in writing for a postponement must be made:

58.1.1. if the parties cannot agree in terms of clause 58.4 whether an arbitration or conciliation should be postponed; or
58.1.2. if the request for a postponement is made within 14 days before the scheduled date of the conciliation or arbitration;

58.1.3. in the circumstances described in clause 58.5;

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.

58.2. The General Secretary will decide whether to:

58.2.1. grant the request for a postponement on the written documents presented; or

58.2.2. convene a formal hearing before a panellist.

58.3. A panellist may condone non-compliance with clause 58.1 only in exceptional circumstances and on good cause shown.

58.4. Postponements will be granted without the need for the parties to appear if both of the following conditions are met:

58.4.1. if all the parties to the dispute agree in writing to the postponement; and

58.4.2. 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.

58.5. If the parties had already requested a postponement of the proceedings one time in terms of clause 58.4, any further request for postponement must be made in terms of clause 58.1.

58.6. These provisions do not affect the right of a party to make an application for a postponement at a scheduled hearing.

59. How to join or substitute parties to proceedings

59.1. 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.

59.2. 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.
59.3. 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.

59.4. A panellist may make an order in terms of clause 59.2:

59.4.1. of the panellist's own accord;

59.4.2. on application by a party; or

59.4.3. if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

59.5. An application in terms of these procedures must be made in terms of clause 69.

59.6. When making an order in terms of clause 59.2, a panellist may:

59.6.1. give appropriate directions as to the further procedure in the proceedings; and

59.6.2. make an order of costs in accordance with these rules.

59.7. 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.

59.8. 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.

59.9. Subject to any order made in terms of clauses 59.6 or 59.7, a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

59.10. 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.

60. 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.

61. 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.

62. Payment of witness fees to subpoenaed witnesses

62.1. 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.

62.2. 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.

62.3. The party calling for the subpoena of a witness shall be responsible for the payment of the prescribed allowances for the witness.

62.4. The General Secretary may, on good cause shown, waive the requirements of clause 62.3 and approve the payment of witness fees from the Council's own funds.

63. How an applicant may withdraw a matter

63.1. The applicant may withdraw a matter by filing a notice of withdrawal on the General Secretary on prescribed Form ELRC E16.

63.2. 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.

63.3. 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.

64. How to have a subpoena issued

64.1. 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.

64.2. 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.

64.3. An application in terms of clause 64.1 must be filed with the General Secretary at least 14 days before the arbitration hearing, or as directed by the panellist hearing the arbitration.

64.4. The General Secretary or a panellist may refuse to issue a subpoena if:

64.4.1. the party does not establish why the evidence of the person is necessary;

64.4.2. the party to be subpoenaed does not have a reasonable period in which to comply with the subpoena;

64.4.3. 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.

64.5. A subpoena must be served on the witness subpoenaed:

64.5.1. 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;

64.5.2. 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.

64.6. 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.

64.7. 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...
Secretary may grant this request.

64.8. Clauses 64.4.3 and 64.5.2 do not apply if the General Secretary has waived the requirement to pay witness fees.

65. How conciliation and arbitration proceedings must be recorded

65.1. English shall be the language of the record of all dispute proceedings, although 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.

65.2. 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.

65.3. The General Secretary will not provide any recording facilities at conciliation or its related activities.

65.4. The General Secretary shall keep a record of:

65.4.1. any evidence given in an arbitration hearing;

65.4.2. any sworn testimony given in any proceedings before the General Secretary; and

65.4.3. any arbitration award or ruling made by a panellist.

65.5. Subject to clause 65.6, the General Secretary shall, upon request, provide mechanical or electronic recording facilities, at the cost of the Council, for arbitration proceedings.

65.6. The General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in the Council.

65.7. The parties may make arrangements for mechanical or electronic recording of the arbitration proceedings.

65.8. 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:

65.8.1. if the panellist keeps notes of the proceedings, these notes may be 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
65.8.2. 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 or another medium is used.

65.9. 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.

65.10. A party may request a copy of the transcript of a record or a portion of a record kept in terms of this clause 65, on payment of the costs of the transcription.

65.11. 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.

65.12. Such mechanical or electronic recording and the transcript shall be the property of the Council.

65.13. The Council reserves the right to destroy the recordings after the 180 days referred to in clause 65.9.

66. What are the powers of panellists\(^\text{10}\)

66.1. A panellist appointed to attempt to resolve a dispute may:

66.1.1. 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;

66.1.2. 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;

66.1.3. call, and if necessary subpoena, any expert to appear before the

\(^{10}\) Clause 66 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.
panellist to give evidence relevant to the resolution of the dispute;

66.1.4. 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;

66.1.5. administer an oath or accept an affirmation from any person called to give evidence or be questioned;

66.1.6. at any reasonable time, but only after obtaining the necessary written authorisation:

66.1.6.1. 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

66.1.6.2. 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

66.1.6.3. 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

66.1.7. inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Council.

66.2. A subpoena issued for any purpose in terms of clause 66.1 must be signed by the General Secretary and must:

66.2.1. specifically require the person named in it to appear before the panellist;

66.2.2. sufficiently identify the book, document or object to be produced; and

66.2.3. state the date, time and place at which the person is to appear.

66.3. The written authorisation referred to in clause 66.1.6:

66.3.1. 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:
66.3.1.1. the nature of the dispute;

66.3.1.2. the relevance of any book, document or object to the resolution of the dispute;

66.3.1.3. the presence of any book, document or object on the premises; and

66.3.1.4. the need to enter, inspect or seize the book, document or object; and

66.3.2. in all other cases, may be given by the General Secretary.

66.4. 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.

66.5. The panellist must issue a receipt for any book, document or object seized in terms of clause 66.4.

66.6. 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.

66.7. 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.

66.8. A person commits contempt of the Council

66.8.1. 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;

66.8.2. if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the panellist;

66.8.3. by refusing to take the oath or to make an affirmation as a witness when a panellist so requires;

66.8.4. by refusing to answer any question fully and to the best of that person's knowledge and belief subject to clause 66.6;
66.8.5. if the person, without good cause, fails to produce any book, document or object specified in a subpoena to a panellist;

66.8.6. if the person willfully hinders a panellist in performing any function conferred by or in terms of the Act;

66.8.7. if the person insults, disparages or belittles a panellist, or prejudices or improperly influences the proceedings or improperly anticipates the panellist's award;

66.8.8. by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;

66.8.9. 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.

66.9. A panellist may:

66.9.1. make a finding that a party is in contempt of the Council for any of the reasons set out in clause 66.8;

66.9.2. refer the panellist's finding, together with the record of the proceedings, to the Labour Court for its decision in terms of clause 66.11.

66.10. Before making a decision in terms of clause 66.11, the Labour Court\textsuperscript{11}:

66.10.1. must subpoena any person found in contempt to appear before it on a date determined by the Court;

66.10.2. may subpoena any other person to appear before it on a date determined by the Court; and

66.10.3. 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.

66.11. The Labour Court may confirm, vary or set aside the finding of a panellist.

66.12. If any person fails to appear before the Labour Court pursuant to a subpoena issued in terms of clause 66.10.1, the Court may make any order that it deems appropriate in the absence of that person.

\textsuperscript{11} The provisions of clauses 66.9.2 to 66.12 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.
66.13. When the provisions of section 142 of the Act is amended, the powers conferred on panellists in this clause 66 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.

67. Costs

67.1. Subject to clause 65.665.6, 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.

67.2. Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.

67.3. If a panellist finds that a dismissal is procedurally unfair the panellist may charge the employer an arbitration fee.¹²

67.4. If, at any time during the proceedings, the panellist is satisfied that:

67.4.1. 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 67.1;

67.4.2. the referral to the Council was made or defended vexatiously or without reasonable cause, the panellist may make an appropriate order of costs;

67.4.3. 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.

67.5. An example of circumstances applicable to clause 67.4.3 is where such party applied for a postponement outside of the time-periods provided for in clauses 19 and was nevertheless granted such postponement despite not bring such application as soon as was reasonably possible.

67.6. The procedure that the panellist must follow, in respect of pursuing the intent of clauses 67.3 to 67.4.3, shall be by:

¹² 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.
67.6.1. informing both parties of the intention to do so; and
67.6.2. giving both parties an opportunity to make representations on the issue.

67.7. Costs awarded by the panellist may include:
67.7.1. the costs of the conciliation and / or arbitration;
67.7.2. legal and professional costs and disbursements;
67.7.3. other expenses which a party has incurred in the conduct of the dispute; and
67.7.4. expenses of witnesses.

68. Taxation of Bills of Cost

68.1. The General Secretary may appoint a panellist as taxing officer to perform the functions of a taxing officer in terms of these procedures.

68.2. 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.

68.3. 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.

68.4. Any person requesting a taxation must complete ELRC Form E11 and must satisfy the taxing officer:
68.4.1. of that party’s entitlement to be present at the taxation; and
68.4.2. that party liable to pay the bill has received notice of the date, time and place of the taxation.

68.5. Despite clause 68.4, notice need not be given to a party:
68.5.1. who failed to appear or to be represented at the hearing; or
68.5.2. who consented in writing to the taxation taking place in that party’s absence.

68.6. Any decision by a taxing officer is subject to review by the Labour Court.
69. How to bring an application

69.1. This clause 69 applies to any:

69.1.1. application for joinder, substitution, variation or rescission;
69.1.2. application in a jurisdictional dispute;
69.1.3. other preliminary or interlocutory application.

69.2. An application must be brought on notice to all persons who have an interest in the application.

69.3. The party bringing the application must sign the notice of application in accordance with clause 48 and must state:

69.3.1. the title of the matter;
69.3.2. the case number assigned to the matter by the General Secretary;
69.3.3. the relief sought;
69.3.4. the address at which the party delivering the document will accept delivery of all documents and proceedings;
69.3.5. 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;
69.3.6. that the application may be heard in the absence of a party that does not comply with clause 69.3.5;
69.3.7. a schedule listing the documents that are material and relevant to the application.

69.4. The application must be supported by an affidavit. The affidavit must clearly and concisely set out:

69.4.1. the names, description and addresses of the parties;
69.4.2. 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;
69.4.3. a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document; and
69.4.4. if the application is filed outside the relevant time period, grounds for condonation in accordance with clause 69;

69.4.5. 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.

69.5. Further steps by the parties:

69.5.1. 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;

69.5.2. 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; and

69.5.3. The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.

69.6. A panellist may permit the affidavits referred to in this clause to be substituted by a written statement.

69.7. In an urgent application, the General Secretary or a panellist may:

69.7.1. dispense with the requirements of this clause 69; and

69.7.2. only grant an order against a party that has had reasonable notice of the application.

69.8. 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.

69.9. The General Secretary must notify the parties of the date, time and place of the hearing of the application.

69.10. Applications may be heard on a motion roll.

69.11. Despite this clause, the General Secretary or a panellist may determine an application in any manner it deems fit.

69.12. A panellist may, on good cause shown, condone non-compliance with this clause 69.
70. Making a Settlement Agreement an Arbitration Award\(^\text{13}\)

70.1. 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.

70.2. For the purposes of clause 70.1, 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).\(^\text{14}\)

71. How an arbitration award can be certified and enforced

71.1. 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.

71.2. Any arbitration award that has been so certified that orders the payment of an amount of money, may be executed:

71.2.1. by using the warrant of execution in ELRC Form E8; or

71.2.2. by a warrant of execution prescribed in the Rules for the Conduct of Proceedings in the High Court.

71.3. For the purposes of this clause 71 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.

71.4. The provisions of clause 71.2 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.

71.5. 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.

72. Effect of arbitration awards

72.1. 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

\(^{13}\) The provisions of clause 67 apply by virtue of section 142A read with section 51(8) and are repeated here merely for the sake of completeness.

\(^{14}\) Respectively being a dispute in (a) an essential service or (b) a maintenance service.
section 158(1)(c) of the Act, unless it is an advisory arbitration award.

72.2. 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.

73. Variation and rescission of arbitration awards

73.1. How to apply to vary or rescind arbitration awards or rulings

73.1.1. An application for the variation or rescission of an arbitration award or ruling must comply with clause 69.

73.1.2. Such application must be made within 14 days of the date on which the applicant became aware of the arbitration award or ruling.

73.1.3. 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 73.

73.2. 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:

73.2.1.1. erroneously sought or erroneously made in the absence of any party affected by that award or ruling;

73.2.1.2. in which there is an ambiguity, or an obvious error or omission, but only to the extent of the ambiguity, error or omission; or

73.2.1.3. granted as a result of a mistake common to the parties to the proceedings.

74. Review of arbitration awards\(^\text{15}\)

74.1. 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:

\(^{15}\) The provisions of clauses 74.1, 74.2, 74.6 and 74.7 apply by virtue of section 145 read with section 51(8) and are repeated here merely for the sake of completeness.
74.1.1. within six weeks of the date that the award was served on the applicant, unless the alleged defect involves corruption; or

74.1.2. if the alleged defect involves corruption, within six weeks of the date that the applicant discovers the corruption.

74.2. A defect referred to in clause 74.1, means:

74.2.1. that the panellist under the auspices of the Council:

74.2.1.1. committed misconduct in relation to his/her duties as a panellist;

74.2.1.2. committed a gross irregularity in the conduct of the arbitration proceedings; or

74.2.1.3. exceeded his/her powers; or

74.2.2. that an award has been improperly obtained.

74.3. 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.

74.4. Such application or papers must be served on the General Secretary of the Council at the physical address provided in Schedule 2 of the ELRC Constitution: Schedules.

74.5. The provisions of clause 65 regarding recording of proceedings shall apply to records required for a review application.

74.6. The Labour Court may:

74.6.1. stay the enforcement of the award pending its decision;

74.6.2. on good cause shown condone the late filing of an application in terms of clause 74.1.

74.7. If the award is set aside, the Labour Court may:

74.7.1. determine the dispute in the manner it considers appropriate; or

74.7.2. make any order it considers appropriate about the procedures to be followed to determine the dispute.
PART 15: GENERAL

75. How panellists are appointed and terminated

75.1. 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.

75.2. In making these appointments the Council must ensure that the panel:

75.2.1. 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;

75.2.2. has panellists with skill and experience in labour relations, knowledge about the education sector and knowledge or experience in conciliation and arbitration;

75.2.3. is broadly representative of South African society.

75.3. A person appointed to the panel may act as panellist only if the panellist:

75.3.1. has concluded a Contract of Work, as prescribed by the Council;

75.3.2. has accepted the relevant Fee Policy of the Council; and

75.3.3. considers him or herself bound by the Code of Conduct in Schedule 3 of the ELRC Constitution: Schedules.

75.4. An error, omission or oversight committed in good faith regarding the appointment of a panellist or the requirements of clause 75.3 shall not invalidate anything done by a panellist or by a putative panellist in terms of these procedures.

75.5. The General Secretary may remove a member of the panel from office because of breach of contract.

75.6. The General Secretary may, subject to the Act, appoint a new member to the panel.

75.7. A member of the panel whose term of office expires is eligible for re-appointment.

75.8. Notwithstanding the provisions of Clause 75.3, 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.

76. Maintenance of a dispute register

76.1. 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.

76.2. 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.

77. Issue of forms

77.1. 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.

77.2. 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.

78. Referral of disputes to the Labour Court for adjudication

78.1. 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.

78.2. An application referred to in clause 78.1 must be made at least nine days before the date on which the matter has been set down for arbitration.

78.3. In deciding whether to refer a dispute to the Labour Court, the General Secretary should consider:

78.3.1. the nature of the dispute;

78.3.2. whether there are questions of law raised by the dispute;

78.3.3. the complexity of the dispute;

78.3.4. whether there are conflicting arbitration awards that need to be resolved;

78.3.5. the public interest.
78.4. 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.

78.5. 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.

78.6. If the *General Secretary* decides:

78.6.1. 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;

78.6.2. that the matter should not be referred to the Labour Court, the *General Secretary* must set the matter down for arbitration.

78.7. When referring the *dispute* to the Labour Court, the *General Secretary* may supplement the *parties*’ papers.

79. **Definitions**

Unless the context indicates otherwise,

79.1. *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;

79.2. *BCEA* means the Basic Conditions of Employment Act 75 of 1997;

79.3. *CCMA* means the Commission for Conciliation, Mediation and Arbitration;

79.4. *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;

79.5. *Combined Trade Union Party* shall mean two or more *Trade Unions* acting together as a single party.

79.6. *Conciliator* means a *panellist* who has been appointed to conduct a conciliation;

79.7. *Consultation* means a meaningful joint consensus seeking process.
79.8. 'Council' means the Education Labour Relations Council;

79.9. 'Days' is defined in clause 47;

79.10. 'Dispute' means a dispute that exists in respect of:

79.10.1. matters that are regulated by uniform rules, norms and standards that apply to the education sector; or

79.10.2. matters that apply to terms and conditions of service that apply to the education sector; or

79.10.3. matters that are assigned to the State as employer in the education sector and includes an alleged dispute

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

79.12. 'Employee' means an employee in the employ at a FET College either on a permanent or fixed term contract basis in terms of the FETC Act;

79.13. 'Employer' means any FET College which has been established in terms of the FETC Act and such employer may only be represented through an employers organisation;

79.14. 'Employers Organisation' means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions;

79.15. 'File' means the delivery or transmission of documents to the relevant Council, as provided for in clause 51, and "filing and filed" shall have a similar meaning;

79.16. 'General Secretary' means the General Secretary of the Council, appointed in terms of this Constitution;

79.17. 'Labour Dispute' means any dispute related to the employment relationship between the employer and an employee in the Public Service in relation to clause 31.

79.18. '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:

79.18.1. on the one side:

79.18.1.1. one or more Trade Unions;
79.18.1.2. one or more employees; or

79.18.1.3. one or more Trade Unions and one or more employees; and

79.18.2. on the other side, the employer;

79.19. ‘Operational requirements’ means requirements based on the economic, technological, structural, or similar needs of the employer.

79.20. ‘Panellist’ means a member of the Panel established in terms of clause 75 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;

79.21. ‘Parties’ means organisations and / or individuals;

79.22. ‘Party’ means any party to proceedings before the Council;

79.23. ‘PSCBC’ means the Public Service Coordinating Bargaining Council established in terms of the Act;

79.24. ‘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:

79.24.1. the members of the South African National Defence Force;

79.24.2. the National Intelligence Agency; and

79.24.3. the South African Secret Service.'

79.25. ‘Registrar’ means the registrar as defined in the Act.

79.26. ‘Serve’ means the delivery or transmission of documents to the other parties to a dispute, as provided for in clause 49, and “serving and served” shall have a similar meaning;

79.27. ‘the Act’ means the Labour Relations Act, 1995 (Act 66 of 1995), as amended;

79.28. ‘the Constitution’ means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

79.29. ‘these Procedures’ means this document
79.30. 'ELRC Constitution' means the constitution of the Council;

79.31. '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.

79.32. '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.

80. Interpretation

80.1. 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.

80.2. Words used in singular in this procedure shall also be read as in plural.
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FETC BARGAINING UNIT - NEGOTIATION, CONSULTATION AND DISPUTE RESOLUTION PROCEDURES

ANNEXURE A

16 September 2008