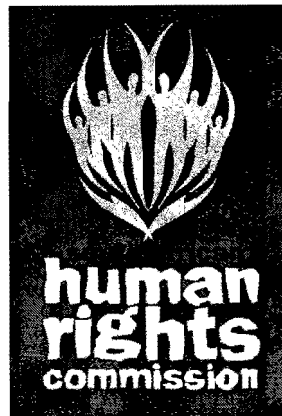


DEPARTMENT OF JUSTICE

No. 55

27 January 2012

COMPLAINTS HANDLING PROCEDURES



DETERMINATION OF THE PROCEDURE
CONTEMPLATED IN SECTION 9(6) OF
THE HUMAN RIGHTS COMMISSION
ACT 54 OF 1994

October 2011

SCHEDULE

ARRANGEMENT OF PROCEDURES

CHAPTER 1: PURPOSE OF PROCEDURES

1. Purpose

CHAPTER 2: DEFINITIONS

2. Definitions

CHAPTER 3: LODGING COMPLAINTS

3. Complaints which may be investigated by the Commission
4. Complaints not dealt with by the Commission
5. Place of lodging a complaint
6. Who can lodge a complaint
7. Information required when lodging a complaint
8. Confidentiality
9. Format of lodging a complaint
10. Manner of lodging a complaint
11. Late lodging of a complaint

CHAPTER 4: PROCESSING OF COMPLAINTS

12. Procedure followed after lodging a complaint

CHAPTER 5: INVESTIGATION OF COMPLAINTS

13. Format and procedure of investigations
14. Format and procedures followed in respect of own accord investigation

CHAPTER 6: RESOLUTION OF COMPLAINTS

15. Method of resolving complaints
16. General provisions relating to resolving complaints
17. Conducting of proceedings
18. Conciliation and negotiation proceedings
19. Mediation proceedings

CHAPTER 7: CONDUCTING OF HEARINGS

20. Circumstances under which the Commission conducts hearings

21. Panel which presides over hearings
22. Notice of hearing
23. Persons allowed to attend hearings
24. Nature of hearings
25. Procedure at hearings
26. Conclusion of hearings
27. Report of hearings

CHAPTER 8: CONCLUSION OF COMPLAINTS

28. Conclusion of complaints
29. Notifying parties of outcome of complaint
30. Making a finding available
31. Issuing of report
32. Provision of report
33. Monitoring of recommendations

CHAPTER 9: APPEALS

34. Lodging appeals
35. Format and procedure of appeals

CHAPTER 10: GENERAL PROVISIONS

36. Grounds for conducting joint investigations
37. Conditions for joining or substituting parties to proceedings
38. Consolidation of complaints
39. Recording of proceedings, investigations and hearings
40. Language used during proceedings, investigations and hearings
41. Costs
42. Institution of legal proceedings
43. Repeal or amendment of Procedures
44. Short title and commencement

ANNEXURES

- A. Complaint form
- B. Appeal form

CHAPTER 1 AND 2

PURPOSE OF PROCEDURES AND DEFINITIONS

CHAPTER 1: PURPOSE OF PROCEDURES

Purpose

1. The purpose of these Procedures is to determine —
 - (a) the procedure to be followed for lodging complaints with the Commission;
 - (b) the procedure to be followed for processing and screening complaints;
 - (c) the procedure to be followed for rejecting, referring or accepting complaints;
 - (d) the procedure to be followed for investigating complaints;
 - (e) the procedure to be followed for the resolution of complaints;
 - (f) the procedure to be followed for conducting hearings;
 - (g) the procedure to be followed regarding appeals;
 - (h) the procedure to be followed regarding conclusion of complaints; and
 - (i) time frames regarding the handling of complaints; and
 - (j) the procedure to be followed regarding the institution of legal proceedings.

CHAPTER 2: DEFINITIONS

Definitions

2. In these Procedures, any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned and, unless the context otherwise indicates —

"appellant" means a person who lodges an appeal as contemplated in Chapter 9 of these Procedures against a determination, decision or finding made in terms of these Procedures;

"assessment" means the process of screening a complaint by the Provincial Manager to confirm jurisdiction and make an initial finding;

"association" means a group of persons organised for a joint purpose;

"Chairperson" means the Chairperson of the Commission;

"child" means any person under the age of 18 years;

"Commission" means the South African Human

Rights Commission established by section 181 of the Constitution;

"complainant" means any person, group or class of persons, association, organisation or organ of state as contemplated in article 6 of these Procedures;

"complaint" means an oral, written or electronic communication alleging conduct or an omission in violation of a fundamental right addressed to the Commission;

"conciliation" means the process of reconciling a matter between parties;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Data Capturer" means the person who receives and registers a complaint or an appeal;

"day" means any calendar day excluding Saturdays, Sundays and public holidays;

"finding" means a conclusion reached after an assessment or investigation of a complaint or an inquiry or a hearing regarding an alleged violation of or a threat to a fundamental right;

"fundamental rights" means the fundamental rights contained in sections 9 to 35 of Chapter 2 of the Constitution;

"hearing" means a formal investigation contemplated in section 9(1)(c) read with section 9(1)(d) of the Act, taking on the nature of a hearing as contemplated in Chapter 7 of these Procedures;

"investigation" means an investigation as contemplated in section 9 of the Act;

"judicial review" means the review of an administrative action by a court or tribunal as contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

"mediation" means the process of intervention between parties by an independent person or mediator to reach an agreement;

"negotiation" means the process of conferring with the parties in order to reach an agreement;

"organisation" means an organised body, including a business, political party, trade union and charity;

CHAPTER 3

LODGING COMPLAINTS

"organ of state" bears the meaning assigned to it in section 239 of the Constitution;

"Panel" means the panel of the Commission as contemplated in article 21 of these Procedures;

"person with a mental disability" means a person aged 18 years or older whose cognitive ability appears to be comparable to that of a child or appears to render such person vulnerable and in need of assistance or protection;

"Provincial Office" means the office of the Commission as contemplated in section 2(2) of the Act, in each of the nine provinces as contemplated in section 103 of the Constitution;

"report" means a written account given or opinion formally expressed after an investigation, consideration or finding;

"respondent" means any person, group or class of persons, association, organisation or organ of state who is allegedly in violation of or a threat to a fundamental right;

"sheriff" means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act 90 of 1986), and also a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

"Steering Committee" means the committee tasked, inter alia, to oversee the programme, unit or division responsible for the provision of legal services and to provide support and quality assurance, consisting of the following members—

- (i) the Chief Operations Officer (Programme Support), as chairperson;
- (ii) the Chief Financial Officer (Corporate Services);
- (iii) the Head of Strategic Support and Governance;
- (iv) the Head of the Commissioners' Programme; and
- (v) all Provincial Managers.

"the Act" means the Human Rights Commission-Act, 1994 (Act 54 of 1994).

CHAPTER 3: LODGING COMPLAINTS

Complaints which may be investigated

3. The Commission has the jurisdiction to conduct or cause to be conducted any investigation –
 - (a) on receipt of a complaint, into any alleged violation of a fundamental right, or
 - (b) on its own accord, into any alleged violation of or a threat to a fundamental right.

Complaints not dealt with by the Commission

4. (1) The Commission has no jurisdiction to deal with complaints regarding conduct or omissions that occurred prior to 27 April 1994.
- (2) The Commission may reject any complaint, which –
 - (a) is based on hearsay, rumour or reports disseminated through the media: Provided that the Commission may conduct an enquiry to verify any allegation of a violation of a fundamental right that is reported in the media or obtained from any source; and upon verification, such alleged violation must be dealt with in terms of the Act and these Procedures;
 - (b) is couched in language that is abusive, insulting, rude or disparaging: Provided that the Commission may consider a complaint if such language is removed;
 - (c) is the subject of a dispute before a court of law, tribunal, any statutory body, any body with internal dispute resolution mechanisms, or settled between the parties, or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body: Provided that the Commission may consider any complaint regarding the process and manner in which the hearing is conducted at such court of law, tribunal, statutory body or other body and if such complaint amounts to a violation of a fundamental right, it must be dealt with in terms of the Act and these Procedures;
 - (d) is an anonymous complaint, subject to the provisions of article 8 of these Procedures: Provided that the Commission may on its own accord

CHAPTER 3

LODGING COMPLAINTS

make enquiries to ascertain the alleged violation of a fundamental right and, upon verification, the Commission may deal with the complaint in terms of the Act and these Procedures;

(e) is viewed to be frivolous, misconceived, unwarranted, incomprehensible, and manifestly incompatible with fundamental rights or does not comply with the provisions of the Act and these Procedures; or

(f) is lodged after the expiry of a period of three years from the date upon which an alleged violation of a fundamental right occurred, subject to the provisions of article 11 of these Procedures.

Place of lodging a complaint

5. A complaint must be lodged at the Provincial Office of the area where the alleged violation of a fundamental right took place: Provided that if a member of staff of a Provincial Office wishes to lodge a complaint about the violation of a fundamental right that occurred in the area of the Provincial Office where he or she is employed, the said member should lodge such complaint at the Provincial Office closest to where he or she is employed.

Who can lodge a complaint

6. Proceedings in terms of these Procedures may be instituted by –

- (a) any person acting in his or her own interest;
- (b) any person acting on behalf of another person who cannot act in his or her own name;
- (c) any person acting as a member of or in the interests of a group or class of persons;
- (d) any person acting in the public interest; or
- (e) any association or organisation acting in the interest of its members:

Provided that if a child or a person with a mental disability wishes to institute proceedings, he or she must be assisted by a parent, an appropriate adult or a guardian who is not the cause of the alleged violation of a fundamental right.

Information required when lodging a complaint

7. In lodging a complaint, the complainant must –

- (1) indicate whether the complaint is lodged personally or on behalf of another person, group or class of persons, association, organisation or organ of state and, if so, provide particulars;
- (2) provide the following personal information –
 - (a) full names of the complainant;
 - (b) the physical and postal address of the complainant;
 - (c) the telephone and facsimile numbers of the complainant and his or her e-mail address, if available; and
 - (d) a copy of his or her identity document, birth certificate or passport, if available, and if the complainant is not a natural person, any document showing the registration number and/or official stamp of the juristic person, if available;
- (3) provide the following information regarding the alleged violation of a fundamental right –
 - (a) the date and place of occurrence of the alleged violation ;
 - (b) the nature of the fundamental right alleged to be violated;
 - (c) particulars of any person, group or class of persons, association, organisation or organ of state who or which is allegedly in violation of a fundamental right, if known;
 - (d) the names and addresses of any person who may provide information relevant to the complaint;
 - (e) information regarding other mechanisms which the complainant has employed in an attempt to resolve the complaint, if any;
 - (f) particulars of any person who has been involved in an attempt to resolve the complaint, if any;
 - (g) any other relevant information or supporting documents that can be used during the investigation: Provided that such documents may be furnished to the Provincial Manager at a later stage but before a finding as contemplated in article 12 of these Procedures is made; and
 - (h) the way in which the alleged violation should, in the opinion of the complainant, be resolved or the nature of the relief sought.

CHAPTER 3

LODGING COMPLAINTS

Confidentiality

8. (1) (a) The complainant may, when lodging a complaint, or at any stage thereafter, request that his or her personal particulars be kept confidential and not be disclosed to any person outside the Commission's offices: Provided that if the complainant is a child or a person with a mental disability, the personal information of the complainant must be kept confidential and not be disclosed to any person outside the Commission's office.
- (b) Any confidentiality request as contemplated in paragraph (a), must be supported by a written statement explaining why the information is confidential.
- (2) If complainants have requested that their particulars be kept confidential and the Provincial Manager is of the view that these particulars are necessary in order to resolve the complaint, the Provincial Manager must, in writing –
 - (a) inform the complainant within seven days of receipt of such request of the particulars, which in the Provincial Manager's view, must be disclosed;
 - (b) explain to the complainant the reasons therefor; and
 - (c) request the complainant's written consent to disclose such particulars.
- (3) (a) The Provincial Manager may, if disclosure of the complainant's particulars is in his or her view necessary to resolve the complaint, decline to investigate the complaint if the complainant refuses the request as contemplated in subarticle (2)(c).
- (b) The Provincial Manager must, within seven days of his or her decision as contemplated in paragraph (a), inform the complainant, in writing, of his or her decision, giving full reasons and advising the complainant of his or her right of judicial review or appeal in terms of Chapter 9 of these Procedures.

Format of lodging a complaint

9. (1) A complaint to the Provincial Manager should preferably be in writing but an oral com-

plaint in person or by telephone may be accepted –

- (a) if it is not possible for a person who wishes to report a complaint to reduce it to writing;
 - (b) if it is not possible for a complainant to send a written complaint to the Provincial Manager; or
 - (c) if the complaint concerns an urgent matter making it inadvisable to insist on a written complaint.
- (2) (a) An oral complaint must be reduced to writing by the Data Capturer or member of staff, as duly designated, on a form which substantially corresponds with the form provided for in Annexure A to these Procedures.
 - (b) The Data Capturer or member of staff, as duly designated, must, after an oral complaint has been reduced to writing in terms of paragraph (a), verify the correctness thereof by reading it back to the complainant and make amendments, if necessary.
 - (c) The Data Capturer or member of staff, as duly designated, must keep a full written record of the process followed in terms of this subarticle.
 - (3) The Data Capturer or member of staff, as duly designated, must, where a complainant has difficulty to communicate or to submit a complaint due to a disability, language barrier or any other reason, render the necessary assistance to reduce the complaint to writing on a form which substantially corresponds with the form provided for in Annexure A to these Procedures.
 - (4) Save for the provisions contained in subarticles (1) and (3), a complaint must be submitted by means of –
 - (a) a written complaint on a form which substantially corresponds with the form provided for in Annexure A to these Procedures; or
 - (b) a written communication containing the information contemplated in article 7 of these Procedures.

Manner of lodging a complaint

10. (1) An oral complaint in person or by telephone as contemplated in articles 9(1) and 9(3) of these Procedures may be submit-

CHAPTER 4

PROCESSING OF COMPLAINTS

ted to the Provincial Office as contemplated in article 5 of these Procedures.

- (2) A written complaint as contemplated in article 9(4) of these Procedures may be submitted to the Provincial Office, in the following manner –
- (a) by handing it in during office hours;
 - (b) by facsimile;
 - (c) by post;
 - (d) by e-mail; or
 - (e) by completing and submitting a complaint form online via the Commission's web site.

Late lodging of a complaint

11. (1) The Provincial Manager may, on good cause shown, grant condonation to a complainant to lodge a complaint with the Provincial Office after the expiry of three years from the occurrence of the alleged violation of a fundamental right: Provided that if the Provincial Manager is unable to determine whether the complaint should be accepted by the Commission despite the delay, the complaint, together with a report and recommendations should, within ten days of receipt of the complaint, be referred to the Steering Committee for consideration.
- (2) A complainant who wishes to lodge a complaint contemplated in subarticle (1) must, on request of the Provincial Manager, in writing or orally, subject to the provisions of article 9(2) of these Procedures, provide the following information –
- (a) the reasons for the delay in lodging the complaint;
 - (b) indicate whether the refusal to investigate the complaint will cause prejudice to the complainant, any other person, group or class of persons, association, organisation or organ of state;
 - (c) indicate whether, to his or her knowledge, the complaint has not been resolved;
 - (d) indicate whether, to his or her knowledge, the complaint is ongoing;
 - (e) indicate whether, to his or her knowledge, a practical remedy for or solution to the complaint is available; and
 - (f) any other relevant information that the complainant may regard as special circumstances as to why the complaint should be investigated.

CHAPTER 4: PROCESSING OF COMPLAINTS

Procedure followed after lodging a complaint

12. (1) (a) The Data Capturer must, within three days of receipt of a complaint, in consultation with the Provincial Manager, transfer any complaint incorrectly submitted to the Provincial Office, after registering it as contemplated in subarticle (2)(b), to the correct Provincial Office as contemplated in article 5 of the Procedures.
- (b) The Data Capturer must, within seven days of receipt of the complaint, inform the complainant of the transfer contemplated in paragraph (a) and provide the complainant with the contact details of such Provincial Office.
- (2) The Data Capturer must, within three days after receipt of a complaint –
- (a) open a file for the complaint; and
 - (b) allocate a reference number to the complaint with a consecutive number for the year during which it is received.
- (3) The Data Capturer must, within seven days from the date of receipt of the complaint, acknowledge receipt of the complaint via the post, e-mail, facsimile or cellular phone text message: Provided that he or she must keep record thereof.
- (4) The notification of acknowledgement of receipt must advise the complainant that his or her complaint has been registered together with the reference number allocated to the complaint.
- (5) All complaints recorded by the Data Capturer must, within three days of registration, be submitted to the Provincial Manager for assessment.
- (6) (a) The assessment contemplated in subarticle (5) must, within seven days of submission of the complaint, be completed: Provided that if, during the course of the assessment, the Provincial Manager requires further information, the assessment has to be finalised within seven days after receipt of the required information.
- (b) If the complainant fails to provide further information as contemplated in paragraph (a), the Provincial Manager may conclude the as-

CHAPTER 4

PROCESSING OF COMPLAINTS

assessment based on the information available on file.

(7) If the Provincial Manager makes a finding that the complaint should be rejected or referred as contemplated in subarticles (8) and (9), the complainant must, within seven days of the finding, be notified thereof, in writing: Provided that he or she must be provided with full reasons for the rejection or referral and be advised of his or her right of judicial review and appeal in terms of Chapter 9 of these Procedures.

(8)(a) If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complaint must, within seven days of the finding, be referred to such appropriate organisation, institution or body (direct referral) and the complainant must, within three days of the referral, be notified thereof, in writing, and be provided with the contact details of such appropriate organisation, institution or body.

(b) The Provincial Manager is entitled to request and receive monthly reports from organisations, institutions and bodies on the status of complaints contemplated in paragraph (a) if the Provincial Manager is of the view that the complaint constitutes a prima facie violation of a fundamental right.

(9) If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complainant must, within seven days of the finding, be notified thereof, in writing; be provided with the contact details of the said organisation, institution or body in order to pursue the alternative option himself or herself (indirect referral); and be advised that he or she may contact the Commission again should he or she not get a response from the said organisation, institution or body.

(10) If the Provincial Manager makes a finding that the complaint should be referred in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) (hereinafter referred to as "PEPUDA"), the complainant must, within seven days of the finding, be notified thereof, in writing and be advised that the Provincial Manager or any member of staff, as duly designated may assist him or her in instituting proceedings in the Equality Court, in compliance with PEPUDA and the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination, 2003 (Government Notice R. 764 of 13 June 2003).

(11) If the Provincial Manager makes a finding that the complaint constitutes a prima facie violation of a fundamental right, the complainant must, within seven days of the finding, be notified that the complaint is accepted, in writing.

(12) If, upon conclusion of the assessment, the Provincial Manager is still in doubt whether the complaint should be accepted or not, the complaint, together with a report and recommendation, should be submitted to the Steering Committee for consideration.

(13) (a) The time frames provided for in this article must be complied with unless special circumstances warrant an extension of the prescribed time frames.

(b) If special circumstances warrant an extension of the prescribed time frames, the Provincial Manager must, within three days of the expiry of the prescribed time frames, inform the complainant of the extension and the special circumstances warranting a longer period, in any manner he or she deems fit but by keeping written record thereof.

CHAPTER 5: INVESTIGATION OF COMPLAINTS

Format and procedure of investigations

13. (1) Once a complaint is accepted as contemplated in article 12(11), the Provincial Manager, must within seven days of the finding, appoint a Senior Legal Officer or Investigator, depending on the complexity of the matter, to investigate the complaint.

CHAPTER 5

INVESTIGATION OF COMPLAINTS

- (2)(a) The Senior Legal Officer or Investigator, as the case may be, must, within five days of receipt of the file, contact the complainant to confirm the issues for investigation, explain the role of the Commission, give an indication of the estimated time frame for the investigation and keep a written record of such communication.
- (b) The Senior Legal Officer or Investigator, as the case may be, must, within seven days of allocation of the matter, request further information from the complainant, if necessary.
- (c) If further particulars are requested from the complainant, he or she must, within 14 days from receipt of the request, provide such particulars, whereafter a reminder, in writing, must be sent to the complainant by the Senior Legal Officer or Investigator, as the case may be, allowing seven more days for providing such particulars.
- (d) If the complainant fails to furnish the requested information within the time frames contemplated in subarticle (2)(c), the Senior Legal Officer or Investigator, as the case may be, must record such failure and submit a report to the Provincial Manager, recommending that the file be closed, upon approval of which the file must be closed.
- (3)(a) The Senior Legal Officer or Investigator, as the case may be, must, within ten days after allocation of the matter or after receipt of further information from the complainant, send a letter to the respondent stating the name of the complainant and providing full details regarding the alleged violation of, or in the case of an own accord investigation, a threat to a fundamental right, and request a response thereto.
- (b) The respondent must, within 21 days of receipt of the letter, respond to such letter, and if no response is received, a reminder must be sent to the respondent by the Senior Legal Officer or Investigator, as the case may be, allowing seven more days for a response.
- (c) If the respondent fails to furnish the requested information within the time frames contemplated in paragraph (b), the Senior Legal Officer or Investigator, as the case may be, must record such failure and submit the complaint, together with a report and recommendations, to the Provincial Manager for consideration.
- (d) The Provincial Manager may make a finding after expiry of the time frames contemplated in paragraph (b) in the absence of a response by the respondent, relying on witness statements.
- (4) After receipt of the information contemplated in subarticles (2)(c) and (3)(b), the Senior Legal Officer or Investigator, as the case may be, must consider the complaint and within seven days of receipt of the final information, submit a report with recommendations to the Provincial Manager.
- (5) Unless otherwise determined by the Provincial Manager, the format of an investigation may include the following or any combination thereof—
 - (a) communication by telephone, e-mail or any other form of correspondence;
 - (b) research, inspections in loco, fact-finding missions, surveys or questionnaires;
 - (c) meetings with affected parties or persons reasonably believed to have information relevant to the investigation; or
 - (d) appearance of a person before the Provincial Manager or any member of staff, as duly designated, for purposes of obtaining or clarifying information (investigation hearing), or to produce any articles or documents as contemplated in section 9(1)(c) of the Act.
- (6) During the investigation of the complaint –
 - (a) the Provincial Manager or any member of staff, as duly designated, may exercise any of the powers referred to in section 9(1)(b) of the Act;
 - (b) the Senior Legal Officer or Investigator, as the case may be may, in consultation with the Provincial Manager, issue a notice to the respondent to attend meetings in pursuance of the investigation and under the hand of a member of the Commission in terms of section 9(1)(c) of the Act; or
 - (c) any member of the Commission, or any member of staff, as duly designated, or police officer authorised thereto by a member of the Commission, may enter and search any premises and collect any evidence as contemplated in section 10 of the Act.

CHAPTER 6

RESOLUTION OF COMPLAINTS

(7) The Senior Legal Officer or Investigator, as the case may be must keep the complainant informed of the status of his or her complaint on a monthly basis, in writing.

Format and procedures followed in respect of own accord investigation

14. The provisions of Chapters 4 and 5 apply, with such changes as may be required by the context, in matters where the Commission investigates an alleged violation of or a threat to a fundamental right on own accord.

CHAPTER 6: RESOLUTION OF COMPLAINTS

Method of resolving complaints

15. The Provincial Manager or any member of staff, as duly designated, must endeavour to resolve a complaint at the earliest possible opportunity in accordance with the manner provided for in the Act and these Procedures, including but not limited to the following –

- (a) where insufficient information has been provided, request the complainant to provide further information as contemplated in article 13(2)(b);
- (b) where sufficient information has been provided, send an allegations letter to the respondent and request a response as contemplated in article 13(3)(a);
- (c) where all the required information is received, proceed with a negotiation and conciliation process, if necessary;
- (d) where the complaint cannot be resolved by a negotiation and conciliation process, proceed with a mediation process;
- (e) where the complaint cannot be resolved by a mediation process, proceed with a hearing process;
- (f) at any stage institute legal proceedings in a competent court or tribunal as contemplated in section 7(1)(e) of the Act read with article 42; and
- (g) at any stage institute legal proceedings as contemplated in section 20(1)(f) of PEPUDA.

General provisions relating to resolving complaints

16. (1) The Provincial Manager or any member of staff, as duly designated, may resolve a complaint by applying a combination of one or more methods of dispute resolution or by any other means appropriate in the circumstances.

(2)(a) If any party fails to attend conciliation, negotiation or mediation proceedings, or fails to come to an agreement after such proceedings, the Provincial Manager or any member of staff, as duly designated, may resolve the matter in any appropriate method and take any action provided for in the Act and these Procedures.

(b) In deciding on an appropriate method of resolving the matter as contemplated in paragraph (a), the Provincial Manager or any member of staff, as duly designated, must take into account–

- (i) whether the party has previously failed to co-operate with the proceedings of the Commission;
- (ii) any reason given for that party's failure to attend the proceedings or to co-operate;
- (iii) whether the proceedings can continue effectively in the absence of that party;
- (iv) the impact of the decision of the Provincial Manager or any member of staff, as duly designated, on the other party;
- (v) whether or not the party has been properly notified of the date, time and place of the proceedings; and
- (vi) any other relevant factor the Provincial Manager or any member of staff, as duly designated, may deem fit.

(3) Once the parties reach an agreement after conclusion of conciliation, negotiation or mediation proceedings, the Provincial Manager or any member of staff, as duly designated, must ensure that such agreement is reduced to writing and signed by the parties within three days after resolving the complaint.

(4) The Provincial Manager or any member of staff, as duly designated, may, on request of a party to the proceedings or by agreement of the parties to the proceedings, make a determination on the disclosure of relevant documents.

(5)(a) The Provincial Manager or any member of

CHAPTER 6

RESOLUTION OF COMPLAINTS

staff, as duly designated, may dismiss a complaint if the complainant –

- (i) fails to participate in the conciliation, negotiation or mediation proceedings; or
 - (ii) fails to attend any of the proceedings.
- (b) The Provincial Manager or any member of staff, as duly designated, must, within seven days of the dismissal, notify the parties thereof and the reasons therefor, in writing.

Conducting of proceedings

17. (1) The Provincial Manager or any member of staff, as duly designated, must determine the manner in which the proceedings relating to conciliation, negotiation or mediation must be conducted.
- (2) A complaint must be conciliated, negotiated or mediated at the Provincial Office unless the Provincial Manager or any member staff, as duly designated, directs otherwise.
- (3) The Provincial Manager or any member of staff, as duly designated, must determine the venue where the conciliation, negotiation or mediation is to take place.
- (4) At any time during the proceedings, the Provincial Manager or any member of staff, as duly designated, may postpone or adjourn the proceedings to allow the parties an opportunity to discuss the matter.

Conciliation and negotiation proceedings

18. (1) The Provincial Manager or any member of staff, as duly designated, may decide on conciliation or negotiation of a complaint, including a complaint referred to the Commission for conciliation or negotiation in terms of an order of the Equality Court, through correspondence or joint sessions with the parties.
- (2) The Provincial Manager or any member of staff, as duly designated, must, within 14 days from receiving the response letter from the respondent, set up a conciliation or negotiation process.
- (3) The Provincial Manager or any member of staff,

as duly designated, must, within three days of setting up a conciliation or negotiation process, determine the issues to be conciliated or negotiated and must, within seven days, inform the parties accordingly.

- (4) The Provincial Manager or any member of staff, as duly designated, must direct the proceedings, develop and propose the terms of a settlement, and determine an outcome to the issues being conciliated or negotiated.
- (5) The conciliation and negotiation process must, within 30 days after the decision contemplated in subarticle (1), be finalised.
- (6) The complainant and the respondent, and if applicable, the clerk of the Equality Court, must, within seven days of finalisation of the proceedings, be notified of the outcome of thereof, in writing.
- (7) (a) If the parties fail to reach an agreement, the Provincial Manager or a member of staff, as duly designated, must prepare a report on the reasons for the failure to resolve the complaint and submit it to the Steering Committee within two days of such failure: Provided that if the matter was referred to the SAHRC in terms of an order of the Equality Court, the report must also be submitted to the said Court.
- (b) The Steering Committee must decide on the appropriate action, which may include mediation, a hearing or the institution of legal proceedings, within seven days.

Mediation proceedings

19. (1) If the Provincial Manager or any member of staff, as duly designated, proposes that mediation proceedings be conducted in respect of a complaint, including a complaint referred to the Commission for mediation in terms of an order of the Equality Court, and the parties agree thereto, such proceedings must, within 14 days from such agreement, be set up.
- (2) The Provincial Manager or any member of staff, as duly designated, must facilitate the mediation proceedings and examine and evaluate the presentations of the parties.

CHAPTER 7 CONDUCTING HEARINGS

- (3) If an agreement is not enforceable, impractical, vexatious, unrealistic, or does not bring finality to the mediation proceedings or if the performance in the agreement is not specific, measurable, achievable, realistic and time bound, the Provincial Manager or any member of staff, as duly designated, may determine an appropriate way to resolve the matter by any other means that may be appropriate in the circumstances.
- (4) The Provincial Manager, or any member of staff, as duly designated, may determine an appropriate way to resolve a matter if a party no longer wishes to participate in the mediation.
- (5)(a) The complainant and the respondent, and if applicable, the clerk of the Equality Court must, within seven days of the determination, be notified by the Provincial Manager or any member of staff, as duly designated, of the outcome of the proceedings, in writing.
 - (b) If the matter was referred to the Commission in terms of and order of the Equality Court, the Provincial Manager must, within seven days of the determination, submit a report to the Steering Committee.
- (6)(a) The provisions of article 20(1) of these Procedures apply in the event that a complaint cannot be resolved by mediation proceedings.
 - (b) The Provincial Manager must, within seven days after the determination that a complaint cannot be resolved by mediation proceedings, submit a report to the Steering Committee and, if applicable, the clerk of the Equality Court, providing reasons for such failure.
 - (c) The Steering Committee must decide on the appropriate action, which may include a hearing or the institution of legal proceedings, within seven days.

CHAPTER 7: CONDUCTING HEARINGS

Circumstances under which the Commission conducts hearings

- 20. (1) The Provincial Manager may on his or her own accord or on receipt of a written request by one or both of the parties, in consultation with the parties and the Steering Committee, refer a

complaint to the Panel contemplated in article 21 of these Procedures for a hearing as contemplated in section 9(1)(c) and (d) of the Act under the circumstances he or she deems fit, including the following –

- (a) if a complaint cannot be resolved by any other means referred to in the Act and these Procedures;
 - (b) if a hearing will offer an appropriate solution regarding the complaint;
 - (c) if it is in the public interest;
 - (d) if the complaint cannot be fairly decided on the basis of documentary evidence or written statements submitted by the parties or any other person having information relevant to the complaint only; or
 - (e) if a party requesting a hearing supplies reasonable grounds.
- (2) A party requesting a hearing must do so in writing setting out –
- (a) the reasons, with due regard to the provisions of subarticle (1), as to why a hearing is desirable; and
 - (b) the material issues that the party wishes to raise during the hearing.

Panel which presides over hearings

- 21. (1) A Panel, representing the Commission, must preside over hearings.
- (2) The Panel must consist of the following persons–
 - (a) the Chairperson or any Commissioner designated by him or her, who must be designated as the Chairperson of the Panel;
 - (b) at least one additional Commissioner; and
 - (c) at least one natural person appointed by the Commission, which may include any member of staff of the Commission.
- (3) Any Provincial Manager or any member of staff who has been a party to any process of assessing, making a determination or taking a decision regarding the complaint, may not be appointed as contemplated in subarticle (2)(c).

Notice of hearing

- 22. (1) The Panel may, under the hand of a member of the Commission issue a summons,

CHAPTER 7

CONDUCTING HEARINGS

- to be delivered by a sheriff or member of staff of the Commission to any person –
- (a) who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on the matter;
 - (b) to appear before the Panel to be questioned at a time and place specified in the summons; or
 - (c) to deliver or produce to the Panel any book, document or other object that has a bearing on the matter at a time and place specified in the summons.
- (2) The matter must be set down for a hearing at least 30 days after the publication of a notice on the Commission's website outlining the terms of reference of the hearing: Provided that if the Chairperson of the Panel, in consultation with the parties, the relevant Provincial Manager and the Steering Committee, determines that the matter is urgent, the hearing may be held on seven days written notice to the parties.
- (3) The notice must contain the following information –
- (a) the place where the hearing will be held;
 - (b) the time and date of the hearing;
 - (c) the aspects in respect of which evidence will be required;
 - (d) the names of the other persons who will attend the hearing and give evidence;
 - (e) an invitation to the parties to bring any person who has personal knowledge about the matters in respect of which evidence is to be given, to the hearing;
 - (f) an indication whether or not a person who will attend the hearing must bring any article or document to the hearing; and
 - (g) any other information which the Chairperson of the Panel deems fit.
- (4) The Chairperson of the Panel must keep record of the proof of delivery contemplated in subarticle (1).
- (5) The Chairperson of the Panel may, on request of the parties, issue a notice contemplated in subarticle (1) to any witness required to attend the

hearing in which case subarticles (2), (3) and (4) apply with such changes as may be required by the context.

- (6) The Chairperson of the Panel may, on its own accord, issue a notice contemplated in subarticle (1) to any person in possession of any information relevant to the matter to appear at the hearing in which case subarticles (2), (3) and (4) apply with such changes as may be required by the context.

Persons allowed to attend hearings

23. (1) A hearing is open to the public unless the Panel determines that the public disclosure of evidence would –
- (a) prejudice the successful conducting of the hearing;
 - (b) threaten the security of any person involved in the hearing; or
 - (c) frustrate the successful functioning of the Commission:
- Provided that when the hearing deals with the complaint of a child or a person with a disability, no person may be present at the hearing, unless his or her presence is necessary in connection with the proceedings or the Chairperson of the Panel has granted him or her permission to be present.

- (2) (a) The Chairperson of the Panel may, in terms of section 9(8) of the Act, direct that any person or category of persons or all persons the presence of whom is not desirable, shall not be present at the hearing or part thereof.
- (b) Before deciding on taking evidence behind closed doors, both parties must be allowed a reasonable opportunity to address the Panel in that regard.
- (c) The Panel may give any directions in respect of the disclosure or publication or prohibition in respect of any information or evidence obtained behind closed doors: Provided that in the case of a child or a person with a mental disability, his or her identity may not be disclosed.

Nature of hearings

24. (1) A hearing is inquisitorial in nature

CHAPTER 7

CONDUCTING HEARINGS

and the Panel must conduct the hearing in a formal manner.

- (2) Any party may, through the Chairperson of the Panel, put questions to any witness at the hearing.
- (3) The Panel may at any stage of a hearing, in addition to anything provided for in the Act –
 - (a) put any question to a witness;
 - (b) rephrase a question put to a witness by a person or a party;
 - (c) clarify any uncertainties in respect of any evidence given; and
 - (d) elicit information from any witness.
- (4) The Panel before whom a person is summoned to appear or to whom a person is required to deliver any book, document or other object –
 - (a) may interrogate and administer an oath to or accept an affirmation from the person named in the summons;
 - (b) may retain any such book, document or other object for examination for a period not exceeding two months, or for such longer period as the Panel, on application and on good cause shown, may allow; and
 - (c) must inform a summoned person that he or she is not obliged to answer any question if the answer would be self-incriminating.

Procedure at hearings

- 25. (1) The Chairperson of the Panel must, before the commencement of the hearing, explain –
 - (a) the purpose of the hearing;
 - (b) the inquisitorial nature of the hearing; and
 - (c) the procedures which will be followed at the hearing.
- (2) The Chairperson of the Panel must commence the hearing by summarising the complaint and the issues to be decided during the hearing.
- (3) The Panel must determine the order for leading evidence.
- (4) The Panel must make a determination about any article, document or information to be disclosed at the hearing.
- (5) The Panel must give directions on any other aspect of the hearing.

(6) The Panel may receive evidence in any manner it deems fit, including by teleconference and videoconference, and in the case of a child or a person with a mental disability, through an intermediary.

(7) Any party appearing at the hearing is entitled to be represented by another person, including a legal representative, who is entitled to peruse all documentation in the possession of the Commission relevant for the purpose of the hearing.

(8)(a) The parties must be given a reasonable opportunity to respond to the evidence given at the hearing.

(b) A party may in response to the evidence given at the hearing –

- (i) give evidence;
- (ii) call witnesses to give evidence on his or her behalf;
- (iii) hand in documents;
- (iv) hand in written submissions;
- (v) personally, through his or her legal representative or in the case of a child or a person with a mental disability, through a parent, an appropriate adult or a guardian cross-examine witnesses; and
- (vi) make a statement personally, through his or her legal representative or in the case of a child or a person with a mental disability, through a parent, an appropriate adult or a guardian.

(c) The Panel must conduct the hearing in a fair and impartial manner.

(9) The Panel must take any step necessary to establish the truth and correctness of any statement, submission or evidence given.

(10) (a) The parties must be given a reasonable opportunity to make closing statements.

(b) A party may make a statement personally, through his or her legal representative or in the event of a child or a person with a mental disability, through his or her parent, an appropriate adult or a guardian.

Conclusion of hearings

- 26. (1) The Panel must conclude the hearing by –
 - (a) considering the evidence submitted at the hear-

CHAPTER 8

CONCLUDING COMPLAINTS

- ing in conjunction with all other available information and evidence obtained otherwise;
- (b) making a finding on the facts and giving full reasons for the decision reached; and
- (c) making a finding regarding remedial action, if necessary.
- (2) The Chairperson of the Panel must, at the conclusion of the hearing, summarise the evidence contemplated in subarticle (1)(a) and state the finding, including any proposed remedial action.
- (3) The finding of the Panel at the hearing is final and is not subject to an appeal as provided for in Chapter 9 of these Procedures.

Report of hearings

- 27. The Chairperson of the Panel must, within 30 days after conclusion of the hearing, submit a report regarding the hearing to the Chairperson, including the majority and minority finding.

CHAPTER 8: CONCLUSION OF COMPLAINTS

Conclusion of complaints

- 28. A complaint is concluded under the following circumstances –
- (a) after conclusion of an assessment if the complaint is rejected or in the case of a direct referral, if no further action is required;
- (b) if the complaint is resolved by means of conciliation, negotiation or mediation as contemplated in Chapter 6 of these Procedures;
- (c) after conclusion of an investigation where it is found that –
 - (i) there was no violation of a fundamental right; or
 - (ii) there was a violation of or threat to a fundamental right and the said violation is remedied;
- (d) if a complaint is withdrawn by the complainant and the Provincial Manager is satisfied that there are no compelling reasons to proceed with the investigation;
- (e) if a complainant does not provide further particulars as contemplated in article 13(2) of these Procedures: Provided that the complaint may be re-opened on good cause shown by the complainant;

- (f) when the final report is received regarding a referral contemplated in article 12(8) of these Procedures;
- (g) after submission of the report contemplated in article 27 of these Procedures; or
- (h) after resolution of a matter subsequent to the institution of legal proceedings in a competent court or tribunal as contemplated in article 42 of these Procedures.

Notifying parties of outcome of complaint

- 29. The Provincial Manager or any member of staff, as duly designated, must, within seven days of finalisation of the matter, notify a complainant and respondent of the outcome of the complaint, in writing.

Making a finding available

- 30. (1) The Provincial Manager must, within 21 days of the finding, make a finding available to the parties and any person, association, organisation or organ of state implicated in any such finding.
- (2) The person, association, organisation or organ of state implicated in the finding must be given an opportunity to respond, on the date determined by the Provincial Manager, to the finding and any recommendations made, in writing.

Issuing of report

- 31. (1) The Provincial Manager must, within 14 days of receipt of the response of the person, association, organisation or organ of state contemplated in article 30(2) of these Procedures, after considering such response, issue a report.
- (2) The Provincial Manager must, if no response has been received by the due date determined under article 30(2) of these Procedures, issue a report.

Provision of report

- 32. The Provincial Manager must, within 14 days of the report being approved by the Chairperson, provide the report contemplated in ar-

CHAPTER APPEALS

article 31 of these Procedures to the parties and to any person association, organisation or organ of state contemplated in article 30(1) of these Procedures, in any manner which the Provincial Manager deems fit, including –

- (i) by sending a letter via e-mail, by post or facsimile; or
- (ii) by informing them telephonically or in person: Provided that written record thereof be kept.

Monitoring of recommendations

- 33. The Provincial Manager must monitor the implementation of any recommendations made in the report contemplated in article 31 of these Procedures.

CHAPTER 9: APPEALS

Lodging appeals

- 34. (1) Any party to proceedings under these Procedures, who feels aggrieved by any determination, decision or finding, save for a finding made at a hearing as contemplated in Chapter 7 of these Procedures, may lodge an appeal with the following persons –

- (a) the Chairperson, if the appeal is of a substantive nature regarding any determination, decision or finding of a Provincial Manager, within 45 days from the date of being notified of such determination, decision or finding by post, delivery, facsimile or e-mail; or
- (b) the Chief Operations Officer, if the appeal is of a procedural nature regarding any determination, decision or finding of a Provincial Manager, within 45 days from the date of being notified of such determination, decision or finding by post, delivery, facsimile or e-mail.
- (2) The Chairperson or the Chief Operations Officer, as the case may be, may, on good cause shown, grant condonation to an appellant who has failed to lodge an appeal timeously as provided for in subarticle (1).

Format and procedure of appeals

- 35. (1) An appeal contemplated in article 34(1) of these Procedures, must be in writing and must be on a form which substantially corresponds with the form provided for in Annexure B to these Procedures.

- (2) Upon receipt of an appeal, the member of staff, as duly designated, must, within three days of receipt of the appeal, record such appeal in the Register of Appeals and allocate a reference number to the appeal with a consecutive number for the year during which it is received.

- (3) The member of staff, as duly designated, must, within 14 days of receipt of the appeal, acknowledge receipt thereof and advise the appellant of the reference number allocated to the appeal.

- (4) The member of staff, as duly designated, must, within three days of receipt of the appeal, notify the Provincial Manager of the Provincial Office from which the appeal originated, of the appeal and request that the relevant file be submitted to the Chairperson or Chief Operations Officer, as the case may be, within 14 days.

- (5) The Provincial Manager must, within 14 days of being requested to do so by the Chief Operations Officer or Chairperson, as the case may be, provide written reasons regarding the determination, decision or finding that is the subject of the appeal.

- (6) If the Chairperson or Chief Operations Officer, as the case may be, is satisfied that the appeal should be dismissed, he or she must, within 45 days of receipt of all information required to finalise the appeal, including the file referred to in subarticle (4), finalise the appeal and inform the appellant of the decision to reject the appeal, within seven days, giving reasons therefor and advising the appellant of his or her right to judicial review, in writing.

- (7) If the Chairperson or Chief Operations Officer, as the case may be, is satisfied that the appeal should be upheld, he or she must, within 45 days of receipt of all information required to finalise the appeal, including the file referred to in subarticle (4), finalise and inform the appellant of the decision to uphold the appeal, within seven days, and must advise the other party and the Provincial Manager of the Provincial Office from which the appeal originated accordingly, in writing.

- (8) Where any of the prescribed time limits in this article cannot be met, the Chairperson or Chief

CHAPTER GENERAL PROVISIONS

Operations Officer, as the case may be, must, within seven days of the expiry of the prescribed time frames, inform the appellant accordingly and provide reasons.

CHAPTER 10: GENERAL PROVISIONS

Grounds for conducting joint investigations

36. (1) The Provincial Manager may conduct a joint investigation with another institution or organ of state if –

- (a) the mandate of that institution or organ of state overlaps with the mandate of the Commission in respect of the resolution of the complaint;
- (b) the Commission does not have resources, capacity or in-house expertise to resolve the matter without assistance of that institution or organ of state;
- (c) the nature and the complexity of the matter warrant the assistance of that institution or organ of state; or
- (d) a collaboration agreement exists between the Commission and the other institution or state organ and the matter falls within the mandate of both, and that institution or organ of state agrees to such a joint investigation.

(2) The Provincial Manager must, if he or she intends to conduct a joint investigation –

- (a) inform the parties within seven days of exercising the power contemplated in subarticle (1) –
 - (i) of the intention to conduct a joint investigation;
 - (ii) of the particulars of the institution or organ of state which will be involved in the joint investigation;
 - (iii) of the reasons for the joint investigation; and
- (b) invite the parties to respond on or before a specified date, in writing to the intended joint investigation.

(3) The Provincial Manager must, within seven days after consideration of the responses from the parties, make a final decision and inform the parties in writing within seven days of the final decision of the outcome, in writing.

Conditions for joining or substituting parties to proceedings

37. (1) The Provincial Manager may on his

or her own accord or on written application by a party to the proceedings, join or substitute any number of persons, associations, organisations or organs of state as parties in the complaint proceedings –

- (a) if their right to corrective action depends on substantially the same question of law or fact;
- (b) if the parties so joined or substituted have a substantial interest in the subject matter of the proceedings, and may give appropriate directions as to further procedures for the proceedings;

Provided that the complaint originated in the area of the Provincial Office as contemplated in article 5 of these Procedures.

(2)(a) An application to join or substitute a person, association, organisation or organ of state as a party in the proceedings must contain the following information –

- (i) the grounds for the application; and
- (ii) full particulars of the person, association, organisation or organ of state concerned;

(b) An application to join any person, association, organisation or organ of state as a party to the proceedings or to substitute an existing party must be accompanied by copies of all documents previously delivered to an office of the Commission.

(3) If during any proceedings it becomes necessary to substitute a person, association, organisation or organ of state for an existing party, any party to the proceedings may apply to the Provincial Manager for a determination substituting that party for an existing party and the Provincial Manager may make such a determination or give appropriate directions as to the further procedure in the proceedings.

(4) Subject to any determination made by the Provincial Manager in terms of this article, the joining or substitution of a person, association, organisation or organ of state in proceedings in terms of these Procedures does not affect any steps already taken regarding the proceedings.

Consolidation of complaints

38. (1) The Provincial Manager may, on his or her own accord or on written application by

CHAPTER 10

GENERAL PROVISIONS

a party to the proceedings, consolidate two or more complaints and deal with these complaints in the same proceedings: Provided that the complaints originated in the area of the Provincial Office as contemplated in article 5 of these Procedures.

- (2) The Provincial Manager may, in consultation with any relevant stakeholders, determine that a class of complaints be handled together.

Recording of proceedings, investigations and hearings

39. (1) Any proceedings in terms of the Act and these Procedures and any discussions held, oral submissions made or evidence given as part of an investigation must be recorded by the Chairperson of the Panel, the Provincial Manager or any member of staff, as duly designated, in any manner he or she deems fit.

- (2) The Chairperson of the Panel, the Provincial Manager or any member of staff, as duly designated, must, before the commencement of any recording, inform the persons present of the fact that a recording will be made and of the manner of recording.

Language used during proceedings, investigations and hearings

40. (1) All proceedings, investigations and hearings in terms of the Act and these Procedures will be conducted in English, unless a party requests that the proceedings be conducted in another official language.
- (2) A party who needs the services of an interpreter during any proceedings, investigations and hearings as contemplated in subarticle (1), must give reasonable notice to the Chairperson of the Panel, the Provincial Manager or any member of staff, as duly designated, who must make the necessary arrangements.

Costs

41. (1) The Commission may not charge any fee for the handling of complaints.
- (2) Any person who is represented by an advocate or attorney is responsible for the costs involved in securing his or her services.

Institution of legal proceedings

42. (1) (a) The Commission may institute legal proceedings in a competent court or tribunal, as contemplated in section 7(1)(e) of the Act, in its own name, or on behalf of a person or a group or class of persons at any stage after a complaint contemplated in article 3 is received.

(b) The Commission may institute legal proceedings in a competent court or tribunal, as contemplated in section 7(1)(e) of the Act, in its own name, or on behalf of a person or a group or class of persons at any stage after an investigation contemplated in article 13 is conducted.

(c) The Commission may institute legal proceedings in its own name, or on behalf of a person or a group or class of persons as contemplated in section 20(1)(f) of PEPUDA.

- (2) If the Provincial Manager is of the view that legal proceedings should be instituted, a substantiated recommendation, including the particulars of the parties and nature of the alleged violation of a fundamental right, must as soon as reasonably possible be submitted to the Steering Committee.
- (3) The Steering Committee must, within seven days of receipt of the recommendation as contemplated in subarticle (2), in consultation with the Chief Financial Officer, make a finding whether legal proceedings should be instituted.
- (4) The Steering Committee must, within three days of its finding, refer the matter to the Chief Executive Officer or any member of staff, as duly designated, for the institution of legal proceedings.
- (5) The Steering Committee must, within seven days of its finding, inform the Provincial Manager and complainant of the finding, in writing.

Repeal or amendment of Procedures

43. These Procedures remain in force until repealed or amended by the Commission by publication in the Gazette.

Short title and commencement

44. These Procedures are called the South African Human Rights Commission Complaints Handling Procedures and come into operation on the date of publication hereof in the Gazette.

ANNEXURE A**SOUTH AFRICAN HUMAN RIGHTS COMMISSION
COMPLAINT FORM***For office use only*

Province	City/Town	Reference No
----------	-----------	--------------

- Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.
- If there is more than one person who would like to send a complaint to us, each person must complete a separate form

**PART A: YOUR DETAILS****1. Name and surname**

Your full name(s) and surname: _____

Your nickname(s), if any: _____

2. ID number

Your ID number: _____

If you do not have an ID number, your date of birth: _____

If you do not know your date of birth, your age: _____

3. Race (information required for statistical purposes only)

Please state your race: _____

4. Gender (information required for statistical purposes only)

Please state whether you are male or female: _____

5. Address and contact numbers

The address where you live: _____

Postal Code: _____

The address where we can send letters to: _____

Postal Code: _____

Telephone number at work: _____

Telephone number at home: _____

Cell phone number: _____

Any other telephone number where we can contact you: _____

Whose telephone number is it: _____

Fax number: _____

E-mail address: _____

Important:

Part B must only be filled in if you are writing on behalf of somebody else, for an association or organisation – do not fill this in if your own rights have been violated.

PART B: DETAILS OF THE PERSON ON WHOSE BEHALF YOU ARE COMPLETING THE FORM (Person or Organisation)**6. Name and surname of person on whose behalf you are completing this form**

His or her full name(s) and surname: _____

His/her nickname(s), if any: _____

7. ID number: His or her ID number

If he or she does not have an ID number, his or her date of birth: _____

If he or she does not know his or her date of birth, his or her age: _____

8. Race (information required for statistical purposes only)

Please state his or her race: _____

9. Gender (information required for statistical purposes only)

Please state whether he or she is male or female: _____

10. Address and contact numbers

The address where he or she lives: _____

Postal Code: _____

The address where we can send letters to: _____

Postal Code: _____

Telephone number at work: _____

Telephone number at home: _____

Cell phone number: _____

Any other tel number where we can contact him or her: _____

Whose telephone number is it: _____ Fax number: _____

E-mail address: _____

11. Details of association, organisation or organ of state on whose behalf you are completing this form

Full name of the association, organisation or organ of state: _____

Registration number: _____

What does it do? (eg civil, business, retailer, factory, NGO, etc): _____

Who should we talk to there? _____

What is contact person's position? (eg colleague, chairperson, director, secretary): _____

The address where we can send letters to: _____

Postal Code: _____

Telephone number: _____

Cell phone number: _____

Any other telephone number where we can contact him or her: _____

Whose telephone number is it? _____

Fax number: _____

E-mail address: _____

PART C: THE COMPLAINT

12. Date: On what date did it happen? _____

13. Is it still happening? Yes _____ No _____

14. Where did it happen? Place _____ Town _____

Province _____

15. If you know, which right(s) in the Bill of Rights was/were violated or is/are being violated _____

16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us _____

17. Where can we contact them? _____

18. If you do not know his/her/its/their names, please tell us anything you do know about him/her/it/them _____

19. Did anybody see or hear what happened? (only people who actually saw or heard what happened, not people who heard about it from someone else)

Full name(s) and surname(s): _____

How and where can we get in touch with them? _____

20. In your own words, tell us exactly what happened (include all information but be as brief as possible)

For office use only

Province		City/Town		Reference No.	
Nature of Appeal		Substantive		Procedural	

- Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.
- If there is more than one person who would like to send a complaint to us, each person must complete a separate form

Identity Number of Appellant:

[illegible]

Name:	
Surname:	
Physical Address:	
Postal address	

Please indicate (X) how you would like to be contacted:

SMS		Fax		E-mail		Phone		Post	
-----	--	-----	--	--------	--	-------	--	------	--

Tel No: Office hours	
Tel No: After hours	
Cell No	
Fax No	
E-mail address	
Postal address	

Reference no of determination, decision or finding	
Date of determination, decision or finding*	

*If your appeal is lodged AFTER a period of 45 days from the date of being notified of such determination, decision or finding by post, delivery, facsimile or email, please attach a separate page providing the reasons for the late lodging of the appeal.

Reasons why you disagree with the determination, decision or finding:
If the space provided is insufficient, please attach a separate page to this form and clearly indicate that a separate page is attached

D. DOCUMENTATION TO ACCOMPANY APPEAL
Kindly submit certified copies of the following documentation with the Appeal Form:

Letter of notification of determination, decision or finding				
Closing letter				
Other supporting documentation	Yes		No	
If YES to supporting documents, please state what documents				

Yes _____ No _____
If yes, who? (eg Police, lawyer, Public Protector) _____

Yes No If yes, please tell us what

Yes _____ No _____
If yes, the language you speak _____

Write regarding this matter/complaint:
 Yes _____ No _____

NOTE: Article 8 of the Human Rights Commission Complaints Handling Procedures provides that you may request that your personal particulars be kept confidential and not be disclosed to any person outside the South African Human Rights Commission's office in order to protect your identity.

Date: _____

(on behalf of yourself, another person,
association, organisation or organ of state)

If on behalf of another person (including a child or a person with a mental disability), association, organisation or organ of state:

**Signature of representative, parent,
appropriate adult or guardian**

- To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.
- To attach any copies of documents which can assist in this matter.

Signature of Appellant _____ **Date** _____