

EDUCATION LABOUR RELATIONS COUNCIL

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



elrc


EDUCATION LABOUR
RELATIONS COUNCIL

23 AUGUST 2016

CONSTITUTION:

PART A

GENERAL PROVISIONS

MS
H. Ad. 

CONTENTS

PART 1: INTRODUCTORY PROVISIONS 4

1. Name of the *Council* 4

2. Juristic person 4

3. Accounting authority 4

4. Accounting Officer 4

5. Legislative framework 4

6. Constitutional scope 5

7. Objectives of the *Council* 5

8. Powers of the *Council* 6

9. Parties to the *Council* 7

 9.1. Parties 7

 9.2. Rights of admitted parties 7

 9.3. Admission 7

 9.4. Combined Trade Union Parties 9

 9.5. Register of Trade Union Parties 10

 9.6. Termination of membership 12

10. Invitees to *Council* 13

PART 2: STRUCTURES AND MEETINGS OF THE *COUNCIL* 14

11. Appointment of representatives 14

12. Appointment of *office bearers* 15

13. Removal of *office bearers* 16

14. General Secretary and Staff 17

15. *Meetings* of the *Council* 19

 15.1. Council Meetings 19

 15.2. Annual General Meeting 19

 15.3. Special Governance Meetings of Council, the Executive Committee and the Audit Committee 20

16. Governance Committees of the *Council* 20

 16.1. General 20

 16.2. The Audit Committee 21

 16.3. The Executive Committee 22

 16.4. Sub-committees of the Executive Committee 23

 16.5. Human Resource Sub-Committee 24

 16.6. Legal Sub-Committee 24

 16.7. Finance Sub-Committee 24

17. *Governance Meetings* 25

 17.1. Notice of Meeting 25

 17.2. Quorum of meetings 25

 17.3. Meeting procedure 25

 17.4. Voting 26

 17.5. Decisions of Council and liability of Executive Committee and Audit Committee Members 26

18. Vote Weights 27

 Vote weight of parties in the Council and its Provincial Chamber 27

PART 3: *PROVINCIAL CHAMBERS* 29

19. Establishment of *Provincial Chambers* 29

CONSTITUTION: GENERAL PROVISIONS

PART A

23 AUGUST 2016

H. A. M. J. P.

ELRC CONSTITUTION

20. Scope of <i>Provincial Chambers</i>	29
21. Objectives of the <i>Provincial Chamber</i>	29
22. Functions of the <i>Provincial Chamber</i>	29
23. Parties to the <i>Provincial Chamber</i>	30
24. Appointment of representatives	30
25. Appointment of <i>office bearers</i>	31
25.1. Chairperson and Deputy-Chairperson.....	31
26. <i>Provincial Manager</i>	32
27. Removal of <i>office bearers</i>	33
28. Special Meeting of the <i>Provincial Chamber (Propose delete)</i>	33
29. Standing sub-committee (STANCO).....	34
30. General provisions on meetings of the <i>Provincial Chamber</i>	34
30.1. Notice of Meeting.....	34
30.2. Quorum of a Meeting.....	35
30.3. Voting in Provincial Chamber and Stanco.....	35
30.4. Vote weight	36
30.5. Meeting procedure.....	36
30.6. Negotiation and consultation meetings of a Provincial Chamber and its task teams.....	36
30.7. Collective Agreements: Provincial Chambers	37
PART 4: ACCOUNTING RESPONSIBILITIES	40
31. General	40
32. Accounting Officer / Responsibilities.....	41
PART 5: ADDITIONAL PROVISIONS	42
33. Negotiations, <i>Consultations</i> and <i>Dispute Resolution Procedures</i>	42
34. Disputes about the interpretation and application of Provisions of the <i>constitution</i>	42
35. Exemptions from <i>collective agreements</i>	42
36. Withdrawal from indefinite period collective agreements:	43
37. Amendment of <i>this constitution</i>	43
38. Seat of the <i>Council</i>	43
39. Winding Up.....	43
40. Interpretation	44
41. Definitions	44



PART 1: INTRODUCTORY PROVISIONS

1. Name of the Council

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

2. Juristic person

2.1. The *Council* is a juristic person.

2.2. Unless otherwise provided by *this constitution*, no employer or Trade Union shall, by reason only of the fact that it is a party to the *Council*, be liable for any of the obligations of the *Council*.

3. Accounting authority

3.1. The *Council* is the accounting authority. The *Council* delegates the discharging of its governance and other obligations to the *Executive Committee*; and

3.2. The *Executive Committee* may delegate any of its powers or functions to any committee, sub-committee and or ad hoc committee of the *Council*, or the *General Secretary*.

4. Accounting Officer

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

5. Legislative framework

5.1. The *Council* is a bargaining council that is established in terms of section 37(2) of the Labour Relations Act, No. 66 of 1995 (hereinafter referred to as "*the Act*") as read with Schedule 1 of *the Act*.

5.2. The ELRC, as a bargaining council shall in terms of its governance and financial management, operate in terms of section 53 and 54 of LRA (Act 66 of 1995), as amended.

5.3. The ELRC as a bargaining council shall in terms of the Income Tax Act comply with Section 30B.

5.3.1. In giving effect to the above:

5.3.1.1. all levies collected in terms of clause 8.7 of this constitution shall be used solely for the administration of the Council, resolving disputes and other Council

activities.

5.3.1.2. substantially the whole of Council activities will be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group; and

5.3.1.3. substantially the whole of the Council's funding must be derived from its annual members.

6. Constitutional scope

6.1. The registered scope of the *Council* extends to:

6.1.1. the Basic Education sector, consisting of the State in its capacity as *employer* and those *employees* in respect of which the Employment of Educators Act, 1998, applies;

6.1.2. The Council may, by a resolution of Council, extend the scope to include other educational sectors including small and medium enterprises in the education sector; and

6.1.3. the registered scope of the Council is extended to the State in its capacity as the employer as represented by Department of Higher Education & Training (DHET) and employer/s in the Technical Vocational Education & Training (TVET) sector and those employees (the educator/management categories of employees) of which the Further Education & Training Colleges Amendment Act (FETCA), 2012 applies.

7. Objectives of the *Council*

Subject to the provisions of *the Act*, the objectives of the *Council* shall be:

7.1. to maintain and promote labour peace in education;

7.2. to prevent and resolve labour *disputes* in education and to perform *dispute* resolution functions in terms of section 51 of *the Act*;

7.3. to promote collective bargaining in relation to all matters of mutual interest and to conclude, monitor compliance and enforce Collective Agreements;

7.4. to grant exemptions to parties and non-parties from Collective Agreements, where appropriate;

7.5. to conduct research, analysis and survey education nationally and internationally, and to promote training and capacity building in education;

7.6. to develop proposals for submission to the *PSCBC*, the *CCMA* and *NEDLAC*, or any other appropriate forum on labour policy and labour legislation that may affect education (sector and area);

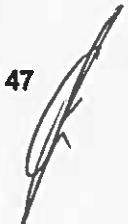
- 7.7. to confer on workplace forums matters for *consultation*;
- 7.8. to consider and deal with any other matters that may affect the interests of the parties;
- 7.9. to extend the services and functions of the *Council* to workers in the informal and other educational sectors; and
- 7.10. to determine by *collective agreement* the matters which may not be an *issue in dispute* for the purpose of a *strike* or a *lock-out* at the work-place.

8. Powers of the *Council*

The *Council* shall have the following powers:

- 8.1. to conclude contracts;
- 8.2. to mortgage, pledge or otherwise encumber any of its movable or immovable property;
- 8.3. to borrow, lend and invest money;
- 8.4. to take part in any form of *consultation*, litigation and *dispute* resolution proceedings;
- 8.5. to promote and establish training and education schemes;
- 8.6. to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *Council* or their *members*;
- 8.7. to establish and administer a fund through the raising of levies to be utilised for the administration of the *Council*, resolving *disputes* and other *Council* activities;
- 8.8. to amalgamate with other Sectoral Bargaining Councils in the *Public Service*, if so agreed to by such other Sectoral Bargaining Council and the *PSCBC*;
- 8.9. to exercise any other powers that may be necessary or desirable to achieve the objectives of the *Council* and which shall include the authority and power to overrule matters which had been dealt with in a *Provincial Chamber* and which are in conflict with the provisions of *this constitution* or any national agreement;
- 8.10. to delegate such matters as the *Council* may deem necessary to any *Provincial Chamber*, committee or sub-committee of the *Council* for conclusion and subject to any conditions which the *Council* may attach thereto;
- 8.11. to refer such matters as the *Council* may deem necessary to any *Provincial Chamber*;

ME
H. MZ



- 8.12. to provide support (industrial) services within the education sector; and
- 8.13. to ratify the appointment of a panel of conciliators and arbitrators or an accredited agency/agencies in terms of the provisions of the Act.

9. Parties to the *Council*

9.1. *Parties*

- 9.1.1. The parties to the *Council* shall be the State in its capacity as *employer* and registered *Trade Unions* that have *members* who fall within the registered scope of the *Council* and are admitted to the *Council* in terms of the provisions of *this constitution*.
- 9.1.2. Any *employer* organisation registered in terms of *the Act*, may apply in writing to the *Council* to be admitted as a party.

9.2. Rights of admitted *parties*

Parties admitted to *Council* have the right to:

- 9.2.1. appoint representatives to the *Council* ;
- 9.2.2. nominate representatives to any committee of the *Council*;
- 9.2.3. receive notices of meetings;
- 9.2.4. attend meetings, where applicable;
- 9.2.5. table proposals at any meeting;
- 9.2.6. vote in any *Council* meeting, with its vote weight as determined in terms of clause 18;
- 9.2.7. exercise organisational rights provided for in section 12, 13, 14, 15 and 16 of *the Act*.

9.3. Admission

- 9.3.1. Any *Trade Union* seeking organisational rights at a workplace, neither admitted to *Council* nor part of the Combined Trade Unions acting together (referred to as *CTU*):
 - 9.3.1.1. shall only qualify for Section 12, 13 and 15 organisational rights when it meets the threshold requirement of 30% of the total number of employees as its members at a workplace.
 - 9.3.1.2. May apply to the General Secretary for admission to the *Council*, provided that such a *Trade Union* or *Combined Trade Union Party* meets the threshold requirement of 60 000 members within the registered scope of the *Council*.

- 9.3.2. A *Trade Union* or *Combined Trade Union Party* applying for membership to the *Council*, must submit:
- 9.3.2.1. A certified copy of its constitution, or in the case of a combined *Trade Union Party*, each individual trade union's constitution fully updated with all amendments as registered and duly authenticated by the signature of its *Accounting Officer*;
 - 9.3.2.2. A certified copy of the *Trade Union's* or, in the case of a *Combined Trade Union Party* each individual *Trade Union's* certificate of registration;
 - 9.3.2.3. The full names of the *Trade Union's* *Accounting Officer*, or in the case of a *Combined Trade Union Party* each individual *Trade Union's* *Accounting Officer* and the permanent street and postal addresses, the full telephone number(s), the full tele-fax number(s) and any other electronic or digital address of its head office;
 - 9.3.2.4. Any other information on which the *Trade Union* or *Combined Trade Union* relies for support of its application;
 - 9.3.2.5. Proof that the *Trade Union* or *Combined Trade Union Party* satisfies the threshold requirements, including certified copies of the *employer's* remittances of dues to the *Trade Union* concerned, or in the case of a *Combined Trade Union Party*, certified copies of the *employer's* remittances of dues to each individual *Trade Union*; and
 - 9.3.2.6. In the case of a *Combined Trade Union Party*, the agreement between the constituent *Trade Unions* addressing material aspects of their acting together arrangement, including:
 - 9.3.2.6.1. the single *Trade Union* under whose name, or any other name acceptable to the parties to *Council*, as agreed to in a bargaining meeting of the *Council*, that *Combined Trade Union Party* will be admitted;
 - 9.3.2.6.2. the allocation of agency fees between the *Trade Unions*.
 - 9.3.2.6.3. proof that the period of validity of the agreement shall be for at least one calendar year from date of agreement.

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

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

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

9.3.4. The *Council* must:

9.3.4.1. decide whether to accept or reject the *General Secretary's* recommendation;

9.3.4.2. record, , its reasons for refusing and/or allowing admission of any applicant;

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

9.3.5. Within one month of a *Council* decision:

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

9.3.5.2. to refuse admission, the *General Secretary* must inform such party in writing of the *Council's* decision and the reasons for the refusal.

9.4. *Combined Trade Union Parties*

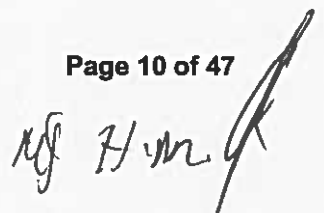
9.4.1. If a *Combined Trade Union Party* is admitted to the *Council* in terms of clause 9.3.1, or if *Trade Unions* combine in terms of clause 9.4.2, the constituent *Trade Unions* will be represented in the *Council* as a single party and in the name of the *Trade Union* referred to in the agreement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

and will at all times act as such single party.

- 9.4.2. Any *Trade Union* with *members* falling within the scope of the *Council* may join an admitted *Trade Union* (including an admitted *Combined Trade Union Party*) to form a *Combined Trade Union Party*, whether such *Trade Union* previously formed part of an admitted *Combined Trade Union Party* or not. Such *Combined Trade Union Party* must inform the *General Secretary* of such combination and supply him or her with the agreement between the constituent *Trade Unions* addressing material aspects of their acting together arrangement, including the elements listed in clauses 9.3.2.6.1 to 9.3.2.6.3. The *General Secretary* must determine the vote weight of the *Trade Union* in terms of clause 18.
- 9.4.3. When the composition of the *Trade Unions* belonging to such *Combined Trade Union Party* changes by the withdrawal or expulsion of a previous member of the *Combined Trade Union Party* in terms of the agreement referred to in clause 9.3.2.6, the remaining member(s) of such *Combined Trade Union Party* must, within one month of such change:
- 9.4.3.1. notify the *General Secretary* of this change;
- 9.4.3.2. where a *Trade Union* under whose name the *Combined Trade Union Party* was admitted, withdraws or is expelled, advise the *General Secretary* of the name of the *Trade Union* under whose name the *Combined Trade Union Party* will be known and submit to the *General Secretary* any new or amended agreement between the constituent parties dealing with the matters referred to in clause 9.3.2.6;
- 9.4.4. Upon receiving the notice from the *Combined Trade Union* the *General Secretary* shall recalculate the vote weight of such *Combined Trade Union Party*,
- 9.4.4.1. the *General Secretary* shall at the next sitting of the *Council* inform the *Council* of the change and make a recommendation regarding the amendment of the vote weights arising from this change; and
- 9.4.4.2. the *Council* must amend the vote weight of the parties accordingly.
- 9.4.5. Where the *General Secretary* receives a notice referred to in clause 9.4.3, he or she shall then act in terms of clause 9.5.4.

9.5. Register of *Trade Union Parties*

- 9.5.1. The *General Secretary* must:
- 9.5.1.1. maintain a register of admitted *Trade Unions*; and



- 9.5.1.2. regarding a *Combined Trade Union Party*, record the names of the *Trade Unions* forming part of such party and, when informed or becomes aware that the composition of that *Combined Trade Union Party* has changed as provided for in clause 9.4.3, record such change.
- 9.5.2. Within one month of:
- 9.5.2.1. the adoption by a *Trade Union* of a resolution to amend its name;and
- 9.5.2.2. registration by the *Registrar* of Labour Relations of a *Trade Union's* name change;or
- 9.5.2.3. the adoption by an admitted *Trade Union* of a resolution to amalgamate with any other admitted *Trade Union* to form a new *Trade Union*; and
- 9.5.2.4. registration by the *Registrar* of such amalgamation; the *Trade Union* shall notify the *General Secretary* in writing of such change.
- 9.5.3. The *General Secretary* must monitor the process of name change or amalgamation referred to in clause 9.5.2 and, when becoming aware that the *Registrar* has registered such name change or amalgamation, amend the register accordingly. If the relevant *Trade Union* has not informed the *General Secretary* as provided in clause 9.5.2, the *General Secretary* shall obtain written confirmation of such fact from the *Trade Union* concerned or from the *Registrar* before amending the register.
- 9.5.4. When the *General Secretary* amends the register regarding an amalgamation he or she must also:
- 9.5.4.1. add the vote weight allocated to the constituent *Trade Unions* as determined in clause 18; and
- 9.5.4.2. issue a notice to all the parties to the *Council* accordingly.
- Such amalgamated *Trade Union* party shall have such combined votes from the date of the *General Secretary's* notice referred to in clause 9.5.4.2.
- 9.5.5. Where a *Trade Union* that amalgamated with an admitted *Trade Union* was not, prior to the amalgamation, an admitted *Trade Union*, the *membership* of the previously unadmitted *Trade Union* shall not affect the vote weight of the amalgamated *Trade Union*, until the vote weights are adjusted.
- 9.5.6. Once the register is amended as provided for in clause 9.5.4:
- 9.5.6.1. any amalgamated *Trade Union* shall, regarding each

Trade Union that amalgamated, be responsible within the *Council* for all obligations of such *Trade Union* prior to amalgamation; and

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

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

9.6. Termination of *membership*

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

9.6.1.1. he/she receives a notice of resignation of such *membership* of the *Trade Union*;

9.6.1.2. it dissolves, winds up in terms of its constitution or is liquidated;

9.6.1.3. the *Registrar* withdraws the *Trade Union's* registration; or

9.6.1.4. it no longer complies with the admission requirements, including the threshold requirement, prescribed in *this constitution*.

9.6.2. Subject to clause 9.6.1, the continued *membership* of the *Trade Union* to the *Council* shall be reviewed by the *General Secretary* quarterly in terms of clause 18.

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

9.6.3.1. The *General Secretary* following the review of *membership* figures as set out in clause 9.6.2; or

9.6.3.2. Any party to the *Council*.

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

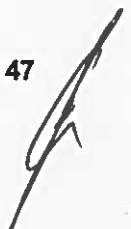
9.6.5. The *Council* must consider any proposal from a party to the *Council* to terminate the *membership* of a *Trade Union*. In considering

termination in such circumstances, the *Trade Union* must be afforded one month to submit written representations to the *Council* as to why its *membership* should not be terminated.

- 9.6.6. If the *membership* of a *Trade Union* is terminated and such a *Trade Union* *disputes* the termination, the *dispute* may be referred to the relevant forum.

10. Invitees to *Council*

- 10.1. *Council* may invite persons or bodies to attend *Council* meetings.
- 10.2. The chairperson and/or *members* of the Audit Committee may be called upon to address meetings of the *Council* and/or the *Executive Committee*.

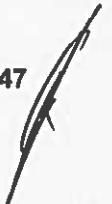
W.F. H.M. 

PART 2: STRUCTURES AND MEETINGS OF THE *COUNCIL*

11. Appointment of representatives

- 11.1. The *employer* shall be represented in the *Council* by such persons as the *employer* may from time to time appoint. The number of employer representatives shall not exceed the number of *Trade Union* representatives in the *Council*.
- 11.2. The *Trade Unions* admitted to the *Council* shall have 25 representatives allocated on the basis of proportionality according to the vote weights: Provided that an admitted *Trade Union* shall have at least 1 (one) representative.
- 11.3. Parties to the *Council* shall make the names of their representative/s available to the *General Secretary* 30 days prior to the Annual General Meeting. *Trade Union* representatives shall be *members* registered in terms of their constitutions, or full-time officials. *Employer* representatives shall be full-time officials employed in terms of the Public Service Act, 1994, as amended, or the Employment of Educators Act, 1998.
- 11.4. A party may at any time withdraw any of its representatives in the *Council* by giving written notice to the *General Secretary*.
- 11.5. Should a vacancy arise in the *Council* as a result of the withdrawal, resignation or death of a representative, the party who previously appointed the relevant representative, by giving written notice to the *General Secretary*, shall fill the vacancy.
- 11.6. Should a party's membership of the *Council* be terminated, its representatives shall vacate their seats.
- 11.7. Parties to the *Council* may co-opt persons to give expert advice, assistance or evidence to the *Council* on matters being discussed in the *Council*: Provided that:
 - 11.7.1. where reasonably possible, the *General Secretary* be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
 - 11.7.2. *Trade Unions* or the *employer* shall not be allowed to co-opt more than one person at a time to address, advise or assist the *Council* on a specific matter; and
 - 11.7.3. The person co-opted will only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.
- 11.8. The *Executive Committee* shall comprise 5 persons representing the *employer* and 5 persons representing the *Trade Unions* shared

H.M.



proportionately in terms of the vote weights determined by the *General Secretary*.

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

12. Appointment of *office bearers*

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



12.1. Chairperson and Deputy-Chairpersons

- 12.1.1. The outgoing Chairperson shall preside over the Annual General Meeting of the *Council*, provided that the *General Secretary* shall preside over the election of the Chairperson and Deputy-Chairpersons.
- 12.1.2. The *General Secretary* shall request nominations for a new Chairperson and Deputy-chairpersons for the forthcoming term of office, to reach him/her 30 *days* prior to the Annual General Meeting.
- 12.1.3. A person other than a representative of the parties who has consented in writing to his or her nomination may also be nominated as Chairperson.
- 12.1.4. All nominations shall be sent to parties at least 14 *days* prior to the Annual General Meeting.
- 12.1.5. During the Annual General Meeting the *General Secretary* shall formally introduce the candidates before voting commences in terms of the provisions of clause 17.4. The person receiving the highest percentage of the total votes shall be declared the duly elected Chairperson. Should an equal number of votes be cast for two or more candidates, the *General Secretary* shall write the name of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one of the papers out of the container. The candidate whose name is so drawn shall be declared as the elected Chairperson.
- 12.1.6. The Chairperson shall hold office for a term of 12 months unless removed by a decision of the *Council*. The Chairperson so removed or any past Chairperson may be re-elected.
- 12.1.7. The provisions of clauses 12.1.1 to 12.1.5 shall, with the changes required by the context, apply in respect of the election of four Deputy-Chairpersons of the *Council*: Provided that two shall be elected from the *employer* and the other two from the *Trade Unions*: Provided further that the Deputy-Chairpersons shall be elected from

- the duly appointed representatives of the parties to the *Council*.,
- 12.1.8. The Chairperson shall preside over all meetings of the *Council*. The Chairperson shall:
- 12.1.8.1. subject to clauses 12.1.10 and 12.1.11, preside over and enforce order at all meetings in accordance with normal meeting procedure;
 - 12.1.8.2. sign and date the minutes of a meeting after confirmation;
 - 12.1.8.3. in a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson; and
- 12.1.9. Whenever the Chairperson is not available, one of the Deputy-Chairpersons shall act as the Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- 12.1.10. Whenever the Chairperson and the Deputy-Chairpersons are not available or unable to perform his or her duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- 12.1.11. The Chairperson, and the Deputy-Chairpersons, shall not be entitled to vote on any matter: Provided that if any of the Deputy-Chairpersons have not been replaced by another representative of that party to the *Council*, such Deputy-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Deputy-Chairpersons.
- 12.1.12. The term of office of a Chairperson and Deputy-Chairpersons, may be terminated by written notice of either such Chairperson or Deputy-Chairperson, or by the *Council* consequent to a decision to that effect.
- 12.1.13. The *Council* may from time to time determine an honorarium payable to the Chairperson of the *Council*.
- 12.1.14. The council shall when it become necessary or desirable to engage the services of the Chairperson on a part-time or full-time basis, the *Council* shall determine the conditions of such engagement of the Chairperson by agreement.

13. Removal of *office bearers*

- 13.1. Council shall determine the protocol.
- 13.2. Any *office-bearer* may be removed from office by the *Council* for incapacity, or misconduct, subject to fair procedure being followed.
- 13.3. Vacancies occurring as a result of the removal from office of an *office-bearer*

 H.M. 

shall be filled through bi-election in terms of clause 12 with the necessary changes required by context.

14. General Secretary and Staff

- 14.1. The *Council* shall appoint a *General Secretary*.
- 14.2. The *Council* shall determine the terms and conditions of employment, of the *General Secretary*.
- 14.3. Subject to the provisions of *this constitution*, the *General Secretary*, shall be responsible for the sound management and administration of the *Council* including:
 - 14.3.1. all meetings of the *Council* and its committees and recording of minutes of meetings;
 - 14.3.2. keeping books of account in accordance with generally accepted accounting practice and the instructions of the *Council*;
 - 14.3.3. correspondence of the *Council*;
 - 14.3.4. keeping an accurate filing system;
 - 14.3.5. general office administration;
 - 14.3.6. banking all monies received on behalf of the *Council* within 24 hours of receipt thereof or on the next working day, whichever is the earliest;
 - 14.3.7. submitting statements of the financial position of the *Council* whenever required to do so by the *Council*;
 - 14.3.8. countersigning cheques on the *Council's* banking account;
 - 14.3.9. keeping a register of all *employers* and *Trade Unions* registered and/or admitted in terms of the provisions of *this constitution*, which must be made available for scrutiny upon request;
 - 14.3.10. calculating the voting percentages of parties to the *Council*;
 - 14.3.11. keeping in safe custody at the offices of the *Council*, for a period of not less than 3 (three) years or in terms of the *Council's* financial policy:
 - 14.3.11.1. a copy of the approved minutes of every meeting of the *Council* and its committees, duly signed by the Chairperson who presided at such meeting;
 - 14.3.11.2. a copy of the approved minutes of every meeting of a *Provincial Chamber*, duly signed by the Chairperson who presided at such meeting;
 - 14.3.11.3. the statements referred to in clause 19 and all records

Handwritten signature: H.M.

- in relation thereto; and
- 14.3.11.4. all past constitutions of the *Council*;
- 14.3.12. entering into agreements regarding matters listed in this clause 14.3.
- 14.3.13. appointment of the *Provincial Managers* and other part-time or full-time personnel as he or she may deem necessary, subject to the budget, staff structure and policies as adopted by the *Council*;
- 14.3.14. appoint of such other staff as may be necessary, and be responsible for all staff employed by the *Council*, including the discipline and termination of employment;
- 14.3.15. providing the *Registrar* with such information as required in terms of the provisions of *the Act*;
- 14.3.16. liaising with the Department of Labour, the *CCMA* or any other *Dispute Resolution Forum* with any relevant matter;
- 14.3.17. determining the duties and functions of the staff employed in the *Council*;
- 14.3.18. compiling the annual report of the *Council*;
- 14.3.19. receiving and processing of all *disputes* in terms of approved policy and procedures of the *Council* and is the designated agent of the *Council* in terms of *the Act*;
- 14.3.20. certification of arbitration awards for purposes of enforcement as envisaged in Section 143 of *the Act*. and
- 14.3.21. performing such other duties and functions as *this constitution*, including its schedules and annexures, provides or as the *Council* may from time to time direct.
- 14.4. Unless otherwise determined by the *Council*, the *General Secretary* may delegate any of his/her functions to any of the staff of the *Council*.
- 14.5. The *General Secretary* is the designated agent of the *Council* and has the powers and responsibilities as set down Schedule 4 of *this constitution*: Schedules (Part D)
- 14.6. The *General Secretary* must act impartially and in accordance with *this constitution* and the decisions of the *Council's* constitutional structures. The *General Secretary* is accountable to the *Council* via the *Executive Committee*.
- 14.7. The *General Secretary* may be removed from office by the *Council* for incapacity, serious neglect of duty or misconduct, subject to just administrative action and fair labour practice.

15. Meetings of the Council

15.1. Council Meetings

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

15.2. Annual General Meeting

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

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

15.2.2.1. Welcome

15.2.2.2. Presentation of *Council* members

15.2.2.3. Minutes of the previous Annual General Meeting

15.2.2.4. Matters arising ex-minutes, other than those covered by the agenda

15.2.2.5. Annual Report of the *Council* by the General Secretary, including the financial statements of the previous financial year, which financial year shall run from 1 April to 31 March;

15.2.2.6. The independent report of the registered Auditors in respect of the financial statements referred to in clause 15.2.2.5;

15.2.2.7. The independent report of the Audit Committee.

15.2.2.8. Adoption of the Annual Report of the *Council*, including the financial statements;

15.2.2.9. The levies to be imposed on educators;

15.2.2.10. The appointment of *members* of the Audit Committee;

15.2.2.11. The appointment of a Chairperson of the Audit Committee;

15.2.2.12. The appointment of *members* of the *Executive Committee*;

15.2.2.13. The election of the Chairperson and Deputy-Chairpersons; and

15.2.2.14. Closure

- 15.3. Special Governance Meetings of Council, the Executive Committee and the Audit Committee
- 15.3.1. Special meetings shall be called by the *General Secretary* upon a written request by:
- 15.3.1.1. any two parties to the *Council* for special *Council* meetings;
- 15.3.1.2. any two *members* of the Audit Committee for special Audit Committee meetings; and
- 15.3.1.3. any two parties, who constitute a quorum, of the Executive Committee for special Executive Committee meetings
- 15.3.2. Provided that the *General Secretary* shall consult, prior to the calling of such a meeting, with the parties to the *Council*, *members* of the Audit Committee, or *members* of the *Executive Committee* to establish a quorum as the case may be.

16. Governance Committees of the *Council*

16.1. General

- 16.1.1. The *Executive Committee* performs the governance functions of the *Council*.
- 16.1.2. The *Executive Committee* may, from time to time, establish committees and may, subject to such conditions as it may determine, delegate any of its functions to any such committee.
- 16.1.3. The *Executive Committee* may, from time to time, activate the convening of any sub-committee.
- 16.1.4. Any committee established in terms of clause 16.1.2, shall consist of equal numbers of representatives of *Trade Unions* and the *employer*.
- 16.1.5. In all committees the composition of the *Trade Union* representation will be proportional to their respective vote weights unless otherwise agreed to by *Trade Unions*.
- 16.1.6. *Members* of governance committees, excluding co-opted experts and the Audit Committee, must be *members* of *Council*.
- 16.1.7. *Members* of the Audit Committee shall be made up of five persons.
- 16.1.7.1. may not be *members* of the *Council*;
- 16.1.7.2. must be financially literate; and
- 16.1.7.3. must comprise of at least three persons who are independent of the parties to the *Council*.

- 16.1.8. Committees established in terms of clause 16.1.2 must submit regular written reports via the *General Secretary* to the *Executive Committee* and the *Council*, as the case may be.
- 16.1.9. A Committee established in terms of clause 16.1.2 may co-opt experts to render assistance; provided that where such co-option has financial implications prior approval must be obtained from the *Executive Committee* or the *Council*.
- 16.1.10. In respect of the procurement of goods and services that are meant to enhance Council operations and in order to ensure the procurement is in terms of the principles of good corporate governance and any other relevant legislation. Committees established for such purpose shall be appointed in terms of Supply Chain Management processes.

16.2. The Audit Committee

16.2.1. The Audit Committee:

- 16.2.1.1. has explicit authority to investigate matters within its powers, as identified in the written terms of reference.
 - 16.2.1.2. must be provided with the resources it needs to investigate such matters and shall have full access to information;
 - 16.2.1.3. must safeguard all the information supplied to it within the ambit of the law; and
 - 16.2.1.4. must report and make recommendations to the *Executive Committee*, but the *General Secretary* retains responsibility for implementing such recommendations.
- 16.2.2. In addition to the above, the audit committee must, in the annual report of the institution, comment on:
- 16.2.2.1. the effectiveness of internal control systems;
 - 16.2.2.2. the quality of the yearly management and quarterly reports.
 - 16.2.2.3. its evaluation of the annual financial statements.
- 16.2.3. The Audit Committee must review the quarterly reports of the *General Secretary* and make recommendations to the *Executive Committee* on the acceptability of such reports.
- 16.2.4. Should a report to the Audit Committee, whether from the internal audit function or any other reliable source, implicate the *General Secretary* in fraud, corruption or gross negligence, the chairperson of the Audit Committee must promptly report this to the *Executive Committee* and *Council* as the case may be.

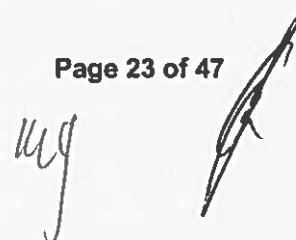
- 16.2.5. The Audit Committee may communicate any concerns it deems necessary to the Independent External Auditors.
 - 16.2.6. The Audit Committee must meet at least annually with the Independent External Auditors to ensure that there are no unresolved issues of concern.
 - 16.2.7. The Audit Committee must table an independent report at the Annual General Meeting.
 - 16.2.8. The functions of the Audit Committee, as outlined in the Audit Committee Charter, are to review:
 - 16.2.8.1. the effectiveness of the internal control systems;
 - 16.2.8.2. the effectiveness of the internal audit function;
 - 16.2.8.3. the risk areas of the institution's operations to be covered in the scope of internal and external audits;
 - 16.2.8.4. the adequacy, reliability and accuracy of the financial information provided to management and other users of such information;
 - 16.2.8.5. any accounting and auditing concerns identified as a result of internal and external audits;
 - 16.2.8.6. the institution's compliance with legal and regulatory provisions; and
 - 16.2.8.7. the activities of the internal audit function, including its annual work programme, co-ordination with the external auditors, the reports of significant investigation and the responses of management to specific recommendations.
 - 16.2.9. The Audit Committee shall comprise of 5 representatives, a minimum of 3 must be independent of the parties to *Council*.
 - 16.2.10. The Chairperson shall be appointed from and by the independent representatives.
 - 16.2.11. The term of office of *members* of the Audit Committee shall be three years which period may be extended by the Executive Committee from time to time, provided that such an extension does not exceed a total of three years.
- 16.3. *The Executive Committee*
- 16.3.1. The *Executive Committee* shall be accountable to the *Council* and shall have the following functions:
 - 16.3.1.1. to attend to such matters referred to it by the *Council*, committees of the *Council* or the *General Secretary*;
 - 16.3.1.2. to advise the *Council* on policy related to the

governance of the *Council*;

- 16.3.1.3. to perform governance functions of the *Council*;
 - 16.3.1.4. to receive quarterly reports, from the *General Secretary*, on the management of the *Council*; to interact with such and to advise the *General Secretary*, committees and the *Council* accordingly;
 - 16.3.1.5. to ratify the appointment of an acting *General Secretary*, made by the *General Secretary*, during his/her absence from work; and to appoint an acting *General Secretary* when the post is vacant;
 - 16.3.1.6. to receive a report by the Independent External Auditors and the *General Secretary* on the Management findings for the period under review;
 - 16.3.1.7. to plan and ensure, together with the *General Secretary*, the continuous evaluation of the *Council* and it's performance;
 - 16.3.1.8. to develop and approve a budget and strategic plan for the *Council*;
 - 16.3.1.9. to recommend the appointment of the *General Secretary* to the *Council*;
 - 16.3.1.10. to determine standing orders for all sub-committees and ad hoc sub-committees;
 - 16.3.1.11. to appoint ad hoc sub-committees; and
 - 16.3.1.12. to identify and to make recommendations to the *Council* on research to be undertaken in terms of clause 7.5.
- 16.3.2. All decisions of the *Executive Committee* shall be decided by a simple majority of the parties on either side, using vote weights in terms of clause 18.

16.4. Sub-committees of the Executive Committee

- 16.4.1. The following sub-committees shall be constituted from time to time:
 - 16.4.1.1. Human Resource Sub-Committee;
 - 16.4.1.2. Legal Sub-Committee;
 - 16.4.1.3. Finance Sub-Committee; and
- 16.4.2. The number and *members* of each sub-committee, except the performance sub-committee, will be determined by the *Executive Committee*.
- 16.4.3. The composition of each *Trade Union* representation to governance committees must be proportional to it's respective vote weight.

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'UJ' or similar. The second signature is a more complex, flowing cursive signature.

16.5. Human Resource Sub-Committee

The functions of the Human Resource Sub-Committee are:

- 16.5.1. upon request to assist and or to conduct interviews, and to recommend the appointment of certain categories of *employees* to the *General Secretary*, the *Executive Committee* and the *Council*, as the case may be;
- 16.5.2. to receive and interact with grievances of the staff against the *General Secretary* and to advise the *General Secretary* and the *Executive Committee*;
- 16.5.3. to consider and to develop proposals on matters that may impact on human resource policy regarding the *Council* staff; and to advise the *General Secretary* and the *Executive Committee*, as the case may be.

16.6. Legal Sub-Committee

The functions of the Legal Sub-Committee are:

- 16.6.1. to attend to such legal matters referred to it by the *Executive Committee* or the *General Secretary*; and
- 16.6.2. to recommend to the *General Secretary* and the *Executive Committee* on policy matters and in respect of *dispute* prevention and resolution.

16.7. Finance Sub-Committee

The functions of the Finance Sub-Committee are:

- 16.7.1. To interact with the quarterly and annual reports, of the *General Secretary*, including its financial statements; and,
- 16.7.2. To advise the *General Secretary* and the *Executive Committee* accordingly.
- 16.7.3. To consider and to develop proposals on matters that may impact on the financial policy of the *Council*; and to advise the *General Secretary* and the *Executive Committee*, as the case may be.

17. Governance Meetings

17.1. Notice of Meeting

- 17.1.1. At least 14 *days* written notice of a meeting of the *Executive Committee* or its Sub - Committees shall be given, setting out the time, date, venue and business to be transacted. However a shorter notice period may be agreed to by a preceding meeting;
- 17.1.2. Representatives should be given at least 5 *days'* notice, or such shorter period as provided in clause 17.1.1, of the venue of such a meeting.
- 17.1.3. It shall be deemed that due notice had been given to a party, if notice of any meeting was given by the *General Secretary* or duly delegated staff of the *Council* serving notice on any representative of the party concerned;

17.2. Quorum of meetings

- 17.2.1. A quorum of meetings of the *Council* or its committees, except the Audit Committee, shall be at least those *Trade Unions* representing 50% + 1 and the *employer*. Provided that:
 - 17.2.1.1. proper notice in terms of clause 17.1 has been given to all of the parties; and
 - 17.2.1.2. if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- 17.2.2. The quorum of the Audit Committee shall be 3 *members* of which 2 must be independent.
- 17.2.3. If, within an hour of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned to the same *day* in the week following or in the event of such date being a public holiday, to the next working *day*, at the same time and place. At such adjourned meeting, the parties present shall form a quorum: All parties may be given 2 *days* notice of the adjourned meeting as a courtesy.

17.3. Meeting procedure

- 17.3.1. Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting.
- 17.3.2. The minutes must be signed by the Chairperson and the *General Secretary* immediately after confirmation thereof.
- 17.3.3. Unless otherwise agreed, the Chairperson shall require that a

proposal dealing with a matter for information, *consultation* or negotiation, be submitted in writing as a prerequisite to any debate or decision in respect thereof.

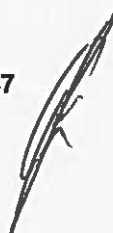
- 17.3.4. The Chairperson shall rule on any procedural matter that is not regulated in *this constitution*.
- 17.3.5. A person who is not a representative may be allowed to address the *Council* at the request of a party or the *General Secretary* and with the concurrence of the *Council*.
- 17.3.6. Every meeting of the *Council* shall be conducted in private unless the *Council* decides otherwise.
- 17.3.7. The *General Secretary* shall keep minutes of the proceedings at meetings and shall forward the said minutes to all parties within a period of 14 *days* after a meeting.

17.4. Voting

- 17.4.1. The *employer* shall have a collective vote, which shall be exercised by its representatives.
- 17.4.2. *Trade Union* representatives shall vote on the basis as determined in terms of clause 18.
- 17.4.3. In the Audit Committee the voting shall be by show of hands and a majority of *members* present. A simple majority will take the decision.

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

- 17.5.1. All proposals must be submitted in writing prior to a meeting and be read by the proposer or the Chairperson as a prerequisite to any debate or decision in respect thereof.
- 17.5.2. No proposal shall be considered unless it has been duly seconded.
- 17.5.3. Subject to *the Act* and *this constitution*, all matters that form the subject of a proposal, shall be decided by a majority vote on the *employer* side together with a majority vote on the *employee* side.
- 17.5.4. Subject to the quorum requirements of clause 17.2, no decision taken at a meeting of the *Council* shall be invalidated by the absence of any party concerned, if it was properly notified of such meeting, in the manner prescribed in clause 17.1.1.
- 17.5.5. All decisions of the *Council* must be properly recorded in the minutes of such a meeting.
- 17.5.6. In respect of governance, a representative or member is personally responsible for any decision that he or she supports in

MJ H.M. 

the *Council*, the *Executive Committee* or *Audit Committee*.

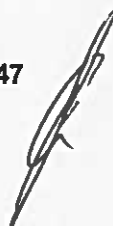
18. Vote Weights

Vote weight of parties in *the Council* and its *Provincial Chamber*

- 18.1. The *employer* shall have 50% of the vote weight in the *Council* and its committees and the admitted *Trade Unions* the other 50% according to each trade union's membership. Collectively the trade unions cannot exceed 50% representation.
 - 18.2. The admitted *Trade Unions* in the *Council* may, during May of each year, reach consensus on the vote weights in respect of the *Council* and its *Provincial Chambers* based on the PERSAL monthly remittances for the end of March of the each year and as referred to in *the Act*.
 - 18.3. In the event of there being no consensus among admitted *Trade Unions* in the *Council* on the vote weight, the *General Secretary* must calculate the vote weight, as at 31st March of each year, by no later than 15th May of each year and make recommendations to the *Council* using:
 - 18.3.1. the monthly remittances referred to in clause 18.2 as at the end of March of each year; and
 - 18.3.2. the recommendations of the official consultant auditors of the *Council*.
- The vote weight that the *General Secretary* must calculate is the ratio of the *Trade Unions' membership* to the total number of paid-up *members* of all *Trade Unions*, which are *members* of this *Council*. This ratio must be expressed as a percentage. If two or more *Trade Unions* are acting jointly they will be treated as a single entity for purposes of calculating their vote weight: Provided that the vote weight of each individual *Trade Union* shall be reflected separately.
- 18.4. For the purposes of calculating the vote weight, dual and multiple *membership* shall be included in the total *membership* figures of each of the relevant *Trade Unions* in terms of the *Official audited membership*: Provided that dual and multiple *membership* figures shall not be counted more than once in calculating the vote weight, where the educators are *members* of *Trade Unions* which are acting jointly as a single party.
 - 18.5. If a *Trade Union* is in *dispute* regarding the vote weight determined by the *General Secretary*, such *dispute* shall be dealt with in terms of the *Dispute Resolution Procedures*: Provided that such *dispute* shall be registered within five *days* of the said determination. In the event of a *dispute* being declared, the vote weights of the previous year shall only apply until the *dispute* is resolved, if there is no *Collective Agreement* on the vote weights.

- 18.6. Subject to clauses 18.1 to 18.5, the *General Secretary* must also calculate the vote weights of *Trade Union* parties to the respective *Provincial Chambers*. The *Provincial Chamber* vote weight is calculated as the ratio of the *Trade Unions' membership* within that province to the total number of paid-up *members* of all *Trade Unions*, which are *members* to that *Provincial Chamber*.
- 18.7. Notwithstanding the provisions of clauses 18.1 to 18.5 above, in the event of any changes occurring in the membership of any of the admitted parties to the *Council* during the course of the year and/or in the event of any new *Trade Union* or *Combined Trade Union Party* being admitted to the *Council* in terms of clause 9.3.4 above, the vote weights of all the parties shall be accordingly amended to give effect through a collective agreement to such changes and/or new admissions.

H.M.
M.J.



PART 3: PROVINCIAL CHAMBERS

19. Establishment of *Provincial Chambers*

- 19.1. The *Council* shall in every Province referred to in Section 103 of the Constitution of RSA, establish a *Provincial Chamber* of the *Council*.
- 19.2. A *Provincial Chamber* established in terms of clause 19.1 shall not be a juristic person, and shall operate as a committee of the *Council*.

20. Scope of *Provincial Chambers*

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

21. Objectives of the *Provincial Chamber*

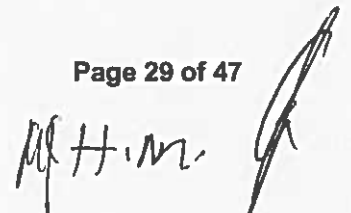
The objectives of a *Provincial Chamber* must be, within the province for which it has been established:

- 21.1. to maintain and promote labour peace;
- 21.2. to mutually prevent and resolve labour *conflict*;
- 21.3. to promote collective bargaining within the scope of its powers;
- 21.4. to conduct research, analyse and survey education, subject to approval by the *Council*; and
- 21.5. to promote training and build capacity, subject to prior approval by the *Council*.

22. Functions of the *Provincial Chamber*

The functions of *Provincial Chamber* must be:

- 22.1. to deal with such matters referred or delegated to that *Provincial Chamber* by the *Council*;
- 9.2. to conclude Collective Agreements on matters pertaining only to that Province: Provided that no Collective Agreement concluded in a *Provincial Chamber* may conflict with a Collective Agreement concluded in the *Council*;
- 22.3. to act as a forum for *consultation* between the *employer* and the *Trade Unions* in that Province;
- 22.4. to deal with matters emanating from the agreed *dispute* resolution procedure of the *Council* which fall within its competency; and



23. Parties to the *Provincial Chamber*

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

24. Appointment of representatives

- 24.1. The *employer*, must be represented in the *Provincial Chambers* by such persons as *the employer* may from time to time appoint, subject to a maximum of 1 (one) representative for each representative of a *Trade Union* in the *Provincial Chamber*. Provided that the *employer*, shall be entitled to have a number of observers equal to its number of representatives.
- 24.2. The composition of the representation of *Trade Unions* to any *Provincial Chamber* shall be on the basis of proportionality in terms of the vote weights applicable in the *Provincial Chamber*, subject to:
- 24.1.1. The norm being 10 representatives;
- 24.1.2. *Trade Unions* being entitled to a number of observers equal to the number of representatives; and
- 24.1.3. *Trade Unions* being admitted and represented in the *Council*.
- 24.3. Parties to the *Provincial Chamber* shall make the names of their representatives, and observers available to the *Provincial Manager* within 30 days of the meeting referred to in clause 28.1 of *this constitution*. *Trade Union* representatives and observers shall be *members* registered in terms of their constitutions, or full-time or part-time officials. *Employer* representatives and observers shall be full-time officials employed in terms of the Public Service Act, 1994 (as amended) or the Employment of Educators Act, 1998.
- 24.4. A party may at any time withdraw any of its representatives or observers in the *Provincial Chamber* by giving written notice to the *Provincial Manager*.
- 24.5. Should a vacancy arise in the *Provincial Chamber* as a result of the withdrawal, resignation, death or disqualification of a representative or an observer, the vacancy shall be filled by the party who previously appointed the relevant representative or observer and by giving written notice to the *Provincial Manager*.
- 24.6. Should a party's *membership* of a *Provincial Chamber* or the *Council* be terminated, its representatives must vacate their seats.
- 24.7. Parties to the *Provincial Chamber* may co-opt persons to give expert advice, assistance or evidence on matters being discussed in the *Provincial Chamber*. Provided that:
- 24.7.1 where reasonably possible, the *Provincial Manager* be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
- 24.7.2 *Trade Union* or the *employer* shall not be allowed to co-opt more

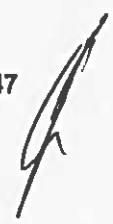
- than one person at a time to address, advise or assist the *Provincial Chamber* on a specific matter; and
- 24.7.3 the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

25. Appointment of *office bearers*

25.1. *Chairperson and Deputy-Chairperson*

- 25.1.1. At the first meeting of the *Provincial Chamber* in a calendar year, unless otherwise agreed, the parties shall elect a Chairperson and Deputy-Chairperson from nominations from admitted parties submitted to the *Provincial Manager* in writing, 14 days prior to the meeting. At this meeting the *Provincial Manager* shall act as presiding officer.
- 25.1.2. A person, other than a representative or observer of the parties, who has consented in writing to his or her nomination, may also be nominated as Chairperson.
- 25.1.3. The *Provincial Manager* shall send all nominations to parties five days prior to the meeting referred to in clause 25.1.1.
- 25.1.4. Any functions to be exercised by the *Provincial Manager* in terms of this clause 25.1 may, if the *Provincial Manager* has not been appointed or is not present or available, be fulfilled by the *General Secretary* or any other person designated by the *General Secretary*.
- 25.1.5. The person receiving the highest percentage of the total votes shall be declared the duly elected Chairperson. Should there be an equal number of votes cast for two or more candidates, the presiding officer shall write the names of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared the elected Chairperson.
- 25.1.6. The provisions of clauses 25.1.5 shall, with the changes required by the context apply in respect of the election of the Deputy Chairperson.
- 25.1.7. The Chairperson or Deputy-Chairperson shall hold office for a term of 12 months unless removed by a decision of the *Provincial Chamber* or the *Council*. The Chairperson or Deputy-Chairperson so removed, or any past Chairperson or Deputy-Chairperson, may be re-elected or nominated as the case may be.
- 25.1.8. The Chairperson shall preside over all negotiating meetings of the *Provincial Chamber* except when a Facilitator is appointed.

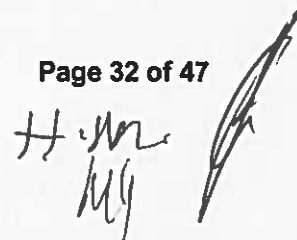
H.M.
M/J



- 25.1.9. The Chairperson shall:
- 25.1.9.1. enforce order at all meetings at which he or she is present, in accordance with normal meeting procedure;
 - 25.1.9.2. sign the minutes of a meeting after confirmation; and
 - 25.1.9.3. at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson.
- 25.1.10. Whenever the Chairperson is not available, the Deputy-Chairperson shall act as Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- 25.1.11. Whenever the Chairperson or the Deputy-Chairperson is not available or unable to perform their duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- 25.1.12. The Chairperson or the Deputy-Chairperson, shall not be entitled to vote on any matter: Provided that if the Deputy-Chairperson has not been replaced by another representative of that party to the *Provincial Chamber*, such Deputy-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Deputy-Chairperson.
- 25.1.13. The term of office of a Chairperson or Deputy-Chairperson may be terminated by written notice of either such Chairperson or Deputy-Chairperson, by the *Provincial Chamber* or the *Council* consequent to a decision to that effect.

26. *Provincial Manager*

- 26.1. The *Provincial Manager* shall be responsible for:
- 26.1.1. Convening meetings of the relevant *Provincial Chamber* and the recording of minutes of meetings.
 - 26.1.2. Keeping a petty cash book of account in accordance with generally accepted accounting practice and the instructions of the *General Secretary*, and the policies of the *Council*.
 - 26.1.3. Correspondence of the relevant *Provincial Chamber*.
 - 26.1.4. Keeping an accurate filing system.
 - 26.1.5. General office administration.
 - 26.1.6. The implementation of the vote weights as determined by the *General Secretary*.
 - 26.1.7. Keeping in safe custody at the offices of the relevant *Provincial Chamber*, for a period of not less than three years

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'H. van...' and the initials are 'M.G.'

A copy of the approved minutes of every meeting of the relevant *Provincial Chamber*, duly signed and dated by the *Provincial Manager* and the Chairperson who presided at such meeting

- 26.1.8. Provide the *Council* and/or the *General Secretary* with such information required.
- 26.1.9. Referring all Collective Agreements reached in the relevant *Provincial Chamber* to the *Council* for ratification.
- 26.1.10. The *Provincial Manager* shall submit accounts in respect of approved expenditure to the *General Secretary* for settlement.
- 26.1.11. The *Provincial Manager* shall administer the petty cash.
- 26.1.12. The *Provincial Manager* shall develop and submit to Stanco a draft budget and operational plan of the relevant *Provincial Chamber*, for the following financial year by 1st May and to the *General Secretary* by 31st May.
- 26.1.13. Funds required for a petty cash account shall:
 - 26.1.13.1. be kept safely in such a manner as the *General Secretary* may determine from time to time; and
 - 26.1.13.2. not exceed the limit determined by the *General Secretary*.
- 26.1.14. The *Provincial Manager* must provide:
 - 26.1.14.1. on a quarterly basis within three *days* of the end of a particular quarter a consolidated report on the organisational performance of the *Provincial Chamber*; and
 - 26.1.14.2. on an annual basis an annual report by no later than 15th April of each year.
- 26.1.15. The *General Secretary* shall prepare and submit quarterly statements of the expenditure to the *Provincial Manager*.
- 26.1.16. Performing such other duties and functions as the *Council* or the *General Secretary* may from time to time direct.

27. Removal of *office bearers*

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

28. Special Meeting of the *Provincial Chamber* (*Propose delete*)

- 28.1. Special meetings: The *Provincial Manager* shall, upon a written request by the *employer* or any *Trade Union* party to the *Provincial Chamber*, call special *Provincial Chamber* meetings; Provided that the *Provincial Manager* shall establish a concensus if such a meeting shall quorate.

29. Standing sub-committee (STANCO)

- 29.1. The Council hereby establishes a Standing Sub-Committee (STANCO). The composition of Stanco shall be the leaders of the admitted parties or their nominees.
- 29.2. The STANCO shall be held at least once a quarter as determined by the *General Secretary* or as agreed with the *Provincial Chamber*. The following matters shall be dealt with at the STANCO meeting:
 - 29.2.1. Welcome
 - 29.2.2. Presentation of credentials of STANCO representatives;
 - 29.2.3. Minutes of the previous meeting;
 - 29.2.4. Matters arising from such minutes, other than those covered by the agenda;
 - 29.2.5. Report of the General Secretary , presented by the *Provincial Manager*, of the previous quarter on the activities of the *Provincial Chamber* and covering the recommendations of any task team, ad hoc committee and or workshop of *Provincial Chamber*;
 - 29.2.6. Other competent matters identified prior to meeting;
 - 29.2.7. Date of next meeting as per year planner;
 - 29.2.8. Closure.
- 29.3. Parties to the *Provincial Chamber* shall make the names of their leader representatives and nominees available to the *Provincial Manager* in January of each calendar year.
- 29.4. The *Provincial Manager* shall be a non-voting member and convenor of the Stanco.
- 29.5. A party may at any time withdraw any of its representatives or nominee from the Stanco by giving notice to the *Provincial Manager*.
- 29.6. Should a vacancy arise in the Stanco as a result of the withdrawal, resignation, death or disqualification of a representative, the vacancy shall be filled by the party who previously appointed the relevant representative or nominee and by giving written notice to the *Provincial Manager*.
- 29.7. Should a party's *membership* of a *Provincial Chamber* or the *Council* be terminated, its representatives and nominees must vacate their seats.

30. General provisions on meetings of the *Provincial Chamber*

- 30.1. *Notice of Meeting*
 - 30.1.1. At least 14 *days'* written notice shall be given, or such shorter period agreed to by all parties or agreed to at a previous meeting,

setting out the time, date and business to be transacted; and at least four *days*' written notice, or such shorter period agreed to, of the venue.

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

30.1.2.1. the *Provincial Manager* of the *Provincial Chamber* serving notice on any representative of the party concerned;

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

30.1.2.3. 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.

30.2. *Quorum of a Meeting*

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

30.2.1.1. proper notice in terms of clause 30.1 has been given to all of the parties; and

30.2.1.2. if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.

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

30.2.3. If, within the first hour of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same *day* in the week following, or in the event of such date being a public holiday, to the next working *day*, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum. All parties may be given 2 *days* notice of the adjourned meeting as a courtesy.

30.3. *Voting in Provincial Chamber and Stanco*

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

30.3.2. *Trade Union* representatives shall vote on the basis of their vote weights as determined by the *Council* for such *Provincial Chamber*.

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

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

30.4. *Vote weight*

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

30.5. *Meeting procedure*

30.5.1. Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed and dated by the Chairperson immediately after confirmation thereof.

30.5.2. Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, *consultation* or negotiation be submitted in writing as a prerequisite to any debate or decision in respect thereof.

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

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

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

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

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

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

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

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

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

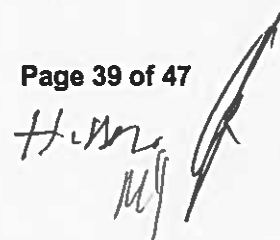
- 30.6.4. The *Provincial Chamber* meeting may from time to time, for the purposes of negotiations and *consultation*, establish task teams (referred to as 'a task team') and may, subject to such conditions as it may determine, refer any matter of *mutual interest* for investigation, fact finding, research and or for such task team to consider such matter of *mutual interest* for recommendation to *Provincial Chamber*.
- 30.6.5. A task team shall consist of at least one representative per party admitted to the *Council*, subject to the *Trade Union* party meeting the threshold set in clause 9.3 in *this constitution*: General Provisions (Part A).
- 30.6.6. A task team must submit regular written reports to *Provincial Secretary* on behalf of the *Provincial Chamber*.
- 30.6.7. A task team may:
- 30.6.7.1. co-opt experts to render assistance;
 - 30.6.7.2. request the *General Secretary* to appointment of a facilitator to facilitate the work of the task team; provided that where such co-option or appointment of a facilitator has financial implications prior *consultation* with the *General Secretary* must occur so that funds from the relevant Budget vote are appropriated.
- 30.6.8. If the task team does not agree on the facilitator within four *days* of its request to appointment a facilitator, the *Provincial Secretary* in *consultation* with the *General Secretary* may nominate the facilitator.
- 30.6.9. In respect of task teams of the *Provincial Chamber*, the *Provincial Secretary* shall give at least 14 *days* written notice, or such shorter period agreed to by all *parties*, setting out the time, date and business to be transacted; and at least four *days*' written notice, or such shorter period agreed to, of the venue.
- 30.7. *Collective Agreements: Provincial Chambers*
- 30.7.1. Decisions in respect of matters of negotiations shall be by way of Collective Agreements of the *Provincial Chamber*.
 - 30.7.2. The determination of a Collective Agreement shall be by way of voting and on the basis of a vote of the *employer* on the one side and a majority vote of the *Trade Unions* on the other side.
 - 30.7.3. A Collective Agreement of a *Provincial Chamber* must comply with

the provisions of this procedure and *the Act*

- 30.7.4. All Collective Agreements of a *Provincial Chamber* must:
- 30.7.4.1. be reduced to writing;
 - 30.7.4.2. duly signed by the *parties* to that agreement;
 - 30.7.4.3. contain a procedure for any *dispute* arising from the interpretation and implementation of that agreement to be referred to the *Council* to be resolved in terms of its *Dispute Resolution Procedures*;
 - 30.7.4.4. include a provision that the Collective Agreement has no force or effect until it has been ratified by the *Council*, and may not be implemented until such time that it has; Provided that omission of such clause does not invalidate the agreement, while the requirement of prior ratification and prohibition of implementation before such ratification remains;
- 30.7.5. The provisions of clause 3 shall apply with the changes required by the context.
- 30.7.6. The *General Secretary* must peruse any Collective Agreement received from a *Provincial Secretary* and make a recommendation at the first negotiating meeting of the *Council* following such receipt (provided that it is received in time for the notice provision for *Council* meetings to be complied with) as to whether the *Provincial Chamber's* Collective Agreement:
- 30.7.6.1. falls within the *Provincial Chamber's* jurisdiction; and
 - 30.7.6.2. is in conflict with the law or any Collective Agreement of the *Council*.
- 30.7.7. Before making such recommendation the *General Secretary* may request legal opinion, provided he or she complies with the time frames of clause 30.7.6.
- 30.7.8. The *Council* must, at its meeting referred to in clause 30.7.6 decide:
- 30.7.8.1. whether to ratify the Collective Agreement or not; or
 - 30.7.8.2. ratify the Collective Agreement conditional on amendments being affected; or
 - 30.7.8.3. refer the matter for a legal opinion in this regard, in

which case it must decide the matter as expeditiously as possible.

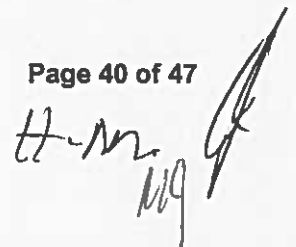
- 30.7.9. If the *Council* does not decide on the Collective Agreement as provided for in clause 30.7.8 the *Provincial Secretary* concerned may request the *General Secretary* to convene a special meeting of the *Council* to consider the matter.
- 30.7.10. The *Council* must make a decision on the Collective Agreement within 60 days of receipt of the Collective Agreement by the *General Secretary*.
- 30.7.11. When the *Council* has made a decision referred to in clause 30.7.8, the *General Secretary* must inform the relevant *Provincial Secretary* of the decision within 10 days of such decision.
- 30.7.12. When the *Council* has made a decision referred to in clause 30.7.8.2 the *General Secretary* shall engage with the *Provincial Chamber* to attempt to effect the amendment and, if it is affected, must certify that the *Council* has ratified the Collective Agreement.

Handwritten signature in black ink, appearing to be 'H. M. J.' with a large flourish.

PART 4: ACCOUNTING RESPONSIBILITIES

31. General

- 31.1. As provided for in clause 3 of *this constitution*, the *Executive Committee* is the accounting authority on behalf of the *Council*, and as provided for in clause 4 the *General Secretary* is the *Accounting Officer*.
- 31.2. The financial and reporting year of the *Council* shall be from 1st April of a particular year to 31st March of the next year.
- 31.3. Quarterly and annual reports must be prepared, and, insofar as they relate to financial matters, shall be in accordance with generally accepted accounting practice, showing monies received and expenditure incurred over the relevant period.
- 31.4. Budget
- 31.4.1. On or before the 15th day of June of each year, the various committees of the *Council* must submit their inputs on the budget for the following three years to the *General Secretary*.
- 31.4.2. The budget of the *Council* shall also make provision for the administration and functioning of *Provincial Chambers*.
- 31.4.3. A draft budget must then be submitted to a meeting of the *Executive Committee* via the budget review process.
- 31.4.4. The Budget Sub-Committee shall interact with the budget.
- 31.4.5. The *General Secretary* shall, during the last two weeks of August of each year, submit to a special meeting of the *Executive Committee* an annual budget, with multi-year projections, which must be approved as submitted or in an amended form at such a meeting.
- 31.5. Receipts
- 31.5.1. The expenses of the *Council* shall be met from a fund or funds, which shall be raised by levies on *employers* and *employees*. Levies may be revised and adjusted by the *Council* from time to time.
- 31.5.2. The *employer* shall pay monthly, per *employee*, an amount agreed to by the parties to the *Council* into the fund or funds referred to in clause 31.5.1.
- 31.5.3. The *employer* shall deduct monthly per *employee* a levy agreed to by the parties to the *Council*, which shall be paid into the fund or funds referred to in clause 31.5.1
- 31.5.4. All monies received on behalf of the *Council* shall be deposited to the credit of the *Council* with a registered bank approved by the *Council*.

Handwritten signature and initials, possibly 'H.M.' and 'M.G.', in black ink.

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

31.5.5.1. at the discretion of the *Council*, be used for *Council* activities including research and development, training and other activities that enhance collective bargaining;
or

31.5.5.2. be invested.

32. Accounting Officer / Responsibilities

- 32.1. A full audit of the books of the *Council* must be prepared as at 31st March of each year.
- 32.2. The *General Secretary* shall, prior to the Annual General Meeting of each year, in respect of the previous financial year, prepare the financial statements and a report on the activities of the *Council* against the business plan
- 32.3. Certified copies of the audited financial statements and of the Independent External auditor's report thereon shall be made available for inspection at the office of the *Council* to the parties who shall be entitled to make copies of both the statements and of the Independent External auditor's report.
- 32.4. All the statements as well as the Independent External auditor's report shall be included in the annual report of the *Council*.
- 32.5. The *General Secretary* shall present his/her report at the Annual General Meeting of the *Council*.
- 32.6. Certified copies of financial statements and of the Independent External auditor's reports referred to in clauses 32.3 and 32.4 shall be transmitted to the Executive Authority, the *Registrar* and any other body or forum or committee as the case may be, within 60 days after the close of the period covered by the statements.
- 32.7. The *General Secretary* shall present and distribute the annual report .
- 32.8. The *General Secretary* shall, within 30 days after the end of each quarter, present quarterly reports as at the preceding quarter including a financial statement and a report on the performance of the *Council* against the objectives set in an operational and strategic plan.
- 32.9. Quarters run from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March.

PART 5: ADDITIONAL PROVISIONS

33. Negotiations, *Consultations* and *Dispute Resolution Procedures*

- 33.1. The negotiations, *consultations* and *dispute* resolution procedures are contained in Parts B & C of *this constitution*.
- 33.2. If a dispute/disputes arises between a registered trade union that is a party to the council, or its members, or both, on the one hand, and the employer that is a party to the council, on the other hand, then the dispute resolution procedure contained in Part C of this constitution shall apply;
- 33.3. If a dispute arises between the parties to *the council*, then the dispute resolution procedure contained in Part C of this constitution shall apply;
- 33.4. Any amendment to Part B must be dealt with in terms of *this constitution*.

34. Disputes about the interpretation and application of Provisions of the *constitution*

- 34.1. Notwithstanding the provisions of clause 33.2, if there is a *dispute* about the interpretation or application of any provision of this constitution, any party to the *dispute* may refer the dispute in writing, on the prescribed form, to *General Secretary*;
- 34.2. Any *dispute* relating to the interpretation or application of *this constitution* shall be resolved by a decision of the *Council* failing which, the *dispute* shall be referred to arbitration in terms of the provisions of the *Council's Negotiations and Dispute Resolution Procedures*.
- 34.3. The *General Secretary* must appoint an arbitrator to determine the dispute in consultation with the parties.
- 34.4. The decision of the *arbitrator* shall be final and binding.

35. Exemptions from *collective agreements*

- 35.1. Any *party* to a *collective agreement* may make an application, in writing, for exemption from any collective agreement concluded in the *council*;
- 35.2. Upon receipt of the application, the *General Secretary* must appoint three arbitrators to constitute the exemptions committee;
- 35.3. The *General Secretary* must ensure that one of the three arbitrators is appointed the chairperson of the exemptions committee;
- 35.4. The exemptions committee, on good cause shown, may grant the application by way of a determination, which is final and binding; and
- 35.5. The provisions of section 138 of the *act* shall apply with the changes required

by the context.

36. Withdrawal from indefinite period collective agreements:

- 36.1. In the event that a party to an indefinite period wish to withdraw, such party shall serve a notice of its intention to withdraw from such collective agreement.
- 36.2. The general secretary shall convene a meeting between parties within 21 days of receipt of the above notice, to resolve the matter.
- 36.3. The notice required for a party's withdrawal from a collective agreement indefinite period shall be 90 days.
- 36.4. Unless a collective agreement provides otherwise Withdrawal from a collective agreement shall be by written notice.

37. Amendment of *this constitution*

- 37.1. The *Council* may amend *this constitution* at any time by a resolution adopted by two thirds of the vote weight of the *Trade Unions* to the *Council* on the one side, and the *employer* on the other, after at least:
 - 37.1.1. one month's notice to the *General Secretary*; and
 - 37.1.2. two weeks' notice to parties to the *Council*.

38. Seat of the *Council*


- 38.1. The seat and domicilium citandi et executandi of the *Council* shall be:

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

39. Winding Up

- 39.1. At a special meeting called for that purpose, the *Council* may decide by resolution to wind up the *Council*.
- 39.2. Upon adoption of a resolution to wind up, the *General Secretary* must:
 - 39.2.1. apply immediately to the Labour Court for, amongst others, an order giving effect to the resolution; and
 - 39.2.2. deliver the *Council's* books of account and its assets, including all funds and investments, to the liquidator appointed by the Labour Court.

Henry
Mf



- 39.3. Upon adoption of a resolution to wind up, each party to the *Council* remains liable for unpaid liabilities to the *Council* as at the date on which the resolution for winding up was adopted.
- 39.4. If all the liabilities of the *Council* have been discharged, the *Council* must transfer any remaining assets to a Bargaining Council to be decided upon by the parties to the *Council*. If no agreement can be reached then the proceeds must be paid to the *CCMA*.

40. Interpretation

- 39.1 Any dispute relating to the interpretation or application of this Constitution shall be resolved by a decision of the Council and failing which, the dispute shall be referred to arbitration in terms of the provisions of the Council's Negotiations and Dispute Resolution Procedures
- 39.2 The decision of the arbitrator shall be final and binding.

41. Definitions

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

- 41.1. '**Accounting Officer**' shall mean the same as *General Secretary*;
- 41.2. '**Arbitrator**' means a *panellist* who has been appointed to conduct an arbitration, and includes a tribunal of more than one *panellist*, if such tribunal is appointed in terms of *these procedures*;
- 41.3. '**BCEA**' means the Basic Conditions of Employment Act 75 of 1997;
- 41.4. '**CCMA**' means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act No.66 of 1995.
- 41.5. '**Chief Executive Officer**' means, in the case of a *Trade Union*, the person finally responsible for administrative matters in that *Trade Union*, irrespective of the terms used within that *Trade Union* to name that position;
- 41.6. '**Combined Trade Union Party**' shall mean two or more *Trade Unions* acting together as a single party for the purposes of clause 9.3.1
- 41.7. '**Conciliator**' means a *panellist* who has been appointed to conduct a conciliation;
- 41.8. '**Consultation**' means a meaningful joint consensus seeking process.
- 41.9. '**Days**' means:
- 41.9.1.if the number of *days* referred to is more than 5, calendar *days* including Saturdays, Sundays and public holidays;
- 41.9.2.if the number of *days* referred to is 5 or less, then calendar *days*

excluding Saturdays, Sundays and public holidays;

Provided that the term:

- 41.9.3. excludes the first and includes the last such *day*;
- 41.9.4. excludes the *days* that the *Council's* offices are closed as provided in clause 2.1 of Schedule 2 of *this constitution*: Schedules (Part D); and
- 41.9.5. excludes the last such *day* if it falls on a Saturday, Sunday, or any *day* referred to in clause 41.9.4; and
- 41.9.6. '*day*' has a similar meaning
- 41.10. '***Dispute***' means a *dispute* that exists in respect of:
 - 41.10.1. matters that are regulated by uniform rules, norms and standards that apply to the education sector; or
 - 41.10.2. matters that apply to terms and conditions of service that apply to the education sector; or
 - 41.10.3. matters that are assigned to the State as *employer* in the education sector and includes an alleged *dispute*;
- 41.11. '***Dispute Resolution Procedures***', the *Council's Dispute Resolution Procedures* as adopted by the Council by Collective Agreement;
- 41.12. '***Employee***' means:
 - 41.12.1. an educator as defined in the Employment of Educators Act 76 of 1998; or
- 41.13. '***Employer***' means:
 - 41.13.1. the State in its capacity as *employer* as defined in the Employment of Educators Act 76 of 1998 in relation to employees who are employed as educators as defined in the Employment of Educators Act 76 of 1998
- 41.14. '***Executive Committee***' means the decision making body which comprises of 6 persons representing the *employer* and 6 persons representing the *Trade Unions* shared proportionately in terms of the vote weights determined by the *General Secretary*.
- 41.15. '***General Secretary***' means the official appointed in terms of clause 14.1 or, with respect to any period that he or she is not available, any person appointed as acting *General Secretary* by the *General Secretary* or the *Executive Committee*.
- 41.16. '***Governance Meeting***' means a meeting of the *Council* where any of the issues listed in clauses 15 and 16 are discussed;
- 41.17. '***Member(s)***' means those persons who have been appointed/nominated to the *Executive Committee* but do not hold office.

- 41.18. **'Membership'** means the paid-up *membership* on stop order with the *employer* and *registered* in terms of *the Act* and *this constitution*.
- 41.19. **'Minister'** means the *Minister* of Basic Education;
- 41.20. **'NEDLAC'** means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act No. 35 of 1994.
- 41.21. **'Office Bearers'** means a person(s) who hold office in the *Executive Committee*
- 41.22. **'Official audited membership'** means the audit of *membership*, as at 31 March, of a registered or admitted *Trade Union* which is required in terms of the provisions of *this constitution* and which is confirmed by the official auditors of the *Council* in an annual audit for the Annual General Meeting;
- 41.23. **'Provincial Chamber'** means the Chamber of a province.
- 41.24. **'PSCBC'** means the Public Service Coordinating Bargaining *Council* established in terms of *the Act*;
- 41.25. **'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:
- 41.25.1. the *members* of the South African National Defence Force;
- 41.25.2. the National Intelligence Agency; and
- 41.25.3. the South African Secret Service.'
- 41.26. **'Party/Parties'** means the employer on the one hand and the admitted registered trade unions on the other hand.
- 41.27. **'Registrar'** means the *Registrar* as defined in *the Act*.
- 41.28. **'Provincial Manager'** means the official appointed in a *Provincial Chamber* in terms of clause 14.3.13.
- 41.29. **'Serve'** shall mean:
- 41.29.1. to effect personal service of the notice on the party concerned; or
- 41.29.2. to post a registered letter containing the notice to the office of the party concerned; or
- 41.29.3. to tele-fax the notice to the office of the party concerned provided that the tele-fax receipt shows that the notice has been transmitted to the addressee; or

- 41.29.4. to hand the notice to an official of a *Trade Union party* or a head of department of person delegated by that department;
- 41.30. **'Act'** means the Labour Relations Act No. 66 of 1995.
- 41.31. **'this constitution'** means the constitution of the *Council*;
- 41.32. **'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.