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## GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

### DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 440

27 March 1997

LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)

#### AMENDMENT OF SCHEDULE 7

Under section 207 (1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), I, Tito Titus Mboweni, Minister of Labour, hereby change Schedule 7 to the said Act as set out in the Annexure.

**T. T. MBOWENI**  
Minister of Labour

#### ANNEXURE

#### *Amendment of Schedule 7 to Act 66 of 1995*

Schedule 7 is hereby amended—

- (a) by the insertion in item 12 (1) (a) of the Afrikaans text of the expression “en afdwingbaar” between the words “krag” and “vir”;
- (b) by the substitution in item 12 (5B) for the expression “ore” of the expression “or”;
- (c) by the substitution in item 22 (2B) for the expression “where” of the expression “were”;
- (d) by the deletion in the Afrikaans text in the heading of item 21A after the expression “akkreditering” of the expression “OO”;
- (e) by the substitution in the Afrikaans text in item 21A (1) (a) for the expression “versoeing” of the expression “versoening”; and
- (f) by the substitution in the Afrikaans text in item 21A (1) (b) for the expression “n'n” of the expression “na”.

**No. R. 440****27 Maart 1997**

## WET OP ARBEIDSVERHOUDINGE, 1995 (WET No. 66 VAN 1995)

**WYSIGING VAN BYLAE 7**

Kragtens artikel 207 (1) van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), verander ek, Tito Titus Mboweni, Minister van Arbeid, hierby Bylae 7 by die vermeldde Wet soos in die Bylae uiteengesit.

**T. T. MBOWENI****Minister van Arbeid****BYLAE****Wysiging van Bylae 7 by Wet 66 van 1995**

Bylae 7 word hierby gewysig—

- (a) deur in item 12 (1) (a) die uitdrukking “en afdwingbaar” tussen die woorde “krag” en “vir” in te voeg;
- (b) deur in die Engelse teks in item 12 (5B) die uitdrukking “ore” deur die uitdrukking “or” te vervang;
- (c) deur in die Engelse teks in item 22 (2B) die uitdrukking “where” deur die uitdrukking “were” te vervang;
- (d) deur in die opskrif van item 21A na die uitdrukking “akkreditering” die uitdrukking “OO” te skrap;
- (e) deur in item 21A (1) (a) die uitdrukking “versoeing” deur die uitdrukking “versoening” te vervang; en
- (f) deur in item 21A (1) (b) die uitdrukking “n’n” deur die uitdrukking “na” te vervang.

**No. R. 441****27 March 1997**

## LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)

**WITHDRAWAL OF REGULATIONS****CORRECTION NOTICE**

The following correction to Government Notice No. R. 1735 appearing in *Government Gazette* No. 17516 of 1 November 1996 is published herewith for general information:

In the English text substitute the expression “13 September 1996” for the expression “13 September 1995”.

**No. R. 441****27 Maart 1997**

## WET OP ARBEIDSVERHOUDINGE, 1995 (WET No. 66 VAN 1995)

**INTREKING VAN REGULASIES****VERBETERINGSKENNISGEWING**

Onderstaande verbeterings aan Goewermmentskennisgewing No. 1735 wat in *Staatskoerant* No. 17516 van 1 November 1996 verskyn word vir algemene inligting gepubliseer.

In die Engelse teks vervang die uitdrukking “13 September 1995” deur die uitdrukking “13 September 1996”.

No. R. 442

27 March 1997

## LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)

**AMENDMENT OF THE GENERAL LABOUR RELATIONS REGULATIONS AND AN ADDITION TO THE FORMS ANNEXED TO THOSE REGULATIONS**

The Minister of Labour has, under section 208 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and after consulting NEDLAC, made the Regulations in the Schedule.

**SCHEDULE****Definition**

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 1737 of 1 November 1996.

**Insertion of regulation 7A in the Regulations**

2. The Regulations are hereby amended by the insertion after regulation 7 of the following regulation:

**"7A. Form of bargaining council constitution**

A bargaining council may adopt a constitution—

- (a) in the form of Form 3.24; or
- (b) in any other form that meets the requirements of section 30 (1) of the Act."

**Insertion of Form LRA 3.24 in the Regulations**

3. The Regulations are hereby amended by the insertion after Form LRA 3.23 of the following form:

**LRA FORM 3.24****MODEL CONSTITUTION OF A BARGAINING COUNCIL**

Model constitution of Bargaining Council based on section 30(1) of the Act

**Purpose of this model constitution**

To assist trade unions and employers to prepare a constitution of a bargaining council that meets the requirements of section 30(1). This is a model constitution. The parties to the council are free to draft their own constitution or to adapt this model to suit their own requirements provided that the constitution complies with section 30(1) of the Act.

**1. Name**

The name of this bargaining council is

---

**2. Registered scope**

The registered scope of the council is specified in the council's certificate of registration attached to this constitution.

**3. Powers and functions**

(1) The powers and functions of the council are-

- (a) to conclude collective agreements;
- (b) to enforce those collective agreements;
- (c) to prevent and resolve labour disputes;
- (d) to perform the dispute resolution functions referred to in section 51 of the Act;
- (e) to establish and administer a fund to be used for resolving disputes;
- (f) to promote and establish training and education schemes;

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- (g) to establish and administer pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members;
  - (h) to develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area;
  - (i) to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out at the workplace;
  - (j) to confer on workplace forums additional matters for consultation; and
  - (k) to consider and deal with any other matter that affects the interests of the parties.
- (2) The council is only able to exercise these powers and perform these functions within its registered scope.

#### 4. Parties

(1) The founding parties to the council are-

(a) the following employers' organisations -

(i) \_\_\_\_\_ [name] \_\_\_\_\_

(ii) \_\_\_\_\_

(iii) \_\_\_\_\_

(b) the following trade union(s)

(i) \_\_\_\_\_ [name] \_\_\_\_\_

(ii) \_\_\_\_\_

(iii) \_\_\_\_\_

(2) Any registered trade union or registered employers' organisation that has members that fall within the registered scope of the council may apply in writing to the council for admission as a party.

- (3) The application must be accompanied by-
  - (a) a certified copy of the applicant's registered constitution;
  - (b) a certified copy of the applicant's certificate of registration;
  - (c) details of the applicant's membership within the registered scope of the council, including, in the case of an employers' organisation, the number of employees that its members employ within the council's registered scope;
  - (d) a statement of the reasons why the applicant ought to be admitted as a party to the council; and
  - (e) any other information on which the applicant relies in support of its application.
- (4) The council, within 90 days of receiving an application for admission, must decide whether to grant or refuse the applicant admission, and must advise the applicant of its decision, failing which the council is deemed to have refused the applicant admission.
- (5) If the council refuses to admit an applicant it must, within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

## 5. Appointment of representatives

- (1) The council consists of -
  - (a) \_\_\_\_ representatives of the employers' organisations that are parties to the council; and
  - (b) \_\_\_\_ representatives of the trade unions that are parties to the council.
- (2) Subject to sub-clause (3), the representatives will be allocated among the parties to the council as follows:

The number of representatives representing employers in paragraph (a) must be equal to the number of representatives representing employees in paragraph (b).

The allocation can be based on a formula, based on representativeness included in the constitution with the secretary of the Council making a determination on an annual basis.

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(a) employers' organisation(s) no of representatives

_____	_____
_____	_____
_____	_____

(b) trade union(s) no of representatives

_____	_____
_____	_____
_____	_____

(3) If one or more employers' organisations party to the council represent small and medium enterprises, at least one of the employer representatives referred to in sub-clause (2) must be allocated to those organisations.

(4) Subject to sub-clause (2) and to its own constitution, each party to the council may appoint -

- (a) its representatives to the council; and
- (b) an alternate for each of its representatives.

(5) (a) A representative or an alternate will hold office for twelve months and will be eligible for re-appointment at the end of that term.

(b) A representative or an alternate whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a representative until that representative's successor assumes office.

(6) Despite sub-clause (5),-

- (a) a party may withdraw any of its representatives or alternates after having given at least 21 days' notice in writing to the secretary;
- (b) a representative who, without good cause, is absent from three consecutive meetings of the council, is

disqualified from continuing in that office.

- (7) If the office of any representative or alternate becomes vacant, the party that appointed the representative or alternate may appoint another representative or alternate for the unexpired portion of the predecessor's term of office.

## 6. Council meetings

- (1) The council must hold -
- (a) an annual general meeting in the month of \_\_\_\_; and
  - (b) an ordinary meeting at least once every \_\_\_\_ month(s).
- (2) A special meeting of the council -
- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
  - (b) must be called by the chairperson within 14 days of -
    - (i) receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than \_\_\_\_ representatives; or
    - (ii) the adoption of a resolution by the council calling for a special meeting.
- (3) At the annual general meeting, the council must-
- (a) elect the additional members of the executive committee;
  - (b) elect the chairperson and the deputy chairperson of the council;
  - (c) appoint the members of the panel of conciliators referred to in clause 11(1)(a);
  - (d) appoint the members of the panel of arbitrators referred to in clause 11(1)(b);
  - (e) appoint the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the council.



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There is no restriction as to the kind of service. The constitution can stipulate any form of service e.g. service by hand, faxed transmission or electronic mail.

- (f) consider the annual financial statements of the council and the auditor's report on those statements; and
  - (g) consider and approve, with or without any amendments, the budget of the council for the next financial year as prepared in terms of clause 15(10).
- (4) The secretary must prepare a written notice of every council meeting stating the date, time and venue of the meeting and the business to be transacted, and must send the notice to each representative by registered post at least \_\_\_\_\_ days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.
  - (5) At least half of the total number of employer representatives and half of the total number of employee representatives form a quorum and must be present before a meeting may begin or continue.
  - (6) If, at the time fixed for a meeting to begin or continue, and for 30 minutes after that time, there is no quorum present, the meeting must be adjourned to the same place at the same time on the corresponding day in the following week unless that day is a public holiday, in which case the meeting must be adjourned to the day immediately after that public holiday.
  - (7) A meeting that was adjourned in terms of sub-clause (6) may proceed on the date to which it has been adjourned with the representatives present at the time called for the meeting, regardless of whether or not notice has been given in terms of sub-clause (4) and whether or not a quorum is present.
  - (8) The secretary must cause minutes to be kept of the proceedings at council meetings.
  - (9) At every meeting of the council-
    - (a) the secretary must read the minutes of the previous meeting unless they were previously circulated; and
    - (b) after the minutes have been confirmed, with or without any amendments, the chairperson must sign the minutes.
  - (10) A motion proposed at a meeting may not be considered unless it has been seconded. The chairperson may require a

The constitution could stipulate that certain matters should be decided by ballot.

motion to be submitted in writing, in which case the chairperson must read the motion to the meeting.

- (11) Unless this constitution provides otherwise, all motions must be decided by a majority of votes of those present and entitled to vote and voting must be by show of hands.
- (12) Each representative has one vote on any matter before the council for its decision. However, if at the meeting the employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- (13) If any question which the executive committee considers to be extremely urgent arises between meetings of the council, and it is possible to answer that question by a simple "yes" or "no", the executive committee may direct the secretary to cause a vote of the representatives on the council to be taken by post. A proposal subjected to a postal vote may be adopted only if it is supported by at least two-thirds of the total number of representatives who are entitled to vote.
- (14) The executive committee may adopt general rules of procedure for its meetings and for the meetings of the council and of its other committees. However, in the event of any conflict between those rules and the provisions of this constitution, the provisions of this constitution will prevail.

## 7. Executive Committee

- (1) The council will have an executive committee that consists of the chairperson and the deputy chairperson of the council, who are members by virtue of their respective offices, and \_\_\_\_\_ additional members elected in accordance with sub-clause (3).
- (2) Subject to the directions and control of the council, the executive committee may exercise and perform the powers, functions and duties of the council relating to the supervision and control of the everyday management and administration of the council. In addition, the executive committee may -
  - (a) investigate and report to the council on any matter connected with the sector in respect of which the council is registered;

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**Admission of parties.**

Various functions to be performed by the council at its annual general meeting.

Winding-up of the council.

Changing council's constitution.

Election and appointment of additional members of the executive committee.

- (b) do anything necessary to give effect to decisions of the council;
- (c) monitor and enforce collective agreements concluded in the council; and
- (d) exercise and perform any power, function and duty that is conferred or imposed on the executive committee by or in terms of this constitution or that is delegated by the council to the executive committee. However, the council may not delegate to the executive committee the powers, functions, and duties contemplated in clauses 4(4) and (5), 6(3), 16 and 17 and sub-clauses (3) and (6) of this clause, and the power of the council to delegate.
- (3) At the annual general meeting, the council must elect the additional members of the executive committee and an alternate for each of them. The additional members and their alternates must be representatives in the council, and half of the additional members, as well as their alternates, must be appointed by the employer representatives in the council, whilst the other half of the additional members, as well as their alternates must be appointed by the employee representatives in the council.
- (4) (a) An additional member of the executive committee will hold office for twelve months and will be eligible for re-election at the end of that term.
- (b) An additional member of the executive committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the executive committee until that member's successor assumes office.
- (5) An additional member of the executive committee-
- (a) may resign from the committee at any time after having given at least 21 day's notice in writing to the secretary;
- (b) must vacate office immediately-

- (i) in the case of resignation, when the resignation takes effect; or
  - (ii) upon ceasing to be a representative of the council.
- (6) (a) If the seat of an additional member of the executive committee becomes vacant, the council must fill the vacancy from the number of candidates nominated for that purpose by -
- (i) the employer representatives in the council, if that seat had been held by an additional member representing the employers; or
  - (ii) the employee representatives in the council, if that seat had been held by an additional member representing employees.
- (b) A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- (7) The executive committee must hold an ordinary meeting at least once every \_\_\_\_\_;
- (8) A special meeting of the executive committee-
- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
  - (b) must be called by the chairperson within \_\_\_\_ days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than \_\_\_\_\_ members of the executive committee.
- (9) The secretary must prepare a written notice of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the committee by registered post at least \_\_\_\_\_ days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.
- (10) At least half of the members of the executive committee representing employers' and half of the members of that committee representing employees form a quorum and must

There is no restriction as to the kind of service. The constitution can stipulate any form of service e.g. service by hand, faxed transmission or electronic mail.

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be present before a meeting may begin or continue.

- (11) Each member of the executive committee has one vote on any matter before the committee for its decision. However, if at the meeting the members representing employers and those representing employees are not equal in number, the side that is in the majority must withdraw so many of its members from voting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- (12) In relation to any matter before the executive committee for its decision, the decision of a majority of those members of the executive committee who are present at the meeting and entitled to vote will be the decision of the committee.

## 8. Other Committees

For example, a council that has been established for two or more sectors, could appoint a sectoral committee for each sector to conclude collective agreements on matters specific to that sector.

- (1) The council may establish other committees to perform any of its functions, including investigating and reporting to the council on any matter but excluding the non-delegable functions referred to in clause 7(2)(d).
- (2)
  - (a) Half of the members of any committee so appointed must be nominated by the employer representatives, and the other half by the employee representatives.
  - (b) Subject to paragraph (a), committee members must be
    - (i) employers or employees within the registered scope of the council; or
    - (ii) office bearers or officials of the parties to the council.
- (3) A majority of the total number of the members of a committee forms a quorum and must be present before the meeting may begin or continue.
- (4) The provisions of clause 7 relating to the calling and conduct of meetings, read with the changes required by context, apply to meetings of any committee contemplated in this clause.

**9. Chairperson and Deputy Chairperson**

- (1) (a) At the annual general meeting the council must elect a chairperson and a deputy chairperson.  
(b) Subject to sub-clauses (3) and (6)(a), the serving chairperson of the council at the time of the annual general meeting will be the chairperson of the meeting and preside over the election of the next chairperson.
- (2) The chairperson of the meeting must call for nominations for the office of chairperson. A person will have been nominated if proposed by one and seconded by another representative in the council.
- (3) If the serving chairperson is nominated for another term, the council, by a show of hands, must elect a representative in the council to act as chairperson of the meeting during the election of the next chairperson.
- (4) (a) If only one candidate is nominated, the candidate will be deemed to have been elected the new chairperson unopposed, and must be declared by the chairperson of the meeting to have been so elected.  
(b) If two or more candidates are nominated, the chairperson of the meeting must conduct a vote by ballot, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected the new chairperson.
- (5) If an equal number of votes are cast for two or more candidates, and no other candidate has drawn a higher number of votes than those candidates, the chairperson of the meeting will cause to be determined by lot which one of those candidates is to become the new chairperson.
- (6) (a) Upon having been declared elected, the new chairperson must preside over the meeting and must call for nominations for the office of deputy chairperson.  
(b) If the newly elected chairperson is an employer representative, only employee representatives may be nominated for deputy chairperson, and vice-versa.  
(c) The provisions of sub-clauses (2), (4) and (5), read with the changes required by context, apply to the

- election of the deputy chairperson.
- (7) (a) The chairperson and the deputy chairperson hold their respective offices until the next election of the chairperson or deputy chairperson (as the case may be) takes place, or, if the chairperson or deputy chairperson ceases to be a representative in the council on any date before that election, until that date. Each of them will be eligible for re-election if still a representative when their respective terms as chairperson and deputy chairperson expires.
- (b) If the office of the chairperson or deputy chairperson becomes vacant before the next election of the chairperson or deputy chairperson (as the case may be) the executive committee must elect a person as a chairperson or deputy chairperson (as the case may be) to hold office until the next election.
- (c) An election contemplated in paragraph (b) must be held in accordance with sub-clauses (2), (4), (5) and (6), read with the changes required by the context.
- (8) The chairperson must preside over all meetings of the council, and must-
- (a) sign the minutes of council meetings after those minutes have been confirmed;
- (b) sign cheques drawn on the council's bank account; and
- (c) perform any other functions and duties entrusted to the chairperson by this constitution as well as those that are generally associated with the office of chairperson.
- (9) The deputy chairperson must preside over meetings of the council and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason unable to act or to perform those functions and duties.
- (10) If both the chairperson and the deputy chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the council, by show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties.

- (11) A chairperson or a deputy chairperson who has not been elected from amongst the representatives in the council is not entitled to vote on any matter before the council or the executive committee.
- (12) A chairperson or a deputy chairperson may be removed from office by the council for serious neglect of duty, serious misconduct or due to incapacity.

#### 10. Officials and employees

- (1) The council must appoint a secretary who will be responsible for the administrative and secretarial work arising from the functioning of the council and for performing the functions and duties imposed on the secretary by or in terms of the Act and this constitution. That work and those duties and functions include-
  - (a) to keep and maintain the books and records of account that the council may direct in order to fully reflect the financial transactions and state of affairs of the council;
  - (b) to attend all meetings of the council and the executive committee and record the minutes of the proceedings at those meetings;
  - (c) to conduct the correspondence of the council, keeping originals of letters received and copies of letters sent;
  - (d) at each meeting of the council, to read significant correspondence that has taken place since the previous meeting;
  - (e) to bank all moneys received on behalf of the council within three days of receipt;
  - (f) whenever required by the council, but at least once in every quarter of the financial year, to submit to the council statements of its financial affairs and position;
  - (g) to prepare, for submission at the annual general meeting of the council, the budget for the next financial year and an annual report summarizing the key activities of the council; and
  - (h) to countersign cheques drawn on the council's bank account.



- (2) The secretary must-
- (a) retain a copy of the confirmed and signed minutes of every meeting of the council, the executive committee and any other committee of the council in safe custody in the office of the council for a period of at least three years from the date those minutes were confirmed;
  - (b) retain every financial statement referred to in sub-clause (1)(f), and all vouchers and records relating to statements of that nature, for at least three years from the date of the statement; and
  - (c) sign the certificates of appointment to be issued to the persons appointed by the Minister as designated agents of the council.
- (3) The council may appoint any additional officials and any number of employees that may be necessary to assist the secretary in performing the functions and duties of that office.
- (4) The council may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the council.
- (5) Where there are two or more suitable candidates for appointment to the position of secretary or a designated agent, the council must elect the secretary or designated agent by conducting a ballot of the representatives present at the meeting at which an appointment is to be made, with the candidate receiving the highest number of votes being appointed.
- (6) The secretary, designated agents and other officials and employees of the council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

## 11. Panels of conciliators and arbitrators

- (1) At its annual general meeting, the council must appoint-
- (a) a panel of conciliators, consisting of \_\_\_\_ members, for the purpose of conciliating disputes,
  - (b) a panel of arbitrators, consisting of \_\_\_\_ members, for the purpose of determining disputes.

- (2) The council may remove a member of the panel of conciliators or arbitrators from office -
  - (a) for serious misconduct;
  - (b) due to incapacity; or
  - (c) if at least one half of the employer representatives in the council and at least one half of the employee representatives in the council have voted in favour of the removal of that member from office.
- (3) If for any reason there is a vacancy in the panel of conciliators or the panel of arbitrators, the council may appoint a new member to the relevant panel for the unexpired portion of the predecessor's term of office.
- (4) Unless the parties to a dispute have agreed on a member of the panel of conciliators or the panel of arbitrators to conciliate or arbitrate their dispute, the secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute.
- (5)
  - (a) A person may be appointed to both the panel of conciliators and the panel of arbitrators .
  - (b) A member of the panel of conciliators or the panel of arbitrators whose term of office expires, will be eligible for re-appointment to the relevant panel at the end of the term.

## 12 Disputes referred to the council for conciliation

A dispute about the interpretation or application of the provisions of Chapter II of the Act (see section 9), about the interpretation or application of the provisions of a collective agreement concluded in the council, that could form the subject matter of a proposed strike or lockout (see section 64(1)), in any case where the parties to the dispute are engaged in an essential service (see section 74), about an unfair dismissal (see

- (1) In this clause dispute means a dispute between any of the parties to a council that may be referred to a council in terms of the Act except a dispute contemplated in clause 14.

section 191), about the severance by (see section 196), or about an unfair labour practice (see item 2 in Schedule 7) may be referred to a council in terms of the Act.

- (2) For the purpose of sub-clause (1), a party to the council includes the members of any party to the council.
- (3) Any party to a dispute may refer the dispute in writing to the council.
- (4) The party who refers the dispute must satisfy the secretary that a copy of the referral has been served on all other parties to the dispute.
- (5) If satisfied that the referral has been served in compliance with sub-clause (4), the secretary -
  - (a) may, if there is a collective agreement binding on the parties to the dispute that provides for an alternative procedure for resolving disputes, refer the dispute for resolution in terms of that procedure; or
  - (b) must appoint a member of the panel of conciliators to attempt to resolve the dispute through conciliation.
- (6) Nothing in this clause prevents an officer or an employee of the council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of sub-clause (5)(b).

### 13. Disputes referred to the council for arbitration

- (1) For the purpose of this clause, a dispute means any dispute between any of the parties to the council that -
  - (a) has been referred to a conciliator in terms of clause 12 but remains unresolved; and
    - (i) the Act requires that the dispute be arbitrated and any party to the dispute has requested that the dispute be resolved through arbitration; or

The Act requires councils to arbitrate the following types of disputes: (1) **Unfair dismissal disputes** if: (a) the reason is related to the employee's conduct or capacity. (This does not apply to an employee's participation in an unprotected strike); (b) the reason is

that the employer made continued employment intolerable; and (c) the employee does not know the reason for the dismissal. (See section 191(5)(a)). (2) Disputes about severance pay. (See section 196). (3) Unfair labour practice disputes excluding a dispute concerning unfair discrimination. (See item 2(1)(a) in Schedule 7 of the Act.) (4) Disputes in essential services as contemplated in section 74(1) of the Act.

(ii) all the parties to the dispute consent to arbitration; or

(b) it is a dispute about the interpretation or the application of the provisions of this constitution.

- (2) Any party to a dispute may request that the dispute be resolved through arbitration.
- (3) The secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- (4) The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- (5) The arbitration proceedings must be conducted in accordance with the provisions of section 138 and 142 and, if applicable, sections 139, 140 and 141, of the Act, read with the changes required by the context.

#### 14. Procedure for the negotiation of collective agreements.

- (1) Any party to the council may introduce proposals for the conclusion of a collective agreement in the council.
- (2) The proposals must be submitted to the secretary in writing and must identify the other parties to the proposed agreement.
- (3) Within seven days of submission of the proposals, the secretary must serve copies of the proposals on the other parties to the council.

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- (4) Within 21 days of submission of the proposals, the chairperson must call a special meeting of the executive committee to consider the proposals and to decide on a process for negotiating the proposals, including -
- (a) the introduction of counter-proposals;
  - (b) whether the negotiations should be conducted by the council, the executive committee or any other committee of the council;
  - (c) the appointment of a conciliator from the panel of conciliators to facilitate the negotiations; and
  - (d) the timetable for the negotiations.
- (5) If no negotiation process is agreed-
- (a) the secretary must appoint a conciliator from the panel of conciliators to facilitate negotiations and the conclusion of a collective agreement;
  - (b) the council must meet at least twice within 30 days of the meeting of the executive committee to negotiate on the proposals and any counter proposals, unless a collective agreement has been concluded;
  - (c) the conciliator must facilitate the negotiations at those meetings and the conclusion of collective agreements.
- (6) If no collective agreement is concluded in the course of this process or procedure contemplated in this clause-
- (a) the parties to the council may -
    - (i) agree to refer the dispute to arbitration; or
    - (ii) resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or
  - (b) any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the employers and the employees engaged in that service be resolved through arbitration.
- (7) In the circumstances contemplated in sub-clause (6)(a)(i) or (b), the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

- (8) The provisions of clause 13(4) and (5) will apply to arbitration proceedings conducted in terms of this clause.
- (9) (a) During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.
- (b) If any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party -
- (i) if they participate in a strike, will forfeit the protection they would have enjoyed in terms of section 67 of the Act;
  - (ii) if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of section 67 of the Act.

#### 15. Finances

- (1) The council may raise funds by charging a levy on employees and employers within the registered scope of the council.
- (2) The council must open and maintain an account in its name at a bank of its choice that is registered in the Republic, and-
- (a) deposit all moneys it receives in that account within three days of receipt; and
  - (b) pay the expenses of and make all payments on behalf of the council by cheques drawn on that account.
- (3) The council may invest any surplus funds not immediately required for current expenses or contingencies, in -
- (a) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
  - (b) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (c) a registered unit trust;
  - (d) any other manner approved by the registrar.

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- (4) All payments from the council's funds must be-
- (a) approved by the council; and
  - (b) made by cheque drawn on the council's bank account and signed by the chairperson or deputy-chairperson and counter-signed by the secretary. However, the council, by special resolution, may authorise any representative in the council, official or employee of the council to sign or counter-sign cheques drawn on the council's bank account in the event of both the chairperson and the deputy chairperson or the secretary not being readily available for that purpose.
- (5) (a) Despite sub-clause (4), the council may maintain a petty cash account, out of which the secretary may make cash payments not exceeding R\_\_\_\_\_ at any one occasion.
- (b) Funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by sub-clause (4).
  - (c) Except with the approval of the council, cheques drawn to transfer funds to petty cash may not exceed R\_\_\_\_\_ per month in aggregate.
  - (d) The council may determine the form of records to be kept for the petty cash account.
- (6) At the end of each quarter of the financial year, the secretary must prepare a statement showing the income and expenditure of the council for that quarter, and another reflecting the assets, liabilities and financial position as at the end of that period.
- (7) The financial year of the council begins on 1\_\_\_\_\_ in each year and ends on \_\_\_\_\_ of the following year, except for the first financial year, which begins on the day that the council is registered and ends on the \_\_\_\_\_.
- (8) No later than \_\_\_\_\_ after the end of the financial year, the secretary must prepare a statement of the council's financial activity in respect of that financial year showing-
- (a) all moneys received for the council -

- (i) in terms of any collective agreement published in terms of the Act; and
  - (ii) from any other sources;
- (b) expenditures incurred on behalf of the council under the following heads-
- (i) remuneration and allowances of their officials and employees;
  - (ii) amounts paid to representatives and alternates in respect of attendance at meetings, the travelling and subsistence expenses incurred by them, and the salary or wage deducted or not received by them due to their absence from work by reason of their involvement with the council;
  - (iii) remuneration and allowances of members of the panel of conciliators and arbitrators;
  - (iv) office accommodation;
  - (v) printing and stationery requirements; and
  - (vi) miscellaneous operating expenditure;
- (c) the council's assets, liabilities and financial position as at the end of that financial year.
- (9) (a) The annual financial statements must be signed by the secretary and counter-signed by the chairperson, and submitted to an auditor for auditing and preparing a report to the council.
- (b) True copies of the audited statements and the auditor's reports must be made available for inspection at the office of the council to members and representatives of the parties, who are entitled to make copies of those statements and the auditor's report.
- (c) The secretary must send certified copies of the audited financial statements and the auditor's report to the registrar within 30 days of receipt thereof.
- (10) Every year the secretary must prepare, for submission at the annual general meeting of the council, a budget for the council for the next financial year.



- (11) At the annual general meeting the council must appoint an auditor to perform the audit of the council for the next year.

## 16. Winding up

- (1) At a special meeting called for that purpose, the council, by resolution adopted by a majority of the total number of representatives in the council, may decide to be wound up.
- (2) Upon adoption of a resolution to wind up, the secretary must take the necessary steps to ensure that-
- (a) application is immediately made to the Labour Court for an order giving effect to the resolution; and
  - (b) the council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the council at the disposal and under the control of the liquidator.
- (3) Each party to the council remains liable for any unpaid liabilities to the council as at the adoption of a resolution to wind-up the council.
- (4) If all the liabilities of the council have been discharged, the council must transfer any remaining assets to-
- (a) a bargaining council within the same or similar sector; that has been agreed upon at the special meeting referred to in sub-clause (1);
  - (b) the Commission if-
    - (i) there is no bargaining council within the same or similar sector; or
    - (ii) the parties to the council fail to agree on a bargaining council that is to receive the remaining assets.

## 17. Changing the constitution

- (1) The council may change this constitution at any time -

- (a) by a resolution adopted by unanimous vote of all the representatives in the council on a motion to amend tabled without prior notice; or
- (b) by a resolution adopted by at least two thirds of all the representatives in the council after at least-
  - (i) one month's notice of that motion to amend had been given to the secretary; and
  - (ii) two weeks' notice of that motion had been given to all the other representatives.
- (2) Any amendment to this constitution becomes effective after the resolution effecting that amendment has been certified by the registrar in terms of section 57(3) of the Act.

#### 18. Necessary first steps

- (1) With a view to making the council operative and functional without delay, the provisions contained in the Annexure to this constitution will apply and must be read as one with this constitution until the requirements and procedures contemplated in those provisions have been complied with.
- (2) Any act performed in compliance with the provisions contained in the Annexure will be deemed to have been performed in terms of and in accordance with this constitution.

#### 19. Definitions

In this constitution, any expression that is defined in the Act has that meaning and unless the context otherwise indicates -

“chairperson” means the chairperson of the council who, by virtue of that office, is also the chairperson of the executive committee;

“deputy chairperson” means the deputy chairperson of the council who, by virtue of that office, is also the deputy chairperson of the executive committee;

“executive committee” means the executive committee contemplated in clause 7;

“Minister” means the Minister of Labour;

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"secretary" means the secretary of the council; and

"the Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995).

## ANNEXURE

### Necessary first steps to be followed by the council

State the date on which, or specify a period after the occurrence of a particular event (e.g. registration of the council), on the expiry of which the meeting must be held, as well as the time and venue of the meeting.

1. At the first meeting of the council, which will be held
 
  - (a) the council, by show of hands, must select a suitable person to act as chairperson of that meeting, subject to paragraph (c), as well as another to keep the minutes of the meeting;
  - (b) the council must elect the chairperson and deputy chairperson and the additional members of the executive committee in the manner set out in clauses 7 and 9 respectively, read with the changes required by the context;
  - (c) the newly-elected chairperson of the council must take over the chair at the meeting;
  - (d) the council must appoint the officials contemplated in clause 6(3)(c), (d) and (e); and
  - (e) the council must appoint an auditor to perform the audit of the council in respect of its first financial year.
2. The secretary, in the manner contemplated in clause 10(1)(g), must as soon as possible prepare, for submission at the next ordinary meeting of the council, a budget for the council for its first financial year.

**[NOTE: According to the above model constitution, the council's certificate of registration is, upon receipt, to be attached to its constitution (see clause 2). If not so attached, the constitution of a council following the model will be incomplete.]".**

**No. R. 442****27 Maart 1997**

WET OP ARBEIDSVERHOUDINGE, 1995 (WET No. 66 VAN 1995)

**WYSIGING VAN DIE ALGEMENE REGULASIES OP ARBEIDSVERHOUDINGE EN 'N BYVOEGING BY DIE VORMS BY DAARDIE REGULASIES AANGEHEG**

Die Minister van Arbeid het kragtens artikel 208 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en na oorlegpleging met NEOAR, die Regulasies in die Bylae uitgevaardig.

**BYLAE****Woordomskrywing**

1. In hierdie Bylae beteken "die Regulasies" die regulasies afgekondig by Goewermentskennisgewing No. R. 1737 van 1 November 1996.

**Invoeging van Regulasie 7A in die Regulasies**

2. Die Regulasies word hierby gewysig deur na regulasie 7 die volgende regulasie in te voeg:

**"7A. Vorm van konstitusie van bedingingsraad**

'n Bedingingsraad kan 'n konstitusie aanneem—

(a) in die vorm van Vorm WAV 3.24; of

(b) in enige ander vorm wat aan die vereistes van artikel 30 (1) van die Wet voldoen."

**Invoeging van Vorm WAV 3.24 by die Regulasies**

3. Die Regulasies word hierby gewysig deur na Vorm WAV 3.23 in die volgende vorm in te voeg:

**WAV-Vorm 3.24****MODELKONSTITUSIE VAN 'N BEDINGINGSRAAD**

Modelkonstitusie van Bedingingsraad gegrond op artikel 30(1) van die Wet

**Doel van hierdie modelkonstitusie**

Om vakbonde en werkgewers te help om 'n konstitusie vir 'n bedingingsraad op te stel wat aan die vereistes van artikel 30(1) voldoen. Dit is 'n modelkonstitusie. Dit staan die partye by die raad vry om hulle eie konstitusie op te stel of om hierdie model aan te pas om in hulle eie behoeftes te voorsien, mits die konstitusie voldoen aan artikel 30(1) van die Wet.

**1. Naam**

Die naam van hierdie bedingingsraad is

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**2. Geregistreeerde bestek**

Die geregistreeerde bestek van die raad word uiteengesit in die raad se registrasiesertifikaat, wat by hierdie konstitusie aangeheg is.

**3. Bevoegdhede en werksaamhede**

(1) Die bevoegdhede en werksaamhede van die raad is -

- (a) om kollektiewe ooreenkomste te sluit;
- (b) om daardie kollektiewe ooreenkomste af te dwing;
- (c) om arbeidsgeskille te voorkom en te besleg;
- (d) om die geskilbeslegtingswerksaamhede in artikel 51 van die Wet bedoel, te verrig;
- (e) om 'n fonds wat vir die beslegting van geskille bestem is, te stig en te administreer;
- (f) om opleidings- en onderwyskemas te bevorder en in te stel;
- (g) om pensioen-, voorsorg-, mediese hulp-, siektebetalings-, vakansie- en werkloosheidskemas of -fondse of enige soortgelyke skemas of fondse ten voordele van een of meer

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van die partye by die bedingingsraad of hulle lede in te stel en te administreer;

- (h) om voorstelle oor beleid en wetgewing wat die sektor en gebied kan raak, te ontwikkel vir voorlegging aan NEOAR of enige ander gepaste forum;
  - (i) om by wyse van kollektiewe ooreenkoms die aangeleenthede te bepaal wat, vir doeleindes van 'n staking of uitsluiting by die werkplek, nie 'n vraagstuk in geskil mag wees nie;
  - (j) om aan werkplekforums bykomende aangeleenthede op te dra vir oorlegpleging; en
  - (k) om enige ander aangeleentheid wat die belange van die partye raak, te oorweeg en te hanteer.
- (2) Die raad mag hierdie bevoegdhede uitoefen en hierdie werksaamhede verrig slegs binne sy geregistreerde bestek.

#### 4. Partye

(1) Die stigterspartye by die raad is -

(a) die volgende werkgewersorganisasies:

(i) .....[Naam].....

(ii) .....

(iii) .....

(b) die volgende vakbonde:

(i) .....[Naam].....

(ii) .....

(iii) .....

(2) Enige geregistreerde vakbond of geregistreerde werkgewersorganisasie wat lede het wat binne die geregistreerde bestek van die raad val, kan skriftelik by die raad aansoek doen om as 'n party toegelaat te word.

(3) Die aansoek moet vergesel gaan van -

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- (a) 'n gewaarmerkte afskrif van die aansoeker se geregisteerde konstitusie;
  - (b) 'n gewaarmerkte afskrif van die aansoeker se registrasiesertifikaat;
  - (c) besonderhede van die aansoeker se lidmaatskap wat binne die geregisteerde bestek van die raad val, insluitende, in die geval van 'n werkgewersorganisasie, die aantal werknemers wat sy lede binne die geregisteerde bestek van die raad in diens het;
  - (d) 'n opgaaf van die redes waarom die aansoeker as 'n party by die raad toegelaat behoort te word; en
  - (e) enige ander inligting wat die aansoeker ter ondersteuning van sy aansoek wil voorlê.
- (4) Binne 90 dae na ontvangs van 'n aansoek om toelating moet die raad besluit of aan die aansoeker toelating verleen of geweier moet word, en moet hy die aansoeker van sy besluit in kennis stel, by versuim waarvan die raad geag word die aansoeker toelating te geweier het.
  - (5) Indien die raad weier om 'n aansoeker toe te laat, moet die raad binne 30 dae na die datum van die weiering die aansoeker skriftelik in kennis stel van sy besluit en van die redes vir daardie besluit.

## 5. Aanstelling van verteenwoordigers

(1) Die raad bestaan uit -

- (a) \_\_\_\_\_ verteenwoordigers van die werkgewersorganisasies wat partye by die raad is; en
- (b) \_\_\_\_\_ verteenwoordigers van die vakbonde wat partye by die raad is.

Die getal verteenwoordigers wat werkgewers verteenwoordig in paragraaf (a), moet gelyk wees aan die getal verteenwoordigers wat werknemers verteenwoordig in paragraaf (b).

Die toewysing kan gegrond wees op 'n formule, gebaseer op verteenwoordigendheid in die konstitusie, met die sekretaris van die raad wat 'n vasstelling op 'n jaarlikse grondslag maak.

(2) Behoudens subklousule (3) word die verteenwoordigers soos volg onder die partye by die raad toegewys:

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(a) Werkgewersorganisasie(s)

Getal verteenwoordigers

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(b) Vakbond(e)

Getal verteenwoordigers

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- (3) Indien een of meer werkgewersorganisasies wat 'n party by die raad is, klein en medium-groote ondernemings verteenwoordig, moet ten minste een van die werkgewersverteenwoordigers in subklousule (2) bedoel, aan daardie organisasies toegewys word.
- (4) Behoudens subklousule (2) en sy eie konstitusie kan elke party by die raad die volgende verkies en aanstel:
- (a) Sy verteenwoordigers in die raad; en
- (b) 'n plaasvervanger vir elk van sy verteenwoordigers.
- (5) (a) 'n Verteenwoordiger of 'n plaasvervanger beklee die amp vir twaalf maande en kan aan die einde van daardie termyn heraangestel word.
- (b) 'n Verteenwoordiger of 'n plaasvervanger wie se ampstermyn verstryk het en wat nie heraangestel word nie, kan nogtans voortgaan om as 'n verteenwoordiger op te tree totdat daardie verteenwoordiger se opvolger diens aanvaar.
- (6) Ondanks subklousule (5) -
- (a) kan 'n party enige van sy verteenwoordigers of plaasvervangers onttrek deur minstens 21 dae skriftelike kennis aan die sekretaris te gee; en
- (b) word 'n verteenwoordiger wat sonder goeie gronde van drie agtereenvolgende vergaderings van die raad afwesig is, gediskwalifiseer om daardie amp langer te beklee.



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- (7) Indien die amp van 'n verteenwoordiger of plaasvervanger vakant raak, kan die party wat die verteenwoordiger of plaasvervanger aangestel het, 'n ander verteenwoordiger of plaasvervanger aanstel vir die onverstreke gedeelte van die voorganger se ampstermyn.

## 6. Raadsvergaderings

- (1) Die raad moet -

- (a) 'n algemene jaarvergadering in die maand ..... van elke jaar hou; en
- (b) gewone vergaderings minstens elke ..... maand(e) hou.

- (2) 'n Spesiale vergadering van die raad -

- (a) kan te eniger tyd deur die voorsitter belê word om dringende sake af te handel; en
- (b) moet deur die voorsitter belê word binne 14 dae na -
  - (i) ontvangs van 'n versoek vir daardie doel, met vermelding van die doel van die spesiale vergadering en onderteken deur minstens ..... verteenwoordigers; of
  - (ii) die aanvaarding van 'n resoluëie deur die raad waarin 'n spesiale vergadering aangevra word.

- (3) By die algemene jaarvergadering moet die raad -

- (a) die bykomende lede van die uitvoerende komitee verkies;
- (b) die voorsitter en die ondervoorsitter van die raad verkies;
- (c) die lede van die paneel van versoeners in klousule 11(1)(a) bedoel, aanstel;
- (d) die lede van die paneel van arbiters in klousule 11(1)(b) bedoel, aanstel;
- (e) die lede van 'n vrystellingsraad aanstel om aansoeke om vrystelling van die bepalings van enige kollektiewe ooreenkoms wat in die raad gesluit is, te oorweeg en af te handel;
- (f) die jaarlikse finansiële state van die raad en die ouditeur se verslag oor daardie state oorweeg; en

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Daar is geen beperking op die tipe betekening nie. Die konstitusie kan enige vorm van betekening bepaal, bv. betekening per hand, faks of elektroniese pos.

- (g) die raad se begroting vir die komende jaar soos opgestel ingevolge klousule 15(10), met of sonder wysigings, oorweeg en goedkeur.
- (4) Die sekretaris moet 'n skriftelike kennisgewing van elke raadsvergadering opstel wat die datum, tyd en plek van die vergadering toon asook die sake wat behandel moet word, en moet die kennisgewing minstens ..... dae voor die datum van die vergadering per geregistreerde pos aan elke verteenwoordiger stuur. Die voorsitter kan egter korter kennisgewing vir 'n spesiale vergadering magtig.
- (5) Minstens die helfte van die totale getal werkgewersverteenvoerders en die helfte van die totale getal vakbondverteenvoerders vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.
- (6) Indien, op die tyd wat vir 'n vergadering bepaal is om te begin of voort te gaan, en vir 30 minute na daardie tyd, daar nie 'n kworum teenwoordig is nie, moet die vergadering verdaag word tot dieselfde plek op dieselfde tyd op die ooreenstemmende dag in die volgende week tensy daardie dag 'n openbare vakansiedag is, in welke geval die vergadering moet verdaag tot die dag onmiddellik na daardie openbare vakansiedag.
- (7) 'n Vergadering wat verdaag is ingevolge subklousule (6), kan voortgaan op die dag tot waarop dit verdaag is, met die verteenwoordigers teenwoordig op die tyd waarvoor die vergadering belê is, ongeag of daar ingevolge subklousule (4) kennis gegee is al dan nie en ongeag of daar 'n kworum teenwoordig is al dan nie.
- (8) Die sekretaris moet 'n notule van die verrigtinge by raadsvergaderings laat hou.
- (9) By elke vergadering van die raad -
- (a) moet die sekretaris die notule van die vorige vergadering lees, tensy dit voorheen gesirkuleer is; en
- (b) moet die voorsitter die notule, met of sonder wysigings, teken nadat dit bevestig is.
- (10) 'n Mosie wat by 'n vergadering voorgestel is, mag nie oorweeg word nie tensy dit gesekondeer is. Die voorsitter kan vereis dat 'n mosie skriftelik voorgelê word, in welke geval die voorsitter die mosie aan die vergadering moet voorlees.

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Die konstitusie kan bepaal dat sekere aangeleenthede per stembrief beslis moet word.

- (11) Tensy hierdie konstitusie anders bepaal, moet alle mosies beslis word deur 'n meerderheid van stemme van diegene wat teenwoordig en stemgeregtig is, en daar moet deur die opsteek van hande gestem word
- (12) Elke verteenwoordiger het een stem oor enige aangeleentheid voor die raad waaroor die raad moet besluit. Indien die werkgewersverteenwoordigers en die werknemersverteenwoordigers by 'n vergadering egter nie gelyk in getal is nie, moet die kant wat in die meerderheid is, soveel van sy lede aan stemming by daardie vergadering onttrek as wat nodig is om te verseker dat die twee kante ewe getalsterk is ten tyde van die stemming.
- (13) Indien daar tussen vergaderings van die raad enige vraag ontstaan wat die uitvoerende komitee as uiters dringend beskou, en dit moontlik is om daardie vraag deur 'n eenvoudige "Ja" of "Nee" te beantwoord, kan die uitvoerende komitee die sekretaris gelas om verteenwoordigers in die raad per posstemming te laat stem. 'n Voorstel waaroor daar per pos gestem word, kan aangeneem word slegs indien dit gesteun word deur minstens twee derdes van die totale getal verteenwoordigers wat stemgeregtig is.
- (14) Die uitvoerende komitee kan algemene prosedurereëls vir sy vergaderings en vir vergaderings van die raad en van sy ander komitees aanvaar. In geval van 'n botsing tussen daardie reëls en die bepalings van hierdie konstitusie geniet die bepalings van hierdie konstitusie egter voorrang.

## 7. Uitvoerende komitee

- (1) Die raad het 'n uitvoerende komitee wat bestaan uit die voorsitter en die ondervoorsitter van die raad, wat uit hoofde van hulle onderskeie ampte lede is, en ..... bykomende lede wat ooreenkomstig subklousule (3) verkies word.
- (2) Behoudens die lasgewings en beheer van die raad kan die uitvoerende komitee die bevoegdheide uitoefen en die werksaamhede en pligte van die raad verrig betreffende die toesig en beheer oor die daaglikse bestuur en administrasie van die raad. Daarbenewens kan die uitvoerende komitee -
  - (a) enige aangeleentheid rakende die sektor ten opsigte waarvan die raad geregistreer is, ondersoek en daarvoor aan die raad verslag doen;
  - (b) enigiets doen wat nodig is om uitvoering te gee aan besluite van die raad;

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Toelating van partye.  
Verskeie werksaamhede  
wat die raad op sy  
algemene  
jaarvergadering moet  
verrig.

Likwidering van die  
raad.

Verandering van die  
raad se konstitusie

Verkiesing en  
aanstelling van  
bykomende lede van die  
uitvoerende komitee

Daar is geen beperking  
op die tipe betekening  
nie. Die konstitusie kan  
enige vorm van  
betekening bepaal, bv.  
betekening per hand,  
faks of elektroniese pos

- (c) kollektiewe ooreenkomste wat in die raad gesluit is, monitor en afdwing; en
- (d) enige bevoegdheid uitoefen en enige werksaamheid en plig verrig wat by of ingevolge hierdie konstitusie aan die uitvoerende komitee verleen of opgedra word of wat deur die raad aan die uitvoerende komitee gedelegeer word. Die raad mag egter nie die bevoegdheede, werksaamhede en pligte beoog in klousules 4(4) en (5), 6(3), 16 en 17 en subklousules (3) en (6) van hierdie klousule, en die bevoegdheid van die raad om te delegeer, aan die uitvoerende komitee delegeer nie.
- (3) Op die algemene jaarvergadering moet die raad die bykomende lede van die uitvoerende komitee en 'n plaasvervanger vir elkeen verkies. Die bykomende lede en hulle plaasvervangers moet verteenwoordigers in die raad wees, en die helfte van die bykomende lede en hulle plaasvervangers moet deur die werkgewersverteenwoordigers in die raad aangestel word, en die ander helfte van die bykomende lede en hulle plaasvervangers moet deur die werknemersverteenwoordigers in die raad aangestel word.
- (4) (a) 'n Bykomende lid van die uitvoerende komitee beklee sy of haar amp vir twaalf maande en is herkiesbaar aan die einde van daardie termyn.
- (b) 'n Bykomende lid van die uitvoerende komitee wie se ampstermyn verstryk het en wat nie herverkies word nie, kan nogtans voortgaan om as 'n lid van die uitvoerende komitee op te tree totdat daardie lid se opvolger diens aanvaar.
- (5) 'n Bykomende lid van die uitvoerende komitee -
- (a) kan te eniger tyd uit die komitee bedank nadat hy minstens 21 dae skriftelike kennis aan die sekretaris gegee het;
- (b) moet die amp onmiddellik ontruim -
- (i) in die geval van bedanking, wanneer die bedanking in werking tree; of

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- (ii) wanneer hy ophou om 'n verteenwoordiger in die raad te wees.
- (6) (a) Wanneer die setel van 'n bykomende lid van die uitvoerende komitee vakant raak, moet die raad die vakature vul uit die getal kandidate wat vir daardie doel benoem is deur -
  - (i) die werkgewersverteenwoordigers in die raad, indien daardie setel deur 'n bykomende lid wat die werkgewers verteenwoordig, gehou is; of
  - (ii) die werknemersverteenwoordigers in die raad, indien daardie setel deur 'n bykomende lid wat werknemers verteenwoordig, gehou is.
- (b) 'n Lid wat verkies word om 'n vakante setel te vul, hou daardie setel vir die onverstreke gedeelte van die voorgangere termyn.
- (7) Die uitvoerende komitee moet 'n gewone vergadering minstens elke ..... hou.
- (8) 'n Spesiale vergadering van die uitvoerende komitee -
  - (a) kan te eniger tyd deur die voorsitter belê word om dringende sake af te handel; en
  - (b) moet deur die voorsitter belê word binne ..... dae na ontvangs van 'n versoek vir daardie doel, wat die doel van die spesiale vergadering vermeld en onderteken is deur minstens ..... lede van die uitvoerende komitee.
- (9) Die sekretaris moet 'n skriftelike kennisgewing van elke vergadering van die uitvoerende komitee opstel wat die datum, tyd en plek van die vergadering toon, asook die sake wat behandel moet word, en moet die kennisgewing minstens ..... dae voor die datum van die vergadering per geregistreerde pos aan elke lid van die komitee stuur. Die voorsitter kan egter korter kennisgewing vir 'n spesiale vergadering magtig.
- (10) Minstens die helfte van die lede van die uitvoerende komitee wat werkgewers verteenwoordig en die helfte van die lede van daardie komitee wat werknemers verteenwoordig, vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.
- (11) Elke lid van die uitvoerende komitee het een stem oor enige aangeleentheid voor die komitee waarvoor die komitee moet besluit. Indien die lede wat werkgewers verteenwoordig en dié wat

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werknemers verteenwoordig by die vergadering egter nie gelyk in getal is nie, moet die kant wat in die meerderheid is, soveel van sy verteenwoordigers aan stemming onttrek as wat nodig is om te verseker dat die twee kante ewe getalsterk is ten tyde van die stemming.

- (12) Met betrekking tot enige aangeleentheid waaroor die uitvoerende komitee moet besluit, is die besluit van die meerderheid van die lede van die uitvoerende komitee wat op die vergadering teenwoordig is en stemgeregtig is, die besluit van die komitee.

## 8. Ander komitees

Byvoorbeeld, 'n raad wat vir twee of meer sektore ingestel is, kan 'n sektorale komitee vir elke sektor aanstel om kollektiewe ooreenkomste te sluit oor aangeleenthede eie aan daardie sektor.

- (1) Die raad kan ander komitees instel om enige van sy werksaamhede te verrig, met inbegrip van ondersoek instel na en verslag doen aan die raad oor enige aangeleentheid maar uitgesonderd die nie-delegeerbare werksaamhede in klousule 7(2)(d) bedoel.
- (2) (a) Die helfte van die lede van 'n komitee wat aldus aangestel is, moet deur die werkgewersverteenwoordigers benoem word, en die ander helfte deur die werknemersverteenwoordigers.
- (b) Behoudens paragraaf (a) moet komiteelede -
- (i) werkgewers of werknemers binne die geregistreerde bestek van die raad wees; of
- (ii) ampsdraers of beamptes van die partye by die raad wees.
- (3) 'n Meerderheid van die totale aantal lede van 'n komitee vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.
- (4) Die bepalinge van klousule 7 met betrekking tot die belê en hou van vergaderings, gelees met die veranderings wat deur die konteks vereis word, is van toepassing op vergaderings van enige komitee in hierdie klousule beoog.

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## 9. Voorsitter en ondervoorsitter

- (1) (a) By die algemene jaarvergadering moet die raad 'n voorsitter en 'n ondervoorsitter verkies.  
(b) Behoudens subklousules (3) en (6)(a) is die dienende voorsitter van die raad ten tyde van die algemene jaarvergadering die voorsitter van die vergadering en lei hy die verkiesing van die volgende voorsitter.
- (2) Die voorsitter van die vergadering moet benoemings vir die amp van voorsitter vra. 'n Persoon is benoem as hy deur een verteenwoordiger in die raad voorgestel en deur 'n ander gesekondeer is.
- (3) Indien die dienende voorsitter vir nog 'n termyn benoem word, moet die raad deur die opsteek van hande 'n verteenwoordiger in die raad verkies om as voorsitter van die vergadering op te tree tydens die verkiesing van die volgende voorsitter.
- (4) (a) Indien net een kandidaat benoem is, word daardie kandidaat gegag onbestrede tot nuwe voorsitter verkies te wees, en die voorsitter van die vergadering moet hom aldus verkose verklaar.  
(b) Indien twee of meer kandidate benoem is, moet die voorsitter van die vergadering 'n stemming per stembrief hou, en hy moet die kandidaat op wie die meerderheid van die stemme uitgebring is, tot die verkose nuwe voorsitter verklaar.
- (5) Indien 'n gelyke getal stemme vir twee of meer kandidate uitgebring is en geen ander kandidaat 'n groter getal stemme as dié kandidate het nie, moet die voorsitter van die vergadering deur middel van loting laat bepaal watter een van daardie kandidate die nuwe voorsitter moet wees.
- (6) (a) Nadat die nuwe voorsitter as verkose verklaar is, moet die nuwe voorsitter as voorsitter van die vergadering optree en vir benoemings vir die amp van ondervoorsitter vra.  
(b) Indien die nuut verkose voorsitter 'n verteenwoordiger van werkgewers is, kan slegs verteenwoordigers van werknemers vir die amp van ondervoorsitter benoem word, en omgekeerd.  
(c) Die bepalings van subklousules (2), (4) en (5), geles met die veranderings wat deur die konteks vereis word, is van toepassing vir die verkiesing van die ondervoorsitter.

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- (7) (a) Die voorsitter en die ondervoorsitter beklee hulle onderskeie ampte totdat die volgende verkiesing van die voorsitter of ondervoorsitter, na gelang van die geval, plaasvind, of, indien die voorsitter of die ondervoorsitter ophou om 'n verteenwoordiger in die raad te wees op enige datum voor daardie verkiesing, tot daardie datum. Albei is herkiesbaar indien hulle steeds 'n verteenwoordiger is wanneer hulle onderskeie termyne as voorsitter of ondervoorsitter verstryk.
- (b) Indien die amp van voorsitter of ondervoorsitter vakant raak voor die volgende verkiesing van die voorsitter of ondervoorsitter, na gelang van die geval, moet die uitvoerende komitee iemand as voorsitter of ondervoorsitter, na gelang van die geval, kies om die amp te beklee tot die volgende verkiesing.
- (c) 'n Verkiesing in paragraaf (b) bedoel, moet gehou word ooreenkomstig subklousules (2), (4), (5) en (6), geles met die veranderinge wat deur die konteks vereis word.
- (8) Die voorsitter sit voor by al die vergaderings van die raad en moet -
- (a) notules van vergaderings van die raad onderteken nadat dit bevestig is;
- (b) tjeks onderteken wat teen die raad se bankrekening getrek word; en
- (c) enige ander werksaamhede en pligte verrig wat by hierdie konstitusie aan die voorsitter opgedra word, asook dié wat in die algemeen gepaard gaan met die amp van voorsitter.
- (9) Die ondervoorsitter sit voor by vergaderings van die raad en verrig die werksaamhede en pligte van die voorsitter telkens wanneer die voorsitter afwesig is of om enige rede nie in staat is om op te tree of om daardie werksaamhede en pligte te verrig nie.
- (10) Indien sowel die voorsitter as die ondervoorsitter afwesig is of nie in staat is om die werksaamhede en pligte van die voorsitter te verrig nie, moet die raad deur die opsteek van hande iemand uit die geledere van die verteenwoordigers verkies om as voorsitter op te tree en daardie werksaamhede en pligte te verrig.
- (11) 'n Voorsitter of 'n ondervoorsitter wat nie uit die geledere van die verteenwoordigers in die raad verkies is nie, mag nie oor enige



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aangeleentheid voor die raad of die uitvoerende komitee stem nie.

- (12) 'n Voorsitter of 'n ondervoorsitter kan deur die raad van sy of haar amp onthef word vir ernstige pligsversuim, ernstige wangedrag of ongeskiktheid.

#### 10. Beamptes en werknemers

- (1) Die raad moet 'n sekretaris aanstel wat verantwoordelik is vir die administratiewe en sekretariële werk voortspruitend uit die werksaamhede van die raad en vir die verrigting van die werksaamhede en pligte wat by of ingevolge die Wet en hierdie konstitusie aan die sekretaris opgedra word. Daardie werk en daardie werksaamhede en pligte sluit in -

- (a) om die rekeningboeke en rekords te hou wat die raad gelas ten einde die finansiële transaksies en stand van die raad volledig te weerspieël;
- (b) om alle vergaderings van die raad en die uitvoerende komitee by te woon en die notule van die verrigtinge by daardie vergaderings aan te teken;
- (c) om die korrespondensie van die raad te voer en oorspronklike briewe wat ontvang en afskrifte van briewe wat gestuur is, te hou;
- (d) om by elke vergadering van die raad belangrike korrespondensie wat sedert die laaste vergadering plaasgevind het, voor te lees;
- (e) om alle gelde wat namens die raad ontvang is, binne drie dae na ontvangs te bank;
- (f) om state van die finansiële sake en posisie van die raad voor te lê telkens wanneer die raad dit vereis, maar minstens een maal elke kwartaal van die boekjaar;
- (g) om die begroting vir die volgende boekjaar en 'n jaarverslag waarin die belangrikste bedrywighede van die raad opgesom word, op te stel vir voorlegging op die algemene jaarvergadering van die raad; en
- (h) om tjeks getrek teen die raad se bankrekening te mede-onderteken.

- (2) Die sekretaris moet -

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- (a) 'n afskrif van die bevestigde en ondertekende notule van elke vergadering van die raad, die uitvoerende komitee en enige ander komitee van die raad in veilige bewaring in die kantoor van die raad hou vir 'n tydperk van minstens drie jaar na die datum waarop die notule bevestig is; en
  - (b) elke finansiële staat in subklousule (1)(f) bedoel en alle bewysstukke en rekords met betrekking tot state van daardie aard vir minstens drie jaar na die datum van die staat hou; en
  - (c) die aanstellingsertifikate wat uitgereik moet word aan die persone wat deur die Minister as aangewese agente van die raad aangestel word, onderteken.
- (3) Die raad kan enige bykomende beamptes en enige aantal werknemers aanstel wat nodig is om die sekretaris by te staan met die verrigting van die werksaamhede en pligte van daardie amp.
  - (4) Die raad kan die Minister versoek om enige aantal persone as aangewese agente aan te stel om die raad te help om enige kollektiewe ooreenkoms wat in die raad gesluit is, af te dwing.
  - (5) Wanneer daar twee of meer geskikte kandidate vir aanstelling in die betrekking van sekretaris of as 'n aangewese agent is, moet die raad die sekretaris of aangewese agent verkies deur 'n stemming deur middel van stembriewe te hou onder die verteenwoordigers teenwoordig by die vergadering waar die aanstelling gedoen moet word, en die kandidaat wat die grootste getal stemme ontvang, word aangestel.
  - (6) Die sekretaris, aangewese agente en ander beamptes en werknemers van die raad mag by die verrigting van hulle onderskeie werksaamhede nie partydig vir of bevooroordeeld teenoor enige party wees nie.

## 11. Panele van versoeners en arbiters

- (1) Op sy algemene jaarvergadering moet die raad -
  - (a) 'n paneel van versoeners aanstel, bestaande uit .... lede, met die doel om geskille te versoen;
  - (b) 'n paneel van arbiters aanstel, bestaande uit ..... lede, met die doel om geskille te beslis.
- (2) Die raad kan 'n lid van die paneel van versoeners of arbiters van sy of haar amp onthef -

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- (a) vir ernstige wangedrag;
  - (b) as gevolg van ongeskiktheid; of
  - (c) indien minstens die helfte van die werkgewersverteenvoerwoordigers in die raad en minstens die helfte van die werknemersverteenvoerwoordigers in die raad ten gunste van die ampsontheffing van daardie lid gestem het.
- (3) Indien daar om enige rede 'n vakature in die paneel van versoeners of die paneel van arbiters is, kan die raad 'n nuwe lid in die betrokke paneel aanstel vir die onverstreke gedeelte van die voorganger se ampstermyn.
- (4) Tensy die partye by 'n geskil op 'n lid van die paneel van versoeners of die paneel van arbiters ooreengekom het om hulle geskil te versoen of te arbitreer, moet die sekretaris 'n lid van die betrokke paneel aanstel om die geskil te versoen of te arbitreer.
- (5) (a) 'n Persoon kan in sowel die paneel van versoeners as die paneel van arbiters aangestel word.
- (b) 'n Lid van die paneel van versoeners of die paneel van arbiters wie se ampstermyn verstryk, kan aan die einde van die termyn heraangestel word.

## 12. Geskille na die raad verwys vir versoening

- (1) In hierdie klousule beteken "geskil" 'n geskil tussen enige van die partye by 'n raad wat ingevolge die Wet na 'n raad verwys kan word, uitgesonderd 'n geskil in klousule 14 bedoel.

'n Geskil oor die interpretasie of toepassing van die bepalings van Hoofstuk II van die Wet (kyk artikel 9), oor die interpretasie of toepassing van die bepalings van 'n kollektiewe ooreenkoms wat in die raad gesluit is, wat die onderwerp kan vorm van 'n voorgenome staking of uitsluiting (kyk artikel 64(1)), in elke geval waar die partye by die geskil by 'n noodsaaklike diens betrokke is (kyk artikel 74), oor 'n onbillike ontslag (kyk artikel 191), oor die uittreeloon (kyk artikel 196), of oor 'n onbillike arbeidspraktyk (kyk item 2 in Bylae 7) kan ingevolge die Wet na 'n raad verwys word.

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- (2) Vir doeleindes van subklousule (1) sluit 'n party by die raad die lede van enige party by die raad in.
- (3) Enige party by 'n geskil kan die geskil skriftelik na die raad verwys.
- (4) Die party wat die geskil verwys, moet die sekretaris daarvan oortuig dat 'n afskrif van die verwysing aan alle ander partye by die geskil beteken is.
- (5) Indien die sekretaris daarvan oortuig is dat die verwysing beteken is ooreenkomstig subklousule (4) -
  - (a) kan hy, indien daar 'n kollektiewe ooreenkoms is wat bindend is vir die partye by die geskil en wat voorsiening maak vir 'n alternatiewe prosedure vir die beslegting van geskille, die geskil verwys vir beslegting ingevolge daardie prosedure; of
  - (b) moet hy 'n lid van die paneel van versoeners aanstel om te probeer om die geskil deur middel van versoening te besleg.
- (6) Niks in hierdie klousule vervat, belet 'n beampte of 'n werknemer van die raad om die geskil te ondersoek of om te probeer om die geskil te versoen voor die aanstelling van 'n versoener ingevolge subklousule (5)(b) nie.

### 13. Geskille na die raad verwys vir arbitrasie

- (1) Vir doeleindes van hierdie klousule beteken 'n geskil enige geskil tussen enige van die partye by die raad wat -
  - (a) ingevolge klousule 12 na 'n versoener verwys is maar steeds onbesleg is; en -
    - (i) waar die Wet vereis dat die geskil gearbitreer word en enige party by die geskil versoek het dat die geskil deur arbitrasie besleg word; of

Die Wet vereis dat rade die volgende tipes geskille arbitreer: (1) Geskille oor onbillike ontslag indien (a) die rede verband hou met die werknemer se gedrag of geskiktheid (dit is nie op 'n werknemer se deelname aan 'n onbeskernde staking van toepassing nie); (b) die rede is dat die werkgewer voortgesette diens ondraaglik gemaak het; en (c) die werknemer nie die rede vir die

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ontslag weet nie (kyk artikel 191(5)(a)). (2) Geskille oor die uittreeloan (kyk artikel 196). (3) Geskille oor 'n onbillike arbeidspraktyk, uitgesonderd 'n geskil oor onbillike diskriminasie (kyk item 2(1)(a) in Bylae 7 van die Wet). (4) Geskille in noodsaaklike dienste soos beoog in artikel 74(1) van die Wet.

- (ii) al die partye by die geskil tot arbitrasie ingestem het; of
  - (b) dit 'n geskil oor die interpretasie of die toepassing van die bepalings van hierdie konstitusie is.
- (2) Enige party by 'n geskil kan versoek dat die geskil deur arbitrasie besleg word.
  - (3) Die sekretaris moet 'n lid van die paneel van arbiters aanstel om die geskil te besleg.
  - (4) Die arbiter kan die arbitrasie doen op 'n wyse wat die arbiter geskik ag ten einde die geskil billik en spoedig te beslis, maar moet die wesentliche meriete van die geskil met die mins moontlike regsformaliteite hanteer.
  - (5) Die arbitrasieverrigtinge moet geskied in ooreenstemming met die bepalings van artikels 138 en 142 en, indien van toepassing, artikels 139, 140 en 141 van die Wet, gelees met die veranderinge wat deur die konteks vereis word.

#### 14. **Prosedure vir onderhandeling oor kollektiewe ooreenkomste**

- (1) Enige party by die raad kan voorstelle vir die sluit van 'n kollektiewe ooreenkoms in die raad maak.
- (2) Die voorstelle moet skriftelik aan die sekretaris voorgelê word en moet die ander partye by die voorgestelde ooreenkoms identifiseer.
- (3) Binne sewe dae na die voorlegging van die voorstelle moet die sekretaris afskrifte van die voorstelle aan die ander partye by die raad beteken.
- (4) Binne 21 dae na die voorlegging van die voorstelle moet die voorsitter 'n spesiale vergadering van die uitvoerende komitee belê om die voorstelle te oorweeg en om te besluit op 'n proses om oor die voorstelle te onderhandel, met inbegrip van -

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- (a) die maak van teenvoorstelle;
  - (b) of die onderhandelinge deur die raad, die uitvoerende komitee of enige ander komitee van die raad gevoer moet word;
  - (c) die aanstelling van 'n versoener uit die paneel van versoeners om die onderhandelinge te fasiliteer; en
  - (d) die tydrooster vir die onderhandelinge.
- (5) Indien daar nie op 'n onderhandelingsproses ooreengekom word nie -
- (a) moet die sekretaris 'n versoener uit die paneel van versoeners aanstel om die onderhandelinge en die sluit van 'n kollektiewe ooreenkoms te fasiliteer;
  - (b) moet die raad binne 30 dae na die vergadering van die uitvoerende komitee ten minste twee keer vergader om oor die voorstelle en enige teenvoorstelle te onderhandel, tensy 'n kollektiewe ooreenkoms gesluit is;
  - (c) moet die versoener die onderhandelinge op daardie vergaderings en die sluit van kollektiewe ooreenkomste fasiliteer.
- (6) Indien daar in die loop van hierdie proses of prosedure beoog in hierdie klousule geen kollektiewe ooreenkoms gesluit word nie -
- (a) kan die partye by die raad -
    - (i) ooreenkom om die geskil vir arbitrasie te verwys; of
    - (ii) hulle toevlug neem tot 'n staking of 'n uitsluiting wat ooreenkomstig die bepalings van Hoofstuk IV van die Wet is; of
  - (b) kan enige party by die geskil wie se lede by 'n noodsaaklike diens betrokke is, versoek dat die geskil ten opsigte van die werkgewers en die werknemers wat by daardie diens betrokke is, deur arbitrasie besleg word.
- (7) In die omstandighede in subklousule (6)(a)(i) of (ii) beoog, moet die sekretaris 'n lid van die paneel van arbiters aanstel om die geskil te arbitreer.
- (8) Die bepalings van klousule 13(4) en (5) is van toepassing op

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arbitrasieverrigtinge wat ingevolge hierdie klousule gevoer word.

- (9) (a) Tydens die staking of uitsluiting moet die partye by die geskil elke vergadering bywoon wat deur die versoener belê word om die geskil te besleg.
- (b) Indien enige party by die geskil sonder grondige rede versuim om 'n vergadering wat aldus belê is by te woon, sal die lede van daardie party -
- (i) indien hulle aan 'n staking deelneem, die beskerming verbeur wat hulle ingevolge artikel 67 van die Wet sou geniet het;
- (ii) indien hulle aan 'n uitsluiting deelneem, die beskerming verbeur wat hulle ingevolge artikel 67 van die Wet sou geniet het.

## 15. Finansies

- (1) Die raad kan fondse insamel deur middel van 'n heffing op werknemers en werkgewers binne die geregistreerde bestek van die raad.
- (2) Die raad moet 'n rekening op sy naam open en in stand hou by 'n bank van sy keuse wat in die Republiek geregistreer is, en -
- (a) alle gelde wat hy ontvang, binne drie dae na ontvangs in daardie rekening deponeer; en
- (b) die uitgawes van en alle betalings ten behoeve van die raad betaal deur middel van tjeks getrek teen daardie rekening.
- (3) Die raad kan enige surplusfondse wat nie onmiddellik vir lopende uitgawes of gebeurlikhede nodig is nie, belê in -
- (a) binnelandse geregistreerde effekte soos beoog in artikel 21 van die Skatkiswet, 1975 (Wet 66 van 1975);
- (b) spaarrekeninge, permanente aandele of vaste deposito's in enige geregistreerde bank of finansiële instelling;
- (c) 'n geregistreerde effektetrust; of
- (d) enige ander belegging deur die registrateur goedgekeur.
- (4) Alle betalings uit die raad se fondse moet -

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- (a) deur die raad goedgekeur word; en
  - (b) per tjek getrek teen die raad se bankrekening en onderteken deur die voorsitter of ondervoorsitter en mede-onderteken deur die sekretaris, betaal word. Die raad kan egter, by spesiale resoluëie, enige verteenwoordiger in die raad, beampte of werknemer van die raad magtig om tjeks wat teen die raad se bankrekening getrek word, te onderteken of te mede-onderteken indien sowel die voorsitter as die ondervoorsitter of die sekretaris nie vir daardie doel geredelik beskikbaar is nie.
- (5)
- (a) Ondanks subklousule (4) kan die raad 'n kleinkasrekening hou, waaruit die sekretaris kontantbetalings van hoogstens R.....by enige een geleentheid kan doen.
  - (b) Fondse benodig vir die kleinkasrekening kan na daardie rekening oorgeplaas word slegs deur die trek van 'n tjek wat uitgereik en onderteken is op die wyse in subklousule (4) vereis.
  - (c) Tensy die raad goedkeuring verleen, mag tjeks wat getrek word om fondse na kleinkas oor te plaas, nie altesaam R..... per maand oorskry nie.
  - (d) Die raad kan die vorm bepaal van rekords wat vir die kleinkasrekening gehou moet word.
- (6) Aan die einde van elke kwartaal van die boekjaar moet die sekretaris 'n staat opstel wat die inkomste en uitgawes van die raad vir daardie kwartaal toon, en nog 'n staat wat die bates, verpligtinge en finansiële posisie soos aan die einde van daardie tydperk toon.
- (7) Die boekjaar van die raad begin op 1 ..... van elke jaar en eindig op ..... van die volgende jaar, uitgesonderd die eerste boekjaar, wat begin op die dag waarop die raad geregistreer word en eindig op .....
- (8) Nie later nie as ..... na die einde van die boekjaar moet die sekretaris 'n staat van die raad se finansiële aktiwiteit ten opsigte van daardie boekjaar opstel wat die volgende toon:
- (a) Alle gelde ontvang vir die raad -
    - (i) ingevolge enige kollektiewe ooreenkoms wat ingevolge die Wet afgekondig is; of



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- (ii) uit enige ander bronne;
  - (b) uitgawes aangeaan ten behoeve van die raad, onder die volgende hoofde:
    - (i) Besoldiging en toelaes van sy beamptes en werknemers;
    - (ii) bedrae betaal aan verteenwoordigers en plaasvervangers ten opsigte van die bywoning van vergaderings, die reis- en verblyfuitgawes deur hulle aangeaan, en die salaris of loon afgetrek of nie deur hulle ontvang nie as gevolg van hulle afwesigheid van werk omrede hulle betrokkenheid by die raad;
    - (iii) besoldiging en toelaes van lede van die paneel van versoeners en arbiters;
    - (iv) kantoorakkommodasie;
    - (v) drukwerk en skryfbehoeftes; en
    - (vi) diverse bedryfsuitgawes; en
  - (c) die raad se bates, verpligtinge en finansiële posisie soos aan die einde van daardie boekjaar.
- (9) (a) Die jaarlikse finansiële state moet deur die sekretaris onderteken word en moet deur die voorsitter medeonderteken word en aan 'n ouditeur voorgelê word vir ouditering en vir 'n verslag aan die raad.
- (b) Gewaarmerkte afskrifte van die geouditeerde state en die ouditeur se verslae moet beskikbaar gestel word vir insae by die kantoor van die raad aan lede en verteenwoordigers van die partye, wat daarop geregtig is om afskrifte van daardie state en die ouditeur se verslag te maak.
  - (c) Die sekretaris moet gewaarmerkte afskrifte van die geouditeerde finansiële state en die ouditeur se verslag binne 30 dae na ontvangs daarvan aan die registrateur stuur.
- (10) Die sekretaris moet elke jaar 'n begroting vir die raad vir die volgende boekjaar opstel vir voorlegging aan die algemene jaarvergadering van die raad.
- (11) Op die algemene jaarvergadering moet die raad 'n ouditeur aanstel om die oudit van die raad vir die volgende jaar te doen.

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## 16. Likwidasie

- (1) By 'n spesiale vergadering wat vir dié doel belê is, kan die raad, deur 'n resoluție wat deur die meerderheid van die totale getal verteenwoordigers in die raad aangeneem word, besluit om gelikwieder te word.
- (2) By aanneming van 'n resoluție om te likwieder, moet die sekretaris die nodige stappe doen om te verseker dat -
  - (a) daar onmiddellik by die Arbeidshof aansoek gedoen word om 'n bevel wat uitvoering gee aan die resoluție; en
  - (b) die raad se rekeningboeke en rekords en 'n inventaris van sy bates, met inbegrip van fondse en beleggings, oorhandig word aan die likwidaateur wat deur die Arbeidshof aangestel word, en dat alles wat nodig is gedoen word om die bates, fondse en beleggings van die raad tot beskikking en onder beheer van die likwidaateur te plaas.
- (3) Elke party by die raad bly aanspreeklik vir enige onbetaalde verpligtinge teenoor die raad soos by aanvaarding van 'n resoluție vir die likwidasie van die raad.
- (4) Indien aan al die verpligtinge van die raad voldoen is, moet die raad enige oorblywende bates oorplaas na -
  - (a) 'n bedingingsraad binne dieselfde of 'n soortgelyke sektor, waarop daar ooreengekom is op die spesiale vergadering in subklousule (1) bedoel;
  - (b) die Kommissie indien -
    - (i) daar geen bedingingsraad binne dieselfde of 'n soortgelyke sektor is nie; of
    - (ii) die partye by die raad nie daarin slaag om ooreen te kom op 'n bedingingsraad wat die oorblywende bates moet ontvang nie.

## 17. Verandering van die konstitusie

- (1) Die raad kan die konstitusie te eniger tyd verander -
  - (a) deur 'n resoluție aangeneem deur 'n eenparige stemming van al die verteenwoordigers in die raad oor 'n mosie om te verander wat sonder voorafkennisgewing ingedien is; of

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- (b) deur 'n resolusie aangeneem deur minstens twee derdes van al die verteenwoordigers in die raad nadat minstens -
  - (i) een maand kennis van daardie mosie om te verander aan die sekretaris gegee is; en
  - (ii) twee weke kennis van daardie mosie aan al die ander verteenwoordigers gegee is.
- (2) 'n Verandering van hierdie konstitusie word van krag nadat die resolusie wat daardie verandering teweeg bring, ingevolge klousule 57(3) van die Wet deur die registrateur gesertifiseer is.

#### **18. Noodsaaklike eerste stappe**

- (1) Met die oog daarop om die raad sonder vertraging in werking te stel en funksioneel te maak, is die bepalings vervat in die Aanhangsel by hierdie konstitusie van toepassing en moet dit gelees word as deel van hierdie konstitusie totdat daar voldoen is aan die vereistes en prosedures beoog in daardie bepalings.
- (2) Enige handeling verrig ingevolge die bepalings vervat in die Aanhangsel word geag verrig te wees ingevolge en in ooreenstemming met hierdie konstitusie.

#### **19. Woordomskrywing**

In hierdie konstitusie het enige uitdrukking wat in die Wet omskryf is, daardie betekenis en, tensy dit uit die samehang anders blyk, beteken -

"Minister" die Minister van Arbeid;

"ondervoorsitter" die ondervoorsitter van die raad, wat, uit hoofde van daardie amp, ook die ondervoorsitter van die uitvoerende komitee is;

"sekretaris" die sekretaris van die raad;

"uitvoerende komitee" die uitvoerende komitee beoog in klousule 7;

"voorsitter" die voorsitter van die raad, wat, uit hoofde van daardie amp, ook die voorsitter van die uitvoerende komitee is; en

"die Wet" die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995).

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## AANHANGSEL

### Noodsaaklike eerste stappe wat die raad moet doen

Meld die datum waarop, of meld 'n tydperk na 'n bepaalde gebeurtenis (bv. die registrasie van die raad) by verstryking waarvan, die vergadering moet plaasvind, asook die tyd en plek van die vergadering.

1. Op die eerste vergadering van die raad, wat gehou moet word
 

.....

.....

.....

.....

  - (a) moet die raad, deur die opsteek van hande, 'n geskikte persoon kies om as voorsitter van daardie vergadering op te tree, behoudens paragraaf (c), asook 'n ander persoon om die notule van die vergadering te hou;
  - (b) moet die raad die voorsitter en die ondervoorsitter en die bykomende lede van die uitvoerende komitee verkies op die wyse uiteengesit in onderskeidelik klousules 7 en 9, gelees met die veranderings wat deur die konteks vereis word;
  - (c) moet die nuut verkose voorsitter van die raad die stoel op die vergadering inneem;
  - (d) moet die raad die beamptes beoog in klousule 6(3)(c), (d) en (e) aanstel; en
  - (e) moet die raad 'n ouditeur aanstel om die oudit van die raad te doen ten opsigte van sy eerste boekjaar.
2. Die sekretaris, op die wyse beoog in klousule 10(1)(g), moet so gou moontlik 'n begroting vir die raad vir sy eerste boekjaar opstel vir voorlegging aan die volgende gewone vergadering van die raad.

**[OPMERKING: Volgens bostaande modelkonstitusie moet die raad se registrasiesertifikaat, by ontvangs, aan hierdie konstitusie geheg word (kyk klousule 2). Indien dit nie aldus aangeheg is nie, is die konstitusie van 'n raad wat die model volg, onvolledig.] "**

No. R. 443

27 March 1997

## LABOUR RELATIONS ACT, 1995

**ADDITION OF SCHEDULE 9: MODEL CONSTITUTION FOR A  
STATUTORY COUNCIL**

Under the powers vested in me by section 207 (3) of the Labour Relations Act, 1995 (Act No. 66 of 1995), I hereby add to that Act a further schedule, namely Schedule 9, as set out in the Annexure.

**T. T. MBOWENI****Minister of Labour****CONTENTS OF CONSTITUTION**

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## ANNEXURE

## "SCHEDULE 9

## MODEL CONSTITUTION FOR A STATUTORY COUNCIL

## CONSTITUTION OF .....

**1. Name**

The name of this statutory council is .....

**2. Registered scope**

The registered scope of the council is specified in the council's certificate of registration attached to this constitution.

**3. Powers and functions**

(1) The powers and functions of the council are -

- (a) to perform the dispute resolution functions referred to in section 51 of the Act;
- (b) to promote and establish training and education schemes;
- (c) to establish and administer pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the council or their members; and
- (d) to conclude collective agreements to give effect to the matters mentioned in paragraphs (a), (b) and (c).

(2) The council may agree to the inclusion of any of the functions of a bargaining council referred to in section 28(1)(a), (b), (c), (e), (h), (i) and (j) of the Act as functions of the council.

(3) The council is only able to exercise these powers and perform these functions within its registered scope.

This is a model constitution. The parties to the council are free to draft their own constitution or to adapt this model to suit their own requirements provided the constitution complies with the provisions of the Act.

There is an alternative method of giving effect to section 43(2) of the Act which permits statutory councils to agree to include any of the other functions of a bargaining council. The council could, through its amending provisions (clause 17), amend clause 3(1) by including any one or more of those functions.

**4. Parties**

(1) The founding parties to the council are —

(a) the following employers' organisation(s) -

(i) .....

(ii) .....; and

(iii) .....; and  
(names)

(b) the following trade union(s) -

(i) .....

(ii) .....; and

(iii) .....  
(names)

(2) Any registered trade union or registered employers' organisation that has members that fall within the registered scope of the council may apply in writing to the council for admission as a party.

(3) The application must be accompanied by —

(a) a certified copy of the applicant's registered constitution;

(b) a certified copy of the applicant's certificate of registration;

(c) details of the applicant's membership within the registered scope of the council, including, in the case of an employers' organisation, the number of employees that its members employ within the council's registered scope;

(d) a statement of the reasons why the applicant ought to be admitted as a party to the council; and

(e) any other information on which the applicant relies in support of the application.

(4) The council, within 90 days of receiving an application for admission, must decide whether to grant or refuse the applicant admission, and must advise the applicant of its decision, failing which the council is deemed to have refused the applicant admission.

- (5) If the council refuses to admit an applicant it must, within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

**5. Appointment of representatives**

- (1) The council consists of—

- (a) ..... representatives of the employers' organisations that are parties to the council, ..... of whom represent(s) small and medium enterprises; and
- (b) ..... representatives of the trade unions that are parties to the council.

The number of representatives representing employers in paragraph (a) must be equal to the number of representatives representing employees in paragraph (b).

In the event that there are no employers' organisations party to the council, representatives will be appointed by the Minister to represent employer interests, and the provisions in the constitution concerning the appointment of representatives will have to be adapted to deal with this situation.

The employer representation must make provision for one or more representatives representing small and medium enterprises.

In the event that there are no trade unions party to the council, representatives will be appointed by the Minister to represent employee interests, and the provisions in the constitution concerning the appointment of representatives will have to be adapted to deal with this situation.

The allocation may be determined according to a formula based on representativeness, with the Secretary of the Council making a determination on an annual basis.

- (2) The representatives will be allocated among the parties to the council as follows -

(a) employers' organisation(s) -	number of representatives -
.....	.....
.....	.....
.....	.....
(names)	

(b) trade union(s) -	number of representatives-
.....	.....
.....	.....
.....	.....
(names)	



- (3) Subject to sub-clause (2) and to its own constitution, each party to the council may appoint —
- (a) its representatives to the council; and
  - (b) an alternate for each of its representatives.
- (4) (a) A representative or an alternate will hold office for 12 months and will be eligible for re-appointment at the end of that term.
- (b) A representative or an alternate whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a representative until that representative's successor assumes office.
- (5) Despite sub-clause (4) —
- (a) a party may withdraw any of its representatives or alternates after having given at least 21 days' notice in writing to the secretary;
  - (b) a representative who, without good cause, is absent from three consecutive meetings of the council, is disqualified from continuing in that office.
- (6) If the office of any representative or alternate becomes vacant, the party that appointed the representative or alternate may appoint another representative or alternate for the unexpired portion of the predecessor's term of office.

## 6. Council meetings

- (1) The council must hold —
- (a) an annual general meeting in the month of .....each year; and
  - (b) an ordinary meeting at least once every ..... month(s).
- (2) A special meeting of the council —
- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
  - (b) must be called by the chairperson within 14 days of —

- (i) receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... representatives; or
  - (ii) the adoption of a resolution by the council calling for a special meeting.
- (3) At the annual general meeting the council must —
- (a) elect the additional members of the executive committee;
  - (b) elect the chairperson and the deputy chairperson of the council;
  - (c) appoint the members of the panel of conciliators referred to in clause 11(1)(a);
  - (d) appoint the members of the panel of arbitrators referred to in clause 11(1)(b);
  - (e) appoint the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the council;
  - (f) consider the annual financial statements of the council and the auditor's report on those statements; and
  - (g) consider and approve, with or without any amendments, the budget of the council for the next financial year as prepared in terms of clause 15(10).
- (4) The secretary must prepare a written notice of every council meeting stating the date, time and venue of the meeting and the business to be transacted, and must send the notice to each representative by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.
- (5) At least half of the total number of employer representatives and half of the total number of employee representatives form a quorum and must be present before a meeting may begin or continue.
- (6) If, at the time fixed for a meeting to begin or continue, and for 30 minutes after that time, there is no quorum present, the meeting must be adjourned to the same place at the same time on the corresponding day in the following week unless that day is a public

There is no restriction as to the kind of service. The constitution can stipulate any form of service eg. service by hand, faxed transmission or electronic mail

holiday, in which case the meeting must be adjourned to the day immediately after that public holiday.

- (7) A meeting that has been adjourned in terms of sub-clause (6) may proceed on the date to which it was adjourned with the representatives present at the time called for the meeting, regardless of whether or not notice has been given in terms of sub-clause (4) and whether or not a quorum is present.
- (8) The secretary must cause minutes to be kept of the proceedings at council meetings.
- (9) At every meeting of the council —
  - (a) the secretary must read the minutes of the previous meeting, unless they were previously circulated; and
  - (b) after the minutes have been confirmed, with or without any amendments, the chairperson must sign the minutes.
- (10) A motion proposed at a meeting may not be considered unless it has been seconded. The chairperson may require a motion to be submitted in writing, in which case the chairperson must read the motion to the meeting.
- (11) Unless this constitution provides otherwise, all motions must be decided by a majority of votes of those present and entitled to vote and voting must be by show of hands.
- (12) Each representative has one vote on any matter before the council for its decision. However, if at the meeting the employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- (13) If any question which the executive committee considers to be extremely urgent arises between meetings of the council, and it is possible to answer that question by a simple 'yes' or 'no', the executive committee may direct the secretary to cause a vote of the representatives on the council to be taken by post. A proposal subjected to a postal vote may be adopted only if it is supported by at least two-thirds of the total number of representatives who are entitled to vote.
- (14) The executive committee may adopt general rules of procedure for its meetings and for the meetings of the council and its other committees. However, in the event of any conflict between those

The constitution could stipulate that certain matters should be decided by ballot.

rules and the provisions of this constitution, the provisions of this constitution will prevail.

## 7. Executive committee

- (1) The council will have an executive committee that consists of the chairperson and the deputy chairperson of the council, who are members by virtue of their respective offices, and ..... additional members elected in accordance with sub-clause (3).
- (2) Subject to the directions and control of the council, the executive committee may exercise and perform the powers, functions and duties of the council relating to the supervision and control of the everyday management and administration of the council. In addition, the executive committee may —
  - (a) investigate and report to the council on any matter connected with the sector in respect of which the council is registered;
  - (b) do anything necessary to give effect to decisions of the council;
  - (c) monitor and enforce collective agreements concluded in the council; and
  - (d) exercise and perform any power, function and duty that is conferred or imposed on the executive committee by or in terms of this constitution or that is delegated by the council to the executive committee. However, the council may not delegate to the executive committee the powers, functions and duties contemplated in clauses 4(4) and (5), 6(3), 16 and 17 and sub-clauses (3) and (6) of this clause, and the power of the council to delegate.
- (3) At the annual general meeting, the council must elect the additional members of the executive committee and an alternate for each of them. The additional members and their alternates must be representatives in the council, and half of the additional members, as well as their alternates, must be nominated by the employer representatives in the council, whilst the other half of the additional members, as well as their alternates, must be nominated by the employee representatives in the council.
- (4) (a) An additional member of the executive committee will hold office for 12 months and will be eligible for re-election at the end of that term.

Admission of parties.

Various functions to be performed by the council at its annual general meeting.

Winding-up of council.

Changing council's constitution.

Election and appointment of additional members of the executive committee.

- (b) An additional member of the executive committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the executive committee until that member's successor assumes office.
- (5) An additional member of the executive committee —
- (a) may resign from the committee at any time after having given at least 21 days' notice in writing to the secretary;
- (b) must vacate office immediately —
- (i) in the case of resignation, when the resignation takes effect; or
- (ii) upon ceasing to be a representative in the council.
- (6) (a) If the seat of an additional member of the executive committee becomes vacant, the council must fill the vacancy from the number of the candidates nominated for that purpose by —
- (i) the employer representatives in the council, if that seat had been held by an additional member representing the employers; or
- (ii) the employee representatives in the council, if that seat had been held by an additional member representing employees.
- (b) A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- (7) The executive committee must hold an ordinary meeting at least once every .....
- (8) A special meeting of the executive committee —
- (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
- (b) must be called by the chairperson within ..... days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than ..... members of the executive committee.
- (9) The secretary must prepare a written notice of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the

There are no restrictions as to the kind of service. The constitution can stipulate any form of service eg service by hand, faxed

transmission or electronic  
mail

notice to each member of the committee by registered post at least ..... days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.

- (10) At least half of the members of the executive committee representing employers and half of the members of that committee representing employees form a quorum and must be present before a meeting may begin or continue.
- (11) Each member of the executive committee has one vote on any matter before the committee for its decision. However, if at the meeting the members representing employers and those representing employees are not equal in number, the side that is in the majority must withdraw so many of its members from voting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- (12) In relation to any matter before the executive committee for its decision, the decision of a majority of those members of the executive committee who are present at the meeting and entitled to vote, will be the decision of the committee.

## 8. Other committees

- (1) The council may appoint other committees to perform any of its functions, including investigating and reporting to the council on any matter, but excluding the non-delegable functions referred to in clause 7(2)(d).
- (2)
  - (a) Half of the members of any committee so appointed must be nominated by the employer representatives, and the other half by the employee representatives.
  - (b) Subject to paragraph (a), committee members must be -
    - (i) employers or employees within the registered scope of the council;
    - (ii) office-bearers or officials of the parties to the council.
- (3) A majority of the total number of the members of a committee forms a quorum and must be present before the meeting may begin or continue.
- (4) The provisions of clause 7 relating to the calling and conduct of meetings, read with the changes required by the context, apply to meetings of any committee contemplated in this clause.

For example, a council that has been established for two or more sectors, could appoint a sectoral committee for each sector to conclude collective agreements on matters specific to that sector.

## 9. Chairperson and deputy chairperson

- (1) (a) At the annual general meeting, the council must elect a chairperson and deputy chairperson.  
(b) Subject to sub-clauses (3) and (6)(a), the serving chairperson of the council at the time of the annual general meeting will be the chairperson of the meeting and preside over the election of the next chairperson.
- (2) The chairperson of the meeting must call for nominations for the office of chairperson. A person will have been nominated if proposed by one and seconded by another representative in the council.
- (3) If the serving chairperson is nominated for another term, the council, by a show of hands, must elect a representative in the council to act as chairperson of the meeting during the election of the next chairperson.
- (4) (a) If only one candidate is nominated, the candidate will be deemed to have been elected the new chairperson unopposed, and must be declared by the chairperson of the meeting to have been so elected.  
(b) If two or more candidates are nominated, the chairperson of the meeting must conduct a vote by ballot, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected the new chairperson.
- (5) If an equal number of votes are cast for two or more candidates, and no other candidate has drawn a higher number of votes than those candidates, the chairperson of the meeting will cause to be determined by lot which one of those candidates is to become the new chairperson.
- (6) (a) Upon having been declared elected, the new chairperson must preside over the meeting and must call for nominations for the office of deputy chairperson.  
(b) If the newly-elected chairperson is an employer representative, only employee representatives may be nominated for deputy chairperson, and vice-versa.  
(c) The provisions of sub-clauses (2), (4) and (5), read with the changes required by the context, apply to the election of the deputy chairperson.

- (7) (a) The chairperson and deputy chairperson hold their respective offices until the next election of the chairperson or deputy chairperson (as the case may be) takes place, or, if the chairperson or deputy chairperson ceases to be a representative in the council on any date before that election, until that date. Each of them will be eligible for re-election if still a representative when their respective terms as chairperson and deputy chairperson expire.
- (b) If the office of chairperson or deputy chairperson becomes vacant before the next election of the chairperson or deputy chairperson (as the case may be) the executive committee must elect a person as chairperson or deputy chairperson (as the case may be) to hold office until that next election.
- (c) An election contemplated in paragraph (b) must be held in accordance with sub-clauses (2), (4), (5) and (6), read with the changes required by the context.
- (8) The chairperson must preside over the meetings of the council, and must —
- (a) sign the minutes of council meetings after those minutes have been confirmed;
- (b) sign cheques drawn on the council's bank account; and
- (c) perform any other functions and duties entrusted to the chairperson by this constitution as well as those that are generally associated with the office of a chairperson.
- (9) The deputy-chairperson must preside over meetings of the council and perform the functions and duties of the chairperson whenever the chairperson is absent or for any reason unable to act or to perform those functions and duties.
- (10) If both the chairperson and deputy chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the council, by a show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties.
- (11) A chairperson or a deputy chairperson who has not been elected from amongst the representatives in the council is not entitled to vote on any matter before the council or the executive committee.
- (12) A chairperson or a deputy chairperson may be removed from office by the council for serious neglect of duty, serious misconduct or due to incapacity.



## 10. Officials and employees

(1) The council must appoint a secretary who will be responsible for the administrative and secretarial work arising from the functioning of the council and for performing the functions and duties imposed on the secretary by or in terms of the Act and this constitution. That work and those duties and functions include -

- (a) to keep and maintain the books and records of account that the council may direct in order fully to reflect the financial transactions and state of affairs of the council;
- (b) to attend all meetings of the council and its executive committee and record the minutes of the proceedings at those meetings;
- (c) to conduct the correspondence of the council, keeping originals of letters received and copies of letters sent;
- (d) at each meeting of the council, to read significant correspondence that has taken place since the previous meeting;
- (e) to bank all moneys received on behalf of the council within three days of receipt;
- (f) whenever required by the council, but at least once in every quarter of the financial year, to submit to the council statements of its financial affairs and position;
- (g) to prepare, for submission at the annual general meeting of the council, a budget for the next financial year and an annual report summarising the key activities of the council; and
- (h) to countersign cheques drawn on the council's bank account.

(2) The secretary must —

- (a) retain a copy of the confirmed and signed minutes of every meeting of the council, the executive committee and any other committee of the council in safe custody at the office of the council for a period of at least three years from the date those minutes were confirmed;
- (b) retain every financial statement referred to in sub-clause (1)(f), and all vouchers and records relating to statements of that nature, for at least three years from the date of the

statement; and

- (c) sign the certificates of appointment to be issued to the persons appointed by the Minister as designated agents of the council.
- (3) The council may appoint any additional officials and any number of employees that may be necessary to assist the secretary in performing the functions and duties of that office.
  - (4) The council may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the council.
  - (5) Where there are two or more suitable candidates for appointment to the position of secretary or a designated agent, the council must elect the secretary or designated agent by conducting a ballot of the representatives present at the meeting at which the appointment is to be made, with the candidate receiving the highest number of votes being appointed.
  - (6) The secretary, designated agents and other officials and employees of the council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

## 11. Panels of conciliators and arbitrators

- (1) At its annual general meeting, the council must appoint —
  - (a) a panel of conciliators, consisting of ..... members, for the purpose of conciliating disputes; and
  - (b) a panel of arbitrators, consisting of ..... members, for the purpose of determining disputes.
- (2) The council may remove a member of the panel of conciliators or arbitrators from office —
  - (a) for serious misconduct;
  - (b) due to incapacity; or
  - (c) if at least one half of the employer representatives in the council and at least one half of the employee representatives in the council have voted in favour of the removal of that member from office.

- (3) If for any reason there is a vacancy in the panel of conciliators or the panel of arbitrators, the council may appoint a new member to the relevant panel for the unexpired portion of the predecessor's term of office.
- (4) Unless the parties to a dispute have agreed on a member of the panel of conciliators or the panel of arbitrators to conciliate or arbitrate their dispute, the secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute.
- (5) (a) A person may be appointed to both the panel of conciliators and the panel of arbitrators.
- (b) A member of the panel of conciliators or the panel of arbitrators whose term of office expires, will be eligible for re-appointment to the relevant panel at the end of that term.

## 12. Disputes referred to council for conciliation

- (1) In this clause, a dispute means any dispute between any of the parties to the council that may be referred to a council in terms of the Act except a dispute contemplated in clause 14.
- (2) For the purposes of sub-clause (1), a party to the council includes the members of any party to the council.
- (3) Any party to a dispute may refer the dispute in writing to the council.
- (4) The party who refers the dispute must satisfy the secretary that a copy of the referral has been served on all the other parties to the dispute.
- (5) If satisfied that the referral has been served in compliance with sub-clause (4), the secretary -

A dispute about the interpretation or application of the provisions of Chapter II of the Act (see section 9), about the interpretation or application of the provisions of a collective agreement concluded in the council, that could form the subject matter of a proposed strike or lockout (see section 64(1)), in any case where the parties to the dispute are engaged in an essential service (see section 74), about an unfair dismissal (see section 191), about severance pay (see section 196), or about an unfair labour practice (see item 2 in Schedule 7) may be referred to a council in terms of the Act.

- (a) may, if there is a collective agreement binding on the parties to the dispute that provides for an alternative procedure for resolving disputes, refer the dispute for resolution in terms of that procedure; or
  - (b) must appoint a member of the panel of conciliators to attempt to resolve the dispute through conciliation.
- (6) Nothing in this clause prevents an officer or an employee of the council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of sub-clause (5)(b).

### 13. Disputes referred to council for arbitration

- (1) For the purpose of this clause, a dispute means any dispute between any of the parties to the council that -
- (a) has been referred to a conciliator in terms of clause 12, but remains unresolved, and -
    - (i) the Act requires that the dispute be arbitrated and any party to the dispute has requested that the dispute be resolved through arbitration; or
    - (ii) all the parties to the dispute consent to arbitration; or
  - (b) it is a dispute about the interpretation or application of the provisions of this constitution.
- (2) Any party to a dispute may request that the dispute be resolved through arbitration.

The Act requires councils to arbitrate the following types of disputes: (1) Unfair dismissal disputes if: (a) the reason is related to the employee's conduct or capacity. (This does not apply to an employee's participation in an unprotected strike); (b) the reason is that the employer made continued employment intolerable; and (c) the employee does not know the reason for the dismissal. (See section 191(5)(a) of the Act). (2) Disputes about severance pay. (See section 196 of the Act). (3) Unfair labour practice disputes, but excluding a dispute concerning unfair discrimination. (See item 2(1)(a) in Schedule 7 to the Act). (4) Disputes in essential services as contemplated in section 74(1) of the Act.

- (3) The secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- (4) The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- (5) The arbitration proceedings must be conducted in accordance with the provisions of sections 138 and 142 and, if applicable, sections 139, 140 and 141, of the Act, read with the changes required by the context.

#### **14. Procedure for negotiation of collective agreements**

- (1) Any party to the council may introduce proposals for the conclusion of a collective agreement in the council.
- (2) The proposals must be submitted to the secretary in writing and must identify the other parties to the proposed agreement.
- (3) Within seven days of submission of the proposals, the secretary must serve copies of the proposals on the other parties to the council.
- (4) Within 21 days of submission of the proposals, the chairperson must call a special meeting of the executive committee to consider the proposals and decide on a process for negotiating the proposals, including —
  - (a) the introduction of counter-proposals;
  - (b) whether the negotiations should be conducted by the council, the executive committee or any other committee of the council;
  - (c) the appointment of a conciliator from the panel of conciliators to facilitate the negotiations; and
  - (d) the timetable for the negotiations.
- (5) If no negotiation process is agreed —
  - (a) the secretary must appoint a conciliator from the panel or conciliators to facilitate negotiations and the conclusion of a collective agreement;

- (b) the council must meet at least twice within 30 days of the meeting of the executive committee to negotiate on the proposals and any counter-proposals, unless a collective agreement has been concluded;
    - (c) the conciliator must facilitate the negotiations at those meetings and the conclusion of a collective agreement.
- (6) If no collective agreement is concluded in the course of a process or procedure contemplated in this clause, -
  - (a) the parties to the council may -
    - (i) agree to refer the dispute to arbitration; or
    - (ii) resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or
  - (b) Any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the employers and employees engaged in that service be resolved through arbitration.
- (7) In the circumstances contemplated in sub-clause (6)(a)(i) or (b), the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- (8) The provisions of clause 13(4) and (5) will apply to arbitration proceedings conducted in terms of this clause.
- (9)
  - (a) During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.
  - (b) If any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party —
    - (i) if they participate in a strike, will forfeit the protection they would have enjoyed in terms of section 67 of the Act;
    - (ii) if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of section 67 of the Act.

**15. Finances**

- (1) The council may raise funds by charging a levy on employees and employers within the registered scope of the council.
- (2) The council must open and maintain an account in its name with a bank of its choice that is registered in the Republic, and —
  - (a) deposit all moneys it receives in that account within three days of receipt; and
  - (b) pay the expenses of and make all payments on behalf of the council by cheques drawn on that account.
- (3) The council may invest any surplus funds not immediately required for current expenditure or contingencies, in —
  - (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (b) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
  - (c) a registered unit trust;
  - (d) any other manner approved by the registrar.
- (4) All payments from the council's funds must be —
  - (a) approved by the council; and
  - (b) made by cheques drawn on the council's bank account and signed by the chairperson or deputy-chairperson and counter-signed by the secretary. However, the council, by special resolution, may authorise any representative in the council, official or employee of the council to sign or counter-sign cheques drawn on the council's bank account in the event of both the chairperson and the deputy chairperson or the secretary not being readily available for that purpose.
- (5)
  - (a) Despite sub-clause (4), the council may maintain a petty cash account, out of which the secretary may make cash payments not exceeding R..... at any one occasion.
  - (b) Funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by sub-clause (4).

- (c) Except with the approval of the council, cheques drawn to transfer funds to petty cash may not exceed R..... per month in aggregate.
- (d) The council may determine the form of the records to be kept for the petty cash account.
- (6) At the end of each quarter of the financial year, the secretary must prepare a statement showing the income and expenditure of the council for that quarter, and another reflecting its assets, liabilities and financial position as at the end of that period.
- (7) The financial year of the council begins on 1 ..... in each year and ends on ..... of the following year, except the first financial year, which begins on the day that the council is registered and ends on .....
- (8) Not later than ..... after the end of the financial year, the secretary must prepare a statement of the council's financial activity in respect of that financial year, showing —
- (a) all moneys received for the council —
- (i) in terms of any collective agreement published in terms of the Act; and
- (ii) from any other sources;
- (b) expenditure incurred on behalf of the council, under the following heads —
- (i) remuneration and allowances of officials and employees;
- (ii) amounts paid to representatives and alternates in respect of their attendance at meetings, the travelling and subsistence expenses incurred by them, and the salary or wage deducted or not received by them due to their absence from work by reason of their involvement with the council;
- (iii) remuneration and allowances of members of the panel of conciliators and arbitrators;
- (iv) office accommodation;
- (v) printing and stationery requirements; and
- (vi) miscellaneous operating expenditure; and



- (c) the council's assets, liabilities and financial position as at the end of that financial year.
- (9) (a) The annual financial statements must be signed by the secretary and counter-signed by the chairperson, and submitted to an auditor for auditing and preparing a report to the council.
- (b) Certified copies of the audited statements and the auditor's report must be made available for inspection at the office of the council to members and representatives of the parties, who are entitled to make copies of those statements and the auditor's report.
- (c) The secretary must send certified copies of the audited financial statements and the auditor's report to the registrar within 30 days of receipt thereof.
- (10) Every year the secretary must prepare, for submission at the annual general meeting of the council, a budget for the council for the next financial year.
- (11) At the annual general meeting the council must appoint an auditor to perform the audit of the council for the next financial year.

## 16. Winding-up

- (1) At a special meeting called for that purpose, the council, by resolution adopted by a majority of the total number of representatives in the council, may decide to be wound up.
- (2) Upon adoption of a resolution to wind-up, the secretary must take the necessary steps to ensure that —
  - (a) application is immediately made to the Labour Court for an order giving effect to that resolution; and
  - (b) the council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the council at the disposal and under the control of that liquidator.
- (3) Each party to the council remains liable for any of its unpaid liabilities to the council as at the adoption of a resolution to wind-up the council.

- (4) If all the liabilities of the council have been discharged, the council must transfer any remaining assets to —
- (a) a bargaining council within the same or a similar sector, that has been agreed upon at the special meeting referred to in sub-clause (1);
  - (b) the Commission, if —
    - (i) there is no bargaining council within the same or a similar sector; or
    - (ii) the parties to the council fail to agree on a bargaining council that is to receive the remaining assets.

### 17. Changing constitution

- (1) The council may change this constitution at any time —
- (a) by a resolution adopted by unanimous vote of all the representatives in the council on a motion to amend tabled without prior notice; or
  - (b) by a resolution adopted by at least two-thirds of all the representatives in the council after at least —
    - (i) one month's notice of that motion to amend had been given to the secretary; and
    - (ii) two weeks' notice of that motion had been given to all the other representatives.
- (2) Any amendment to this constitution becomes effective after the resolution effecting that amendment has been certified by the registrar in terms of section 57(3) of the Act.

### 18. Necessary first steps

- (1) With a view to making the council operative and functional without delay, the provisions contained in the Annexure to this constitution will apply and must be read as one with this constitution until the requirements and procedures contemplated in those provisions have been complied with.
- (2) Any act performed in compliance with the provisions contained in the Annexure will be deemed to have been performed in terms of and in accordance with this constitution.

**19. Definitions**

In this constitution, any expression that is defined in the Act has that meaning and unless the context otherwise indicates -

'chairperson' means the chairperson of the council who, by virtue of that office, is also the chairperson of the executive committee

'deputy chairperson' means the deputy chairperson of the council who, by virtue of that office, is also the deputy chairperson of the executive committee;

'executive committee' means the executive committee of the council; contemplated in clause 7;

'Minister' means the Minister of Labour;

'secretary' means the secretary of the council; and

'the Act' means the Labour Relations Act, 1995 (Act No. 66 of 1995).

**ANNEXURE**

**Necessary first steps to be followed by council**

State the date on which, or specify a period after the occurrence of a particular event (e.g. registration of the Council), on the expiry of which the meeting must be held, as well as the time and venue of the meeting.

1. At the first meeting of the council, which will be held  
 .....  
 .....  
 .....

- (a) the council, by a show of hands, must select a suitable person to act as chairperson of that meeting, subject to paragraph (c), as well as another to keep the minutes of the meeting;
- (b) the council must elect the chairperson and the deputy chairperson and the additional members of the executive committee in the manner set out in clauses 9 and 7 respectively, read with the changes required by the context;
- (c) the newly-elected chairperson of the council must take over the chair at that meeting;
- (d) the council must appoint the officials contemplated in clause 6(3)(c), (d) and (e); and

- (e) the council must appoint an auditor to perform the audit of the council in respect of its first financial year.
2. The secretary, in the manner contemplated in clause 10(1)(g), must as soon as possible prepare, for submission at the next ordinary meeting of the council, a budget for the council for its first financial year."

**[NOTE: According to the above model constitution, the council's certificate of registration is, upon receipt, to be attached to its constitution (see clause 2). If not so attached, the constitution of a council following the model will be incomplete.]"**

No. R. 443

27 Maart 1997

## WET OP ARBEIDSVERHOUDINGE, 1995

BYVOEGING VAN BYLAE 9: MODELKONSTITUSIE VIR 'N  
STATUTÊRE RAAD

Kragtens die bevoegdheid my verleen by artikel 207 (3) van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), voeg ek hierby nog 'n bylae, naamlik Bylae 9, by daardie Wet, soos in die Aanhangsel uiteengesit.

T. T. MBOWENI

Minister van Arbeid

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## AANHANGSEL

## "BYLAE 9

## MODELKONSTITUSIE VIR 'N STATUTÊRE RAAD

KONSTITUSIE VAN .....

Dit is 'n modelkonstitusie. Dit staan die partye by die raad vry om hulle eie konstitusie op te stel of om hierdie model aan te pas om in hulle eie behoeftes te voorsien, mits die konstitusie voldoen aan die bepalings van die Wet.

**1. Naam**

Die naam van hierdie statutêre raad is .....

**2. Geregistreeerde bestek**

Die geregistreeerde bestek van die raad word gespesifiseer in die raad se registrasiesertifikaat, wat by hierdie konstitusie aangeheg is.

**3. Bevoegdhede en werksaamhede**

(1) Die bevoegdhede en werksaamhede van die raad is -

- (a) om die geskilbeslegtingswerksaamhede in artikel 51 van die Wet bedoel, te verrig;
- (b) om opleidings- en onderwyskemas te bevorder en in te stel;
- (c) om pensioen-, voorsorg-, mediese hulp-, siektebetalings-, vakansie- en werkloosheidskemas of -fondse of soortgelyke skemas of fondse ten voordele van een of meer van die partye by die raad of hulle lede in te stel en te administreer; en
- (d) om kollektiewe ooreenkomste te sluit wat uitvoering gee aan die aangeleenthede in paragrawe (a), (b) en (c) genoem.

(2) Die raad kan instem tot die insluiting van enige van die werksaamhede van 'n bedingingsraad bedoel in artikel 28(1)(a), (b), (c), (e), (h), (i) en (j) van die Wet as werksaamhede van die raad.

(3) Die raad kan hierdie bevoegdhede uitoefen en hierdie werksaamhede verrig slegs binne sy geregistreeerde bestek.

Daar is 'n alternatiewe manier om uitvoering te gee aan artikel 43(2) van die Wet, wat statutêre rade toelaat om enige van die ander werksaamhede van 'n bedingingsraad in te sluit. Die raad kan, deur sy wysigingsbepalings (klousule 17), klousule 3(1) wysig deur enige een of meer van daardie werksaamhede in te sluit.

**4. Partye**

(1) Die stigterspartye by die raad is -

(a) die volgende werkgewersorganisasie(s):

(i) \_\_\_\_\_

(ii) \_\_\_\_\_; en

(iii) \_\_\_\_\_; en  
(name)

(b) die volgende vakbond(e):

(i) \_\_\_\_\_

(ii) \_\_\_\_\_; en

(iii) \_\_\_\_\_; en  
(name)

(2) Enige geregistreerde vakbond of geregistreerde werkgewersorganisasie wat lede het wat binne die geregistreerde bestek van die raad val, kan skriftelik by die raad aansoek doen om as 'n party toegelaat te word.

(3) Die aansoek moet vergesel gaan van -

(a) 'n gewaarmerkte afskrif van die aansoeker se geregistreerde konstitusie;

(b) 'n gewaarmerkte afskrif van die aansoeker se registrasiesertifikaat;

(c) besonderhede van die aansoeker se lidmaatskap binne die geregistreerde bestek van die raad, insluitende, in die geval van 'n werkgewersorganisasie, die aantal werknemers wat sy lede binne die geregistreerde bestek van die raad in diens het;

(d) 'n opgawe van die redes waarom die aansoeker as 'n party by die raad toegelaat behoort te word; en

(e) enige ander inligting wat die aansoeker ter ondersteuning van sy aansoek wil voorlê.

(4) Binne 90 dae na ontvangs van 'n aansoek om toelating moet die raad besluit of aan die aansoeker toelating verleen of geweier moet word, en moet hy die aansoeker van sy besluit in kennis stel, by

versuim waarvan die raad geag word die aansoeker toelating te geweier het.

- (5) Indien die raad weier om 'n aansoeker toe te laat, moet hy die aansoeker binne 30 dae na die datum van die weiering skriftelik van sy besluit en die redes vir daardie besluit in kennis stel.

**5. Aanstelling van verteenwoordigers**

- (1) Die raad bestaan uit-

- (a) ..... verteenwoordigers van die werkgewersorganisasies wat partye by die raad is, van wie ..... klein en medium-grootte ondernemings verteenwoordig; en
- (b) ..... verteenwoordigers van die vakbonde wat partye by die raad is.

Die getal verteenwoordigers wat werkgewers verteenwoordig in paragraaf (a), moet gelyk wees aan die getal verteenwoordigers wat werknemers verteenwoordig in paragraaf (b).

Indien daar geen werkgewersorganisasies is wat partye by die raad is nie, sal verteenwoordigers deur die Minister aangestel word om werkgewersbelange te verteenwoordig, en die bepalings in die konstitusie betreffende die aanstelling van verteenwoordigers sal aangepas moet word om hierdie situasie te hanteer.

Die werkgewersverteenvoordiging moet voorsiening maak vir een of meer verteenwoordigers wat klein en medium-grootte ondernemings verteenwoordig.

Indien daar geen vakbonde is wat partye by die raad is nie, sal verteenwoordigers deur die Minister aangestel word om werknemersbelange te verteenwoordig, en die bepalings in die konstitusie betreffende die aanstelling van verteenwoordigers sal aangepas moet word om hierdie situasie te hanteer.

Die toewysing kan gegrond word op 'n formule gebaseer op verteenwoordigendheid, met die sekretaris van die raad wat 'n vasstelling op 'n jaarlikse grondslag maak.

- (2) Die verteenwoordigers word soos volg onder die partye by die raad toegewys

(a) Werkgewersorganisasie(s)	Getal verteenwoordigers
------------------------------	-------------------------


(name)



(b) Vakbond(e) Getal verteenwoordigers

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(name)

(3) Behoudens subklousule (2) en sy eie konstitusie kan elke party by die raad die volgende verkies en aanstel :

(a) Sy verteenwoordigers in die raad; en

(b) 'n plaasvervanger vir elk van sy verteenwoordigers.

(4) (a) 'n Verteenwoordiger of 'n plaasvervanger beklee die amp vir 12 maande en kan aan die einde van daardie termyn heraangestel word.

(b) 'n Verteenwoordiger of 'n plaasvervanger wie se ampstermyn verstryk het en wat nie heraangestel word nie, kan nogtans voortgaan om as 'n verteenwoordiger op te tree totdat daardie verteenwoordiger se opvolger diens aanvaar.

(5) Ondanks subartikel (4) -

(a) kan 'n party enige van sy verteenwoordigers of plaasvervangers onttrek deur minstens 21 dae skriftelike kennis aan die sekretaris te gee; en

(b) word 'n verteenwoordiger wat sonder goeie gronde van drie agtereenvolgende vergaderings van die raad afwesig is, gediskwalifiseer om die amp langer te beklee.

(6) Indien die amp van 'n verteenwoordiger of plaasvervanger vakant raak, kan die party wat die verteenwoordiger of plaasvervanger aangestel het, 'n ander verteenwoordiger of plaasvervanger aanstel vir die onverstreke gedeelte van die voorganger se ampstermyn

## 6. Raadsvergaderings

(1) Die raad moet -

(a) 'n algemene jaarvergadering in die maand ..... van elke jaar hou; en

(b) minstens een keer elke ..... maand(e) gewone vergaderings hou.

(2) 'n Spesiale vergadering van die raad -

- (a) kan te eniger tyd deur die voorsitter belê word om dringende sake af te handel; en
  - (b) moet deur die voorsitter belê word binne 14 dae na -
    - (i) ontvangs van 'n versoek vir daardie doel, met vermelding van die doel van die spesiale vergadering en onderteken deur minstens ..... verteenwoordigers; of
    - (ii) die aanvaarding van 'n resoluëie deur die raad waarin 'n spesiale vergadering aangevra word.
- (3) By die algemene jaarvergadering moet die raad -
- (a) die bykomende lede van die uitvoerende komitee verkies;
  - (b) die voorsitter en die ondervoorsitter van die raad verkies;
  - (c) die lede van die paneel van versoeners in klousule 11(1)(a) bedoel, aanstel;
  - (d) die lede van die paneel van arbiters in klousule 11(1)(b) bedoel, aanstel;
  - (e) die lede van 'n vrystellingsraad aanstel om aansoeke om vrystelling van die bepalings van 'n kollektiewe ooreenkoms wat in die raad gesluit is, te oorweeg en af te handel;
  - (f) die jaarlikse finansiële state van die raad en die ouditeur se verslag oor daardie state goedkeur; en
  - (g) die raad se begroting vir die komende jaar soos opgestel ingevolge klousule 15(10), met of sonder wysigings, oorweeg en goedkeur.
- (4) Die sekretaris moet 'n skriftelike kennisgewing van elke raadsvergadering opstel wat die datum, tyd en plek van die vergadering toon asook die sake wat behandel moet word, en moet die kennisgewing minstens ..... dae voor die datum van die vergadering per geregistreerde pos aan elke verteenwoordiger stuur. Die voorsitter kan egter korter kennisgewing vir 'n spesiale vergadering magtig.
- (5) Minstens die helfte van die totale getal werkgewersverteenvoordigers en die helfte van die totale getal werknemersverteenvoordigers vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.

Daar is geen beperking op die tipe betekening nie. Die konstitusie kan enige vorm van betekening voorskryf, bv. betekening per hand, faks of elektroniese pos.

- (6) Indien daar op die tyd wat vir 'n vergadering bepaal is om te begin of voort te gaan, en vir 30 minute na daardie tyd, nie 'n kworum teenwoordig is nie, moet die vergadering verdaag word tot dieselfde plek op dieselfde tyd op die ooreenstemmende dag in die volgende week tensy daardie dag 'n openbare vakansiedag is, in welke geval die vergadering moet verdaag tot die dag onmiddellik na daardie openbare vakansiedag.
- (7) 'n Vergadering wat ingevolge subartikel (6) verdaag is, kan voortgaan op die datum tot wanneer dit verdaag is, met die verteenwoordigers teenwoordig op die tyd waarvoor die vergadering belê is, ongeag of daar ingevolge subklousule (4) kennis gegee is en of daar 'n kworum teenwoordig is al dan nie.
- (8) Die sekretaris moet 'n notule van die verrigtinge by raadsvergaderings laat hou.
- (9) By elke vergadering van die raad -
- (a) moet die sekretaris die notule van die vorige vergadering voorlees, tensy dit voorheen gesirkuleer is; en
  - (b) moet die voorsitter die notule, met of sonder wysigings, teken nadat dit bevestig is.
- (10) Geen mosie mag by 'n vergadering oorweeg word nie tensy dit gesekondeer is. Die voorsitter kan vereis dat 'n mosie skriftelik voorgelê word, in welke geval die voorsitter die mosie aan die vergadering moet voorlees.
- (11) Tensy hierdie konstitusie anders bepaal, moet alle mosies beslis word deur 'n meerderheid stemme van diegene wat teenwoordig en stemgeregtig is, en daar moet met die opsteek van hande gestem word.
- (12) Elke lid van die uitvoerende komitee het een stem oor enige aangeleentheid voor die komitee waarvoor die komitee moet besluit. Indien die lede wat werkgewers verteenwoordig en dié wat werknemers verteenwoordig by die vergadering egter nie gelyk in getal is nie, moet die kant wat in die meerderheid is, soveel van sy verteenwoordigers aan stemming onttrek as wat nodig is om te verseker dat die twee kante ewe getalsterk is ten tyde van stemming.
- (13) Indien daar tussen vergaderings van die raad enige vraag ontstaan wat die uitvoerende komitee as uiters dringend beskou, en dit moontlik is om daardie vraag deur 'n eenvoudige "Ja" of "Nee" te beantwoord, kan die uitvoerende komitee die sekretaris opdrag gee om die verteenwoordigers in die raad deur posstemming te laat

Die konstitusie kan bepaal dat sekere aangeleenthede per stemming beslis moet word.

stem. 'n Voorstel wat aan 'n posstemming onderwerp word, kan aangeneem word slegs indien dit gesteun word deur minstens twee derdes van die totale getal verteenwoordigers wat stemgeregtig is.

- (14) Die uitvoerende komitee kan algemene prosedurereëls vir sy vergaderings en vir die vergaderings van die raad en sy komitees aanvaar. In geval van 'n botsing tussen daardie reëls en die bepalings van hierdie konstitusie geniet die bepalings van hierdie konstitusie egter voorrang.

## 7. Uitvoerende komitee

- (1) Die raad het 'n uitvoerende komitee wat bestaan uit die voorsitter en die ondervoorsitter van die raad, wat uit hoofde van hulle onderskeie ampte lede is, en ..... bykomende lede wat ooreenkomstig subklousule (3) gekies word.
- (2) Behoudens die lasgewings en beheer van die raad kan die uitvoerende komitee die bevoegdhede, werksaamhede en pligte van die raad uitoefen en verrig betreffende die toesig en beheer oor die daaglikse bestuur en administrasie van die raad. Daarbenewens kan die uitvoerende komitee -
- (a) ondersoek instel na en aan die raad verslag doen oor enige aangeleentheid betreffende die sektor ten opsigte waarvan die raad geregistreer is;
- (b) enigiets doen wat nodig is om uitvoering aan besluite van die raad te gee;
- (c) kollektiewe ooreenkomste wat in die raad gesluit is, monitor en afdwing; en
- (d) enige bevoegdheid uitoefen en enige werksaamheid en plig verrig wat by of ingevolge hierdie konstitusie aan die uitvoerende komitee verleen of opgedra word of wat deur die raad aan die uitvoerende komitee gedelegeer word. Die raad mag egter nie die bevoegdhede, werksaamhede en pligte beoog in klousules 4(4) en (5), 6(3) 16 en 17 en subklousules (3) en (6) van hierdie klousule, en die bevoegdheid van die raad om te deleger, aan die uitvoerende komitee deleger nie.
- (3) Op die algemene jaarvergadering moet die raad die bykomende lede van die uitvoerende komitee en 'n plaasvervanger vir elkeen verkies. Die bykomende lede en hulle plaasvervangers moet verteenwoordigers in die raad wees, en die helfte van die bykomende lede en hulle plaasvervangers moet deur die werkgewersverteenwoordigers in die raad benoem word, en die

Toelating van partye.

Verskeie werksaamhede wat die raad op sy algemene jaarvergadering moet verrig.

Likwidering van die raad.

Verandering van die raad se konstitusie.

Verkieping en aanstelling van bykomende lede van die uitvoerende komitee.

ander helfte van die bykomende lede en hulle plaasvervangers moet deur die werknemersverteenvoerders in die raad benoem word.

- (4) (a) 'n Bykomende lid van die uitvoerende komitee beklee die amp vir 12 maande en is herkiesbaar aan die einde van daardie termyn.
- (b) 'n Bykomende lid van die uitvoerende komitee wie se ampstermyn verstryk het en wat nie herverkies word nie, kan nogtans voortgaan om as 'n lid van die uitvoerende komitee op te tree totdat daardie lid se opvolger diens aanvaar.
- (5) 'n Bykomende lid van die uitvoerende komitee -
- (a) kan te eniger tyd uit die komitee bedank nadat hy minstens 21 dae skriftelike kennis aan die sekretaris gegee het;
- (b) moet die amp onmiddellik ontruim -
- (i) in die geval van bedanking, wanneer die bedanking in werking tree; of
- (ii) wanneer hy ophou om 'n verteenwoordiger in die raad te wees.
- (6) (a) Wanneer die setel van 'n bykomende lid van die uitvoerende komitee vakant raak, moet die raad die vakature vul uit die getal kandidate wat vir daardie doel benoem is deur -
- (i) die werkgewersverteenvoerders in die raad, indien daardie setel deur 'n bykomende lid wat die werkgewersverteenvoerders, gehou is; of
- (ii) die werknemersverteenvoerders in die raad, indien daardie setel deur 'n bykomende lid wat werknemers verteenwoordig, gehou is.
- (b) 'n Lid wat aangestel is om 'n vakante setel te vul, hou daardie setel vir die onverstreke gedeelte van die voorganger se termyn.
- (7) Die uitvoerende komitee moet 'n gewone vergadering minstens elke ..... hou.
- (8) 'n Spesiale vergadering van die uitvoerende komitee -
- (a) kan te eniger tyd deur die voorsitter belê word om dringende sake af te handel; en

Daar is geen beperking op die tipe betekening nie. Die konstitusie kan enige vorm van betekening bepaal, bv. betekening per hand, faks of elektroniese pos.

(b) moet deur die voorsitter belê word binne ..... dae na ontvangs van 'n versoek vir daardie doel, wat die doel van die spesiale vergadering vermeld en onderteken is deur minstens ..... lede van die uitvoerende komitee.

- (9) Die sekretaris moet 'n skriftelike kennisgewing van elke vergadering van die uitvoerende komitee opstel wat die datum, tyd en plek van die vergadering toon, asook die sake wat behandel moet word, en moet die kennisgewing minstens ..... dae voor die datum van die vergadering per geregistreerde pos aan elke lid van die komitee stuur. Die voorsitter kan egter korter kennisgewing vir 'n spesiale vergadering magtig.
- (10) Minstens die helfte van die lede van die uitvoerende komitee wat werkgewers verteenwoordig en die helfte van die lede van daardie komitee wat werknemers verteenwoordig, vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.
- (11) Elke lid van die uitvoerende komitee het een stem oor enige aangeleentheid voor die komitee waarvoor die komitee moet besluit. Indien die lede wat werkgewers verteenwoordig en dié wat werknemers verteenwoordig by die vergadering egter nie gelyk in getal is nie, moet die kant wat in die meerderheid is, soveel van sy verteenwoordigers aan stemming onttrek as wat nodig is om te verseker dat die twee kante ewe getalsterk is ten tyde van stemming.
- (12) Met betrekking tot enige aangeleentheid waarvoor die uitvoerende komitee moet besluit, is die besluit van die meerderheid van die lede van die uitvoerende komitee wat op die vergadering teenwoordig is en stemgeregtig is, die besluit van die komitee.

## 8. Ander komitees

Byvoorbeeld, 'n raad wat vir twee of meer sektore ingestel is, kan 'n sektorale komitee aanstel vir elke sektor om kollektiewe ooreenkomste te sluit oor aangeleenthede eie aan daardie sektor.

- (1) Die raad kan ander komitees aanstel om enige van sy werksaamhede te verrig, met inbegrip van ondersoek instel na en verslag doen aan die raad oor enige aangeleentheid, maar uitgesonderd die nie-delegeerbare werksaamhede in klousule 7(2)(d) bedoel.
- (2) (a) Die helfte van die lede van 'n komitee wat aldus aangestel is, moet deur die werkgewersverteenwoordigers benoem word, en die ander helfte deur die werknemersverteenwoordigers.
- (b) Behoudens paragraaf (a) moet komiteelede -
- (i) werkgewers of werknemers binne die geregistreerde bestek van die raad wees; of

(ii) ampsdraers of beamptes van die partye by die raad wees.

(3) 'n Meerderheid van die totale aantal lede van 'n komitee vorm 'n kworum en moet teenwoordig wees voordat 'n vergadering kan begin of voortgaan.

(4) Die bepalinge van klousule 7 met betrekking tot die belê en hou van vergaderings, gelees met die veranderings wat deur die konteks vereis word, is van toepassing op vergaderings van enige komitee in hierdie klousule bedoel.

## 9. Voorsitter en ondervoorsitter

(1) (a) By die algemene jaarvergadering moet die raad 'n voorsitter en 'n ondervoorsitter verkies.

(b) Behoudens subklousules (3) en (6)(a) is die dienende voorsitter van die raad ten tyde van die algemene jaarvergadering die voorsitter van die vergadering en lei hy die verkiesing van die volgende voorsitter.

(2) Die voorsitter van die vergadering moet benoemings vir die amp van voorsitter vra. 'n Persoon is benoem as hy deur een verteenwoordiger in die raad voorgestel en deur 'n ander gesekondeer is.

(3) Indien die dienende voorsitter vir nog 'n termyn benoem word, moet die raad deur die opsteek van hande 'n verteenwoordiger in die raad verkies om as voorsitter van die vergadering op te tree tydens die verkiesing van die volgende voorsitter.

(4) (a) Indien net een kandidaat benoem is, word daardie kandidaat geag onbestrede tot nuwe voorsitter verkies te wees, en die voorsitter van die vergadering moet hom aldus verkose verklaar.

(b) Indien twee of meer kandidate benoem is, moet die voorsitter van die vergadering 'n stemming per stembrief hou, en hy moet die kandidaat op wie die meerderheid van die stemme uitgebring is, tot die verkose nuwe voorsitter verklaar.

(5) Indien 'n gelyke getal stemme vir twee of meer kandidate uitgebring is en geen ander kandidaat 'n groter getal stemme as dié kandidate het nie, moet die voorsitter van die vergadering deur middel van loting laat bepaal watter een van daardie kandidate die nuwe voorsitter moet wees.

- (6) (a) Nadat die nuwe voorsitter as verkose verklaar is, moet die nuwe voorsitter as voorsitter van die vergadering optree en vir benoemings vir die amp van ondervoorsitter vra.
- (b) Indien die nuut verkose voorsitter 'n verteenwoordiger van werkgewers is, mag slegs verteenwoordigers van werknemers vir die amp van ondervoorsitter benoem word, en omgekeerd.
- (c) Die bepalings van subklousules (2), (4) en (5), gelees met die veranderinge wat deur die konteks vereis word, is van toepassing vir die verkiesing van die ondervoorsitter.
- (7) (a) Die voorsitter en die ondervoorsitter beklee hulle onderskeie ampte totdat die volgende verkiesing van die voorsitter of ondervoorsitter, na gelang van die geval, plaasvind, of, indien die voorsitter of die ondervoorsitter ophou om 'n verteenwoordiger in die raad te wees op enige datum voor daardie verkiesing, tot daardie datum. Albei is herkiesbaar indien hulle steeds 'n verteenwoordiger is wanneer hulle onderskeie termyne as voorsitter of ondervoorsitter verstryk.
- (b) Indien die amp van voorsitter of ondervoorsitter vakant raak voor die volgende verkiesing van die voorsitter of ondervoorsitter, na gelang van die geval, moet die uitvoerende komitee iemand as voorsitter of ondervoorsitter, na gelang van die geval, verkies om die amp tot die volgende verkiesing te beklee.
- (c) 'n Verkiesing in paragraaf (b) bedoel, moet gehou word ooreenkomstig subklousules (2), (4), (5) en (6), gelees met die veranderinge wat deur die konteks vereis word.
- (8) Die voorsitter sit voor by al die vergaderings van die raad en moet -
- (a) notules van vergaderings van die raad onderteken nadat daardie notules bevestig is;
- (b) tjeks onderteken wat teen die raad se bankrekening getrek word; en
- (c) enige ander werksaamhede en pligte verrig wat by hierdie konstitusie aan die voorsitter opgedra word, asook dié wat in die algemeen gepaard gaan met die amp van voorsitter.
- (9) Die ondervoorsitter sit voor by vergaderings van die raad en verrig die werksaamhede en pligte van die voorsitter telkens wanneer die voorsitter afwesig is of om enige rede nie in staat is om op te tree of om daardie werksaamhede en pligte te verrig nie.



- (10) Indien sowel die voorsitter as die ondervoorsitter afwesig is of nie in staat is om die werksaamhede en pligte van die voorsitter te verrig nie, moet die raad deur die opsteek van hande iemand uit die geledere van die verteenwoordigers verkies om as voorsitter op te tree en daardie werksaamhede en pligte te verrig.
- (11) 'n Voorsitter of 'n ondervoorsitter wat nie uit die geledere van die verteenwoordigers in die raad verkies is nie, mag nie oor enige aangeleentheid voor die raad of die uitvoerende komitee stem nie.
- (12) 'n Voorsitter of 'n ondervoorsitter kan deur die raad van sy of haar amp onthef word vir ernstige pligsversuim, ernstige wangedrag of ongeschiktheid.

#### **10. Beampptes en werknemers**

- (1) Die raad moet 'n sekretaris aanstel wat verantwoordelik is vir die administratiewe en sekretariële werk voortspruitend uit die werksaamhede van die raad en vir die verrigting van die werksaamhede en pligte wat by of ingevolge die Wet en hierdie konstitusie aan die sekretaris opgedra word. Daardie werk en daardie werksaamhede en pligte sluit in -
  - (a) om die rekeningboeke en rekords te hou wat die raad gelas ten einde die finansiële transaksies en stand van die raad volledig te weerspieël;
  - (b) om alle vergaderings van die raad en sy uitvoerende komitee by te woon en die notule van die verrigtinge by daardie vergaderings aan te teken;
  - (c) om die korrespondensie van die raad te voer en oorspronklike briewe wat ontvang en afskrifte van briewe wat gestuur is, te hou;
  - (d) om by elke vergadering van die raad belangrike korrespondensie wat sedert die laaste vergadering plaasgevind het, voor te lees;
  - (e) om alle gelde wat namens die raad ontvang is, binne drie dae na ontvangs te bank;
  - (f) om state van die finansiële sake en posisie van die raad voor te lê telkens wanneer die raad dit vereis, maar minstens een maal elke kwartaal van die boekjaar;
  - (g) om 'n begroting vir die volgende boekjaar en 'n jaarverslag waarin die belangrikste bedrywighede van die raad opgesom word, op te stel vir voorlegging op die algemene

jaarvergadering van die raad; en

(h) om tjeks getrek teen die raad se bankrekening te mede-onderteken.

(2) Die sekretaris moet -

(a) 'n afskrif van die bevestigde en ondertekende notule van elke vergadering van die raad, die uitvoerende komitee en enige ander komitee van die raad in veilige bewaring in die kantoor van die raad hou vir 'n tydperk van minstens drie jaar na die datum waarop die notule bevestig is;

(b) elke finansiële staat in subklousule (1)(f) bedoel en alle bewysstukke en rekords met betrekking tot state van daardie aard vir minstens drie jaar na die datum van die staat hou; en

(c) die aanstellingstifikate wat uitgereik moet word aan die persone wat deur die Minister as aangewese agente van die raad aangestel word, onderteken.

(3) Die raad kan enige bykomende beamptes en enige aantal werknemers aanstel wat nodig is om die sekretaris by te staan met die verrigting van die werksaamhede en pligte van daardie amp.

(4) Die raad kan die Minister versoek om enige aantal persone as aangewese agente aan te stel om die raad te help om enige kollektiewe ooreenkoms wat in die raad gesluit is, af te dwing.

(5) Wanneer daar twee of meer geskikte kandidate vir aanstelling in die betrekking van sekretaris of as 'n aangewese agent is, moet die raad die sekretaris of aangewese agent verkies deur 'n stemming deur middel van stembriewe te hou onder die verteenwoordigers teenwoordig by die vergadering waar die aanstelling gedoen moet word, en die kandidaat wat die grootste getal stemme ontvang, word aangestel.

(6) Die sekretaris, aangewese agente en ander beamptes en werknemers van die raad mag by die verrigting van hulle onderskeie werksaamhede nie partydig vir of bevooroordeeld teenoor enige party wees nie.

## 11. Panele van versoeners en arbiters

(1) Op sy algemene jaarvergadering moet die raad -

(a) 'n paneel van versoeners aanstel, bestaande uit .... lede, met die doel om geskille te versoen;

- (b) 'n paneel van arbiters aanstel, bestaande uit ..... lede, met die doel om geskille te beslis.
- (2) Die raad kan 'n lid van die paneel van versoeners of arbiters van sy of haar amp onthef -
  - (a) vir ernstige wangedrag;
  - (b) as gevolg van ongeschiktheid; of
  - (c) indien minstens die helfte van die werkgewersverteenvoerders in die raad en minstens die helfte van die werknemersverteenvoerders in die raad ten gunste van die ampsonthef van daardie lid gestem het.
- (3) Indien daar om enige rede 'n vakature in die paneel van versoeners of die paneel van arbiters is, kan die raad 'n nuwe lid in die betrokke paneel aanstel vir die onverstreke gedeelte van die voorganger se ampstermyn.
- (4) Tensy die partye by 'n geskil op 'n lid van die paneel van versoeners of die paneel van arbiters ooreengekom het om hulle geskil te versoen of te arbitreer, moet die sekretaris 'n lid van die betrokke paneel aanstel om die geskil te versoen of te arbitreer.
- (5) (a) 'n Persoon kan in sowel die paneel van versoeners as die paneel van arbiters aangestel word.
- (b) 'n Lid van die paneel van versoeners of die paneel van arbiters wie se ampstermyn verstryk, kan aan die einde van daardie termyn heraangestel word.

## 12. Geskille na die raad verwys vir versoening

- (1) In hierdie klousule beteken "geskil" 'n geskil tussen enige van die partye by 'n raad wat ingevolge die Wet na 'n raad verwys kan word, uitgesonderd 'n geskil in klousule 14 bedoel.

'n Geskil oor die interpretasie of toepassing van die bepalings van Hoofstuk II van die Wet (kyk artikel 9), oor die interpretasie of toepassing van die bepalings van 'n kollektiewe ooreenkoms wat in die raad gesluit is, wat die onderwerp kan vorm van 'n voorgenome staking of uitsluiting (kyk artikel 64(1)), in elke geval waar die partye by die geskil by 'n noodsaaklike diens betrokke is (kyk artikel 74), oor 'n onbillike ontslag (kyk artikel 191), oor die uitreeloon (kyk artikel 196), of oor 'n onbillike arbeidspraktyk (kyk item 2 in Bylae 7) kan ingevolge die Wet na 'n raad verwys word.

- (2) Vir doeleindes van subklousule (1) sluit 'n party by die raad die lede van enige party by die raad in.
- (3) Enige party by 'n geskil kan die geskil skriftelik na die raad verwys.
- (4) Die party wat die geskil verwys, moet die sekretaris daarvan oortuig dat 'n afskrif van die verwysing aan al die ander partye by die geskil beteken is.
- (5) Indien die sekretaris daarvan oortuig is dat die verwysing beteken is ooreenkomstig subklousule (4) -
  - (a) kan hy, indien daar 'n kollektiewe ooreenkoms is wat bindend is vir die partye by die geskil en wat voorsiening maak vir 'n alternatiewe prosedure vir die beslegting van geskille, die geskil verwys vir beslegting ingevolge daardie prosedure; of
  - (b) moet hy 'n lid van die paneel van versoeners aanstel om te probeer om die geskil deur middel van versoening te besleg.
- (6) Niks in hierdie klousule vervat, belet 'n beamppte of 'n werknemer van die raad om die geskil te ondersoek of om te probeer om die geskil te versoen voor die aanstelling van 'n versoener ingevolge subklousule (5)(b) nie.

### 13. Geskille na die raad verwys vir arbitrasie

- (1) Vir doeleindes van hierdie klousule beteken 'n geskil enige geskil tussen enige van die partye by die raad wat -
  - (a) ingevolge klousule 12 na 'n versoener verwys is maar steeds onbesleg is; en -
    - (i) waar die Wet vereis dat die geskil gearbitreer word en enige party by die geskil versoek het dat die geskil deur arbitrasie besleg word; of

Die Wet vereis dat rade die volgende tipes geskille arbitreer: (1) Geskille oor onbillike ontslag indien (a) die rede verband hou met die werknemer se gedrag of geskiktheid (dit is nie op 'n werknemer se deelname aan 'n onbeskermdede staking van toepassing nie); (b) die rede is dat die werkgever voortgesette diens ondraaglik gemaak het; en (c) die werknemer nie die rede vir die ontslag weet nie (kyk artikel 191(5)(a) van die Wet). (2) Geskille oor uittreeloon (kyk artikel 196 van die Wet). (3) Geskille oor 'n onbillike arbeidspraktyk, maar uitgesonderd 'n geskil oor onbillike diskriminasie (kyk item 2(1)(a) in Bylae

7 van die Wet). (4)  
**Geskille in noodsaaklike  
 dienste** soos beoog in  
 artikel 74(1) van die Wet

- (ii) al die partye by die geskil tot arbitrasie ingestem het; of
  - (b) dit 'n geskil oor die interpretasie of die toepassing van die bepalings van hierdie konstitusie is.
- (2) Enige party by 'n geskil kan versoek dat die geskil deur arbitrasie besleg word.
  - (3) Die sekretaris moet 'n lid van die paneel van arbiters aanstel om die geskil te besleg.
  - (4) Die arbiter kan die arbitrasie doen op 'n wyse wat die arbiter geskik ag ten einde die geskil billik en spoedig te beslis, maar moet die wesentliche meriete van die geskil met die mins moontlike regsformaliteite hanteer.
  - (5) Die arbitrasieverrigtinge moet geskied in ooreenstemming met die bepalings van artikels 138 en 142 en, indien van toepassing, artikels 139, 140 en 141 van die Wet, gelees met die veranderinge wat deur die konteks vereis word.

#### **14. Prosedure vir onderhandeling oor kollektiewe ooreenkomste**

- (1) Enige party by die raad kan voorstelle vir die sluit van 'n kollektiewe ooreenkoms in die raad maak.
- (2) Die voorstelle moet skriftelik aan die sekretaris voorgelê word en moet die ander partye by die voorgestelde ooreenkoms identifiseer.
- (3) Binne sewe dae na die voorlegging van die voorstelle moet die sekretaris afskrifte van die voorstelle aan die ander partye by die raad beteken.
- (4) Binne 21 dae na die voorlegging van die voorstelle moet die voorsitter 'n spesiale vergadering van die uitvoerende komitee belê om die voorstelle te oorweeg en om te besluit op 'n proses om oor die voorstelle te onderhandel, met inbegrip van -
  - (a) die maak van teenvoorstelle;
  - (b) of die onderhandelinge deur die raad, die uitvoerende komitee of enige ander komitee van die raad gevoer moet word;
  - (c) die aanstelling van 'n versoener uit die paneel van versoeners

- om die onderhandelinge te fasiliteer; en
- (d) die tydrooster vir die onderhandelinge.
- (5) Indien daar nie op 'n onderhandelingsproses ooreengekom word nie -
- (a) moet die sekretaris 'n versoener uit die paneel van versoeners aanstel om die onderhandelinge en die sluit van 'n kollektiewe ooreenkoms te fasiliteer;
- (b) moet die raad binne 30 dae na die vergadering van die uitvoerende komitee ten minste twee keer vergader om oor die voorstelle en enige teenvoorstelle te onderhandel, tensy 'n kollektiewe ooreenkoms gesluit is;
- (c) moet die versoener die onderhandelinge op daardie vergaderings en die sluit van kollektiewe ooreenkomste fasiliteer.
- (6) Indien daar in die loop van hierdie proses of prosedure beoog in hierdie klousule geen kollektiewe ooreenkoms gesluit word nie -
- (a) kan die partye by die raad -
- (i) ooreenkom om die geskil vir arbitrasie te verwys; of
- (ii) hulle toevlug neem tot 'n staking of 'n uitsluiting wat ooreenkomstig die bepalings van Hoofstuk IV van die Wet is; of
- (b) kan enige party by die geskil wie se lede by 'n noodsaaklike diens betrokke is, versoek dat die geskil ten opsigte van die werkgewers en die werknemers wat by daardie diens betrokke is, deur arbitrasie besleg word.
- (7) In die omstandighede in subklousule (6)(a)(i) of (ii) beoog moet die sekretaris 'n lid van die paneel van arbiters aanstel om die geskil te arbitreer.
- (8) Die bepalings van klousule 13(4) en (5) is van toepassing op arbitrasieverrigtinge wat ingevolge hierdie klousule gevoer word.
- (9) (a) Tydens die staking of uitsluiting moet die partye by die geskil elke vergadering bywoon wat deur die versoener belê word om die geskil te besleg.
- (b) Indien enige party by die geskil sonder grondige rede versuim

om 'n vergadering wat aldus belê is by te woon, sal die lede van daardie party -

- (i) indien hulle aan 'n staking deelneem, die beskerming verbeur wat hulle ingevolge artikel 67 van die Wet sou geniet het;
- (ii) indien hulle aan 'n uitsluiting deelneem, die beskerming verbeur wat hulle ingevolge artikel 67 van die Wet sou geniet het.

## 15. Finansies

- (1) Die raad kan fondse insamel deur middel van 'n heffing op werknemers en werkgewers binne die geregistreerde bestek van die raad.
- (2) Die raad moet 'n rekening op sy naam open en in stand hou by 'n bank van sy keuse wat in die Republiek geregistreer is, en -
  - (a) alle gelde wat hy ontvang, binne drie dae na ontvangs in daardie rekening deponeer; en
  - (b) die uitgawes van en alle betalings ten behoeve van die raad betaal deur middel van tjeks getrek teen daardie rekening.
- (3) Die raad kan enige surplusfondse wat nie onmiddellik vir lopende uitgawes of gebeurlikhede nodig is nie, belê in -
  - (a) spaarrekeninge, permanente aandele of vaste deposito's in enige geregistreerde bank of finansiële instelling;
  - (b) binnelandse geregistreerde effekte soos beoog in artikel 21 van die Skatkiswet, 1975 (Wet 66 van 1975);
  - (c) 'n geregistreerde effektetrust; of
  - (d) enige ander wyse deur die registrateur goedgekeur.
- (4) Alle betalings uit die raad se fondse moet -
  - (a) deur die raad goedgekeur word; en
  - (b) per tjek getrek teen die raad se bankrekening en onderteken deur die voorsitter of ondervoorsitter en mede-onderteken deur die sekretaris, betaal word. Die raad kan egter, by spesiale resoluësie, enige verteenwoordiger in die raad, beampte of werknemer van die raad magtig om tjeks wat teen die raad se bankrekening getrek word, te onderteken of te

- mede-onderteken indien sowel die voorsitter as die ondervoorsitter of die sekretaris nie vir daardie doel gereedlik beskikbaar is nie.
- (5) (a) Ondanks subklousule (4) kan die raad 'n kleinkasrekening hou, waaruit die sekretaris kontantbetalings van hoogstens R..... by enige een geleentheid kan doen.
- (b) Fondse benodig vir die kleinkasrekening kan na daardie rekening oorgeplaas word slegs deur die trek van 'n tjek wat uitgereik en onderteken is op die wyse in subklousule (4) vereis.
- (c) Tensy die raad goedkeuring verleen, mag tjeks wat getrek word om fondse na kleinkas oor te plaas, nie altesaam R..... per maand oorskry nie.
- (d) Die raad kan die vorm bepaal van rekords wat vir die kleinkasrekening gehou moet word.
- (6) Aan die einde van elke kwartaal van die boekjaar moet die sekretaris 'n staat opstel wat die inkomste en uitgawes van die raad vir daardie kwartaal toon, en nog 'n staat wat die bates, verpligtinge en finansiële posisie soos aan die einde van daardie tydperk toon.
- (7) Die boekjaar van die raad begin op 1 ..... van elke jaar en eindig op .... van die volgende jaar, uitgesonderd die eerste boekjaar, wat begin op die dag waarop die raad geregistreer word en eindig op .....
- (8) Nie later nie as ..... na die einde van die boekjaar moet die sekretaris 'n staat van die raad se finansiële aktiwiteit ten opsigte van daardie boekjaar opstel wat die volgende toon:
- (a) Alle gelde ontvang vir die raad -
- (i) ingevolge enige kollektiewe ooreenkoms wat ingevolge die Wet afgekondig is; of
- (ii) uit enige ander bronne;
- (b) uitgawes aangegaan ten behoeve van die raad, onder die volgende hoofde:
- (i) Besoldiging en toelaes van sy beamptes en werknemers;
- (ii) bedrae betaal aan verteenwoordigers en plaasvervangers ten opsigte van die bywoning van vergaderings deur hulle, die reis- en verblyfuitgawes deur



- hulle aangegaan, en die salaris of loon afgetrek of nie deur hulle ontvang nie as gevolg van hulle afwesigheid van werk omrede hulle betrokkenheid by die raad;
- (iii) besoldiging en toelaes van lede van die paneel van versoeners en arbiters;
  - (iv) kantoorakkommodasie;
  - (v) drukwerk en skryfbehoeftes;
  - (vi) diverse bedryfsuitgawes; en
- (c) die raad se bates, verpligtinge en finansiële posisie soos aan die einde van daardie boekjaar.
- (9) (a) Die jaarlikse finansiële state moet deur die sekretaris onderteken word en moet deur die voorsitter mede-onderteken word en voorgelê word aan 'n ouditeur vir ouditering en vir 'n verslag aan die raad.
- (b) Gewaarmerkte afskrifte van die geouditeerde state en die ouditeur se verslag moet beskikbaar gestel word vir insae by die kantoor van die raad aan lede en verteenwoordigers van die partye, wat daarop geregtig is om afskrifte van daardie state en die ouditeur se verslag te maak.
- (c) Die sekretaris moet gewaarmerkte afskrifte van die geouditeerde finansiële state en die ouditeur se verslag binne 30 dae na ontvangs daarvan aan die registrateur stuur.
- (10) Die sekretaris moet elke jaar 'n begroting vir die raad vir die volgende boekjaar opstel vir voorlegging aan die algemene jaarvergadering van die raad.
- (11) Op die algemene jaarvergadering moet die raad 'n ouditeur aanstel om die audit van die raad vir die volgende boekjaar te doen.

## 16. Likwidasie

- (1) By 'n spesiale vergadering wat vir dié doel belê is, kan die raad, deur 'n resoluëie wat deur die meerderheid van die totale getal verteenwoordigers in die raad aangeneem word, besluit om gelikwideer te word.
- (2) By aanneming van 'n resoluëie om te likwideer moet die sekretaris die nodige stappe doen om te verseker dat -
- (a) daar onmiddellik by die Arbeidshof aansoek gedoen word om

- 'n bevel wat uitvoering gee aan die resoluëie; en
- (b) die raad se rekeningboeke en rekords en 'n inventaris van sy bates, met inbegrip van fondse en beleggings, oorhandig word aan die likwidaëur wat deur die Arbeidshof aangestel word, en dat alles wat nodig is gedoen word om die bates, fondse en beleggings van die raad tot beskikking en onder beheer van die likwidaëur te plaas.
- (3) Elke party by die raad bly aanspreeklik vir enige van sy onbetaalde verpligtinge teenoor die raad soos by aanvaarding van 'n resoluëie vir die likwidasië van die raad.
- (4) Indien aan al die verpligtinge van die raad voldoen is, moet die raad enige oorblywende bates oorplaas na -
- (a) 'n bedingingsraad binne dieselfde of 'n soortgelyke sektor, waarop daar ooreengekom is op die spesiale vergadering in subklousule (1) bedoel;
  - (b) die Kommissie, indien -
    - (i) daar geen bedingingsraad binne dieselfde of 'n soortgelyke sektor is nie; of
    - (ii) die partye by die raad nie daarin slaag om ooreen te kom op 'n bedingingsraad wat die oorblywende bates moet ontvang nie.

## 17. Verandering van die konstitusie

- (1) Die raad kan hierdie konstitusie te eniger tyd verander -
- (a) deur 'n resoluëie aangeneem deur 'n eenparige stemming van al die verteenwoordigers in die raad oor 'n mosie om te verander wat sonder voorafkennisgewing ingedien is; of
  - (b) deur 'n resoluëie aangeneem deur minstens twee derdes van al die verteenwoordigers in die raad nadat minstens -
    - (i) een maand kennis van daardie mosie om te verander aan die sekretaris gegee is; en
    - (ii) twee weke kennis van daardie mosie aan al die ander verteenwoordigers gegee is.
- (2) 'n Verandering van hierdie konstitusie word van krag nadat die resoluëie wat daardie verandering teweeg bring, ingevolge artikel 57(3) van die Wet deur die registrateur gesertifiseer is.

**18. Noodsaaklike eerste stappe**

- (1) Met die oog daarop om die raad sonder vertraging in werking te stel en funksioneel te maak, is die bepalings vervat in die Aanhangsel by hierdie konstitusie van toepassing en moet dit gelees word as deel van hierdie konstitusie totdat daar voldoen is aan die vereistes en prosedures beoog in daardie bepalings.
- (2) Enige handeling verrig ter nakoming van die bepalings vervat in die Aanhangsel word geag verrig te wees ingevolge en in ooreenstemming met hierdie konstitusie.

**19. Woordoms krywing**

In hierdie konstitusie het enige uitdrukking wat in die Wet omskryf is, daardie betekenis en, tensy dit uit die samehang anders blyk, beteken -

"Minister" die Minister van Arbeid;

"ondervoorsitter" die ondervoorsitter van die raad, wat, uit hoofde van daardie amp, ook die ondervoorsitter van die uitvoerende komitee is;

"sekretaris" die sekretaris van die raad;

"uitvoerende komitee" die uitvoerende komitee beoog in klousule 7;

"voorsitter" die voorsitter van die raad, wat, uit hoofde van daardie amp, ook voorsitter van die uitvoerende komitee is; en

"die Wet" die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995).

**AANHANGSEL**

**Noodsaaklike eerste stappe wat die raad moet doen**

- 1. Op die eerste vergadering van die raad, wat gehou moet word

.....  
 .....  
 .....

- (a) moet die raad, deur die opsteek van hande, 'n geskikte persoon kies om as voorsitter van daardie vergadering op te tree, behoudens paragraaf (c), asook 'n ander persoon om die notule van die vergadering te hou;

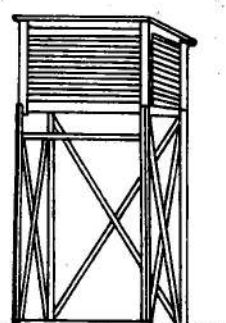
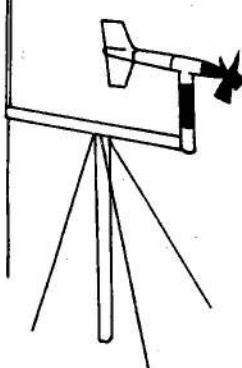
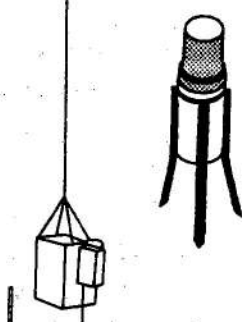
- (b) moet die raad die voorsitter en die ondervoorsitter en die

Meld die datum waarop, of meld 'n tydperk na 'n bepaalde gebeurtenis (bv. die registrasie van die raad) by verstryking waarvan, die vergadering moet plaasvind, asook die tyd en plek van die vergadering.

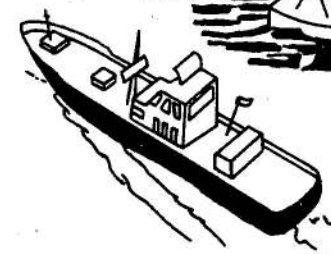
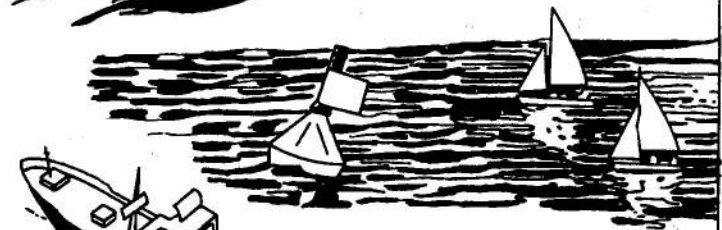
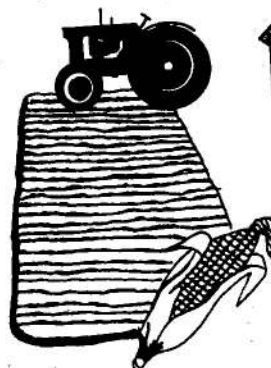
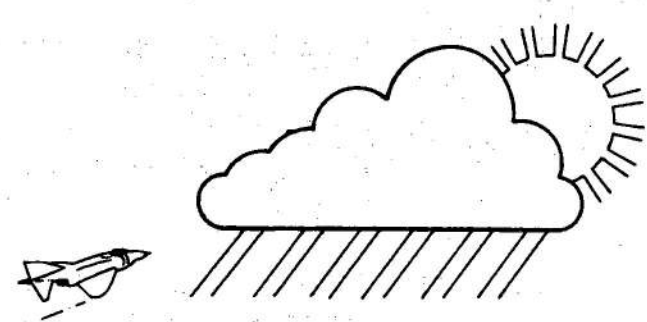
- bykomende lede van die uitvoerende komitee verkies op die wyse uiteengesit in onderskeidelik klousules 7 en 9, gelees met die veranderings wat deur die konteks vereis word;
- (c) moet die nuut verkose voorsitter van die raad die stoel op die vergadering inneem;
  - (d) moet die raad die beamptes beoog in klousule 6(3)(c), (d) en (e) aanstel; en
  - (e) moet die raad 'n ouditeur aanstel om die oudit van die raad te doen ten opsigte van sy eerste boekjaar.
2. Die sekretaris, op die wyse beoog in klousule 10(1)(g), moet so gou moontlik 'n begroting vir die raad vir sy eerste boekjaar opstel vir voorlegging aan die volgende gewone vergadering van die raad.

**[OPMERKING: Volgens bostaande modelkonstitusie moet die raad se registrasiesertifikaat, by ontvangs, aan hierdie konstitusie geheg word (kyk klousule 2). Indien dit nie aldus aangeheg is nie, is die konstitusie van 'n raad wat die model volg, onvolledig.] "**

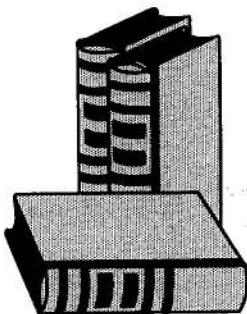
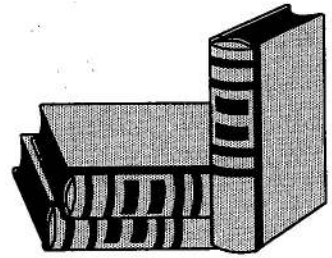
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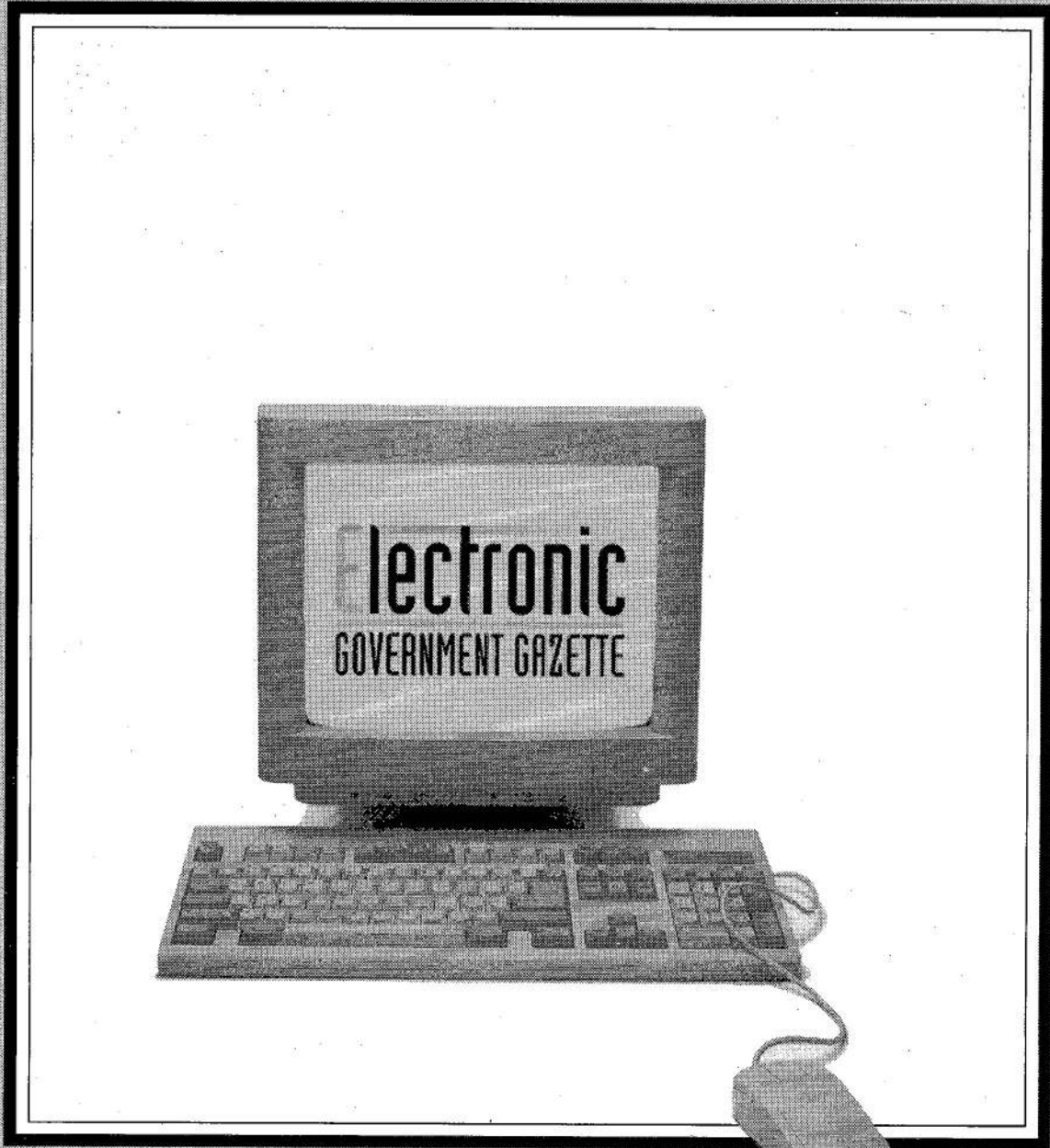


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