


DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 3726

28 July 2023

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCEI):
EXTENSION OF DISPUTE RESOLUTION COLLECTIVE AGREEMENT TO NON-
PARTIES**


I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Civil Engineering Industry (BCCEI)** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from the second Monday after the date of publication of this notice and for the period ending 31 August 2028.

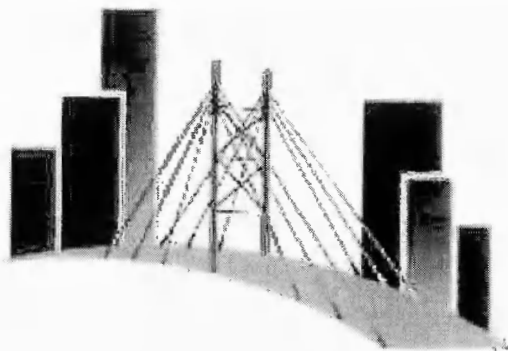

MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 13 July 2023

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA - 1995**

**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI
EMBonINI YONJINIYELA BEZOKWAKHIWA KWEMIGWAQO NAMABHULOHO:
UKWELULWA KWESIVUMELWANO SOKUXAZULULWA KWEZIMPIKISWANO,
SELULELWA KILABO ABANGEYONA INGXEYENYE YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi Nezabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yonjiniyela Bezokwakhiwa Kwemigwaqo Namabhuloho, futhi ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka-1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, kusukela ngomsombuluko wesibili emva kokushicilelwa kwalesisaziso kuze kube mhlaka 31 kuNcwaba 2028.


**MNUMZANE TW NXESI, MP
UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI
USUKU: 13/07/2023**



BCCEI

**Bargaining Council for the
Civil Engineering Industry**

DISPUTE RESOLUTION COLLECTIVE AGREEMENT

for the

CIVIL ENGINEERING INDUSTRY

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COUNCIL SCHEDULE**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY
DISPUTE RESOLUTION COLLECTIVE AGREEMENT**

In accordance with the Labour Relations Act of 1995, made and entered into by and between the –

Employers Organisations

~~Consolidated Employers Organisation (CEO)~~

South African Forum of Civil Engineering Contractors (SAFCEC)

Hereinafter referred to as the “employer” or the “employers organisation” of the one party and the –

Trade Unions

Building, Construction and Allied Workers Union (BCAWU)

National Union of Mineworkers (NUM)

Hereinafter referred to as the “employees” or the “trade union” of the other party, being the parties to the Bargaining Council for the Civil Engineering Industry

PREAMBLE

This agreement was entered into by and between the members of the employer organisations and the members of the trade unions under the auspices of the Bargaining Council for the Civil Engineering Industry.

The Minister of Employment and Labour has extended this agreement to all the employers and employees in the industry that are not signatories to this agreement. This has the effect of making the agreement applicable to all employers and employees in the industry.

CHAPTER 1**1. Application of this agreement**

- 1.1** The terms of this agreement shall apply to and be observed-
- (a) throughout the Republic of South Africa; and
 - (b) by all employers and employees in the Civil Engineering Industry who are members of the employers' organisations and the trade unions that are party to this agreement, respectively.
- 1.2** This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.
- 1.3** This agreement is binding in terms of Section 31 of the Labour Relations Act, 66 of 1995, on the parties which concluded this agreement and shall become binding on the other employers and employees in the industry upon extension by the Honourable Minister of Employment and Labour in terms of Section 32, from a date determined by the Minister.
- 1.4** This Agreement shall come into operation on such date signed by the parties to this agreement, or as fixed by the Honorable Minister of Labour in terms of section 32 of the Act and shall remain in force until 31 August 2028 or until withdrawn or amended.

2. Scope of the Civil Engineering Industry

- 2.1** 'Industry' means the Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purposes of carrying out work of a civil engineering character normally associated with the civil engineering sector and includes such work in connection with any one or more of the following activities:
- a. The construction of aerodrome runways or aprons; aqueducts, bins or bunkers; bridges, cable ducts, caissons; rafts or other marine structures; canals, cooling, water or other towers; dams; docks; harbours, quays or wharves; earthworks; encasements; housing or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgears; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; and/or

- b. Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping, drilling and blasting; preparation of bench areas; drilling pre-split holes, blasting and/or cast blasting; secondary blasting; loading, hauling and dumping of mineralized and or waste material to waste dumps or processing plant feed (ROM pad) stockpiles; production dozing of top soil, inter-burden or waste material; pumping and dewatering of storm and or contaminated water, construction and maintenance of; access and haul roads; ramps; waste and processing plant feed (ROM pad) areas; safety beams; high-walls; benches; storm water systems; catch drains; bund walls; surge dams; trimming; scaling or chain dragging of batters; heap-leach pads, tailing dams; dust suppression of loading areas; haul roads and dumping areas; rehabilitation of earth work areas or waste dumps; topsoil spreading; hydro-seeding and watering; and/or
- c. Excavation work or the construction of foundations, lift shafts, piling, retaining's, stairwells, underground parking garages or other underground structures; and/or
- d. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites;

and further includes-

- e. Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- f. The making, repairing, checking or overhauling of tools, vehicles plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in sub - clauses (a) to (f) inclusive:

but excluding -

- i) Work in connection with any one or more of the activities specified in sub-clause (c) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures;
- ii) Work in connection with any or more of the activities specified in sub-clause (c) when undertaken as an incidental operation in connection with the

erection of structures having the general character of buildings or when undertaken by the employers erecting such structures;

- iii) Any work falling within the scope of any other industry; and
- iv) The Mining Industry which is defined as the industry where employers and employees are associated for the purpose, directly or indirectly, for the winning, extracting, processing and refining of a mineral in, on or under the earth or water or from any residue stockpile or residue deposit.

3. Definitions and expressions

Any expression used in this agreement which is defined in the Basic Conditions of Employment Act, 1997, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context-

'Act' means the Labour Relations Act 66 of 1995, as amended and includes any regulation made in terms of that Act.

'Agreement enforcement disputes' refers to those disputes emanating from the Council's collective agreements.

'Associations' means any unincorporated body or persons.

'Collective agreement' includes –

- (i) any collective agreement signed under the auspices of the Council; and
- (ii) the rules of any fund or scheme established by the Council.

'Commission' or **'CCMA'** means the Commission for Conciliation, Mediation and Arbitration (CCMA), established in terms of section 112 of the Act.

'Council' means the Bargaining Council for the Civil Engineering Industry registered in terms of section 29 of the Act.

'Code' means any code of good practice issued in terms of the Act or any other employment law that may be applicable to employers and employees in the civil

engineering industry.

'Commissioner' means an accredited individual appointed by the Council to resolve disputes.

'Designated agent' means any person appointed as a designated agent in terms of section 33(1) of the Act.

'Dispute' includes an alleged dispute and means any situation where –

- ~~(i) any dispute in terms of the Labour Relations Act 66 of 1995 which must be referred to the Council.~~
- (ii) two or more parties are unable to reach agreement on a matter of mutual interest between them and one or more of those parties advise the Council in writing that they are in dispute; or
- (iii) the Council by way of its designated agents or any other person so appointed by the Council, declare a dispute against an employer and/or employee for failure to comply with the provisions of one or more of the Council's collective agreements. Notification of declaration of dispute shall be contained in a compliance order issued to the employer and/or employee in respect of the identified contraventions; or

'DRC' shall mean the Council's 'Dispute Resolution Centre'.

'Employee' means a person who is defined as an employee in the Act.

'Employer' means any person, including a temporary employment service (TES) as defined in section 198(1) of the Act, who employs or provides work to another person, other than a volunteer or an independent contractor, and who remunerates or undertakes, expressly or tacitly, to remunerate that person and who permits that other person to assist in any manner in the carrying on or conducting of the business.

'Employment law' means any employment law as defined in section 213 of the Act.

'Establishment' is any premises or site wherein or whereon the activities of the industry or part thereof, as herein defined, is carried on.

'General Secretary' means the General Secretary of the Council appointed by the annual general meeting of the Council.

'Labour Court' means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court.

'Party' means –

- (i) the Council;
- (ii) any or all of the employers' organisation(s) and/or trade union(s) listed as members of this Council;
- (iii) any employers' organisation(s) and/or trade union(s) not listed as a member of this Council; and/or
- (iv) any employer and/or employee and/or any of the organisations referred to in (ii) or (iii) hereof acting on their behalf.

'Rules' means the rules for conciliation, arbitration and other proceedings before the Council, as contained in Annexure A and includes footnotes appearing in any rule.

'Public holiday' means a public holiday referred to in section 1 of the Public Holidays Act 36 of 1994.

CHAPTER 2 - DISPUTE RESOLUTION

2.1 Preamble

2.1.1 The Council has been accredited, in terms of section 127(5) of the Act, to conciliate or arbitrate disputes provided for in this agreement.

2.1.2 Notwithstanding this agreement, parties may agree to meet in an attempt to resolve any dispute between them. They may give consideration to appoint, at their own cost, a mediator or arbitrator or referring the dispute to any other process, as agreed between them.

2.1.3 Notwithstanding the provisions of this agreement, nothing prevents the parties to a dispute to establish, by agreement, their own, private dispute procedures.

2.2 Disputes to be conciliated and arbitrated as provided for in the Act (commonly known as disputes of right)

2.2.1 Disputes in terms of this clause which arise in the registered scope of the Council must be referred to the Council for resolution and the Rules in Annexure A apply.

2.2.2 The arbitrating Commissioner, in determining a dispute, shall take into account –

- (a) any code of good practice that has been issued by NEDLAC in accordance with the provisions of the LRA and/or any code of good practice issued in terms of any other employment law, if applicable; and
- (b) the purpose and effect of the Council's collective agreements relevant to the matter being considered in the arbitration proceedings.

2.3 Mutual interest disputes (commonly known as disputes of interest)

2.3.1 Matters of mutual interest that are subject to negotiations are resolved through conciliation and industrial action, subject to clause 2.3.2.

2.3.2 Where the dispute concerns a refusal to bargain, as defined in section 64(2) of the Act, an advisory award must be issued at the conclusion of the conciliation process before notice of industrial action is given.

2.3.3 In order to refer a dispute concerning any matter in clauses 2.3.1 and 2.3.2 to the Council for conciliation, the relevant provisions of the Rules for the Conduct of Dispute Resolution Proceedings, contained in Annexure A, and the guidelines on picketing rules in Annexure B to this agreement, apply with the changes required by the context.

2.3.4 The conciliating commissioner may, in addition to the powers given to a conciliator in the Act, require the parties to appoint a sub-committee elected from the National Negotiating Forum, to meet within a specified number of days for the purposes of attempting to resolve the dispute and/or advise the parties to refer the dispute to advisory or binding arbitration.

2.3.5 Industry disputes shall be processed and dealt with in accordance with this agreement.

2.4 Disputes concerning unilateral amendments to conditions of employment.

2.4.1 Disputes about an employer unilaterally amending employment conditions will be dealt with in accordance with section 64(4) of the Act and the relevant provisions for referring a dispute to conciliation and otherwise dealing with a dispute in conciliation, as contained in the Rules for the Conduct of Dispute Resolution Proceedings in Annexure A, apply.

2.4.2 A dispute concerning the unilateral change to conditions of employment of a single employee is not arbitrable in terms of the Act and such single employee has recourse in terms of the common law or compliance procedures, whichever is more appropriate.

2.5 Interpretation and application disputes

2.5.1 Any dispute concerning the interpretation or application of this agreement will be resolved by way of conciliation and arbitration.

2.5.2 Any dispute concerning the interpretation and application of any other of the Council's collective agreements will be resolved by way of conciliation and arbitration.

2.5.3 The Rules for the Conduct of Dispute Resolution Proceedings in Annexure A to this agreement apply.

2.6 Demarcation disputes

Demarcation disputes must be referred to the CCMA in terms of section 62 of the Act.

2.7 General

2.7.1 The Council shall comply with the accreditation requirements set by the CCMA.

2.7.2 The Council shall establish and maintain a panel of accredited conciliators and arbitrators to conduct conciliations, arbitrations and all related proceedings in terms of

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this agreement. The persons appointed to the panel shall be referred to as commissioners.

- 2.7.3 The Council may at any stage decide to remove a commissioner from the panel for whatever reason it considers appropriate, including but not limited to incapacity or serious misconduct or failure to comply with the Council's requirements as outlined in his/her contract. Before removal, the Council will advise the commissioner of the reason for the anticipated removal and afford the commissioner an opportunity to make representations, in writing or orally, of why such a removal should not occur.
- 2.7.4 The Council shall maintain in safe-keeping all arbitration awards and rulings given under its jurisdiction, which shall be available to all parties within the industry.
- 2.7.5 Without in any way detracting from the rights and obligations emanating from this agreement, it shall be interpreted and applied in a manner that promotes effective dispute resolution.
- 2.7.6 The Council shall at all times observe the provisions of the Protection of Personal Information Act 4 of 2013 (POPI Act), where applicable, and keep personal information of parties confidential, except in the execution of its duties and functions and where such information has to appear in public documents such as rulings and arbitration awards. Parties are required to treat each other's private information with care and confidentiality.

CHAPTER 3 - ENFORCEMENT OF AND COMPLIANCE WITH COLLECTIVE AGREEMENTS

- 3.1 The Council is entitled to monitor, investigate and enforce compliance with its collective agreements in terms of this clause or a collective agreement concluded by the parties to the Council.
- 3.2 A designated agent of the Council must investigate and attempt to resolve a dispute/complaint that comes to his/her attention in the course of performing his/her duties.

- 3.3 A designated agent of the Council is authorised to issue a compliance order where he or she believes, after an investigation, that any person bound by the Council's agreements has not complied with any provision of any of the Council's agreements and the compliance order must require that person to comply with the collective agreement(s) within the time frame determined by the designated agent.
- 3.4 The Council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration by completing the prescribed form and serving it on all parties concerned.
- 3.5 The provisions of the Act and the rules in Annexure A to this agreement pertaining to arbitrations apply, with the necessary changes, to arbitrations conducted in terms of this Chapter.
- 3.6 An arbitrator conducting an arbitration in terms of this clause may make any appropriate award, including –
- (a) ordering a person to pay any amount owing in terms of a collective agreement;
 - (b) imposing a fine for a failure to comply with a collective agreement in accordance with Tables One and Two as set out hereunder as Annexure –D;
 - (c) charging a party an arbitration fee of R1 000-00 per day or any part of a day only in the event that an employer is found guilty of non-compliance with an agreement or in the event that the employer settles the non-compliance issue(s) after having received the notice of an arbitration hearing;
 - (d) ordering a party to pay the costs of the arbitration;
 - (e) confirming, varying or setting aside a compliance order issued by a designated agent; or
 - (f) any award contemplated in section 138(9) of the Act.
- 3.7 Interest on any amount that a person is obliged to pay in terms of a collective agreement accrues from the date on which the amount was first due and is payable at the rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975, unless the arbitration award provides otherwise.
- 3.8 If an employer files an application to review and set aside an arbitration award that was issued in a compliance arbitration, any obligation included in the award to pay a fine is suspended pending the outcome of the review.

CHAPTER 4 - EXEMPTIONS

All exemption applications and any appeal or dispute that may arise as a result of an exemption application must be dealt with in accordance with the "Exemptions Collective Agreement".

ANNEXURE A – RULES FOR THE CONDUCT OF DISPUTE RESOLUTION**RULES FOR THE CONDUCT OF DISPUTE RESOLUTION PROCEEDINGS BEFORE THE
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CHAPTER ONE SERVICE AND FILING OF DOCUMENTS

1. Contacting the Council

- (1) The addresses, email addresses, telephone and telefax numbers of the offices of the Council are contained in Appendix A to these Rules.
- ____(2) All documents must be filed with the Council at the Johannesburg office or at any one of the regional offices of the Council. _____

2. Office hours of the Council

- (1) For the purposes of these Rules, the offices of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 8:00 and 16:00, or as determined by the Council from time to time.
- (2) Documents that are handed in at one of the offices of the Council must be filed on the days and during the hours referred to in sub-rule (1). Documents may be faxed or e-mailed at any time during a day, whether during or outside the office hours of the Council.

3. Calculation of time periods

- (1) For the purpose of calculating time periods provided for in these Rules –
 - (a) "day" means a calendar day; and
 - (b) the first day is excluded and the last day is included, subject to sub-rule (2).
- (2) The last day of any period must be excluded if it falls on a Sunday, public holiday or on a day during the period between 16 December and 7 January.¹

¹ This sub-rule is in line with the Interpretation Act of 1957. The effect of this is that time periods in the Rules and in the Act are calculated in the same manner, save that in the case of the Rules the shutdown period is added.

4. Persons who may sign documents

- (1) A document that a party must sign in terms of the Act or these Rules must be signed by him or her personally or by his or her representative, including a legal representative.
- (2) (a) Where proceedings are jointly instituted or opposed by more than one employee, all documents must be signed by all the employees or by their representative(s), including a legal representative, or by one of the employees if mandated to sign on behalf of all the other employees. If an employee has been so mandated, the mandate must be attached to every and all referral forms and applications.

(b) A written list of all employees who are instituting or opposing the proceedings must be attached to every and all referral forms and applications. The list must contain the full names, identity numbers and telephone numbers of all the employees and, where possible, also their physical and e-mail addresses.
- (3) The onus is on all parties to any proceedings before this Council to advise the Council of any changes in their personal and/or contact details.

5. Service of documents on other parties

- (1) A party must serve a document on the other party or parties –
 - (a) by handing a copy of the document to –
 - (i) the party or parties concerned;
 - (ii) a representative authorised in writing to accept service on behalf of the party or parties;
 - (iii) a person who is in charge of the party's place of residence, business or place of employment and who appears to be at least 16 years of age.
 - (b) by leaving a copy of the document on the main door or other visible area at the address chosen by the party to receive service;
 - (c) by faxing a copy of the document to the party's fax number or to a fax number chosen by that party to receive service;

(d) by e-mailing a copy of the document to the party's e-mail address or to an e-mail address chosen by that party. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable to service by e-mail;

(e) by sending a copy of the document by registered mail to the last known postal address of the party or to a postal address chosen by the party to receive service;

(2) A document may also be served on –

(a) a company or other body corporate by handing a copy of the document to a responsible employee of the company or body corporate at its head office, its principal place of business within the Republic or its office where the dispute arose;

(b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employee(s) involved in the dispute ordinarily work or worked;

(c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the head office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;

(d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairperson or secretary of the managing or other controlling body of the association, as the case may be;

(e) on a municipality by serving a copy of the document on the municipal manager or any other person authorised to accept service;

(f) on a statutory body by handing a copy to the secretary or similar officer or member of the board or committee of that body or any person acting on behalf of that body; or

(g) on the State or a province, a state department or a provincial department, a minister or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.

(3) The Council or a commissioner may order service of a document in a manner other than prescribed in this Rule.

~~(4) The Council may, if so requested by an unrepresented employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act of 1997, provide administrative assistance to that employee to serve any notice or document in respect of any proceedings in terms of the Act or these Rules, provided that the employee remains responsible in law for any such service.~~

6. Proof of service

(1) A party must prove to the Council or to a commissioner that a document was served in accordance with Rule 5 by providing the Council or a commissioner with -

- (a) a copy of the registration slip that the document was sent by registered mail to the other party;
- (b) a copy of the fax transmission report indicating the successful fax transmission of the whole document to the other party. The Council may request an affidavit from the person who sent the fax to confirm that the whole document was successfully transmitted and that the number to which it was sent was the correct number of the recipient;
- (c) (i) if a document was served by e-mail, with a copy of the sent e-mail, indicating the successful transmission of the document and all attachments to the other party;
(ii) the Council may request an affidavit from the person who sent the e-mail to confirm that the document was successfully sent and that the e-mail address to which it was sent was the correct address of the recipient;

(iii) the relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable to service by e-mail.

(d) If a document was served by hand –

- (i) with a copy of a receipt signed by, or on behalf of, the recipient which clearly indicates the name and job title of the recipient and the place, time and date of service; or
- (ii) with an affidavit, confirming service, signed by the person who delivered a copy of the document to the other party or left it at the premises of the other party; or
- (iii) with a copy of the referral form with an official company stamp and the name and job title of the recipient, as well as the place, time and date of service.

7. Filing documents with the Council

(1) A party must file documents with the Council –

- (a) by handing the document to a responsible person at the Council's Johannesburg office or at a regional office, as contained in Appendix A to these Rules, and obtaining the signature of the recipient as confirmation of receipt of the document; or
- (b) by sending a copy of the document by e-mail, fax or registered mail to the Council at its Johannesburg office or a regional office, as contained in Appendix A.

(2) A document has been filed with the Council when –

- (a) the entire document has been handed to a responsible person at one of the offices of the Council, as contained in Appendix A;
- (b) an entire document sent by registered mail has been received by the Council;
- (c) an entire document has been successfully transmitted by fax to the Council; or

(d) an entire document has been successfully transmitted by e-mail to the Council, as provided for in the Electronics Communications and Transactions Act 25 of 2002.

- (3) A party must file the original of a document which was faxed if requested to do so by the Council or a commissioner within seven (7) days of the request. If not filed within seven (7) days, as requested, the faxed copy of the document may be rejected.

8 Notice of proceedings before the Council

The Council must give notice of a conciliation or arbitration hearing or any other proceeding before it by means of any of the methods of service provided for in Rule 5 or may give notice by means of short message service (SMS).

9. Documents and notices sent by registered mail

Any document or notice sent by registered mail by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was mailed.

CHAPTER TWO CONCILIATION OF DISPUTES

10. Referring a dispute to the Council for conciliation

- (1) A party must refer a dispute to the Council for conciliation by filing a completed LRA Form 7.11 (the "referral document") and serving a copy thereof on the other party or parties.
- (2) The referring party must –
 - (a) complete the LRA Form 7.11 fully by filling in all the spaces on the form and, in the case of more than one person referring a dispute, attach a list of the names, addresses and other contact details of each person as per Rule 4(2)(b);
 - (b) sign the referral document in accordance with Rule 4;
 - (c) attach to the referral document written proof, in accordance with Rule 6, that a copy of the referral document was served on the other party or parties to the dispute; and
 - (d) if the referral document is filed out of time, attach an application for condonation. The application for condonation must be done in accordance with Rule 24 and 35.
- (3) The Council must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

11. Notice by the Council to the parties of a conciliation hearing

- (1) The Council must notify the parties in writing, as per Rule 8, of a conciliation hearing at least fourteen (14) days prior to the scheduled date, unless the parties agree to a shorter period or justifiable circumstances require a shorter period of notice.
- (2) The calculation of the time period of fourteen (14) days in sub-rule 1 is done in accordance with Rule 3, but if notification is sent by registered mail an additional seven (7) days must be allowed.

12. Conciliation proceedings

- (1) Conciliation may be conducted by telephone, on an on-line platform or in person.
- (2) The notice of set down sent by the Council to the parties will clearly indicate which of the methods in sub-rule (1) will be used for the conciliation process and, where necessary, at which venue(s) a party or the parties must report in order to be present for the conciliation process.

13. Jurisdiction of the Council to conciliate a dispute

If a jurisdictional issue is raised during the conciliation proceedings the commissioner must require the referring party to prove that the Council has jurisdiction to conciliate the dispute, provided that any jurisdictional challenge requiring evidence may be deferred to arbitration.

14. Issuing of a certificate in terms of section 135(5)

- (1) A certificate of outcome, issued in terms of section 135(5) of the Act, that the dispute has or has not been resolved must identify the parties to the dispute, as well as the nature of the dispute as described in the referral document or as identified by the commissioner in consultation with the parties during the conciliation proceedings;
- (2) If the dispute that has been referred to the Council for conciliation has not been enrolled for conciliation within the 30-day conciliation period, as envisaged in section 135(2) of the Act, a certificate of non-resolution will be issued after expiry of said 30-day period in accordance with section 135(5) of the Act.

15. Conciliation proceedings are confidential

- (1) Conciliation proceedings are private and confidential and are conducted on a "without prejudice" basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing to disclosure or if ordered to do so by a court of law.

- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court of law to give evidence of what transpired during conciliation, unless ordered to do so by a court of law.

CHAPTER THREE
CON-ARB IN TERMS OF SECTION 191(5A)

16. Conduct of con-arb in terms of section 191(5A)

- (1) The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The notice period of fourteen (14) days is calculated in accordance with Rule 3, unless sent by registered mail in which case an additional seven (7) days must be allowed.
- (2) A party who intends to object to a dispute being dealt with in terms of section 191(5A) must deliver a written notice of objection to the Council and the other party or parties prior to the scheduled date.
- (3) Sub-rule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or to an unfair labour practice relating to probation.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1) the commissioner must conduct the conciliation on the date specified in the notice of set down.
- (5) Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
- (6) The provisions of these Rules that apply to conciliations and arbitrations, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings respectively.
- (7) If the arbitration does not proceed or is not concluded on the scheduled date, the Council must schedule the matter for arbitration or for continuance of the arbitration by notifying the parties in accordance with Rule 20.

CHAPTER FOUR ARBITRATIONS

17. Referring a dispute to the Council for arbitration

- (1) A party who wants to refer an unresolved dispute to the Council for arbitration must deliver a completed LRA Form 7.13 by filling the form with the Council (in terms of Rule 7) and serving a copy thereof on the other party or parties (in terms of Rule 5).
- (2) When delivering an LRA Form 7.13, the referring party must –
 - (a) ensure that LRA Form 7.13 has been fully completed by filling in all spaces and that all attachments have been annexed to LRA Form 7.13, including a list of all the referring parties if there are more than one;
 - (b) that LRA Form 7.13, and all attachments have been signed in accordance with Rule 4;
 - (c) when filing the referral document with the Council, attach to it written proof that a copy of LRA Form 7.13 and all attachments were served on the other party or parties to the dispute in accordance with Rule 6; and
 - (d) where LRA Form 7.13 is filed out of time, attach an application for condonation which must be done in accordance with Rules 24 and 35.
- (3) The Council must accept an LRA Form 7.13 even if sub-rule (2) has not been complied with, but may refuse to process the referral until the requirements in sub-rule (2) have been complied with.
- (4) This Rule does not apply to con-arb proceedings held in terms of section 191(5A).

18. Statements of case

- (1) The Council or a commissioner may direct –
 - (a) the referring party in an arbitration to deliver a statement of case; and
 - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of sub-rule (1) must –

- (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and
 - (b) be delivered within the time period specified by the commissioner or the Council.
- (3) The commissioner has a discretion to continue with the arbitration despite non-compliance with a directive to deliver a statement of case and answering statement, but any non-compliance must be taken into account when considering costs at the conclusion of the arbitration hearing.

19. Pre-arbitration conference

- (1) The parties to an arbitration must –
- (a) endeavour in good faith to conduct a pre-arbitration conference; or
 - (b) the parties may agree to hold a pre-arbitration conference; or
 - (c) if so directed by a commissioner, the parties must conduct a pre-arbitration conference and file a minute with the Council in accordance with sub-rules (3) and (4).
- (2) When parties conduct a pre-arbitration conference they must deal with the following matters –
- (a) any means by which the dispute may be settled;
 - (b) facts that are agreed between the parties;
 - (c) facts that are in dispute;
 - (d) the issues that the arbitrating commissioner is required to decide;
 - (e) the relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - (f) the sharing and exchange of relevant documents and the preparation of bundles of documents in chronological order with each page numbered;

- (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence;
 - (h) whether evidence on affidavit will be admitted with or without the deponent of the affidavit testifying and the other party cross-examining him or her;
 - (i) which party must begin;
 - (j) the necessity for any on-the-spot inspection;
 - (k) securing the presence of any witness at the venue appointed by the Council;
 - (l) the raising and/or resolution of any preliminary points that are intended to be taken;
 - (m) the exchange of witness statements;
 - (n) expert evidence;
 - (o) any other means by which the proceedings may be expedited;
 - (p) an estimate of the time required for the hearing;
 - (q) the right of representation; and
 - (r) whether an interpreter is required and, if so, for how long and for which of the official South African languages.
- (3) Unless a dispute is settled, the parties must draw up and sign a minute, setting out the issues referred to in sub-rule (2) and indicating their agreement or disagreement on those issues.
- (4) The referring party must ensure that a copy of the pre-arbitration conference minute is filed with the Council within seven (7) days of the conclusion of the pre-arbitration conference or as directed by the Council or a commissioner.
- (5) The Council or commissioner may, after receiving a pre-arbitration minute –
- (a) enroll the matter for arbitration;
 - (b) direct the parties to hold a further pre-arbitration conference; or

(c) issue any other directive to the parties concerning the conduct of the arbitration.

20. Notice by the Council to parties of an arbitration hearing

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of twenty-one (21) days is calculated in accordance with Rule 3, unless sent by registered mail in which case an additional seven (7) days must be allowed.

21. Jurisdiction of the Council to arbitrate

If, during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the arbitrating commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

22. Postponement of an arbitration or any hearing other than conciliation

- (1) An arbitration or other hearing must be postponed, and there is no need for the parties to appear, if all the parties to the proceedings agree in writing to a postponement and the written agreement is filed with the Council at least seven (7) days before the scheduled date.
- (2) Where the parties agree to a postponement, but fail to file their written agreement to postpone at least seven (7) days before the hearing date, as required in sub-rule (1), the parties will not be required to appear on the scheduled date, but may be held liable, in equal portions, for the costs incurred by the Council in respect of the day of the hearing, unless good cause can be shown why the written agreement was filed late.
- (3) Upon receipt of the agreement referred to in sub-rule (2), the Council will notify the parties that they do not have to appear on the hearing date and at the same time direct the parties to submit written representations within 14 (fourteen) days from the date of the notification to show good cause of why they should not be held liable for the costs of the hearing date. The representations will be placed before the

commissioner seized with the matter, who has to determine the issue of the costs in the arbitration award when dealing with the main issue in dispute.

- (4) An arbitration or other hearing may be postponed on application. Where the parties do not agree to a postponement in writing, any party to the dispute may apply for a postponement. The application must be made in accordance with Rule 35 and the time periods in Rule 35 apply.
- (5) The Council will appoint a commissioner to consider the application for postponement on the papers and the commissioner so appointed will issue a written ruling before the scheduled hearing date.
- (6) If an application for postponement is not delivered within the prescribed time, the parties have to attend the proceedings, at which time condonation for the late delivery and the postponement will have to be argued. Parties must be prepared to continue with the arbitration in the event that postponement is not granted.

CHAPTER FIVE
RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND OTHER PROCEEDINGS

23. Venue of proceedings

- (1) The Council determines the venue for any and all proceedings.
- (2) The parties to a dispute may agree to have the conciliation and/or arbitration proceedings or any other proceedings on an on-line platform or, if the parties do not agree, any of the parties may submit to the Council, fourteen (14) days before the hearing date, a written request with motivation for an on-line hearing.
- (3) Upon receipt of the request referred to in sub-rule (2), the Council will invite the other party to respond to the request within five (5) days from the date of the invitation, whereafter the Council will appoint a commissioner to determine on the papers whether the request for an on-line hearing should be granted.
- (4) When a matter is to be heard on an on-line platform, the Council will determine the venue or venues the parties must attend to in order to have access to the on-line platform.

24. Condonation for the late filing of documents or failure to comply with the Rules

- (1) This Rule applies to all referral documents, applications and all other documents which are delivered outside of the applicable time period prescribed in the Act or any other employment law or these Rules.
- (2) Condonation must be applied for in accordance with Rule 35 when a document is filed late with the Council or as soon as the party who has filed a document becomes aware that the document was filed late.
- (3) An application for condonation must set out the grounds on which condonation is sought and must include details of at least the following:
 - (a) the degree of lateness;
 - (b) the reasons for the lateness;
 - (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;

- (d) any prejudice to the other party; and
- (e) any other relevant factors.

- (4) A commissioner appointed by the Council for this purpose may condone, on good cause shown, any failure to comply with any time period provided for in the Act, in any employment law or these Rules.
- (5) In deciding whether or not to grant condonation, the commissioner may act in such a manner as is deemed expedient in the circumstances in order to achieve the objectives of the Act. In doing so, regard shall be had to substance rather than form.

25. Representation

(1) In conciliation proceedings –

- (a) an employee or ex-employee² may appear in person or can be represented by an office bearer, official or member of his or her registered trade union, provided that the employee was a paid-up member of that trade union at the date the dispute arose;
- (b) an employer who is a sole trader may appear in person or can be represented by any of its employees;
- (c) an employer who is a partnership can be represented by any of the partners or by any employee of the partnership;
- (d) an employer who is a close corporation (CC) can be represented by any member or any employee of the CC;
- (e) an employer who is a company can be represented by a director or an employee of that company;
- (f) a government department, municipality or any organ of state can be represented by any one of its employees;
- (g) an employer who is an association, organisation or other entity can be represented by one of its board members or by an employee;
- (h) despite the provisions in (b) – (g), an employer can be represented by an office bearer, official or member of its registered employers' organisation;

² An "ex-employee" for the purposes of this Rule means an employee who alleges an unfair dismissal and who is challenging the fairness of the dismissal; an employee whose services were terminated and who alleges, in terms of section 186(2)(c) of the Act, that the employer has refused or failed to reinstate or re-employ him/her in terms of an agreement; and an employee who has been refused to resume work after maternity leave, as in section 186(1)(c).

- (i) a registered trade union that is a party to a dispute can be represented by an office bearer, official or member of the trade union if authorised to do so in writing, which written authorisation must be handed up to the presiding commissioner at the commencement of the proceedings;
 - (j) a registered employers' organisation that is a party to a dispute can be represented by an office bearer, official or member of the employers' organisation if authorised to do so in writing, which written authorisation must be handed up to the presiding commissioner at the commencement of the proceedings;
- (2) In arbitrations or any proceedings other than conciliations a party to the dispute may appear in person or be represented by a person as set out in sub-rule (1) or by a legal representative, subject to sub-rule (3).
- (3) If an arbitration concerns the dismissal of an employee as a result of the employee's alleged misconduct or incapacity, a party is not entitled to be represented by a legal representative in the arbitration hearing,³ unless –
- (i) the commissioner and all the parties consent; or
 - (ii) on application, which application must be done in accordance with Rule 35, and if the commissioner considering the application concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –
 - a) the nature of the questions of law raised by the dispute;
 - b) the complexity of the dispute;
 - c) the public interest; and
 - d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (4) The commissioner presiding over the proceedings must determine the standing of the parties' representatives whether or not one party objects to the representative of another party.

³ For the purposes of this rule "arbitration hearing" means the actual arbitration and does not include other hearings or proceedings related to or flowing from the arbitration, such as jurisdictional challenges, other preliminary issues and applications.

(5) In determining whether a representative qualifies to represent a party in terms of this Rule, the commissioner may call upon the representative to show why he or she should be permitted to appear in terms of this Rule and may direct the representative to tender any documents, including but not limited to, qualifications, constitutions, pay-slips, contracts of employment, recognition agreements and proof of paid-up membership of a registered trade union or registered employers' organisation.

(6) No representative other than a practicing attorney or advocate may charge a fee or receive any financial benefit in consideration for representing a party in any proceedings before the Council.

26. Correcting the citation of a party

- (1) If a party to any proceedings has been incorrectly or defectively cited, the Council or a commissioner may of their own accord or by consent of the parties or on application and on notice to the parties concerned correct the error or defect.
- (2) An application to have a citation corrected must be made in accordance with Rule 35.

27. Consolidation of disputes

- (1) The Council, of its own accord, or a commissioner, of his or her own accord, may consolidate more than one dispute so that the disputes are dealt with in the same proceedings.
- (2) Parties may agree to have disputes consolidated, in which case a commissioner must issue a written ruling in which the consolidation is confirmed or the parties may file a written and signed agreement to confirm the consolidation.
- (3) Any party to a dispute may apply for the consolidation of disputes, in which case an application must be made in accordance with Rule 35 and a commissioner must issue a written ruling, allowing or dismissing the application.

28. Joinder or substitution of parties

- (1) The Council or the commissioner seized with a matter may, at any time prior to the conclusion of an arbitration hearing, join any person as a party to the proceedings if that person's right to relief depends on substantially the same question of law or fact.
- (2) The commissioner seized with a matter may, at any time during any proceedings, order the joining of any person as a party to the proceedings if the person to be joined has a substantial interest in the subject-matter and/or outcome of the proceedings.
- (3) The commissioner may make an order in terms of sub-rule (2) –
 - (a) of his or her own accord;
 - (b) on application by a party; or
 - (c) on application by a person who has an interest in the matter before the Council and who is entitled to be joined to the proceedings.
- (4) When making an order in terms of sub-rule (2), the commissioner may –
 - (a) give appropriate directions as to further procedures in the proceedings; and
 - (b) make an order of costs in accordance with these Rules.
- (5) If in any proceedings it becomes necessary to substitute a party with another person, any party to the proceedings may apply to the Council for an order substituting that party with the other person and the commissioner seized with the matter may make such order and/or give appropriate directions as to the further procedures in the proceedings.
- (6) An application to join a person or to substitute a party may be made at any time prior to the conclusion of an arbitration hearing and must be made in accordance with Rule 35.
- (7) An application to join a person as a party to proceedings or to substitute an existing party with another person must be accompanied by copies of all documents

previously delivered, unless the person concerned or his or her representative is already in possession of the documents.

- (8) Subject to any order made in terms of sub-rules (4) and (5), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

29. Discovery of documents

- (1) At any time after the request for arbitration has been delivered either party may apply, in accordance with Rule 35, for an order as to the discovery of relevant documents or other evidence.
- (2) The parties may agree to the discovery of documents or other relevant evidence.
- (4) Documents and/or other evidence to be discovered in terms of sub-rules (1) and (2), must be disclosed before the scheduled hearing date.

30. Failure to attend proceedings

- (1) If both the referring party and his or her representative fail to attend conciliation proceedings, the commissioner must conclude the proceedings by issuing a certificate to the effect that a dispute remains unresolved.
- (2) If the party opposing the dispute and its representative fail to attend the conciliation proceedings, the commissioner must issue a certificate to the effect that the dispute remains unresolved or, in the case of a mutual interest dispute, postpone the proceedings to a later date, provided that such a postponement falls within the 30-day conciliation period as provided for in section 135(2) of the Act and provided, further, that there is a compelling reason for such a postponement.
- (3) If the referring party and his or her representative fail to attend an arbitration hearing or any proceedings before the council other than conciliation, the commissioner may dismiss the matter, unless the referring party or his or her representative has provided, before the commencement of the proceedings, justifiable and acceptable reasons for not attending the proceedings.

- (4) If the party opposing the dispute that has been referred to arbitration or opposing any issue that has been referred to the Council for proceedings other than conciliation fails to attend, the commissioner may continue with the proceedings in the absence of the opposing party and his or her representative or may, on good cause shown, postpone the proceedings to a later date.
- (5) Any postponement or dismissal of a matter in terms of this Rule must be confirmed by the commissioner in writing and the written ruling must be served by the Council on the parties.

31. Subpoenas

- (1) A commissioner who has been appointed to resolve a dispute may, in terms of section 142(1) of the Act, subpoena any person, including an expert, whose evidence is required to testify and/or to produce any relevant document(s) or other relevant evidence during any proceedings.
- (2) Any party who requires the Council or a commissioner to subpoena a person in terms of section 142(1) of the Act must file a completed LRA Form 7.16, together with a written motivation, setting out why the evidence of the person to be subpoenaed is necessary, as well as proof of payment of the witness fees.
- (3) A party requesting the Council to waive the requirement of paying witness fees in terms of section 142(7)(c) of the Act must set out the reasons for the request in writing at the time of requesting the subpoena. The Council's decision to waive or not waive the witness fees must be provided in writing to the party who requested the waiver before the subpoena is served on the person to be subpoenaed.
- (4) An application in terms of sub-rule (1) must be filed with the Council at least fourteen (14) days prior to the scheduled date of the proceedings or as directed by the commissioner seized with the matter.
- (5) The Council must refuse to issue a subpoena if –
 - (a) the party requesting the subpoena does not establish why the evidence of the person is necessary;
 - (b) the witness who is being subpoenaed does or will not receive the subpoena at least seven (7) days prior to the scheduled date of the proceedings;

(c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees and reasonable travel costs and subsistence expenses of the person subpoenaed, unless the witness fees has been waived by the Council in terms of sub-rule (2).

(6) A subpoena must be served on the witness –

(a) by the person who has requested the issuing of the subpoena or by the Sheriff at least seven (7) days prior to the scheduled date of the proceedings; and

(b) must be accompanied by proof of payment of the prescribed witness fees for at least one day.

(6) Sub-rules (5)(c) and (6)(b) do not apply if the Council, in terms of section 142(7)(c), has waived the requirement to pay witness fees.

32. Expert witnesses

(1) A party intending to call an expert witness shall give seven (7) days' notice, prior to the date of the proceedings, to the Council and the other party or parties of its intention to call an expert witness.

(2) Such notice shall be accompanied by—

- (a) a summary of the evidence the expert witness will give;
- (b) any document on which the expert witness will rely; and
- (c) the basis upon which the witness is regarded to be an expert.

33. Payment of witness fees

(1) A witness who has been subpoenaed in any proceedings before the Council must be paid a witness fee of R300-00 per day or any part of a day.

(2) In addition to the witness fee as in sub-rule (1), the witness must be reimbursed for reasonable travel and subsistence expenses, which expenses must be submitted, with supporting documentation, to the presiding commissioner for determination.

(3) The witness fee must be paid by –

- (a) the party who requested the Council to issue the subpoena; or
- (b) the Council, if the issuing of the subpoena was not requested by a party but by a commissioner in accordance with sub-rule (1) or if the Council has waived the requirement to pay witness fees in terms of section 142(7)(c) of the Act.

34. Costs orders in arbitration proceedings

(1) In any arbitration proceedings or proceedings arising out of or in the course of an arbitration, the commissioner may make an order for the payment of costs according to the requirements of law and fairness and, in doing so, should have regard to –

- (a) the measure of success that the parties achieved;
- (b) considerations of fairness that weigh in favour of or against granting a costs order;
- (c) any with prejudice offers that were made with a view to settling the dispute;
- (d) whether a party or his or her representative acted in a frivolous and vexatious manner by proceeding with or defending the dispute in the arbitration or in its conduct during the proceedings;
- (e) the effect that a costs order may have on the continued employment relationship of the parties;
- (f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
- (g) the importance to the parties and the labour community at large of the issues raised;
- (h) any other relevant factor.

(2) Costs may be ordered either in the form of disbursements or legal costs, not both.

- (3) An order as to costs, in the form of disbursements only, may be made where not all parties are legally represented during the proceedings and, if such costs are ordered, the commissioner can order costs for only those disbursements he or she deems reasonable in the circumstances.
- (4) In proceedings where all parties are not legally represented a party seeking costs in the form of disbursements must do so during the course of the proceedings and must itemise each claim with supporting documentation. The other party or parties must be afforded an opportunity to oppose the claims.
- (5) Where the commissioner orders costs in the form of disbursements in proceedings in which not all parties are legally represented, the commissioner must, in his or her order, specify each item that has been allowed, as well as the amount in respect of each item.
- (6) An order as to costs, in the form of legal costs, can be ordered only if both or all parties to the proceedings are legally represented and such costs are fixed at a rate of R5 000 (five thousand rand) in respect of the first day of the proceedings and R3 000 (three thousand rand) for each additional day of the proceedings. Said amounts are inclusive of VAT.

CHAPTER SIX APPLICATIONS

35. Bringing an application

- (1) This Rule applies to all –
 - (a) applications for condonation, joinder, substitution, variation, rescission, postponement, consolidation of disputes, correction of citation and discovery of documents;
 - (b) applications in a jurisdictional dispute; and
 - (c) other preliminary or interlocutory applications.
- (2) An application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application, such notice to be served in accordance with Rule 5. If an application is delivered by registered mail, the application must be brought twenty-one (21) days prior to the hearing date.
- (3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state –
 - (a) the title of the matter;
 - (b) the case number assigned to the matter by the Council, if available;
 - (c) the relief sought;
 - (d) the address at which the party delivering the documents will accept delivery of all documents in the proceedings;
 - (e) that any party who intends to oppose the matter is required to deliver a notice of opposition and an answering affidavit within five (5) days from the date the application was served or, if delivered by registered mail, within twelve (12) days;
 - (f) that the application may be heard in the absence of a party that does not comply with sub-paragraph (e); and
 - (g) that a schedule is included, listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out –

- (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to respond to the facts;
 - (c) a statement of legal issues that arises from the material facts, in sufficient detail to enable any party to respond to the issues;
 - (d) If the application is filed outside the relevant time period, grounds for condonation in accordance with Rule 24; and
 - (e) If the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in this Rule.
- (5) (a) Any party opposing the application must deliver a notice of opposition and an answering affidavit within five (5) days from the day on which the application was served or, if it was served by registered mail, within twelve (12) days.
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the same information as is required in sub-rules (3) and (4).
- (6) (a) The party bringing the application may deliver a replying affidavit within three (3) days from the date on which the notice of opposition and answering affidavit were served or, if it was served by registered mail, within ten (10) days.
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (7) A commissioner may permit the affidavits referred to in this Rule to be substituted by written statements.
- (8) In an urgent application a commissioner –
- (a) may dispense with the requirements of this Rule; and
 - (b) may only grant an order against a party who has had reasonable notice of the application.

(9) Once the replying affidavit has been delivered or, if not delivered, once the time period for delivering the replying affidavit has lapsed, the Council must—

- (a) allocate a date for the hearing of the application, which may be on a motion roll; and
- (b) notify the parties of the date, time and venue of the hearing;
- (c) or the Council may appoint a commissioner to deal with the application on the papers.

(10) Despite this Rule, the commissioner may determine an application in any manner deemed appropriate, provided that the Council or the commissioner inform the parties of how the process will be conducted and giving the parties an opportunity to be heard.

36. Variation and rescission of rulings and arbitration awards

An application for the variation or rescission of an arbitration award or ruling must be made in accordance with Rule 35 and within fourteen (14) days of the date on which the applicant became aware of —

- (a) the arbitration award or ruling; or
- (b) a mistake common to the parties to the proceedings.

37. Application to refer a dismissal dispute to the Labour Court

(1) An application in terms of section 181(6) of the Act to refer a matter to the Labour Court must be delivered —

- (a) within ninety (90) days of a certificate that the dispute has not been resolved was issued; or
- (b) by a party who has not requested arbitration, within fourteen (14) days of the date the referral to arbitration was filed.

- (2) Despite sub-rule (1), a party who requests arbitration may not thereafter make an application in terms of section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of section 191(8) within fourteen (14) days after receipt of the objection.

**CHAPTER SEVEN
SECTION 188A INQUIRY**

38. Inquiry by arbitrator in terms of section 188A

- (1) An employer requesting the Council to conduct an inquiry in terms of section 188A of the Act must do so by filing a completed LRA Form 7.19 to the Council.
- (2) The employee must sign the LRA Form 7.19 to indicate his or her consent to an inquiry by an arbitrator, unless –
 - (a) the employee earns more than the amount determined by the Minister in terms of section 8(3) of the Basic Conditions of Employment Act (BCEA) and has consented in terms of section 188A(4) of the Act to the inquiry in his or her contract of employment, in which case a copy of the contract must be attached to LRA Form 7.19; or
 - (b) the employee is bound by a collective agreement that provides for a section 188A inquiry, in which case a copy of the collective agreement must be attached to LRA Form 7.19.
- (3) When filing the LRA Form 7.19 the employer must pay an arbitration fee of R6 000 (six thousand rand) per day in respect of all the days the inquiry is likely to be scheduled to the Council by way of a bank guaranteed cheque or by electronic transfer into the banking account of the Council.
- (4) Within seven (7) days of receipt of a completed LRA Form 7.19 which complies with sub-rule (2) and payment of the prescribed fee in terms of sub-rule (3), the Council must notify the parties of the date, time and venue of the inquiry.
- (5) Unless the parties agree otherwise, the Council must give the parties at least seven (7) days' notice of the inquiry.
- (6) The Council will be required to refund a fee paid in terms of sub-rule (3) only if the Council is notified of the resolution of the matter prior to enrolling the matter for an inquiry and issuing a notice to the parties in terms of sub-rule (4).

**CHAPTER EIGHT
GENERAL****39. Certification of arbitration awards**

- (1) An application to have a Council arbitration award certified must be made on LRA Form 7.18A.
- (2) An arbitration award that has been certified in terms of section 143 of the Act that –
 - (a) orders the payment of an amount of money to an employee may be enforced by execution against the property of the employer by the Sheriff of the court in the magisterial district where the employer resides or conducts its business;
 - (b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings in the Labour Court.
- (3) For the purposes of this Rule, an arbitration award includes any order as to costs and an arbitration fee charged in terms of section 140(2) of the Act.

40. Recording of Council proceedings

- (1) A commissioner must keep a record of all proceedings, save conciliation proceedings, in digital recording format and in legible hand-written or typed notes.
- (2) The record must capture the entire proceedings, including all evidence, testimonies and arguments given by the parties.
- (3) Upon conclusion of the proceedings the commissioner must file the entire and full record with the Council and the Council shall keep the record in safe-keeping.
- (4) Any party to the proceedings may request a copy of the record or a portion thereof upon payment of the costs as prescribed by the Council.

41. Project specific agreements

- (1) Any project specific agreement that provides for a special dispute resolution dispensation that covers parties to the Council must be approved by the Council.
- (2) Disputes arising in the context of a project specific agreement shall be dealt with in accordance with such an agreement and where such agreement is silent, in terms of these Rules.

42. Transitional arrangements

These Rules become applicable on the date of their publication in the *Government Gazette* and shall apply to all matters that are referred on or after said date. Any matter that was referred before the coming into operation of these Rules will be dealt with in terms of the Rules as they were before the amendments of 2023.

43. Definitions

Unless the context of these Rules indicates otherwise, any expression, word or phrase used in these Rules shall have the same meaning as defined in the Labour Relations Act 66 of 1995 and any reference to an Act shall include all amendments and regulations to such Act and, unless the contrary intention appears, words importing the masculine gender shall include the female gender and, further, unless inconsistent with the context.

"Act" means the Labour Relations Act 66 of 1995, as amended, and includes all regulations made in terms of that Act and codes or guidelines issued under the Act.

"Association" means any unincorporated body or persons.

"CCMA" or "Commission" means the Commission for Conciliation, Mediation and Arbitration, established in terms of section 112 of the Act.

"Collective agreement" includes –

- (I) any collective agreement signed under the auspices of the Council; and
- (II) the rules of any fund or scheme established by the Council.

"Con-arb" means proceedings held in terms of section 191(5A) of the Act.

"Council" or the **"BCCEI"** means the Bargaining Council for the Civil Engineering Industry, registered in terms of section 29 of the Act.

"Commissioner" means a person appointed by the Council to preside over and determine dispute in the Council and who has been accredited by the CCMA.

"Deliver" means to serve a document on other parties and to file that document with the Council.

"Dispute" includes an alleged dispute and means any situation where –

- (i) two or more parties are unable to reach agreement on a matter of mutual interest between them and one or more of those parties advise the Council in writing that they are in dispute; or
- (iii) any dispute that has to be referred to the Council, in terms of the Labour Relations 66 of 1995, for resolution.

"Employer" means any person, including a temporary employment service (TES) as defined in section 198(1) of the Act, who employs or provides work to another person other than a volunteer or an independent contractor and who remunerates or undertakes, expressly or tacitly, to remunerate that person and who permits that other person to assist in any manner in the carrying on or conducting of the business.

"File" means to lodge with the Council in accordance with Rule 7 of these Rules.

"General Secretary" means the General Secretary of the Council, appointed by the annual general meeting of the Council.

"Labour Court" means the Labour Court, established by section 151 of the Act and includes any judge of the Labour Court.

"Legal representative" means a legal practitioner as defined in section 213 of the Act.

"Party" means any party to proceedings before the Council.

"Proceedings" means a conciliation hearing, an arbitration hearing, a con-arb hearing, a section 188A inquiry, any hearing that is related to or flows from a conciliation, arbitration or

con-arb and any other hearing that is scheduled by the Council in the process of resolving a dispute and includes applications that are considered and determined on the papers.

"Public holiday" means a public holiday as defined in section 1 of the Public Holidays Act 36 of 1994.

"Rules" means these Rules and includes headings, annexures and any footnote to a Rule.

"Serve" means to provide a copy of a document to the other party or parties to the proceedings in accordance with rule 5 and "service" has a corresponding meaning.

ANNEXURE B – GUIDELINES ON PICKETING**Guidelines on Picketing Rules**

1. Of relevance in establishing picketing rules are:
 - the Picketing Regulations (GNR 1393, GG no 42121, 19 December 2018), with effect 1 January 2019; and
 - the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (GNR 1396, GG 42121, 19 December 2018).
2. Both the Regulations and the Code provide for default picketing rules and parties to a dispute are well advised to consider them in coming to an agreement on picketing rules. In the absence of an agreement between the parties, the conciliating commissioner who has to establish picketing rules must have regard to the default rules in the Regulations and the Code.
3. Ideally, picketing rules should be negotiated between an employer and a registered trade union early on in their relationship of bargaining; or the rules can be negotiated in the bargaining council. The picketing rules can be included in a collective agreement on bargaining, a recognition agreement or it can be an independent agreement.
4. Where an agreement on picketing rules has not been concluded early on in the employer-union relationship, the parties must endeavour to establish picketing rules as soon as they realise during negotiations that they are heading towards a deadlock or when they have in fact deadlocked. It is preferable for parties to conclude their own agreement for fear that a commissioner-established set of rules is forced upon them.
5. If the disputing parties, after good faith endeavours, can still not reach an agreement on picketing rules, the conciliating commissioner must attempt to get the parties to agree; alternatively, the commissioner must establish picketing rules.
6. An agreement on picketing rules must, as a minimum, include the following:
 - the parties;
 - the purpose of the picket and the fact that the picket is in accordance with section 69 of the LRA;
 - the participants in the picket – who will picket and their anticipated numbers;

- location of the picket – the exact location/premises where the picket may and will take place must be specified;
- if the picket is at the employer's premises, specific rules that may be applicable/preferable must be specified, which may include, but not limited to the use of bathroom facilities, telephone use, access to water;
- the hours during which picketing will be allowed;
- the duration of the picket – start and end dates;
- conduct of the picketers – conduct that is and is not allowed;
- who will control the picketers and enforce compliance with the picketing rules;
- what the employer is expected to do and may not do;
- consequences of failure to comply with the picketing rules (which may include police intervention);
- dispute resolution;
- any other issue that the union and the employer may deem necessary to include in the agreement on picketing.

7. Where an agreement on picketing rules has been concluded, such agreement must accompany the referral form (LRA 7.11).

ANNEXURE C – FORMS**FORMS**

LRA Form 7.11	REFERRING A DISPUTE TO THE BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY ("BCCEI") FOR CONCILIATION (INCLUDING CON-ARB)
LRA Form 7.12	CERTIFICATE OF OUTCOME OF DISPUTE REFERRED TO CONCILIATION
LRA Form 7.13	REQUEST FOR ARBITRATION
LRA Form 7.14	NOTICE OF OBJECTION TO ARBITRATION BY SAME COMMISSIONER
LRA Form 7.15	APPLICATION TO APPOINT A SENIOR COMMISSIONER TO ARBITRATE
LRA Form 7.16	SUBPOENA
LRA Form 7.18A	APPLICATION TO CERTIFY A BARGAINING COUNCIL AWARD
LRA Form 7.19	REQUEST FOR INQUIRY BY ARBITRATOR
LRA Form 7.21	REQUEST FOR ADVISORY AWARD ON WHETHER A PERSON IS AN EMPLOYEE

All above forms are accessible via the website at www.bccel.co.za; alternatively, contact the BCCEI offices in Johannesburg for assistance.

ANNEXURE D – GUIDELINES FOR THE LEVYING OF FINES**GUIDELINES FOR THE LEVYING OF FINES**

- 1) Until such time as the Minister promulgates a notice in terms of Section 33A (13) of the Act, an arbitrator conducting an arbitration in terms of section 33A of the Act may impose a fine in terms of section 33A (8) of the Act subject to the maximum fines set out in Table One and Two of this item.
- 2) The maximum fine that may be imposed by an arbitrator in terms of section 33A (8) (b) of the Act-
 - (a) for a failure to comply with a provision of a collective agreement not involving a failure to pay any amount of money, is the fine determined in terms of Table One; and
 - (b) involving a failure to pay an amount due in terms of a collective agreement, is the greater of the amounts determined in terms of Table One and Table Two.

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provisions within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four or more previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

TABLE TWO: MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order

Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

APPENDIX A – ADDRESSES OF THE COUNCIL

The addresses and contact details of the Council are as follows:

Johannesburg office

Block F, Eastgate Park Office

24 South Boulevard, Bruma 2198

Tel: (011) 450 4966/63

Fax: 086 550 4995

e-mail: disputes@bccel.co.za or info@bccel.co.za

Cape Town office

2nd Floor, Sunbel Building,

3 Old Paarl Road, Bellville, Cape Town, 7530

Tel: 010 001 0096

Fax: 086 550 4995

e-mail: disputes@bccel.co.za or info@bccel.co.za

Durban office

Suite 102, Gateview Office Park

3 Sugar Close, Umhlanga Ridge 4320

Tel: 010 001 0097

Fax: 086 550 4995

e-mail: disputes@bccel.co.za or info@bccel.co.za

East London office

Shop 11C, Beacon Bay Crossing Centre

Cnr N2 & Bonza Bay Road, Beacon Bay 5241

Tel: 010 001 0099

Fax: 086 550 4995

e-mail: disputes@bccel.co.za or info@bccel.co.za

Port Elizabeth (Gqeberha) office

51 Sixth Ave, Newton Park

Port Elizabeth (Gqeberha) 6050

Tel: 010 001 0098

Fax: 086 550 4995

e-mail: disputes@bccel.co.za or info@bccel.co.za