

AMANZI

BARGAINING

COUNCIL

CONSTITUTION

1. NAME, SCOPE AND SEAT

- 1.1. The name of the Council shall be the Amanzi Bargaining Council.
- 1.2. The scope of registration of the Council shall be as specified in the Council's certificate of registration attached to this constitution.
- 1.3. The Council shall be a body corporate and shall be capable in law of suing and being sued, and of purchasing or otherwise acquiring, holding or alienating property movable or immovable, and or doing any other act which this Constitution requires or permits it to do.
- 1.4. Unless otherwise provided for in this Constitution, no Employer's Organisation or Trade Union shall by reason only of the fact that it is a Party to the Council, be liable for any of the obligations of the Council.
- 1.5. The seat of the Council shall be such premises and town as shall be decided by the Central Council.

2. DEFINITIONS

In this Constitution, any expression defined in the Act shall have the same meaning as that in the Act unless it should appear to be inconsistent with the context: -

- 2.1 "Act" means the Labour Relations Act No. 66 of 1995 as amended;
- 2.2 "Alternate" means a person appointed by a Party to represent it in the Central Council or Executive Committee in the absence of the member's regular Representative;
- 2.3 "Bargaining Committee" means the committee responsible for the negotiation and conclusion of collective and main agreements in accordance with the provisions of clause 6.8;
- 2.4 "Council" means the Amanzi Bargaining Council;
- 2.5 "Central Council" means the convocation of the national Representatives of the Parties;
- 2.6 "Committee" means a body appointed by the Central Council composed of Representatives of the Parties required to carry out designated functions;
- 2.7 "Executive Committee" means the Committee responsible for the operation of the Council between meetings of the Central Council;
- 2.8 "Party" means an employers' organisation or Trade Union admitted to the Council in terms of this constitution;
- 2.9 "Registrar" means the Registrar referred to in the Act;
- 2.10 "Representative" means a person appointed by any Party to represent it in the Council, and
- 2.11 "Trade Union" means those registered trade unions that have been admitted to the Council.

3. POWERS AND FUNCTIONS

3.1 The powers and functions of the Council shall be: -

- 3.1.1 To conclude collective agreements;
- 3.1.2 To enforce those collective agreements;
- 3.1.3 To prevent and resolve labour disputes;
- 3.1.4 To perform the dispute resolution functions referred to in Sections 28 and 51 of the Act;
- 3.1.5 To establish and administer funds to be used for resolving disputes;
- 3.1.6 To promote and establish training and education schemes;
- 3.1.7 To establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members;
- 3.1.8 To develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area;
- 3.1.9 To determine by collective agreement the matters which may not be an issue in dispute for the purpose of a strike or a lock-out at the workplace;
- 3.1.10 To seek to regulate essential services through collective agreements on minimum services and representations on the determination of essential services;
- 3.1.11 To confer on local labour forums additional matters for consultation;
- 3.1.12 To do such other things as provided for in the Act or as may be agreed to by the Council from time to time.
- 3.1.13 To provide sectoral support services within the sector.
- 3.1.14 To extend the services and functions of the bargaining council to workers in the informal sector and home workers.

3.2 Negotiations on issues contained in 3.1, shall be conducted in the Central Council, unless the Central Council adopts a specific resolution that such issues are to be negotiated in any Committee. In negotiating such issues, due cognisance will be taken of the diversity of the sector.

4. PARTIES TO THE COUNCIL

- 4.1 The founding Parties to the Council are those Parties set out in Schedule 1.
- 4.2 After considering an application in terms of Section 56 of the Act, the Council may admit as additional Parties: -
 - 4.2.1 any registered Employers' Organisation operating in the Water Services sector, provided that the employers' organisation has a membership of not less than 10% of the total number of employers within the scope of the Council; and
 - 4.2.2 any registered Trade Union operating in the Water Services sector, provided however that such Trade Union has a membership of not less than 10% of the total number of employees within the scope of the Council;
- 4.3 Any Party may terminate its membership of the Council by giving 30 days prior written notice to the Central Council.

5 CENTRAL COUNCIL

5.1 Appointment of Representatives and Alternates

- 5.1.1 There shall be a total of 30 seats on the Central Council divided equally between the Employer's Organisation on the one hand and the Trade Union Parties on the other hand, who shall be appointed every two years.
- 5.1.2 The Employer Party shall determine the allocation of Representatives amongst the Employer Parties but ensuring that there is representation of small and medium employers.
- 5.1.3 The Employer Parties shall submit to the Central Council by no later than 15 February of each year details for each of the member employers as at 31 December of the previous year, of the total number of employees together with membership of Trade Unions being Parties to the Council as reflected by stop order deductions and dual membership of such Trade Unions.
- 5.1.4 The allocation of Representatives amongst the Trade Union Parties shall be determined by the following formula:

$$\frac{A}{B} \times \frac{C}{1}$$

Where –

- A = membership of the Trade Union in question
- B = total joint membership of the Trade Unions
- C = number of seats allocated to the Trade Unions

Any fractions shall be rounded off to the nearest whole number.

- 5.1.5 A Trade Union Party may at any time make written representations to the Central Council for a change in its representation based on any change in membership at least equal to the factor determined in terms of 5.1.4 subject to due verification of such Trade Union's contentions and the Central Council shall thereafter make such adjustments to the representation of the Trade Unions as may be appropriate.
- 5.1.6 Representatives of Parties and Alternates to such Representatives shall be appointed every two years and will be eligible for re-appointment. Parties

shall be entitled after fourteen days written notice to the Central Council to replace any Representative or Alternate.

5.1.7 A Representative who, without good cause, is absent from three consecutive meetings of the Central Council, is disqualified from continuing in that office.

5.1.8 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.

5.2 Chairperson and Deputy-Chairperson

5.2.1 The Central Council shall at its meeting after the end of every second financial year elect a Chairperson and Deputy-Chairperson.

5.2.2 The General Secretary or any person acting in his or her stead shall call for nominations for Chairperson. If there is more than one nomination, a secret ballot shall be conducted. The General Secretary shall declare the nominee with the highest votes as duly elected. In the event of an equality of votes, the General Secretary shall place the names of such nominees in an opaque container and make a draw. The nominee whose name is drawn shall be deemed to be duly elected.

5.2.3 The Deputy-Chairperson shall be elected in a similar manner to that in 5.2.2 above.

5.2.4 The Chairperson and Deputy-Chairperson shall hold office until the next election.

5.2.5 The office of the Chairperson and Deputy-Chairperson shall rotate between Representatives of the Parties in each election year.

5.2.6 The Chairperson or Deputy-Chairperson may be removed from office by a majority vote of Central Council if such removal is deemed to be in the interest of the Council.

5.2.7 In the event of a vacancy occurring during the term of office of the Chairperson or Deputy-Chairperson, a successor shall be elected at the next meeting of the Central Council in a similar manner to that provided for in 5.2.2, provided however that such successor shall hold office only for the unexpired portion of the period of office of the vacating office bearer.

5.2.8 The Chairperson shall preside at all meetings of the Central Council and Executive Committee at which he or she is present and perform such other duties as may be determined from time to time by the Council.

5.2.9 In the absence of the Chairperson, the Deputy-Chairperson shall perform his or her duties or shall act in his or her stead and in the event of neither of them being able to act, the Central Council shall by a show of hands elect an acting Chairperson from amongst its numbers.

5.3 General Secretary

5.3.1 The Council shall employ a General Secretary on terms and conditions, as it shall determine.

5.3.2 The General Secretary shall attend all meetings of the Central Council and Executive Committee, record the proceedings of such meetings, conduct all correspondence on behalf of the Central Council and Executive Committee, keep copies of all correspondence and ensure that all relevant documentation is tabled at the next ordinary meeting of the Central Council and Executive Committee.

- 5.3.3 The General Secretary shall bank all monies received by the Central Council within 3 days of receipt and shall further keep all books of account and generally manage the financial affairs of the Council as provided for in clause 8 below.
- 5.3.4 The General Secretary shall perform any other functions or duties as determined by the Central Council or the Executive Committee.

5.4 Meetings

- 5.4.1 The Central Council shall meet at least once per quarter at such place; the Executive Committee may determine the date and time of such meetings.
- 5.4.2 The General Secretary shall call a special meeting of the Central Council within 21 days of receipt of a written request by any Party, which request shall stipulate the business to be discussed.
- 5.4.3 Notice of all meetings containing the agenda for such meeting and outlining the business to be discussed, shall be sent to all Representatives by the General Secretary by fax or e-mail at least 7 days before the date of such meeting, provided that in the case of special meetings, the Chairperson may authorise the giving of such shorter notice as may be reasonable in the circumstances.
- 5.4.4 If the Chairperson so requires, any motion shall be submitted in writing and shall be read by him or her. Voting shall be by show of hands provided however that any Representative of a Party duly seconded may require before or after any such vote that a ballot be held, in which event the result of the ballot shall prevail.
- 5.4.5 No business in respect of which notice and/or such detail as are required in 5.4.2 and 5.4.3 has not been furnished shall fall for consideration unless its incorporation into the agenda is unanimously supported by all of the Parties.
- 5.4.6 The quorum for meetings of the Central Council shall be 50% of the Representatives of each of the Employer and Trade Union Parties. If, within sixty minutes (60) from the time fixed for any meeting, a quorum is not present, the meeting shall be adjourned to the same day in the week following, or in the event that such day is a public holiday, the subsequent day at the same time and place and at such meeting, the Representatives present shall form a quorum; provided further if the General Secretary provides documentary proof that notice had been given to the Parties the meeting shall proceed immediately after the sixty minutes (60) referred to above and the Representatives present shall form a quorum.
- 5.4.7 All decisions of the Council shall require a simple concurrent majority of Employer Representatives and Trade Union Representatives unless otherwise indicated.
- 5.4.8 Every meeting of the Central Council shall be conducted in private unless the Central Council decides otherwise.
- 5.4.9 The General Secretary shall record and keep minutes of all proceedings of every meeting of the Central Council and Executive Committee and shall submit such minutes to the next succeeding meeting for confirmation by way of resolution, and the Chairperson shall thereafter sign such minutes as confirmed.
- 5.4.10 The General Secretary shall retain in safe custody in the Head Office of the Council a copy of the confirmed minutes of every meeting
- 5.4.11 No decision taken at a meeting of the Central Council or Executive Committee shall be invalidated by the absence of any Representative who has been properly notified in terms of 5.4.3 above.

5.4.12 The meeting referred to in 5.2.1 shall:

- 5.4.12.1 be held by no later than four (4) months after the financial year end of the Council as determined in terms of 8.1;
- 5.4.12.2 approve audited financial statements in respect of the previous year;
- 5.4.12.3 appoint the panel of conciliators and arbitrators as is required in 9.2.1;
- 5.4.12.4 appoint the members of the Executive Committee as is required in 6.1; and
- 5.4.12.5 approve a budget in respect of the forthcoming year.

5.5 Establishment of Committees

5.5.1 The Central Council shall have the power to establish and disestablish any Committee and to confer onto that Committee any of its powers or functions.

6 EXECUTIVE COMMITTEE

6.1 The Executive Committee shall consist of ten seats divided equally between the Employer Parties, on the one hand and the Trade Union Parties, on the other hand, who shall be appointed every alternate year by the Central Council.

6.2 The Employer Party shall determine the allocation of Representatives internally.

6.3 The allocation of Representatives amongst the Trade Union Parties shall be in terms of the formula in 5.1.4.

6.4 The Executive Committee shall determine the place, date and time for its meetings.

6.5 The General Secretary shall call a special meeting of the Executive Committee within ten days of receipt of a written request therefore by any Party detailing the business to be discussed.

6.6 The provisions of 5.4.3, 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8, 5.4.9 and 5.4.10 shall *mutatis mutandis* be applicable to meetings of the Executive Committee.

6.7 The Executive Committee shall have the power to:

- 6.7.1 Perform any of the powers of the Central Council in 3.1, between meetings of the Central Council, excluding the powers indicated in 3.1.9.
- 6.7.2 Conclude any matter referred to it by the Central Council unless required otherwise by the Central Council.
- 6.7.3 Establish and disestablish Working Groups and determine their terms of reference.

6.8 Bargaining Committee

6.8.1 The Bargaining Committee shall consist of 12 (twelve) seats divided equally between the Employer parties and the Trade Union Parties.

6.8.2 The allocation of Representatives amongst the Employer parties shall be determined *mutatis mutandis* by the formula in sub-clause 5.1.4.

- 6.8.3 The allocation of Representatives amongst the Trade Union Parties shall be determined by the formula in sub-clause 5.1.4.
- 6.8.4 The delegates shall, at the first meeting of the year, appoint a chairperson from amongst the delegates to the Bargaining Committee. The Bargaining Committee may appoint a chairperson from outside the delegates of the parties' representatives.
- 6.8.5 The Bargaining Committee shall meet at such place, date and time it or the Executive Committee may determine.
- 6.8.6 The Bargaining Committee shall have the power to conclude and define any collective agreement relating to terms and conditions of service or any matter referred to it for bargaining by the Executive Committee, such as the bargaining unit and Policy Exemption and Framework.
- 6.8.7 A dispute that arises in the Bargaining Committee shall be resolved in terms of clause 9.8.

7 EMPLOYEES OF THE COUNCIL

- 7.1 The Central Council shall be responsible for determining the staffing requirements of the Council, the procedures relating to the employment and terms and conditions of employment of all employees and shall be the employer of all such employees.
- 7.2 The General Secretary shall be responsible for the management of all staff of the Council.

8 FINANCES OF THE COUNCIL

8.1 Financial Year

The financial year of the Council shall be from 1 July in any year to 30 June in the following year, or the Council may determine such other period from time to time.

8.2 Income

- 8.2.1 The income of the Council shall be derived from levies, donations or grants, bargaining fees, interest on investments, or any other source approved by the Central Council or the Executive Committee from time to time.
- 8.2.2 The Council may from time to time fix a levy to be raised by the deduction of an amount from the wages/salaries of employees within the scope of the Council, [on the one hand], and an equal amount to be paid by each employer for each such employee.

8.3 Accounts

- 8.3.1 The Executive Committee shall have the power to open or close, on good cause, all accounts of the Council.
- 8.3.2 All income received for the account of the Council shall be deposited to a Central Account either by way of direct deposit or within 3 working days of receipt thereof by the General Secretary.
- 8.3.3 Operating Accounts shall be opened for the Central Council to provide for the administration of the ordinary operating expenses thereof.
- 8.3.4 The Executive Committee may approve the opening of additional special accounts, as it may deem necessary for the effective management of the finances of the Council.

8.4 Distribution of Resources

- 8.4.1 The funds of the Council shall be employed for the effective operation of the Council in terms of its objectives.

8.5 Expenditure

- 8.5.1 All disbursements of funds by the Council shall be by authorised cheque or electronic fund transfer obtained from at least the Chairperson, Deputy Chairperson and or the General Secretary of the Central Council, provided that an amount to be determined by the Executive Committee from time to time may each month be drawn as petty cash.
- 8.5.2 The General Secretary shall submit all such statements of account to the next ordinary meeting of the Central Council.

8.6 Auditing

- 8.6.1 The Council shall each year appoint an Auditor as required by Section 53 of the Act.
- 8.6.2 The General Secretary shall, on behalf of the Council, ensure compliance with Sections 53 and 54 of the Act.

8.7 Investments

Any investment of Council funds shall only be made pursuant to a decision of the Executive Committee and in terms of Section 53(5) of the Act.

9 NEGOTIATING AND DISPUTE PROCEDURE

9.1 General

This procedure applies to all disputes that arise within the registered scope of the Council where the Parties to the dispute are: -

- 9.1.1 one or more Trade Unions;
- 9.1.2 one or more employees; or
- 9.1.3 one or more Trade Unions and one or more employees;
- on the one hand, and
- 9.1.4 one or more employers' organisations;
- 9.1.5 one or more employers; or
- 9.1.6 one or more employers' organisations and one or more employer;
- on the other hand.

Save that in the case of those parties who are not Parties to the Council this procedure shall not apply in respect of those disputes over which the Council does not have jurisdiction in terms of the Act.

And save further that should the subject matter of any dispute fall within the jurisdiction of the Labour Court the party declaring such dispute shall be entitled to require that the Labour Court resolve the dispute.

9.2 Panels of conciliators and arbitrators

- 9.2.1 At the meeting referred to in 5.2.1, the Central Council shall appoint a panel of conciliators and arbitrators to conciliate and arbitrate disputes;
- 9.2.2 The Council may remove a member of a panel from office:
 - 9.2.2.1 for serious misconduct;
 - 9.2.2.2 due to incapacity; or
 - 9.2.2.3 if at least half of the Employer Representatives and half of the Trade Union Representatives in the Council have voted in favour of the removal of that panellist from office.
- 9.2.3 If for any reason there is a vacancy in a panel of conciliators or a panel of arbitrators, the Central Council may appoint a new panellist to the relevant panel for the unexpired term of office.
- 9.2.4 A person may be appointed to both panels of conciliators and arbitrators.
- 9.2.5 A member of a panel of conciliators or arbitrators, whose term of office expires, shall be eligible for re-appointment to the relevant panel at the end of the term.
- 9.2.6 In the event that the Parties are unable to agree on an appointment to a vacancy in a panel the matter shall be referred by the General Secretary to an agreed institution who shall nominate a suitably qualified person to fill the vacancy, which nomination shall be binding on the Parties.

9.3 Procedure for negotiation of collective agreements

- 9.3.1 Any Party to the Central Council may introduce proposals for the conclusion of a collective agreement, including an amendment or a repeal of a collective agreement, in the Central Council in terms of the procedure contained in this 9.3.
- 9.3.2 The procedure in this 9.3 may be adapted by consensus of the Parties to the Central Council provided that any such adaptation provides for the conciliation of any dispute that may arise from the negotiations.
- 9.3.3 Any Party may introduce at any time proposals for negotiation in the Central Council in respect of any matter of mutual interest. The General Secretary shall convene the first meeting of the Central Council within 21 days of the receipt of the proposals and subject to the provisions of 3.2.
- 9.3.4 At least 50% + 1 of the Employer Representatives and 50% + 1 of the Trade Union Representatives shall vote in favour of a collective agreement for it to be a collective agreement concluded in the Council.
- 9.3.5 If a deadlock is declared in respect of any matter that has formed the subject matter of the negotiations, a conciliator shall be appointed from amongst the panel referred to in 9.2 to attempt to resolve the dispute through conciliation.
- 9.3.6 If the dispute remains unresolved for 30 days after the declaration of deadlock, the dispute may be resolved, subject to 9.3.2, 9.3.7 and 9.3.8, through the exercise of a strike or a lockout in compliance with Section 64 of the Act.

- 9.3.7 If the dispute remains unresolved for 30 days after the declaration of a deadlock, the dispute shall be referred to arbitration if the Party that declared the dispute requests that the dispute be resolved through arbitration.
- 9.3.8 If Parties to the dispute include employees engaged in an essential service, the dispute in respect of those employees shall be referred to arbitration if –
 - 9.3.8.1 there is no collective agreement that provides for the maintenance of a minimum service in that essential service; and
 - 9.3.8.2 the dispute remains unresolved; and
 - 9.3.8.3 the Party declaring the dispute requests that the dispute be resolved through arbitration.

9.4 Exemption applications

- 9.4.1 Any Party may apply for exemption from the provisions of any collective agreement whole or in part or on its own behalf or on behalf of any of its constituents, by lodging with the General Secretary an application setting out its reasons and by providing any further information required by the Council.
- 9.4.2 The General Secretary shall table the application referred to in 9.4.1 above at the Executive Committee for consideration. In the event that the Executive Committee is unable to reach agreement on how the application should be dealt with, the Executive Committee may refer the matter to an independent exemptions body, established by the Executive Committee to deal with the matter.
- 9.4.3 In considering whether an exemption should be granted or not, the following criteria shall be applied:
 - 9.4.3.1 Whether the exemption will give an employer an unfair competitive advantage;
 - 9.4.3.2 the effect of the exemption on the fair, equitable and uniform application of the agreement;
 - 9.4.3.3 whether granting the exemption will undermine collective bargaining in the sector;
 - 9.4.3.4 the consent of the affected employees;
 - 9.4.3.5 the fact that an employer is suffering or will suffer a substantial detriment;
 - 9.4.3.6 the applicant's past record of compliance with the provisions of the council's collective agreements and exemption certificates, and
 - 9.4.3.7 any other criteria that the Executive Committee may deem to be relevant to the particular application.

9.5 Disputes about application and interpretation of collective agreements

- 9.5.1 Any person or Party may refer a dispute about the interpretation or application of a collective agreement, to the Central Council for resolution.
- 9.5.2 The provisions of the procedure in this 9.4 are in addition to any other legal remedy in terms of which the Council may enforce a collective agreement concluded in the Central Council.
- 9.5.3 The General Secretary shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by recommending that the Executive Committee issue a directive, and in the event of a dispute not being resolved –

- 9.5.3.1 appoint a conciliator from the panel of conciliators, (doing so as far as possible on a rotational basis) or if the dispute remains unresolved;
- 9.5.3.2 refer the dispute to arbitration in terms of this 9.
- 9.5.4 If a conciliator is appointed, the General Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the Parties to the dispute.
- 9.5.5 If the dispute is referred to arbitration, the General Secretary shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.
- 9.5.6 The General Secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.
- 9.5.7 The arbitrator shall –
 - 9.5.7.1 endeavour to conciliate the dispute unless the Parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and
 - 9.5.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.
- 9.5.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to the collective agreement.

9.6 Disputes about application and interpretation of this constitution

- 9.6.1 Any Party may refer a dispute about the application or interpretation of this constitution to the General Secretary in writing.
- 9.6.2 The General Secretary shall table the dispute before the next meeting of the Central Council or the Executive Committee for resolution. A decision of the Central Council or the Executive Committee supported by a concurrent majority of the Employer Representatives and Trade Union Representatives determines the dispute, provided that if the Executive Committee has considered the matter it cannot be considered by the Central Council and *vice versa*.
- 9.6.3 In the event that the dispute is not resolved by a decision of the Central Council or the Executive Committee in terms of 9.5.2, the procedure in 9.6 shall be followed, provided that the arbitrator appointed pursuant thereto shall be entitled to attempt to conciliate the dispute.

9.7 Rights disputes

- 9.7.1 Subject to Clause 9.7, the mediation/arbitration ("med/arb") procedure in this clause shall apply to any rights disputes contemplated in Clause 9.1.
 - 9.7.1.1 A Party to a dispute may refer the dispute in writing to the General Secretary.
 - 9.7.1.2 The Party who refers the dispute shall satisfy the General Secretary that a copy of the referral has been served on all other Parties to the dispute.
 - 9.7.1.3 If satisfied that the referral has been served in compliance with 9.6.1.2, the General Secretary shall, within fourteen days of the referral appoint a member of the panel of

mediators/arbitrators who shall attempt to resolve the dispute through conciliation. As soon as he or she is satisfied that no resolution is possible through conciliation, he/she shall immediately proceed to arbitrate the dispute.

9.7.1.4 The General Secretary shall as far as possible make such appointments on a rotational basis provided that if the Parties to the dispute agree on a specific member of the panel such person shall be appointed.

9.7.1.5 The provision of Clause 9.7 shall *mutatis mutandis* apply to any arbitration conducted in terms of this clause.

9.8 Disputes referred to Council for arbitration

9.8.1 For the purpose of this Clause a dispute means any dispute that has been referred to conciliation but remains unresolved after thirty days of the referral; and

9.8.1.1 the disputant Party has requested that the dispute be resolved through arbitration; or

9.8.1.2 It is a dispute about the interpretation or application of the provisions of this Constitution.

9.8.2 The arbitrator shall conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the disputes with the minimum of legal formalities.

9.8.3 Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a Party to the dispute may give evidence, call witnesses, cross-question witnesses of any other party and address arguments to the arbitrator.

9.8.4 The arbitrator may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation if the parties to the dispute consent to this.

9.8.5 In any arbitration proceedings, a party to the dispute may appear in person or be represented by a shop steward, office bearer or official of that party's Trade Union or by an official or office bearer of the employer's organisation. Save for disputes contemplated in 9.7.1.2, a legal practitioner shall not represent a party unless all the parties to the dispute have agreed otherwise in writing.

9.8.6 If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, the arbitrator may dismiss the matter.

9.8.7 If a party, other than the party who referred the dispute to the Council, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may –

9.8.7.1 continue with the arbitration proceedings in the absence of that party; or

9.8.7.2 adjourn the arbitration proceedings to a later date.

9.8.8 The Arbitrator may make any appropriate arbitration award in terms of any terms of reference agreed by the parties or in the absence of such agreement in terms of the Act or any other law.

9.8.9 Within 14 days of the conclusion of the arbitration proceedings –

- 9.8.9.1 the arbitrator shall issue an arbitration award with reasons, signed by the arbitrator; and
- 9.8.9.2 the General Secretary shall serve a copy of that award on each party to the dispute.
- 9.8.10 On good cause shown, the General Secretary may extend the period in which the arbitration award and the reasons are to be served and filed by up to 14 days.
- 9.8.11 The arbitrator may not include an order for costs in the arbitration award, provided however that in the case of a non-appearance by any party or delay caused by the fault of any party or if the arbitrator is of the view that the party pursuing or resisting the claim did so vexatiously or frivolously, the arbitrator may make an appropriate award of costs.
- 9.8.12 An arbitrator may at his or her initiative or as a result of an application by an affected party, vary or rescind an award –
 - 9.8.12.1 erroneously sought or made in the absence of any party affected by the award;
 - 9.8.12.2 in which there is ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - 9.8.12.3 granted as a result of a mistake common to the parties to the proceedings.

9.9 Disputes falling within the jurisdiction of the Labour Court

Notwithstanding the provisions of Clause 9.6, a party may, if the subject matter of a dispute falls within the jurisdiction of the Labour Court, elect to have the matter resolved by the procedure contained herein.

- 9.9.1 A party to a dispute may refer the dispute in writing to the General Secretary.
- 9.9.2 The party who refers the dispute shall satisfy the General Secretary that a copy of the referral has been served on all other parties to the dispute.
- 9.9.3 If satisfied that the referral has been served in compliance with Clause 9.9.2 the General Secretary shall within fourteen days of the referral appoint a member of the panel of conciliators to attempt to resolve the dispute through conciliation.
- 9.9.4 The General Secretary shall, as far as possible, make such appointments on a rotational basis provided that if the parties to the dispute agree on a specific panellist, such person shall be appointed.
- 9.9.5 At the conciliation proceedings a party shall not be entitled to be represented by a practising attorney or advocate or any other independent consultant.
- 9.9.6 Upon receipt of written notification from the conciliator that the dispute has not been resolved by means of conciliation or if the dispute remains unresolved after thirty days of the referral, the General Secretary shall issue a certificate to that effect and the referring party shall be entitled to refer the matter to the Labour Court for adjudication.
- 9.9.7 Should the Labour Court decline jurisdiction, the dispute shall be arbitrated upon in terms of the provision of Clause 9.7.

9.10 The parties to a dispute may by agreement adapt the dispute resolution provisions contained in this Clause 9 if the nature of the dispute and the affect of such dispute on the parties require a more expedited process of dispute resolution.

10 DISSOLUTION AND WINDING-UP

10.1 The Council shall be wound up in the event of –

10.1.1 two-thirds concurrent majority of the Employer Representatives and the Trade Union Representatives of the Central Council adopting a resolution to that effect and which resolution is confirmed by an order of the Labour Court; or

10.1.2 The Labour Court on application by any Party or the Registrar of Labour Relations makes a determination that the Council is unable to continue to function for any reason that cannot be remedied.

10.2 Any Party who wishes to submit a motion for the dissolution of Council shall call on the General Secretary in writing to convene a special meeting of the Central Council for that purpose. The General Secretary shall notify each Party in writing at least thirty (30) days prior to convening such a meeting. The full content of the motion proposing the dissolution of Council shall accompany notice of the meeting.

10.3 In the event of Central Council adopting a resolution to dissolve, the General Secretary shall immediately make application to the Labour Court for an order giving effect to that resolution, provided that notice of the application is given to each Party to the Council.

10.4 Any Party shall be entitled to join in proceedings before the Labour Court concerning the winding up of Council, either to oppose the dissolution of Council or to make representations concerning an appropriate manner in which Council's interests should be disposed of.

10.5 All remaining assets of the Council after the discharge of its liabilities shall be divided equally between the Employer Parties and the Trade Union Parties, on the one hand, and to the Trade Unions in proportion to the percentage referred to in 5.1.4, on the other hand.

10.6 If, after all the liabilities of the council have been discharged, any assets remain that cannot be disposed of in accordance with the constitution of that council, the liquidator must realise those assets and pay the proceeds to the Commission for Conciliation Mediation and Arbitration for its own use.

11 AMENDMENTS TO THE CONSTITUTION

11.1 Upon receipt of any proposal for the amendment of the constitution, the General Secretary shall convene a meeting of the Central Council to consider such proposal on at least sixty (60) days written notice, detailing the proposed amendment.

11.2 Such notice shall be sent to each of the Parties.

11.3 An amendment to the constitution shall require a two-thirds concurrent majority of the Employer Representatives and the Trade Union Representatives.

11.4 Any amendment to this constitution becomes effective after the resolution effecting that the Registrar in terms of section 57(3) of the Act has certified amendment.

11.5 Any failure to reach agreement on a proposed amendment in the manner

envisaged in 11 .3 shall entitle any Party to declare a dispute, in which event the matter shall be referred to advisory arbitration, after which the dispute may be resolved through the exercise of a strike or lock-out in the manner contemplated in Section 64 of the Act.

Thus done and signed by the authorised representatives of the Parties on the date and at the place indicated below.

On behalf of

Date: _____ Place: _____

SAMWU

WITNESS

On behalf of

Date: _____ Place: _____

NEHAWU

WITNESS

On behalf of

Date: _____ Place: _____

UASA

WITNESS

On behalf of

Date: _____ Place: _____

SAAWU

WITNESS

SCHEDULE 1

Trade Union Parties

South African Municipal Workers' Union

National Education, Health and Allied Workers' Union

United Association of South Africa

Employer Party

South African Association of Water Utilities