

CONSTITUTION OF THE HEALTH AND OTHER SERVICE PERSONNEL TRADE UNION OF SOUTH AFRICA

We, union members of HOSPERSA, firmly commit ourselves to the formation of a strong, non-politically aligned worker-led democratic organisation; to a united, non-racial, non-sexist, democratic South Africa, free of oppression, social and economic exploitation and any form of unfair discrimination.

VISION

Committing to maximum unity amongst workers in all sectors. Striving for human dignity, effective service delivery, protection of our members' rights in the workplace, as well as civil society, in line with Hospersa's Constitution.

MISSION

- To render a professional service to all our members through democratically elected structures which are mandated by members in the interest of protecting them against any unfair practices.
- To encourage professionalism of all our members towards each other and ensure that the community is treated with respect and dignity.
- To promote a democratic labour environment and society, free from any unfair discrimination against gender, religion, race, culture or political beliefs; or any other form of unfair discrimination against any individual or group of people.
- To unite and organise in all sectors who share our beliefs, values and aspirations.

AIMS AND OBJECTIVES

- To regulate relations between employees and their employers and to promote the interests of such employees;

- To build a strong and democratic organisation of workers at the workplace through active shop steward councils which will be able to participate in various platforms of dialogue, in the spirit and principle of democracy;
- To work towards uniting all workers in improving their remuneration and working conditions;
- To strive for the right to take collective action and to take secondary action;
- To resist privatisation, casualisation, retrenchment and strive for full employment;
- To end all forms of discrimination in employment;
- To strive for proper and accessible training to develop the skills of all workers;
- To promote safe and healthy working conditions;
- To promote or oppose any laws or administrative measures that affect the rights and/or interests of our members;
- Subject to the further provisions of this Constitution, to render legal assistance to members in matters relating to their employment and to institute legal proceedings for and on behalf of the Union and/or its members;
- To affiliate with or confer or enter into co-operative arrangements with any other trade union, trade union federation, or labour organisation, with the object of securing joint action on any matter;
- To enter into collective bargaining forums for the purpose of negotiating and entering into collective agreements with employers and associations of employers;

- To encourage the settlement of disputes through conciliatory methods;
- To raise and acquire funds by means of subscriptions, levies, donations, loans, or by any other lawful manner, which the National Executive Committee may deem fit;
- To buy, take on lease, hire or otherwise acquire or sell, pledge or mortgage any movable or immovable property;
- To deal with such other lawful matters as deemed to be in the interests of the union;
- To protect the job security of members, to advance their employment prospects, and to serve their individual and collective interests;
- To recruit and unite workers in order to improve their economic and social welfare;
- To strive for proper and accessible training to develop the skills of all worker leaders and staff;
- To establish relationships with other trade unions, trade union federations, labour organisations, and service providers for the benefit of members of the union;
- To build working class solidarity and bilateral relations with trade unions internationally;
- To develop policies and procedures that are clearly defined to promote good governance;
- To develop human resource policies that will enhance the development and motivation of staff according to prescribed legislation;

- To promote HIV/AIDS awareness, and wellness in general, gender equality, job creation/security and a corruption-free society;
- To promote communication channels and transparency between worker leaders and staff;
- To strengthen and grow the labour movement by organising and developing young workers.

DEFINITIONS

1.1 In this Constitution, the following words and expressions shall bear the meanings assigned to them hereunder:

“**The Act**” shall mean the Labour Relations Act, 1995 as amended from time to time.

“**Legal assistance**” shall mean, in relation to all disputes which are the subject of potential legal proceedings, a written opinion obtained or given by the Union and made available to the member concerned under the hand of the Provincial Secretary summarising the facts of the dispute as reported to the Union by that member and making recommendations whether the dispute, given these facts, should be pursued or abandoned and shall exclude any other forms of legal assistance without the specific authority in writing of the National Executive Committee.

“**Legal Proceedings**” shall not include internal disciplinary proceedings in any workplace or institution where members are employed and all proceedings and remedies for conciliation, determination and/or resolution of labour disputes, and/or the enforcement of employee’s rights and/or determination of matters of mutual interest and as are provided for in any labour legislation in force from time to time as may be excluded by the National Executive Committee from time to time, but

shall include all other instances of the said proceedings, remedies and determination of matters of mutual interest which the National Executive Committee, or the Provincial Executive Committee having jurisdiction, may, in their sole discretion subject to the provisions of this Constitution, determine are to be instituted on behalf of any member by the Union.

“Professional Indemnity” shall mean such professional indemnity insurance as is made available from time to time to professional employees or certain categories of professional employees by the Union.

“Professional Employee” shall mean a member of the Union whose professional affairs are regulated by statute or any law and who is required in terms of that person’s conditions of employment to be registered and in good-standing with any professional body established by such statute or law.

“Misconduct” shall mean, in the context of the relationship members and the Union, without limiting the generality of the term actual or alleged conduct by any member who:

- (a) Acts in a manner which prejudices the Union by bringing it into disrepute;
- (b) Fails without good cause to pay the required monthly subscription fees;
or
- (c) Fails, without a reason or apology acceptable to the particular committee on which the member concerned serves, to attend more than 3 (three) consecutive meetings of that committee;
- (d) Violates any provision of this Constitution or regulation promulgated thereunder, or any provision of the Union’s policies, procedures and membership code; and/or

- (e) Acts in a manner which is detrimental to the interests of the Union and its members.

“Appeals Committee” shall mean a committee appointed by the National Executive Committee from time to time, whose terms of reference shall *inter alia* be to finalise and determine any appeal against any decision to expel, suspend or sanction any member made in terms of sections 8.3 to 8.10 inclusive of this Constitution, referred to it by the National Executive Committee, or duly lodged with it by any member affected thereby, and whose decision on the matter shall be final.

“Compulsory Retirement” shall mean the retirement of a member against his wishes at the insistence of his or her employer.

“Retired Member” shall mean a member whose contract of employment with his or her employer has terminated due to that member reaching the compulsory retirement age, or a member who has duly prematurely retired in terms of any scheme or policy in force in terms of that member’s contract of employment or by special agreement with his or her employer, and “retire” and “retirement” shall have the same meaning in context. In the case of a member disputing the lawfulness of his or her compulsory retirement, he or she shall be deemed to be a “retired member” from the date of termination of his or her employment, unless, at the discretion of the Provincial Executive Committee concerned, sufficient and compelling grounds exist for legal proceedings to be instituted by the Union on behalf of the member challenging the lawfulness of the member’s compulsory retirement.

“Benefits of Membership” shall mean, subject to this Constitution, all assistance afforded by the Union to its members, including legal assistance, the right to the Union instituting legal proceedings on behalf of its members and the right, in the case of professional employees, to claim professional indemnity and any other right or advantage enjoyed

by members of the Union as a consequence of their membership of the Union, including but not limited to:

- (a) Attending general meetings of the Union;
- (b) Meeting and assembling freely with other members;
- (c) Participating in Union activities;
- (d) Voting for the election of elected Union representatives; and
- (e) Enforcement the rights conferred on members in terms of the Act.

“Prescribed” means prescribed by the National Executive Committee in terms of this Constitution.

“Dismissal Dispute” shall mean a dispute which may be referred by the employee for determination by the employee in terms of the provisions of the Act or of the Employment Equity Act, Act Number 55 of 1998, or any subsequent legislation repealing or amending these statutes.

“Establishment” shall mean the place or places where the members of the Union work in any particular province of South Africa for a particular employer, including establishments which comprise more than one building and/or work facilities and where such buildings and/or work facilities are not geographically in close proximity to each other, but provided that the operations conducted by the employer in all of the buildings and/or facilities comprising such an establishment are not, in the view of the National Executive Committee, independent of each other having regard to the size, function or organisation of each building and/or facility comprising the establishment.

1.2 Save in cases where an expression is defined in this Constitution, any expression used in this Constitution and which is defined in the Act shall have

the same meaning as in that Act, save that the term “Union” shall mean the Health and Other Service Personnel Trade Union of South Africa. The term “worker” shall have the same meaning as “employee” as defined in that Act.

INTERPRETATION

- 2.1 The masculine shall include the feminine and vice-versa as shall the singular includes the plural and vice versa.
- 2.2 Clause headings and sub-headings appear in this Constitution for purposes of reference only and shall not influence the proper interpretation of this Constitution.
- 2.3 Where a number of days is prescribed for the performance of any act in terms of this Constitution, the period shall be calculated by way of taking account of all consecutive days comprising the number of days prescribed, commencing on and including the day on which the period commences, save that where the last day for performance falls on a weekend or public holiday the period allowed for performance shall exclude such weekend or public holiday.

SCOPE

3. The Union shall be open to employees in the health sector and all other sectors, both public and private.

AUTHORITY OF THE CONSTITUTION

4. This Constitution is the source of all rights and obligations within the Union and is the final source of authority in the event of any dispute arising.

PART 1 : FOUNDING PROVISIONS OF THE TRADE UNION

FOUNDATION

- 5.1 The Trade Union shall be known as the HEALTH AND OTHER SERVICE PERSONNEL TRADE UNION OF SOUTH AFRICA (HOSPERSA) (hereinafter referred to as “**the Union**”), which shall be an association not for gain and a corporate body having perpetual succession, legal existence and all the legal powers of a juristic person. The Union shall have its National Office at such places in South Africa as shall be determined by the National Executive Committee from time to time. The Union shall be entitled to organise and operate anywhere in the Republic of South Africa.

UNION STRUCTURES

- 5.2 The Union is organised into the following structures. The duties and responsibilities of Office Bearers serving on these are briefly described below. Such duties and responsibilities are more fully set out in Part 10 (ten) of this Constitution. In addition to the provincial and national structures comprising the Union, there shall be various forums established for the specific purposes set out herein.

Provincial Level

- 5.3 First level: **Branch**

Branches are represented by Shop Steward Branch Committees. This Committee comprises all Shop Stewards elected by the members in that establishment and governs the affairs of the Union inside that establishment. Branches shall exist in establishments where 25 (twenty five) members or more are employed. If less than 25 (twenty five) workers are so employed, provided that there are at least a minimum of 10 (ten) members in the establishment, the Provincial Executive Committee may resolve to permit an

establishment with less than 10 (ten) members to merge with other establishment/s in order to meet the threshold of 25 (twenty five) members.

5.3.1 All Branch Committee members shall hold office for period of 5 (five) years or until required to vacate office or are validly removed from office, in terms of this Constitution and shall be eligible for re-election upon termination of their full period of office. Each Branch Committee shall elect amongst themselves a chairperson and secretary as provided for in Part 12 of this Constitution.

5.4 Second level: **Local**

A Local Shop Steward Council comprises the Chairperson and Secretary from every Branch Committee where such branch has 500 (Five Hundred) or less members, and where such branch has more than 500 (Five Hundred) members includes the Vice Chairperson of that branch, within the jurisdiction of the said Council and shall consist of no less than 3 (three) branches, who together have no less than 1000 (one thousand) members.

5.4.1 The members of the Council shall elect amongst themselves the office bearers as are provided for in Part 12 of this Constitution. All Local committee members shall hold office for the duration of their period of office as a Branch Committee member, or until they are required to vacate office or are validly removed from office, in terms of this Constitution.

5.4.2 The geographical boundaries of a local are determined by the Provincial Executive Committee concerned and are subject to ratification by the National Executive Committee.

5.5 Third level: **Provincial Executive Committee (PEC)**

The responsibility for governance and oversight in respect of the affairs of the Union in any province shall be vested in the Provincial Executive Committee.

The jurisdiction of the Provincial Executive Committee shall be exercised, subject to the limits imposed on it by this Constitution, within its area of jurisdiction. Notwithstanding anything to the contrary contained elsewhere in this Constitution, a Provincial Executive Committee shall at all times be subject to the general directions and control of the National Executive Committee. The Provincial Executive Committee shall consist of the elected Provincial Office Bearers, 1 (one) representative from every Local Shop Steward Council for every 1000 (one thousand) members or part thereof, inclusive of the Chairperson and Secretary of the Local Shop Steward Councils and the duly elected provincial National Forum Representatives. Members of the Provincial Executive Committee shall hold office for 5 (five) years from the date of their election or until they are required to vacate their office or are validly removed in terms of this Constitution, and shall be eligible for re-election on termination of their full period of office.

5.5.1 The Provincial Executive Committees have jurisdiction to debate and resolve on the following matters:

5.5.1.1 Admit, or refuse to admit, persons to membership of the Union and to impose on any member under its jurisdiction any sanction provided for in this Constitution, including to suspend or expel any member for cause appearing sufficient to a majority of the Committee;

5.5.1.2 To determine in its area of jurisdiction the geographical boundaries of any proposed Local Shop Steward Council;

5.5.1.3 To receive reports from all the Local Shop Steward Councils in its area of jurisdiction and to criticise, prohibit or support such activities, and to suspend any Local Shop Steward Council for cause appearing sufficient to the majority of the Provincial Executive Committee and take over management of the affairs of any Local Shop Steward Council until a Local

Shop Steward Council is re-elected by the members of the relevant constituency;

5.5.1.4 To appoint from time to time such sub-committee(s), whether *ad hoc* or standing, as it may deem fit for the purpose of investigating and reporting on *any* provincial matter referred to such sub-committee;

5.5.2 Provincial Office Bearers, save the Provincial Secretary, are elected at the Provincial Congress and serve on the Provincial Executive Committee. Such office bearers shall consist in each province of the Provincial Chairperson, 3 (three) Provincial Vice-chairpersons and 1 (one) Provincial Treasurer. Provincial Office Bearers provide oversight and exercise governance in relation to the union's affairs in their province between Provincial Executive Committee meetings. During these periods these office bearers shall have jurisdiction in the province to take steps to ensure the effective implementation of the decisions and policies of the National Executive Committee and Provincial Executive Committee and to perform such additional duties as are specifically assigned to them by this Constitution or by the National Executive Committee or National Office Bearers.

5.5.2.1 Provincial Office Bearers shall hold office for a period of 5 (five) years, or until they are required to vacate office, or are validly removed from office, in terms of this Constitution.

5.6 Fourth level: **Provincial Congress** (PC)

The National Executive Committee shall decide the number of and geographical boundaries of Provinces from time to time in instances where it resolves to deviate from the demarcated provincial boundaries prescribed by South African law. A Provincial Congress shall be convened during the year in which National Congress is scheduled at least 6 (six) months prior to the

convening of the National Congress, in each Province, to transact the following business:

- 5.6.1 To elect, in the manner prescribed in Part 12 of this Constitution, a Chairperson, Vice-Chairperson/s and a Treasurer who shall serve as the Provincial Office Bearers of the Provincial Executive Committee during the next term of office;
- 5.6.2 To receive reports from the Provincial Executive Committee and National Executive Committee.

National Level

5.7 First Level: **National Executive Committee (NEC)**

The policy-making authority of the Union is vested in the National Executive Committee, which authority is exercised subject to any specific policies adopted by the Union at the National Congress. The National Executive Committee is responsible for oversight and governance in relation all the affairs of the Union between each National Congress. The NEC shall, subject to the provisions of this Constitution and in addition to any other functions prescribed herein, have the jurisdiction to:

- 5.7.1 Approve the remuneration and terms and conditions of employment of employees of the Union;
- 5.7.2 Appoint sub-committees for the purpose of investigating and reporting on matters referred to it by the National Congress or any other matter concerning the Union;
- 5.7.3 Ensure that all structures of the union, as provided for in this Constitution, adhere to the Constitution and perform their duties as contemplated by the Constitution;

- 5.7.4 Acquire by purchase, lease or otherwise any movable or immovable property on behalf of the Union and sell, lease, mortgage, donate or otherwise lawfully dispose of any movable or immovable property owned by the Union;
 - 5.7.5 Open and operate banking accounts in the name of the Union;
 - 5.7.6 Dissolve or suspend any Provincial Executive Committee and to assume to itself all the powers of the said Provincial Executive Committee in any Province where a Provincial Executive Committee has been so dissolved or suspended until such time as another Provincial Executive Committee has been constitutionally elected or the suspension in respect of the said Provincial Executive Committee is uplifted;
 - 5.7.7 Approve or reject annual accounts and balance sheets of the Union, receive regular reports from the National Finance Committee and consider budgets and the payment of accounts as reported by the National Financial Committee;
 - 5.7.8 Receive reports from, and issue directions to the National Working Committee;
 - 5.7.9 Refer appeals concerning the admission to membership, benefits and discipline of members, as provided for in this Constitution, to the Appeals Committee established by it for this purpose;
 - 5.7.10 Do all such other lawful things as are deemed by it to be in the best interests of the Union and/or its members and which are not in conflict with this Constitution or the policies and objectives of the Union.
- 5.8 The National Executive Committee consists of the National Office Bearers, the 9 (nine) Provincial Chairpersons, 1 (one) additional Committee member for

every 5000 (five thousand) members or part thereof per province, inclusive of the provincial chairperson, and the General Secretary. The General Secretary shall serve on the National Executive Committee ex officio.

5.8.1 Members of the National Executive Committee shall hold office for 5 (five) years from the date of their election or until they are required to vacate their office or are validly removed in terms of this Constitution, and shall be eligible for re-election on termination of their full period of office.

National Working Committee (NWC)

5.8.2 The National Office Bearers (NOB's), Provincial Chairpersons and the General Secretary, who serve on the National Executive Committee, shall comprise this Committee. This Committee shall meet at least once between each meeting of the National Executive Committee to receive reports on the operations of the Union and to make recommendations to improve the efficiency of the said operations;

The NWC is primarily responsible for the implementation of resolutions adopted at the National Executive Committee meetings. The NWC will be responsible for the exercise of mandating requirements in the Union, to improve service delivery and member rights in the workplace.

National Office Bearers (NOBs)

5.8.3 National Office Bearers, save the General Secretary, are elected at the National Congress and serve on the National Executive Committee. Such office bearers shall consist of the President, such number of National Vice-Presidents as are provided for in this Constitution and a National Treasurer. National Office Bearers provide oversight and exercise governance in relation to all the union's affairs between National Executive Committee meetings. During these

periods these office bearers shall have jurisdiction to take steps to ensure the effective implementation of the decisions and policies of the National Executive Committee and to perform such additional duties as are specifically assigned to them by this Constitution or by the National Executive Committee. The National Office Bearers also, in consultation with the General Secretary, manage the operational affairs of the Union between National Executive Committee Meetings. In performing the latter duties these office bearers shall report to the National Working Committee on such operations, receive recommendations from the National Working Committee to improve the efficiency of the said operations and render such reports to the National Executive Committee on all the operations of the trade union as are necessary, In addition National Office Bearers perform such additional political functions regarding the governance of the trade union as are assigned to each of them, either individually or collectively, by this Constitution or by the National Executive Committee.

5.8.3.1 National Office Bearers shall hold office for a period of 5 (five) years, or until they are required to vacate office, or are validly removed from office, in terms of this Constitution.

National Finance Committee (Fincom)

5.9 The National Finance Committee oversees the financial affairs of the Union and shall consist of the National Treasurer, the General Secretary, and the Provincial Treasurers. The General Secretary shall serve on the National Finance Committee ex officio.

5.9.1 Provided that the National Executive Committee shall ratify and approve all expenditure, the National Finance Committee shall report to the National Executive Committee at each meeting of the National Executive Committee. The National Finance Committee shall have the duty and responsibility to:

- 5.9.1.1 Prepare financial reports for the National Executive Committee;
- 5.9.1.2 Scrutinise the Union's accounts and query unusual expenditure;
- 5.9.1.3 Scrutinise budgets and financial statements prepared by the National Treasurer and the General Secretary prior to the meeting for submission to and approval by the National Executive Committee;
- 5.9.1.4 Perform whatever inspections of financial records and transactions as are deemed necessary;
- 5.9.1.5 Recommend amendments to the Union's financial policy;
- 5.9.1.6 Make recommendations regarding financial requests submitted by any province;
- 5.9.1.7 Report all income and expenditure to the National Executive Committee and declare unbudgeted expenditure.

5.10 Second level: **National Congress** (NC)

The National Congress is the supreme national structure. Ordinarily it shall convene following the finalisation of the business of the Provincial Congresses in all of the Provinces and prior to the expiry of the term of office of the National Office Bearers for the purposes of:

- 5.10.1 Electing the National Office Bearers, namely the President, National Treasurer, Vice President: Gender and HIV/Aids, Vice President: Education and Training and Vice President: Structures and Recruitment;

- 5.10.2 Take note of the provincial chairpersons eligible to serve on the National Executive Committee during their forthcoming term of office, following the results of the provincial elections as contemplated by section 5.6.1 of this Constitution;
- 5.10.3 To consider reports received from the National Executive Committee, which reports shall be delivered by the outgoing President;
- 5.10.4 Subject to the procedure provided for in Part 22, to amend this Constitution;
- 5.10.5 To consider the financial reports the auditor's reports and approve the Union's financial statements; and
- 5.10.6 To determine and establish any additional forums as are required by the Union in order to promote the workplace and socio-economic rights and interests of the Union's members.

National Forums

- 5.11 Each National Forum established will consist of one (1) representative from each Province, who shall be duly elected at Provincial Congress, to fulfil the responsibility for the particular portfolio attaching to the forum in question. Each forum shall be tasked with ensuring implementation and furtherance of all aspects of the portfolio assigned to each forum by the Union, and with such additional tasks as the National Executive Committee shall decide from time to time. Forum meetings shall take place at such intervals and at such places as may be determined by the National Executive Committee or the National Office Bearers from time to time. Each forum will report to the Vice President responsible for that portfolio, at a National Forum Meeting, which Vice President shall chair the National Forum Meeting. National Forum Meetings shall take place at such intervals and at such places as may be determined by

the National Executive Committee or the National Office Bearers from time to time.

PART 2 : MEMBERSHIP: QUALIFICATIONS FOR ADMISSION TO MEMBERSHIP

CONDITIONS OF ADMISSION TO MEMBERSHIP

- 6.1 All workers engaged in the various operations, industries and services comprising all sectors within the scope of the Union shall be eligible for membership governed by the terms and conditions contained in this Constitution.
- 6.2 Application for membership shall be lodged in writing on the prescribed form to the Provincial Secretary who shall place the application before the Provincial Executive Committee at the earliest opportunity. The said committee may confirm admission of the applicant to membership. The Provincial Secretary shall, prior to doing so, ensure that the applicant is eligible for membership and shall, after a decision has been made by the Provincial Executive Committee concerned, submit the approved application to the General Secretary for data capture and record keeping purposes.
- 6.2.1 For the purposes of determining whether an applicant qualifies for membership, no person may be denied membership of the Union on any basis that constitutes unfair discrimination in terms of section 9 of the Constitution of the Republic of South Africa, Act 108 of 1996.
- 6.3 All applicants must:
- 6.3.1 Be an employee or worker in any operation, industry or service within any of the sectors contemplated in section 3.1 above; and
- 6.3.2 Not have been refused admission to membership of the Union or expelled from membership by the Union in the last 6 (six) months

preceding the date of the applicant's application form, which refusal or expulsion must be disclosed by the prospective member in writing together with his or her application form.

6.4 In the case of an applicant who seeks re-admission after he or she has been expelled from membership or after he or she has resigned, such applicant shall disclose the full circumstances of his or her expulsion or resignation in writing together with his or her application form and may only be re-admitted to membership if:

6.4.1 At the time of application for readmission the applicant meets the requirements as determined and approved by the National Executive Committee from time to time; and

6.4.2 Complies with any additional conditions determined by the Provincial Executive Committee concerned.

6.5 Subject to the limitations contained in section 6.6 below, the date on which an applicant's membership commences and from which a right to the benefits of membership accrues to that applicant shall be from the date of acceptance of his or her application by the Provincial Executive Committee, subject to the condition that where payment of the applicant's first membership fee has not yet been made by the time of this acceptance, commencement of membership and entitlement to benefits shall be deferred until the date of payment by the applicant of his or her first membership fee.

6.6 Notwithstanding the provisions of section 6.5 above, new members admitted to membership shall be limited in their right to claim the benefits of membership in the following respects:

6.6.1 Where the facts and circumstances (being the earliest date on which the events, acts or omissions and/or conduct alleged by the employer, employee or complainant, whichever the case may be, in

support of the employer's, employee's or complainant's case, took place) giving rise to:

6.6.1.1 Any disciplinary proceedings instituted by the member's employer arose prior to the date upon which such member was admitted to membership of the Union, such member will have no right to assistance or representation by a Union official or Shop Steward during such disciplinary process, unless the member shall have applied to the Provincial Office Bearers having jurisdiction and the said Office Bearers have granted written consent to such assistance or representation;

6.6.1.2 Any disciplinary or arbitration proceedings, as described in the definition of "legal proceedings" in section 1.1, arose prior to the said date of admission, the Union shall have no obligation to provide such member with any representation or with legal assistance in respect of such proceedings;

6.6.1.3 Any claim made by a professional employee for professional indemnity cover pre-dates the date of that employee's date of admission to membership of the Union, and further subject to any exclusionary terms contained in any insurance policy covering the matter, such employee shall not be entitled to professional indemnity cover by virtue of his or her membership of the Union despite the fact that he or she falls in a category of professional employees to whom indemnity cover is available.

6.7 Any person joining the Union with claims for indemnity or disputes with their employers which are pending as at the date of their admission to membership will, given the exclusions set out in section 6.6 above, be liable for their own

legal and other expenses should such be incurred. Likewise, any member who incurs any personal expense in obtaining legal or other advice in relation to any claim by or against him or her, including claims in respect of which this Constitution affords such member any benefit and in respect of claims concerning the interpretation of this Constitution or the conduct of the affairs of the Union, shall have no claim against the Union for reimbursement of such expenses where such expense were incurred without the lawful express written authority of the National Executive Committee.

WAIVER AND INDEMNITY

6.8 Applicants for membership, by applying for membership of the Union, declare themselves fully acquainted with their rights and the nature and effect of this Constitution, in particular this provision, and solely by way of submission of their written application for membership offer to waive all past and future rights, giving rise to any claim whatsoever that such applicants for membership have or may have in the future, regardless of whether these rights have vested or could vest in the future, to claim damages from the Union, its office bearers, officials, employees and/or agents arising from any allegations of negligence or any other alleged actionable conduct on the part of the Union, its office bearers, officials, employees and/or agents and the Union shall be deemed to have accepted such offer to waive upon acceptance of the Applicant to membership. The members of the Union jointly and severally indemnify and hold the Union's said office bearers, officials, employees and agents harmless against all costs and financial consequences of any claim that may be instituted against such persons by any prospective member, member or former member of the Union. Such waiver shall endure irrevocably after such prospective member has been admitted to membership and after the person making such claim has ceased to be a member.

APPEAL AGAINST REFUSAL OF ADMISSION TO MEMBERSHIP

6.9 If admission to membership is refused by a Provincial Executive Committee, the applicant shall be notified in writing by the Provincial Secretary and shall

have the right to, within 7 (seven) days of the date of such notice of refusal of admission to membership, to appeal in writing in the prescribed form to the National Executive Committee at its next meeting. The decision of the National Executive Committee shall be final. Provisions governing the procedure for appeals set out in Part 5 (five) of this Constitution shall apply *mutatis mutandis* to any appeal lodged in terms of this section.

6.10 From the date of such notice of refusal of admission to membership, despite the provisions of section 6.5 above, the applicant shall have no claim to any benefits of membership or to the issue of a membership number until such a time as the National Executive Committee confirms the applicant's membership. In the event of the National Executive Committee so confirming the applicant's membership, the date of membership shall commence from the date upon which the applicant is advised of the decision of the National Executive Committee in writing by the General Secretary.

6.11 An applicant to whom membership has been refused by the Provincial Executive Committee having jurisdiction shall be entitled to a refund of any moneys paid on application following the outcome of any appeal lodged by the applicant, as contemplated by section 6.9 hereof, or after the lapse of the period prescribed in section 6.9 for the lodging of such appeal.

NOTIFICATION OF CHANGE IN PERSONAL PARTICULARS

6.12 Members shall notify the Provincial Secretary in writing within 14 (fourteen) days of any change in their address or contact particulars as reflected on their application for membership form.

FELLOW MEMBERS

6.13 The National Executive Committee may admit any person to fellow-membership of the union provided that the person has had a continuous of 10 (ten) years of membership with the union at the time of retirement.

HONORARY MEMBERS

6.14 The National Executive Committee may approve honorary membership of the Union in acknowledgement of extraordinary service rendered to the Union and define the terms of such membership.

PART 3 : CIRCUMSTANCES IN WHICH A MEMBER WILL NO LONGER BE ENTITLED TO THE BENEFITS OF MEMBERSHIP AND WHERE BENEFITS OF MEMBERSHIP ARE RESTRICTED

ENTITLEMENT TO BENEFITS OF MEMBERSHIP AND LOSS THEREOF

7.1 Subject to any restrictions imposed by this Constitution, a member in good standing shall be entitled to all the **benefits of membership** until the date on which his or her membership is terminated for any reason, including as provided for in Part 4 (four) of this Constitution or the date on which such member retires or ceases to be in good standing. The circumstances in which a member ceases to be a member in good standing include when a member is suspended as provided for in Part 4 (four) of this Constitution or when a member's subscriptions payable in terms of Part 6 (six) are more than 3 (three) months in arrears, save that a member who has been duly exempted in terms of Part 6 (six) from paying subscriptions remains in good standing during the period of that exemption. Save as is expressly otherwise provided for in this Constitution, entitlement to the benefits of membership ceases in all cases upon termination of membership in accordance with any reason set out in Part 4 of this Constitution.

RESTRICTED BENEFITS OF MEMBERSHIP

Retired Members

7.2 In the case of retired members, these members shall only be entitled to such benefits of membership as are determined from time to time by the National Executive Committee, provided that the benefits that a retired member shall be

entitled to throughout his or her retirement shall be limited to those accruing to him or her as at the date of his or her retirement by virtue of the National Executive Committee's decision, and such members entitlement to all the benefits of membership will thus automatically cease upon the date of his or her retirement. Retired members shall only be entitled to such benefits as are determined from time to time by the National Executive Committee, provided that the benefits that a retired member shall be entitled to throughout his or her retirement shall be limited to those accruing to him or her as at the date of his or her retirement, and such a member's entitlement to full benefits will thus automatically cease upon the date of his or her retirement. **Retired members** shall only be entitled to such benefits as are determined from time to time by the National Executive Committee, provided that the benefits that a retired member shall be entitled to throughout his or her retirement shall be limited to those accruing to him or her as at the date of his or her retirement, and such a member's entitlement to full benefits will thus automatically cease upon the date of his or her retirement.

New Members

- 7.3 In the case of new members seeking assistance from or representation by the Union in respect of disputes and claims arising from facts which pre-date their date of membership, the **benefits of membership** shall be restricted in the circumstances envisaged by Part 2 (two) of this Constitution.

Professional Members

- 7.4 In the case of professional members, only those categories of professional members which the National Executive Committee shall from time to time have determined, shall be entitled to professional indemnity cover provided by the Union, which entitlement shall be on such terms and conditions as may be determined from time to time by the National Executive Committee and stipulated for in any indemnity policy obtained by the Union for the purposes of such cover.

Legal Assistance and Legal Proceedings

7.5 No member shall be entitled to demand that the Union furnish such member with legal assistance unless such member shall have submitted to the Provincial Secretary of the Province in which the dispute arose and within the time period provided for herein a written claim, in such form and together with such annexures as may be prescribed from time to time. Such claim shall be duly endorsed as supported by way of signature of the Secretary of the Shop Steward Branch Committee for that member's establishment, or failing such secretary, one of the Provincial Office Bearers of the Province concerned. No written claim submitted after 14 (fourteen days) from the date upon which the dispute arose and/or not complying in all respects with this Constitution and, if applicable with the National Executive Committee's directions shall be valid and the Union shall have the right to refuse to accept the same. The Provincial Executive Committee may, on good cause shown, condone late claims.

Legal Proceedings

7.6 No member shall be entitled to demand that any or specific legal proceedings be instituted by the Union on his or her behalf, despite the content of any written opinion obtained in the context of legal assistance afforded to the member, or that the Union continue with any proceedings already instituted, in cases where the Provincial Secretary, who shall have the right to delegate this decision to any Union National Office employee as may be approved from time to time by the National Executive Committee, he is of the view and has certified in writing that in his or her opinion the dispute which is the subject of the legal proceedings no longer has reasonable prospects of success in the light of any further legal opinion obtained, or further facts that have now come to light and/or, having had due regard to all other considerations of policy as prescribed by the National Executive Committee from time to time, that in his or her opinion the proposed or current legal proceedings are no longer in the interests of both the member and the Union.

**RESTRICTIONS LEADING TO POSSIBLE LOSS OF BENEFITS:
LEGAL ASSISTANCE AND PROCEEDINGS**

- 7.7 In the event of the Provincial Secretary refusing to certify that proposed or existing legal proceedings have reasonable prospects of success and/or that the said legal proceedings are in the interests of the Union and the member, the Union's obligation to render legal assistance to that member shall be deemed to have been fulfilled and all responsibility for the obtaining of further legal assistance and/or second opinions and/or the institution of legal proceedings in relation to the said dispute shall vest solely in the member at his or her sole expense.
- 7.8 Failure on the part of the member to comply with any provision of this Constitution, including the under mentioned obligations, shall mean that the Union shall have the right to forthwith withdraw any further cover in respect of legal assistance and/or the institution of legal proceedings (both in respect of current and future disputes) and withdraw from assisting or acting on behalf of the said member on written notice to the member:
- 7.8.1 The member shall submit duly sworn and attested affidavits setting out the full facts and circumstances of the alleged dispute within 3 (three) days of having been requested to do so in writing by the Provincial Secretary;
- 7.8.2 All members irrevocably afford the Union the right to prosecute any legal proceedings in the name of the member, including the right to depose to any Founding Affidavit on behalf of that member in any legal proceedings, and grant the Union the right to do all things necessary to prosecute the proceedings on their behalf, including the right to settle or compromise the dispute and undertake to provide the Union, at the member's sole expense and within a reasonable time of being requested to do so, with all information and other material reasonably required by the Union in order to render legal assistance and/or to institute legal proceedings for and on behalf of the member;

- 7.8.3 Any member who requires legal proceedings to be instituted on his behalf shall be obliged, if requested by the Union in writing to do so, to submit to the Union a written acknowledgement of debt on such terms and conditions as are acceptable to the Union or as may be prescribed by the National Executive Committee from time to time, in respect of such amount as represents the prescribed excess, being the first amount payable by the member, in respect of all legal costs and necessary disbursements incurred by the Union in instituting legal proceedings for and on behalf of the member, which acknowledgement shall be signed by the member. For the purposes hereof, the National Executive Committee shall prescribe from time to time the circumstances in which members can be called on to undertake liability for such excess and the amount of such excess;
- 7.8.4 Members shall comply with all other matters relating to claims by members of the Union for legal assistance and/or the instituting of proceedings on behalf of that member as may be prescribed from time to time by the National Executive Committee.

EXTENSION OF BENEFITS : LEGAL ASSISTANCE AND PROCEEDINGS

- 7.9 Despite any limitation on the right to legal assistance or proceedings contained in this Constitution, in cases where the National Committee is, by majority resolution, of the view that legal assistance should be afforded to a particular member or that legal proceedings should be instituted on behalf of a particular member, the National Executive Committee may resolve that such legal assistance be afforded to such member or that legal proceedings be instituted by the Union on behalf of such member.

APPEAL AGAINST LOSS OF BENEFITS

- 7.10 Any member aggrieved by the loss of any or more of the benefits of membership or any restriction imposed on his or her enjoyment of such

benefits, other than as a consequence of the suspension or expulsion of such member by virtue of any provision of this Constitution, shall have the right to appeal in the prescribed form to the National Executive Committee in the manner provided for in Part 5 (five) of this Constitution. The decision of the National Executive Committee shall be final.

7.11 Where, by virtue of any facts or circumstances which, in the opinion of the National Office Bearers make it necessary to make an urgent interim decision pending the confirmation or discharge of such interim decision at the earliest meeting of the National Executive Committee, the appeal shall be decided on an interim basis by the National Office Bearers following such deliberations as they deem necessary.

7.12 The lodging of an appeal does not suspend any decision or ruling which gave rise to the alleged withdrawal, limitation on or loss of benefits of membership.

PART 4 : TERMINATION AND SUSPENSION OF MEMBERSHIP

8. Membership of the Union shall terminate in the following circumstances:

Resignation

8.1 A member may resign his or her membership by giving notice of his or her intention to resign to the Provincial Secretary. No resignation unlawfully induced by an employer shall have validity, provided that the Provincial Executive Committee concerned is satisfied on good cause shown that the member concerned was unlawfully induced to tender notice of his or her intention to resign.

8.1.1 No notice purporting to give insufficient notice shall be valid, provided that the National Executive Committee or the Provincial Executive Committee may waive the notice period required for a resignation in circumstances where this is justified and on good cause shown. The following notice periods are applicable:

- (a) Members employed in the public sector: 3 (three) months; and
- (b) All other sectors: 1 (one) month.

8.1.2 Notwithstanding delivery of a notice of resignation, a member who resigns remains individually responsible for ensuring that such member's employer is notified to lawfully cease making deductions by way of stop order of Union subscriptions and dues, in accordance with the provisions of the Act. The member waives and abandons any claim against the Union for any loss suffered by the member where this is not done and deductions continue. A waiver of the notice period for resignation by the Union does not waive the notice period required by the Act in cases where union subscriptions and union dues are deducted by the member's employer by way of stop order;

8.1.3 In the case of a member, whose Union's subscriptions and dues have been deducted by way of stop order for a period in excess of 3 (three) months, disputing the validity of his or her membership, the Union reserves the right to continue making such deductions until such dispute is resolved and to contend that such member is estopped from denying the validity of his or her membership by virtue of his or her acceptance of such stop orders during the previous 3 (three) months or more and to deal with of such dispute as a notice of intention to resign deemed to be validly effected in accordance with section 8.1 above.

The Member Ceasing to be an Employee/Worker

8.2 Save in the case of members who retire, in the event that a member's contract of employment with an employer is terminated for any other reason whatsoever, including but not limited to medical incapacity, voluntary severance and dismissal for operational and other reasons, including incapacity and misconduct, and in the further event that no **dismissal dispute**

arises out of such termination, such person's membership of the Union will automatically lapse after a period of 3 (three) months following the date of termination of the said contract of employment and such person shall forthwith cease to enjoy the benefits of membership. In the event that such person secures a new contract employment after such termination with the same, or another employer in any sector falling within the Union's scope, prior to or after the lapse of the said period of 3 (three) months, that person is required to make application for membership in the manner contemplated by section 6.2 above, and meet the requirements for admission to membership.

8.2.1 In the case of a member whose contract of employment with his or her employer has been terminated by his or her employer in circumstances where a **dismissal dispute** arises and where the Provincial Executive Committee concerned, in its sole discretion, considers sufficient grounds exist to render his or her dismissal unfair and justify reinstatement of that member, the said member's membership shall terminate after the lapse of a period of six months from the date of termination of his or her employment except where **legal proceedings** have been instituted by the Union on his or her behalf to challenge the lawfulness of the said termination, in which case, in the event that he or she is not reinstated in his or her employment following the outcome of such legal proceedings, the membership of that member shall terminate once the outcome of such proceedings are known. In the event that he or she is reinstated the member shall have the option to, within 30 (thirty) days, elect whether to submit a new application for membership or reimburse the Trade Union for all arrears membership fees still outstanding as at the date of his or her reinstatement. In the event of the member electing to submit a new application, his or her membership shall automatically lapse upon his or her reinstatement;

8.2.2 Where legal proceedings concerning a dismissal dispute contemplated by section 8.2.1 above have been instituted and the member, at any stage during those proceedings, abandons his or her

claim for reinstatement in writing or by communicating such abandonment to the employer party to the dispute, the membership of such member shall forthwith terminate from the date of such written notice or communication abandoning the claim for reinstatement. In such cases the Union shall not be obliged to continue with the legal proceedings on behalf of the member. Likewise the provisions of this section shall apply in circumstances where the member renders reinstatement impractical by securing a new contract of employment with another employer.

Suspension or Termination of Membership on Grounds of Misconduct

- 8.3 A Provincial Executive Committee, after holding or causing to be held an enquiry at which the member concerned is afforded an opportunity to be heard, may suspend or expel a member for any **misconduct**, provided that the Provincial Executive Committee shall submit its decision, accompanied by a full record of the enquiry, to the National Executive Committee at its very next meeting for consideration as to whether the said decision shall be overturned or confirmed. In this event the National Executive Committee shall make a decision based on the record of enquiry caused to be held by the Provincial Executive Committee.
- 8.4 The Provincial Office Bearers may, notwithstanding the provisions of subsection 8.3 above, on their own initiative by a majority resolution, or upon receipt of a written request from a Local, and following an enquiry at which the member concerned is afforded an opportunity to be heard, recommend to the Provincial Executive Committee that a member be suspended or expelled for any misconduct. In this event the Provincial Executive Committee shall make a decision based on the record of the enquiry caused to be held by the Provincial Office Bearers.
- 8.5 The Provincial Executive Committee shall submit a report to the next meeting of the National Executive Committee reporting on all recommendations made

to it by the Provincial Office Bearers in terms of section 8.4 of this Constitution, and recording its decision in each case.

- 8.6 The outcome of all enquiries conducted in terms of the provisions of sub-sections 8.3 and 8.4 above, including enquiries where no misconduct is proved, together with a record of all decisions made by the Provincial Executive Committee in terms of these provisions, shall be referred to the National Executive Committee at its next meeting by the General Secretary. This referral shall be accompanied by a full copy of the record of the enquiries caused to be conducted, copies of which shall be forwarded to the General Secretary by the Provincial Secretaries. The National Executive Committee may, after considering the referrals and records, resolve to refer any decision to the **Appeals Committee** or to confirm or alter the suspension, expulsion or sanction imposed or overturn the decision of the body *a quo* and deal with the matter *de novo*. In cases where an appeal has been lodged by the member affected by any decision, as contemplated by section 11 (eleven) of this Constitution, the National Executive Committee shall refer the matter to the Appeals Committee.
- 8.7 Nothing contained herein shall be construed as preventing the National Executive Committee from, acting on its own initiative, or upon receipt of a written request from any constitutional structure of the Union, taking any action that any Provincial Executive Committee is empowered to take in terms of these sections. The National Office Bearers shall, following a request by any structure of the Union or on their own initiative by majority resolution, have the same powers as are conferred on the Provincial Office Bearers by sub-section 8.4 above to recommend the expulsion or suspension of any member to the National Executive Committee following an enquiry at which the member concerned is afforded an opportunity to be heard. In these cases the National Executive Committee, having considered such recommendation and the record of the enquiry, shall act as is contemplated by sub-section 8.6 above and either confirm the suspension or expulsion or refer the matter to the **Appeals Committee**.

- 8.8 Notwithstanding anything to the contrary contained in sub-sections 8.3 to 8.7 above, any body which is empowered in terms of these sub-sections to make a recommendation or a decision shall not be limited in its recommendation or decision to recommending or deciding that a members' membership should be terminated or suspended, but shall also have the power to recommend or decide to:
- 8.8.1 Impose a fine not exceeding R500,00 (five hundred rand) and may suspend a person from membership until such fine is paid;
- 8.8.2 Impose any other lesser penalty such as a warning or a reprimand.
- 8.9 A suspension, expulsion or sanction imposed in terms of sub-sections 8.3 to 8.8 above is effective immediately the decision is made by the Provincial Executive Committee or the National Executive Committee, whichever may be the case, notwithstanding that the decision falls to be confirmed by the National Executive Committee or an appeal is pending or the National Executive Committee may decide to refer the matter to the Appeals Committee.
- 8.10 Once the decision is effective, the member concerned must be notified in writing of the reasons for the suspension, expulsion or sanction by the General Secretary.

APPEALS AGAINST TERMINATION OF MEMBERSHIP OR SUSPENSIONS

- 8.11 The member concerned may appeal a suspension, expulsion or other sanction imposed in terms of sub-sections 8.3 to 8.10 above by:
- 8.11.1 Lodging an appeal in the prescribed form with the General Secretary within 10 (ten) days of the date of the written notice of the suspension, expulsion or sanction; and

- 8.11.2 Such appeal must be referred directly to the **Appeals Committee** together with a full record of the matter by the General Secretary for finalisation and its decision shall be final and binding in the matter.
- 8.12 Any appeal lodged by the member concerned in terms of sub-section 8.10 referred to the Appeals Committee by the National Executive Committee as contemplated above shall not suspend the effective date of the suspension, other sanction, expulsion or other sanction as is provided for in section 8.9 above. The decision of the **Appeals Committee** shall be final in all instances.
- 8.13 An appeal in terms of this Part shall be subject *mutatis mutandis* to the procedural provisions contained in Part 5 of this Constitution.

GENERAL PROVISIONS

- 8.14 When a member resigns or is expelled from the Union:
- 8.14.1 The member remains responsible to the union for any money that the member owes to the Union at the date of his resignation or expulsion;
- 8.14.2 The member has no further claim on the **benefits of membership** or any assets or funds of the Union; and
- 8.14.3 The National Executive Committee shall take lawful steps against the member to pursue any claim for recovery of assets and money owed to the Union by the member.

PART 5 : PROCEDURE FOR APPEALS AGAINST LOSS OF BENEFITS, SUSPENSIONS, SANCTIONS AND TERMINATION OF MEMBERSHIP

9. Appeals lodged in terms of this Constitution concerning refusal of admission to membership and alleged loss of benefits shall be decided on the written record alone. In all other cases the Appeals Committee, whose decision shall be final,

shall decide whether to hear further evidence and argument *via voce* and the procedural rules which shall apply in the further conduct of any appeal lodged with it in terms of this Constitution. Subject to specific time limits imposed elsewhere in this Constitution, appeals in all cases shall be dealt with in the following manner:

- 9.1 The appellant shall submit an appeal on the prescribed form to the General Secretary. He or she shall set out fully therein his or her grounds for the appeal and such other submissions as he or she wishes to make. No appeal against the alleged loss of or restriction on benefits of membership shall be lodged after 30 (thirty) days of the date of the decision giving rise to the loss of or restriction on his or her benefits of membership, or the date upon which he or she ought reasonably to have become aware of such decision.
- 9.2 If, in the opinion of the General Secretary, the appeal complies with the provisions of this Constitution and has been timeously lodged, the General Secretary shall forward a copy of the appeal documents lodged with him or her to the person or body which made the decision complained of. Such person or body shall forward to the General Secretary certified copies of the complete record of the decision complained of together with such further written reasons which he or she law or desires to make available or which are required in law, in support of the decision, within 30 (thirty) days of the date upon which he/she receives a copy of the appeal documentation.
- 9.3 The General Secretary shall thereafter forward the complete record in the appeal, comprising the written appeal documentation submitted to him by the appellant and the record and/or reasons forwarded to him by the decision-maker to the National Executive Committee at its next meeting or directly to the Appeals Committee, whichever is applicable. In the event that the General Secretary is of the view that the appeal documentation does not comply with this Constitution or that the appeal has been lodged out of time, the General Secretary may reuse to

accept the appeal in which case he or she shall forward the appeal documentation together with his or her reasons for such decision in writing to the National Executive Committee at its next meeting.

- 9.4 The National Executive Committee may resolve to forward the appeal to an ad-hoc or standing committee, constituted by it for the purposes of investigating the circumstances surrounding the refusal of admission to membership or alleged loss or restriction on enjoyment of benefits of membership, whichever is the case, and making recommendations to the National Executive Committee in that regard within such period as the National Executive Committee may deem fit.
- 9.5 Once the National Executive Committee or Appeals Committee, whichever is applicable, has decided the appeal the General Secretary shall advise the appellant of the outcome of the appeal in writing and where the appeal is unsuccessful of the reasons therefore.
- 9.6 Any enquiry into allegations of misconduct on the part of a member as is contemplated by sections 8.3 to 8.8 of this Constitution shall, in as far the General Secretary deems it practicable, follow any relevant provision contained in the guidelines for procedural fairness in cases of alleged workplace misconduct as set out in Schedule 8 (eight) to the Act, or any similar provision which is enacted amending Schedule 8 (eight) or repealing and substituting the same from time to time. The committee or office bearers causing the enquiry to be held shall be entitled to constitute an *ad hoc* committee comprising any persons deemed by it suitable for service on such committee, for the purposes of making recommendations to it in writing within such time frame as may be determined after conducting the necessary enquiry.
- 9.6.1 When it is intended to discipline Shop Stewards and other Office Bearers of the Union, whether for misconduct or incapacity, the Provincial Executive Committee or the National Executive Committee initiating the disciplinary proceedings, as the case

may be, shall determine the procedure for the conduct of the hearing, and shall;

9.6.1.1 Advise the person concerned of the full nature of the charges against him or her, in writing, not less than 7 (seven) days prior to the date, time and place of his/her hearing specified in such notice. The notice may be sent by registered post to the last known address of the person concerned or delivered personally to the member concerned in any other manner;

9.6.1.2 From amongst themselves appoint a person, or persons comprising a disciplinary panel, to preside over the hearing and a person to prosecute the charges at the enquiry.

9.6.2 At the hearing of the charges the person concerned shall be afforded the opportunity to state his/her case personally and may be assisted by another member and call witnesses in support of his or her case;

9.6.3 In each case the person concerned must receive written notice of the decision and be advised in this notice that he/she has a right to appeal, which he/she must take up within 7 (seven) days;

9.6.4 If the Provincial Executive Committee or the National Executive Committee, as the case may be, is satisfied that:

9.6.4.1 The person charged has, although absent, received the notice;

9.6.4.2 The person charged is present;

9.6.4.3 The Disciplinary Committee may proceed to hear and determine the charge.

9.6.5 If the Disciplinary Committee finds that the charge of misconduct or incapacity has been satisfactorily proven on a balance of probabilities, the Committee concerned may, in addition to any sanction which it may impose in terms of this Constitution short of expulsion or suspension from membership in respect of misconduct and in appropriate cases of incapacity remove the shop steward or other office bearer concerned from office in the Union;

9.6.5.1 Expel the shop steward or office bearer from the Union;

9.6.5.2 Suspend him/her for a definite period from membership of in the Union;

9.6.5.3 Impose a fine and may suspend a person from membership until such fine is paid;

9.6.5.4 Impose any other such penalty not listed above as it deems fit.

9.7 The National Executive Committee or the Provincial Executive Committee shall be entitled to establish an *ad hoc* or standing committee constituted by it for the purposes of investigating the circumstances surrounding any alleged misconduct and/or incapacity, and recommending to it in that regard in writing, within such period as the Committee may deem fit, whether to overturn or confirm any decision referred to it by any body *a quo* or recommendation by the National or Provincial Office Bearers, whichever the case may be, or in deciding whether to take disciplinary steps against any member.

- 9.8 The National Executive Committee shall determine the procedure to be followed by it or by the **Appeals Committee**, in deciding any appeal lodged with it in terms of this Constitution.

PART 6 : SUBSCRIPTIONS

- 10.1 A member shall pay subscriptions to the Union, which shall be 1.1% of the gross salary, to a maximum as determined by the National Executive Committee from time to time.
- 10.2 The amount of the subscription payable may be varied from time to time by a majority decision of the National Executive Committee.
- 10.3 Subscriptions shall be paid monthly in arrears to the Union.
- 10.4 A member employed in an establishment where stop order facilities are afforded to the Union, where such stop order facilities are acceptable to the Union, shall pay his or her subscriptions through such facility. In cases where subscriptions are not paid through such facility, all payments are to be made by way of direct deposit or debit order drawn on the member's bank account, into the Union's national bank account on or before the 28th day of each month accompanied by documentary proof of such deposit, which documentary proof shall reach the Union's National Office at which the membership component is situated before the last day of the month in which the subscription is so paid.
- 10.5 The National Executive Committee may excuse a member from paying monthly subscriptions for reasons they deem fit.
- 10.6 The National Executive Committee will determine the amount and manner of payment of fellow membership subscriptions or subscriptions payable by any other category of member envisaged by this Constitution.

PART 7 : RULES FOR CONVENING AND CONDUCTING OF MEETINGS OF MEMBERS AND MEETINGS OF REPRESENTATIVES OF MEMBERS INCLUDING THE QUORUM REQUIRED FOR, AND THE MINUTES TO BE KEPT OF THOSE MEETINGS

General Members' Meetings and Shop Steward Branch Committee Meetings

- 11.1 General Branch meetings and Shop Steward Branch Committee (Branch Committee) meetings shall be convened and the members and committee shall meet as regularly as possible, at least once a month. Any Branch where the members and/or the said committee fail to meet at all or at least once in any period comprising 3 (three) consecutive months, shall be excluded from any decision-making process contemplated by this Constitution.
- 11.2 Additional items not covered by the standing agenda determined by the Provincial Executive Committee for inclusion on the agenda for Branch Committee meetings shall be decided at each meeting.
- 11.3 At all General meetings and Branch Committee meetings minutes shall be taken by a Branch Committee Secretary, elected by the Branch Committee from its members at an inaugural meeting held for that purpose. The Branch Secretary shall be responsible for custody and safekeeping of the minutes.
- 11.4 The quorum at General meetings shall be the members present. At Branch Committee meetings the quorum shall be 1/3 (one third) of the total number of Shop Stewards elected in that establishment. Notice of General meetings shall be given in such a way as to best reach all members who may attend, given the facilities available at the particular Branch.

Local Shop Steward Councils

- 11.5 Local Shop Steward Council (Local) meetings shall be convened once every 3 (three) months, on such dates and at such times and venues as the Provincial Secretary shall arrange, after consultation with the Provincial Office Bearers. The said Secretary shall circulate to each branch within the area of the Local, notice of any Local meeting at least 7 (seven) days before an ordinary meeting and at least 24 (twenty-four) hours before a special meeting.
- 11.6 The agenda shall be decided at the commencement of the meeting.
- 11.7 Minutes of Local meetings shall be taken by a Committee Secretary, elected by the Local committee from its members at its inaugural meeting for that purpose. The Provincial Secretary is responsible for the custody and safekeeping of the minutes.
- 11.8 A quorum at any Local meeting shall be 50 (fifty) percent of the total number of Branch Chairpersons in the Local. If no quorum is reached within 60 (sixty) minutes of the time fixed for the meeting, the meeting shall stand adjourned to the same day in the following week or, if this day falls on a Saturday, Sunday or public holiday, the following day, at which adjourned meeting the members of the Local present shall form a quorum.

Meetings of the Provincial Executive Committee

- 11.9 Provincial Executive Committee meetings shall be convened and the committee shall meet at least 4 (four) times a year, on such dates and at such times and venues as the Provincial Chairperson shall determine in consultation with the Provincial Secretary. The said Secretary shall circulate to each member of the PEC, notice of any meeting at least 14 (fourteen) days before an ordinary meeting and at least 7 (seven) days before an extraordinary meeting.

- 11.10 The Provincial Secretary shall make available to the committee members copies of the agenda, which shall be derived solely from items arising from Branch Committee meetings. Copies of all correspondence, financial and other documents pertaining to such items and relevant to any decision to be made shall be made available for perusal at the meeting.
- 11.11 Minutes of meetings shall be taken by the Provincial Secretary or such official appointed by him or her for that purpose. The Provincial Secretary shall be responsible for custody and safekeeping of the minutes.
- 11.12 The quorum for a meeting shall be 50 (fifty) percent plus one of the total number of committee members. In the event that a quorum is not reached within 60 (sixty) minutes of the time fixed for the meeting, the meeting shall stand adjourned to the same day in the following week or, if this day falls on a Saturday, Sunday or public holiday, the following day, at which adjourned meeting the committee members present shall form a quorum.

Provincial Congress

- 11.13 A Provincial Congress shall be convened in every province once every 5 (five) years and shall take place at least 6 (six) months prior to the National Congress. After the National Executive Committee shall have decided the number of and boundaries of the Provinces for the purposes of the Congress, should this be necessary, the National Executive Committee in office preceding such a Congress shall determine the delegates to and representation at the Congress.
- 11.14 The Provincial Secretary shall give the delegates to Provincial Congress at least 14 (fourteen) days notice of the venue, date and time of the Provincial Congress.

- 11.15 The Provincial Secretary shall arrange for an official to take minutes. The General Secretary is responsible for the custody and safekeeping of the minutes.
- 11.16 A quorum of the Provincial Congress shall be 50 (fifty) percent plus 1 (one) of the delegates entitled to attend. In the event of a quorum not being present the Congress shall stand adjourned to be reconvened within not later than 1 (one) month thereafter. The Provincial Secretary shall ensure that at least 14 (fourteen) days notice is given to delegates of such reconvened congress. At such reconvened congress the delegates present shall form a quorum.

Meetings of the National Finance Committee

- 11.17 The National Finance Committee shall meet 3 (three) times a year, on such dates prior the meetings of the National Executive Committee as are arranged by the National Treasurer in consultation with the General Secretary. The General Secretary shall arrange for an official to take minutes and shall be responsible for the custody and safekeeping of minutes.
- 11.18 The quorum for meetings shall be 50 (fifty) percent plus 1 (one) of the total number of committee members. In the event that a quorum is not reached within 60 (sixty) minutes of the time fixed for the meeting, the meeting shall stand adjourned for 14 (fourteen) days, at which adjourned meeting the committee members present shall form a quorum.

Meetings of the National Executive Committee

- 11.19 National Executive Committee meetings shall be convened and the committee shall meet every 6 (six) months, on such dates and at such times and venues as the President shall determine in consultation with

the General Secretary. The General Secretary shall circulate to each member of the committee, notice of any meeting at least 14 (fourteen) days before an ordinary meeting and at least 7 (seven) days before an extraordinary meeting.

- 11.20 Prior to the meeting the General Secretary shall circulate to all committee members the agenda and copies of any correspondence and other documents relevant to any decision that needs to be made.
- 11.21 Minutes of the meeting shall be taken by an official appointed by the General Secretary for that purpose. The General Secretary is responsible for the custody and safekeeping of the minutes.
- 11.22 A quorum shall be a majority of the members. If a quorum is not achieved within 60 (sixty) minutes of the time set for the meeting, the meeting shall stand adjourned and shall be reconvened by the General Secretary within 14 (fourteen) days thereafter, on not less than 5 (five) days notice to all members. At such adjourned meeting the committee members present shall form a quorum.

National Congress

- 11.23 The National congress shall be convened by the National Executive Committee once every 5 (five) calendar years at such place that may be decided on by the National Executive Committee. At least 3 (three) months notice shall be given in writing of the date and venue of the Congress to every Provincial Executive Committee of the Union.
- 11.24 A special National Congress may be convened if and when it is considered necessary by the National Executive Committee. The National Executive Committee shall give 1 (one) month's written notice to the Provincial Executive Committees of the Union.

- 11.25 The President, or in his absence the Vice-President(s), or in their absence a person appointed by the National Executive Committee shall preside at any National Congress.
- 11.26 Each province shall be represented at a National Congress according to a formula to be decided on by the National Executive Committee preceding such a Congress. All serving National and Provincial Executive Committee members shall be members of the National Congress.
- 11.27 All members at National Congress, including outgoing National Office Bearers, may stand for the positions of President, National Treasurer and Vice-Presidents of the Union.
- 11.28 The quorum at Congress shall be a majority of the delegates, provided that at least 2/3 (two thirds) of the provinces are present. In the event that the Congress does not quorate, the meeting shall stand adjourned and shall be reconvened within 8 (eight) weeks. At such an adjourned congress the delegates present shall form a quorum. 4 (four) Weeks written notice shall be given of the adjourned meeting.
- 11.29 The General Secretary, Assistant General Secretaries, the Provincial Secretaries and such other staff as may be authorised by the National Executive Committee, may attend the Congress where they may have the right to speak but not to vote.
- 11.30 The General Secretary shall ensure that minutes are taken at the National Congress and shall be responsible for the custody and safe-keeping of such minutes.

PART 8: GENERAL PROVISIONS RELATING TO ALL MEETINGS OF MEMBERS AND MEETINGS OF REPRESENTATIVES OF MEMBERS AND THE MANNER IN WHICH DECISIONS ARE REACHED (STANDING ORDERS)

12. The following rules of procedure shall apply at all Union meetings:
- 12.1 The Chairperson shall determine whether a quorum is present. Should it not be so present, the meeting shall stand adjourned and be reconvened in terms of this Constitution.
 - 12.2 No matters other than those appearing on the agenda shall be debated, provided that the meeting may, on a majority vote, agree to debate any urgent matter which might arise.
 - 12.3 All questions for decisions shall be decided, following a motion by a mover duly seconded by a member other than the mover, by way of a show of hands or by way of ballot in instances where the meeting so decides or where decision by ballot is prescribed by this Constitution or by law.
 - 12.4 Except in the case of an election a motion shall be deemed to have lapsed in the event of an equality of votes.
 - 12.5 No matter that has been debated and voted on may be reopened at the same meeting except on a motion put without amendment and carried out by not less than 2/3 (two thirds) majority of the members present.
 - 12.6 Each person, who desires to speak, addresses the chair. The mover of a motion shall be allowed to speak for not longer than 10 (ten) minutes and shall be permitted to reply to any debate. Such reply shall not be longer than 5 (five) minutes.

- 12.7 No person may speak, interject or otherwise participate in a debate in a meeting without the permission of a chairperson.
- 12.8 The mover or seconder may not withdraw a motion, which has been seconded, unless the meeting so decides.
- 12.9 At every meeting the minutes of the preceding meeting shall be adopted and signed by the presiding officer after confirmation. Such confirmed minutes shall be bound. A register of all resolutions taken shall be kept.
- 12.10 A paid official or other employee of the Union shall not be entitled to vote on any matter except where he/she has been appointed or elected to represent the Union on any board, council or committee.
13. Save where this Constitution expressly provides for the contrary, where this Constitution is silent on a particular procedure to be followed at a Union meeting, the rules and procedure for the conduct of the meeting shall be decided on by majority vote of the members present, provided that such decisions are not inconsistent with any requirement of this Constitution.
14. All issues at Branch Meetings shall be decided by a majority of members present at general members' meeting by a show of hands unless this Constitution or the law requires a ballot.
15. Notwithstanding anything to the contrary contained in this Constitution, any decision taken at any meeting of the Union shall not be invalidated merely since a member entitled to attend alleges that he or she has not received notice of the said meeting, at all or timeously.

PART 9 : THE OFFICE AND FUNCTIONS OF THE GENERAL SECRETARY

16. The Union shall appoint a **General Secretary**.
17. The functions of the **General Secretary** shall be to
 - 17.1 In consultation with the National Office Bearers, manage the affairs of the Union between National Executive Committee meetings.
 - 17.2 Receive reports from, supervise and manage all aspects of the contract of employment between the Union and the Assistant General Secretaries, Provincial Secretaries and other Union officials and employees, who shall report to the General Secretary.
 - 17.3 Report fully to each National Congress and meetings of the National Executive Committee on all aspects of the Union's activities.
 - 17.4 Conduct correspondence of the National Office of the Union.
 - 17.5 Be a co-signatory to the national banking accounts of the Union.
 - 17.6 Attend National Congress and meetings of the National Executive Committee and other sub-committees.
 - 17.7 Visit provincial offices on a regular basis in a managerial capacity and oversee the discipline and efficiency of all officials employed by the Union.
 - 17.8 Generally supervise the affairs of the Union and perform duties as per resolutions of the National Executive Committee and National Congress and in compliance with this Constitution including:
 - 17.8.1 Keeping financial records for the Union;

- 17.8.2 Ensure administrative functionality of the Union including matters pertaining to agendas, minutes for meetings and other record-keeping;
- 17.8.3 Attend National Executive Committee, National Office Bearers, National Working Committee and National Finance Committee meetings and National Congresses and such other meetings of departments or other committees of the Union where appropriate;
- 17.8.4 Perform any other functions which the National Executive Committee may charge him/her with, from time to time in his/her capacity as executive official of the Union; and
- 17.8.5 In general promote the affairs of the Union.

17.9 The General Secretary may resign on 1 (one) month's written notice, or on such other period as may be mutually agreed upon, given to the National Executive Committee.

PART 10 : FUNCTIONS OF OFFICE BEARERS, OFFICIALS AND TRADE UNION REPRESENTATIVES AND THE PROCEDURE FOR NOMINATING AND ELECTING OFFICE BEARERS AND TRADE UNION REPRESENTATIVES

NATIONAL OFFICE BEARERS

18. The National Office Bearers shall be:

The President

18.1 The functions of the *President* shall be to:

- 18.1.1 Attend all congresses and all meetings of the National Executive Committee and preside at such meetings. He or she shall have a deliberative vote;
 - 18.1.2 Sign minutes of the said meetings after confirmation thereof;
 - 18.1.3 Exercise supervision over the affairs of the Union;
 - 18.1.4 Receive reports from the General Secretary;
 - 18.1.5 Report to National Congress;
 - 18.1.6 Preside over all national congresses and meetings at which he or she is present and sign minutes of those meetings after confirmation thereof;
 - 18.1.7 Ensure reasonable steps are taken by the Union to enforce observance of this Constitution; and
 - 18.1.8 Perform such other duties as by usage and custom pertain to the office.
19. In the event of an equality of voting in any decision to be taken at any Union meeting, except in cases where the decision will result in the election of any office bearer, he or she shall have a casting vote.
20. The President may serve a maximum of 2 (two) terms of office.

The Vice Presidents

21. The functions of the ***Vice-Presidents*** shall be to:
- 21.1 Assist the President in the performance of his or her duties when called on to do so.

- 21.2 Exercise the powers, functions and duties of the President in his absence.
- 21.3 In the absence of the President any one of the Vice-Presidents or the National Treasurer shall exercise the powers and perform the duties of the President. In the event of the President and/or the Vice-Presidents and/or the National Treasurer being unable, either temporarily or permanently, to perform their duties, the National Executive Committee shall appoint one or more of its members to act instead, which appointee shall hold office until the President or Vice-Presidents are able to resume their duties or until the next election which shall be held at the National Congress, whichever applies.
- 21.4 The Vice Presidents shall each perform such functions according to their individual portfolios, as are specifically assigned to each of them, by the National Executive Committee or by this Constitution.

The National Treasurer

22. The specific functions of the **National Treasurer** shall be to:
- 22.1 Preside over all meetings of the National Finance Committee at which he or she is present, and report at each National Executive Committee meeting.
- 22.2 Generally exercise supervision over the financial affairs of the Union, working, at all times, in close liaison with the General Secretary in respect of the financial management of the Union.
- 22.3 Be a co-signatory to the national banking account of the Union.

- 22.4 Report to National Congress, National Executive Committee and National Finance Committee meetings, at which meeting he or she shall have a deliberative vote, on all aspects of the Union's finances.
- 22.5 Sign the minutes of meetings at which he or she is present, after confirmation thereof.
- 22.6 Ensure that the National Finance Committee makes recommendations to the National Executive Committee concerning a sound financial policy for the Union and to oversee the implementation of such policies approved by the National Executive Committee in terms of this Constitution.
- 22.7 Assist the President in the performance of his or her duties when called on to do so.
- 22.8 Exercise the powers, functions and duties of the President in his absence.
- 22.9 In the absence of the President any one of the Vice-Presidents or the National Treasurer shall exercise the powers and perform the duties of the President. In the event of the President and/or the Vice-Presidents and/or the National Treasurer being unable, either temporarily or permanently, to perform their duties, the National Executive Committee shall appoint one or more of its members to act instead, which appointee shall hold office until the President or Vice-Presidents are able to resume their duties or until the next election which shall be held at the National Congress, whichever applies.
- 22.10 Assist the President in the performance of his or her duties when called on to do so.
- 22.11 Exercise the powers, functions and duties of the President in his absence.

22.12 In the absence of the President any one of the Vice-Presidents or the National Treasurer shall exercise the powers and perform the duties of the President. In the event of the President and/or the Vice-Presidents and/or the National Treasurer being unable, either temporarily or permanently, to perform their duties, the National Executive Committee shall appoint one or more of its members to act instead, which appointee shall hold office until the President or Vice-Presidents are able to resume their duties or until the next election which shall be held at the National Congress, whichever applies.

The General Secretary

23. The functions of the **General Secretary** are those set out in Part 9 (nine).

Provincial Office Bearers

24. The functions of the Provincial Office Bearers shall, at provincial level, accord with those assigned to the National Office Bearers, read with the changes required by context. In addition to those duties assigned to Provincial Office Bearers by way of reference to those of the National Office Bearers, the Provincial Treasurer shall specifically submit a provincial financial report at each of the Provincial Executive Committee meetings.

Provincial Secretaries

25. Functions of the appointed officials, **Provincial Secretaries** shall be to:

25.1 Ensure the efficient co-ordination and administration of all Trade Union activities within the province.

25.2 Exercise direct control, supervision and discipline over all Union officials managed by him or her.

- 25.3 Ensure the proper conduct and administration of the Union's activities in the Province including responsibility for the provincial imprest account.
 - 25.4 Provide full reports to the Provincial Executive Committee at its meetings on all provincial activities.
 - 25.5 Conduct all provincial correspondence.
 - 25.6 Issue notices of provincial meetings, attend such meetings and cause such proceedings to be recorded and minutes to be taken. Copies of such minutes shall be submitted to the General Secretary.
 - 25.7 Keep a register of members and submit such returns as are required to the Union's national office.
 - 25.8 Ensure the prompt processing of applications for membership to the Union and conduct and promote initiatives aimed at the recruitment of members, and
 - 25.9 Perform other duties as are imposed by this Constitution or which may be imposed by decisions of the National Congress, National Executive Committee and by the General Secretary.
26. A Provincial Secretary may resign on 1 (one) month's written notice given to the Provincial Executive Committee having jurisdiction and to the General Secretary.

Office Bearers at Local and Branch Level

27. The functions of Shop Steward Branch Committee Members shall be to:
- 27.1 Establish and maintain in their establishment good relations between members and management, as far as is reasonably possible.

- 27.2 Maintain order, harmony and discipline among members in the establishment.
- 27.3 Employ conciliatory methods to attempt to settle disputes in the establishment.
- 27.4 Conclude collective agreements binding on the Union provided that the National Executive Committee or the Provincial Executive Committee has authorised the conclusion of the collective agreement in writing.
- 27.5 Attend all Shop Steward Branch Committee meetings.
- 27.6 Report regularly on any disputes and grievances of members.
- 27.7 Encourage compliance with industrial agreements, wage determinations and labour legislation by management and members.
- 27.8 Consult with management on all matters affecting the interests of members.
- 27.9 Act as liaison between members in the establishment and the rest of the Union.
- 27.10 Convey to members employed in the establishment decisions of the Union.
- 27.11 Take up legitimate complaints of members employed in the establishment with management.
- 27.12 Assist in recruiting and enrolling new Union members.
- 27.13 Elect representatives to Provincial Congress in terms of this Constitution, and generally

27.14 Perform the functions prescribed by sub-section 14(4) of the Act.

Local Shop Steward Council Members

28. Subject to the provisions of Section 14 of the Act, the functions of Local Shop Steward Council Members are to:

28.1 Review and co-ordinate local activities.

28.2 Discuss and comment on decisions of Branch Committees in accordance with provincial policy.

28.3 Provide social assistance to members in relation to their employment or in furtherance of the objectives and policies of the Union, provided that where such assistance requires expenditure of Union funds or deployment of Union resources, approval of such intended assistance must first be obtained from the Provincial Executive Committee concerned.

28.4 Submit reports to the Provincial Executive Committee on all activities of the Local and of all Branch Committees within its area of jurisdiction.

PART 11 : PROCEDURE FOR APPOINTING OFFICIALS

29. Officials of the Union are appointed by virtue of a contract of employment approved from time to time by the National Executive Committee. The periods of notice that must be given if intention to terminate the contract of employment between the Union and the General Secretary and/or the Provincial Secretaries are prescribed by this Constitution.

PART 12: A PROCEDURE FOR NOMINATING AND ELECTING OFFICE BEARERS AND TRADE UNION REPRESENTATIVES (SHOP STEWARDS)

Procedure for Elections at Branch and Local Level

Branch Level

30. In every establishment where members are employed the members shall be entitled to elect from amongst themselves Shop Stewards. Shop Stewards duly elected hold office for a period of 5 (five) years from the date of their election. In branches these Shop Stewards would represent the members on a Branch Committee. The number of Shop Stewards that may be elected are as is set out in the Act.
31. At least 14 (fourteen) days' notice must be given of the election of Shop Stewards by displaying a notice of such elections on the establishment's notice boards, or in such a way as the Provincial Executive Committee shall determine if such facilities are not available, will best ensure the notice reached the attention of the members in the branch. No election shall be invalidated solely by actual or alleged non-receipt of any such notice by any member who was entitled to receive notice. Elections shall be preceded by the due nomination of members as candidates, duly seconded, either in writing or at a general meeting of members of the relevant establishment. In the event that only one member is duly nominated, he or she shall be declared duly elected. Voting, should this be necessary, shall be by show of hands or, if required by any candidate or the majority of the members present, by ballot.
32. At the inaugural meeting of any Branch Committee the committee shall elect from amongst themselves a Chairperson, Vice Chairperson and Secretary as contemplated by section 31 (thirty one). In the event of any vacancy arising on any Branch Committee, a by-election shall be held within 30 (thirty) days of such vacancy arising and the provisions of section 31 (thirty one) shall apply *mutatis mutandis* to the by-election. Shop stewards elected in such by-elections shall only hold office for the remainder of his or her predecessor's

term of office or until removed from office in any manner provided for in this Constitution. Shop Stewards who have served a full term of office shall be eligible for re-election. In the event that the vacancy arising was that of the Branch Chairperson, Vice Chairperson and/or Secretary, the Branch Committee shall elect a new Branch Chairperson, Vice Chairperson and/or Secretary, whichever is the case, at the very next Branch Committee meeting following the by-election.

33. The Branch Committee shall elect from its members Office Bearers consisting of (a) the Chairperson (b) the Vice Chairperson and (c) a Secretary. At any duly constituted meeting of a Branch Committee where election of these office bearers takes place, any nomination of candidates must be duly seconded and the election shall take place by way of voting by ballot. The candidate attaining the majority votes shall be declared duly elected. Save in the case of elections following a by-election, such duly elected office bearers shall hold office for a period of 5 (five) years or until he or she is required to vacate office or is removed in terms of the provisions of this Constitution.

Local Level

34. A Local Shop Steward Council shall elect from its members (a) a Chairperson (b) a Vice Chairperson and (c) a Secretary. Only members of the Local Shop Steward Council who have served on a Branch Committee for at least 1 (one) calendar year prior to his or her nomination shall be eligible for election. The procedure for election of and by-elections in respect of these Office Bearers shall be *mutatis mutandis* that set out in section 32 for the election of Branch Committee Office Bearers. Office Bearers duly elected to these offices shall hold office for a period of 5 (five) years from the date of the election or until any such Office Bearer is required to vacate office or is validly removed in terms of this Constitution.
35. In the event that any Local Shop Steward Council fails to call such an election, the Provincial Executive Committee concerned shall call the election.

PROCEDURE FOR ELECTION OF REPRESENTATIVES TO NATIONAL FORUMS AT THE PROVINCIAL CONGRESS

36. Provincial representatives to the National fora contemplated by section 5.9.1 of this Constitution shall be elected at Provincial Congress by the delegates to and at the Congress. Election shall be preceded by the due nomination of members as candidates, duly seconded, either in writing or at the commencement of the election. In the event that only one member is duly nominated, he or she shall be declared duly elected. Voting, should this be necessary, shall be by ballot. Forum members so elected shall hold office for a period of 5 (five) years or until he or she is required to vacate office or is removed in terms of the provisions of this Constitution.

PROCEDURE FOR BY-ELECTIONS AT PROVINCIAL EXECUTIVE COMMITTEE LEVEL

37. In the event of any vacancy in respect of the Chairperson, Vice Chairperson and/or the Secretary arising on a Local or Provincial Executive Committee, a by-election shall be held, in the case of a Local at the next Local meeting, and in the case of the Provincial Executive Committee within 30 (thirty) days of such vacancy arising. The provisions of Section 31 (thirty one) shall apply *mutatis mutandis* to the by-election. Local and Provincial Executive Council members elected in such by-elections shall hold office for the remainder of his or her predecessor's term of office or until removed from office in any manner provided for in this Constitution. In the case of by-elections at Provincial Executive Committee level, the vacancy shall be filled from the existing committee members.
38. Should the total number of members in the Province exceed 5000 (five thousand) members, the Provincial Executive Committee shall elect the additional National Executive Committee Members. The procedure for all elections in terms of Section 37 above and this provision shall follow, *mutatis mutandis*, the provisions of Section 31 of this Constitution.

PROCEDURE FOR ELECTIONS AT NATIONAL LEVEL

39. The procedure for election of the National Office Bearers at National Congress shall be as follows:
- 39.1 The President and Vice-Presidents to be nominated and elected from the delegates to and present at Congress. The National Treasurer shall be elected from the Provincial Treasurers who are delegates and present at Congress.
- 39.2 Following the due nomination of candidates in respect of the Presidency, the National Treasurer and Vice Presidencies an election shall take place by way of voting by ballot. The candidate obtaining the majority of votes shall be declared duly elected. In all other cases, if only one candidate is nominated, he or she shall be declared duly elected.
- 39.3 All candidates duly elected at National Congress shall hold office for a period of 5 (five) years from the date of their election or until such time as such Office Bearers shall be required to vacate office or are validly removed from office in terms of this Constitution.

PART 13 : REMOVAL FROM OFFICE: SHOP STEWARDS, OFFICE BEARERS

REMOVAL OF MEMBERS WHO HOLD OFFICE

40. Any Shop Steward, or any member holding any office in the Union, shall *ipso facto* cease to hold that position, if:
- 40.1 He or she is no longer employed in the workplace which elected him or her.
- 40.2 He or she is no longer employed within the scope of the Union.

- 40.3 He or she fails to attend 3 (three) consecutive meetings of the council and/or committee on which he or she serves, without sending a written reason.
- 40.4 He or she ceases to be in good-standing with the Union.
- 40.5 The Union suspends or expels the Office Bearer concerned.
- 40.6 He or she has submitted his or her intention to resign his or her membership or his or her membership has validly terminated for any other reason, and/or
- 40.7 The Office Bearer is found incapable of performing his or her duties by reason of medical or other incapacity by a panel duly constituted by the National Executive Committee for the purpose of enquiring into the capacity of such member. At all such hearings the member shall be given an opportunity to be heard. The provisions of Sections 9.6.1 to Sections 9.7 inclusive shall apply *mutatis mutandis* to such hearing. The tribunal constituted by the National Executive Committee for this purpose shall be competent to hold that the member concerned should be removed from office as a consequence of incapacity.

REMOVAL OF MEMBERS WHO HOLD OFFICE BY BALLOT

- 41. Notwithstanding any other provision in this Constitution providing for the removal from office of any Office Bearer, Union Office Bearers may be removed from office in the following manner:
 - 41.1 In the event that at least 30 (thirty) percent of the members are in good standing in the constituency in which the affected person was elected requests the removal of that Office Bearer in writing, which written request should be delivered to the Provincial Executive Committee or the National Executive Committee, whichever is the case, the responsible Executive Committee shall forthwith arrange for a ballot of

all the members in good standing in such constituency to determine the matter.

41.2 The matter shall be decided by the majority vote determined by way of the said ballot, which decision shall be final.

41.3 For the purposes of this section, “constituency” shall mean:

41.3.1 In the case of Local Office Bearers, all the members in good standing employed in establishments within the geographical jurisdiction of the local;

41.3.2 For Provincial Office Bearers, all the members in good standing employed in establishments within the geographical area of the province; and

41.3.3 In the case of National Office Bearers, all the members employed in all the branches comprising the Trade Union.

42. In the event that the majority of members so balloted vote in favour of removal of the said Office Bearer, that Office Bearer shall be removed from office forthwith.

REMOVAL OF MEMBERS WHO HOLD OFFICE IN OTHER UNIONS OR POLITICAL PARTIES

43. No member of the Union may hold any office in any other trade union while he or she serves as an Office Bearer in any structure of the Union and any member standing for election as an Office Bearer of the Union shall be obliged to disclose any such office in any other trade union held by that member prior to his or her assumption of office in the Union, or forthwith in the event that such member assumes such office in any other union during the currency of his or her office in the Union. No National Executive Committee member may hold office in any political party while holding such office with the Union and all

prospective members are required to make disclosure of all political offices held by them prior to their assumption of office as a National Office Bearer or National Executive Committee Member or forthwith if such political office is assumed while in office as a National Office Bearer or National Executive Committee member. Any prospective member declares that he accepts these conditions as reasonable qualifications for membership. In the event of an Office Bearer holding office with another Trade Union or political party, whichever the case may be, as contemplated by this provision, such Office Bearer will be forthwith removed as an Office Bearer of the Union.

GENERAL PROVISIONS

44. All Office Bearers of the Trade Union may resign on 1 (one) month's written notice of their intention to vacate their office. In the case of a National Office Bearer such notice shall be delivered in writing to the National Executive Committee by way of delivering such notice to the Office of the General Secretary and, in the case of Provincial Office Bearers, to his or her Provincial Executive Committee, by way of delivering a copy of the notice to the Provincial Secretary. Trade Union representatives serving on Branch Committees shall deliver such notice either to the Branch Chairperson concerned or, in the event of his or her unavailability, to the Local Chairperson concerned.
45. Any member of a Branch Committee, Local or Provincial Executive Committee shall vacate his or her position on that Committee if he or she is elected to higher office in the Union. In this event a by-election as contemplated by this Constitution shall be held.
46. In the case of Trade Union representatives elected to hold any office on any Local, such representatives shall vacate that office if he or she ceases to be a member of his or her Branch Committee.

PART 14 : APPEALS AGAINST REMOVAL FROM OFFICE OF OFFICE BEARERS AND TRADE UNION REPRESENTATIVES

47. Any Office Bearer or Trade Union representative who is aggrieved by any decision removing him or her from office, other than in the case where he or she is removed by way of ballot as contemplated by Section 41 (forty one) of this Constitution, may lodge an appeal in the prescribed form with the General Secretary within 10 (ten) days of the date of the decision complained of. The General Secretary shall refer the appeal, together with a full record of the decision, to the National Executive Committee at its next meeting. The National Executive Committee may decide to determine the matter of the appeal, in which case its decision shall be final and binding in the matter. Conversely the National Executive Committee may decide to refer the appeal to the Appeals Committee for determination. In that case the decision of the Appeals Committee shall be final and binding in all instances.
48. The structure of the Union or the Appeals Committee hearing the appeal has the power to confirm, vary or reverse the decision and this decision is final.
49. Any appeal lodged by any office bearer in terms of these provisions shall be subject *mutatis mutandis* to the procedural provisions contained in Part 5 (five) of this Constitution. An Appeal lodged by an Office Bearer in terms hereof shall not suspend the effective date of the removal from office or the decision which gave rise to the removal.

PART 15 : THE CIRCUMSTANCES AND MANNER IN WHICH A BALLOT MUST BE CONDUCTED

50. BALLOTS

A ballot must be taken:

50.1 When required by any law.

50.2 When required by this constitution, and

- 50.3 If a decision is taken to this effect by any structure of the Union.
51. The Provincial Executive Committee may, in its sole discretion, confine a ballot to the members of the particular Province, or Branch, in instances where the decision to be made affects only the members within the Province or the Branch.
52. Whenever a decision has been made by way of ballot, the following procedure shall apply:
- 52.1 The relevant structure or meeting of the trade union shall appoint at least 2 (two) scrutinisers who shall, in addition to the duties imposed on the scrutinisers hereunder, count the votes.
- 52.2 The scrutinisers may be members of the Union.
- 52.3 The scrutinisers must supervise the conduct of the ballot with a view to ensuring and certifying in writing that the provisions of this Constitution have been adhered to.
- 52.4 Each voter shall, in the presence of a scrutiniser, be issued with a ballot paper, which:
- 52.4.1 Clearly describes the issue; and
- 52.4.2 Makes it impossible to identify the voter.
- 52.5 The voter must make his/her mark in secret and deposits the ballot paper in a ballot box. Each voter shall in the presence of a scrutiniser be issued with a ballot paper, which shall be completed, folded and deposited in a sealed container provided for the purpose. The issue to be voted on shall be set forth clearly on the ballot papers on which it will not be possible to identify the voter.

- 52.6 Such ballot papers shall not be signed or marked in any way apart from the mark required to be made by a member in recording his/her vote. Papers bearing any other mark shall be regarded as spoilt. Ballot boxes shall be inspected by the scrutiners and sealed in their presence. In the event of an election being conducted by ballot, candidates shall have the right to inspect such ballot boxes prior to being sealed and be present when sealed.
- 52.7 On completion of the ballot or as soon as possible thereafter, the scrutiner must count the votes. If there is an election the candidates can watch the counting of the votes.
- 52.8 The scrutiner must then inform the Chairperson of the results.
- 52.9 The scrutiner must then inform the meeting or committee of the results.
- 52.10 The Branch, Provincial and General Secretary must keep branch, provincial and national ballot papers. Ballot papers including spoilt papers shall be placed in a sealed container again after counting. These ballot papers shall be kept for 3 (three) years.
- 52.11 The body responsible for the conducting of such a ballot shall be bound to take action according to the decision of a majority of members voting in such a ballot.
- 52.12 In any election conducted by ballot, the candidate receiving the majority of votes shall be declared elected.
- 52.13 The scrutiner shall have the right and duty to ensure that no discussion on the merits of any issue related to the ballot is conducted with any voter from the time he/she has received the ballot paper until after he/she has voted and deposited the ballot paper in the ballot box.

PART 16: STRIKE BALLOT

53. The Union shall, notwithstanding any other provision to the contrary contained in this Constitution, before calling a strike conduct a ballot of those of its members in respect of whom it intends to call the strike. The ballot shall be conducted in accordance with the procedure set out in Part 15 (fifteen) of this Constitution.

PART 17: REFUSAL BY A MEMBER / MEMBERS TO PARTICIPATE IN A STRIKE

54. No member of the Trade Union may be disciplined or be subjected to any sanction, including suspension or expulsion, as a sole consequence of that member's refusal to participate in any strike if:

54.1 No ballot was held about the strike, or

54.2 Have their membership terminated as a sole consequence of their failure of refusal to participate in any strike.

PART 18 : UNION FINANCES

NATIONAL ACCOUNT

55. All periodic subscriptions from members and all other moneys paid to the Union from whatsoever source shall, subject to the provisions of clause 10(4) (ten four), be remitted to the National Office and shall be deposited within 5 (five) days of receipt at a bank nominated by the National Executive Committee from time to time. This account shall be called the Health and Other Service Personnel Trade Union of South Africa National Account. The signatories on this account shall be the President, the National Treasurer, the General Secretary and/or certain other managers specifically appointed by the General Secretary. Any two signatories may jointly sign each cheque.

GENERAL

56. Statements of income and expenditure accurately reflecting the financial position of the Trade Union shall be prepared by the General Secretary, prior to each National Finance Committee meeting, for submission to and approval by the National Executive Committee.
57. All accounts of the Union shall be audited annually, following the financial year ending February of each year, by auditors registered under Section 23 of the Public Accountants and Auditors Act No 51 of 1951, which auditors shall be appointed by the National Executive Committee. True copies of the consolidated audited account of the Trade Union together with the auditor's report, as required by the Act, shall be made available for inspection by any member of the Union at the National Office of the Union.
58. The consolidated audited financial statement, balance sheet and auditor's report for the Union shall be confirmed by the National Executive Committee and presented to all the Provincial Executive Committees of the Union.
59. The auditor's report contemplated by Section 57 of this Constitution shall, in addition to any other matter required by Section 98 of the Act, state whether:
 - 59.1 He/she has satisfied him/herself of the existence of the securities and has examined the books of accounts and records of the Union or organisation.
 - 59.2 Proper books of accounts have been kept.
 - 59.3 He/she has obtained all the information and explanations required.
 - 59.4 In his/her opinion the statement and the balance sheet audited by him/her have been drawn up so as to exhibit a true and correct reflection of the state of the Union to the best of his/her knowledge

according to the explanation given to him/her and as shown by the books of the Union as at the date of the balance sheet.

59.5 He or she is of the opinion that the Trade Union has complied with those provisions of its Constitution relating to financial matters.

PART 19 : THE PURPOSE FOR WHICH UNION MONEY MAY BE USED

RECEIPT AND USE OF UNION FUNDS

60. Union funds consist of all monies received by means of subscription fees, levies, donations, functions and in any other manner within the framework of this Constitution.
61. Union funds shall consist of all monies received by the Union, whether by way of subscriptions, levies, donations or in any other lawful manner.
62. Funds may be used for investment, payment of expenditure relating to the acquisition of property and for other purposes as may be decided by the National Congress for the achievement of the aims and objects of the Union, but no profits or gains will be distributed to any person.
63. Union funds may be used for the purposes of investment, payment of creditors, expenditure relating to the acquisition of property and for any and all other purposes as may be decided upon by National Congress for the purposes of achieving the aims and objectives of the Union. No profit or gain shall be distributed by the Trade Union to any person.
64. Float amounts and other funds must be allocated to each Provincial Executive Committee, by the National Executive Committee from time to time.
65. The National Executive Committee may make available to the Provincial Executive Committees float amounts and other funds, which amounts and

funds shall be allocated to each Provincial Executive Committee in such amounts as the National Executive Committee may decide from time to time.

PART 20 : ACQUIRING AND CONTROLLING PROPERTY

66. All property acquired by the Trade Union from whatsoever source shall, within 10 (ten) days of the acquisition thereof, be recorded in an Assets Register. The General Secretary shall maintain the Asset Register. The Asset Register shall, in all respects, comply with generally accepted accounting principles. The Asset Register shall, in particular, record the date and manner in which the Asset was obtained and its value as at the date of acquisition.
67. In the event that any asset is disposed of, for whatsoever cause, the Asset Register referred to above shall be amended within 7 (seven) days of the disposal of the said property. Such amendments shall include the reason for the disposal of the property, the authority by which the same was disposed of, the value of the property as at its date of disposal and any funds paid to the Union as a result of the disposal of the said property.

PART 21 : THE UNION'S FINANCIAL YEAR

68. The Union's financial year shall be from the 1st day of April until the last day of March of the succeeding year.

PART 22: AMENDMENTS TO THE CONSTITUTION

69. The National Congress or the National Executive Committee may repeal, amend or add to the provisions of this Constitution by resolution carried at any National Congress or at any meeting of Congress or the National Executive Committee by way of carried by a 2/3 (two thirds) majority vote in favour of the repeal, amendment or addition. No such resolution shall be capable of being passed unless at least 4 (four) months notice of any proposed amendment in terms of this provision has been given to each of the Provinces by way of written notice addressed to each Provincial Executive Committee by the

General Secretary. No amendments or additions or repeals shall have any force or effect until such amendment, addition or repeal has been duly certified and registered in terms of the Act.

PART 23 : DISSOLUTION AND WINDING UP

70. The Union may decide at any time by resolution carried by 2/3 (two thirds) majority of the National Congress, if for any reason the Union is unable to continue functioning, to wound up its business. No such resolution shall be taken unless a ballot of members of the Union has been conducted in terms of this constitution and more than 2/3 (two thirds) of the members in good standing and participating in the ballot so approve.
71. If such a resolution as provided for in Section 70 (seventy) above has been passed, the following shall apply, subject to a provision to the contrary in law:
- 71.1 The last elected President of the Union, or if he is not available the available members of the last National Executive Committee shall forthwith apply to the Labour Court for an order in terms of Section 103 of the Act, to give effect to the resolution. The Union shall transmit to the Labour Court a statement setting out the resolution adopted or the reasons for its inability to continue with its functioning.
- 71.2 The liquidator appointed by the Labour Court shall call on the Unions last elected office bearers to deliver the Unions books of accounts showing the assets and liabilities of the Union. The register of members showing, for the 12 (twelve) months prior to the granting of the order or the date on which the Union ceased to function, the membership fees paid by each member and their address shall also be submitted.
- 71.3 The liquidator shall also call on the Office Bearers to hand over all unexpended funds of the Union and to deliver the Union's assets and the documents necessary to liquidate said assets.

- 71.4 The liquidator shall take the necessary steps to liquidate the debts of the Union from its unexpended funds and any other monies realised from the assets of the Union. If the said funds are insufficient to pay all creditors after the liquidator's fees and costs of winding-up have been met, the order in which creditors shall be paid shall be the same as for any law for the time being in force relating to the distribution of the assets of an insolvent estate.
- 71.5 After the payment of all debts in accordance with paragraph 71.4 above, the remaining funds, if any, shall be distributed among the remaining members of the Union on the basis of membership fees actually paid in the 12 (twelve) months prior to the dissolution.
- 71.6 After the discharge of all liabilities of the Union any assets that cannot be disposed of in accordance with this Constitution shall be realised by the liquidator and the proceeds paid over to the Commission for Conciliation, Mediation and Arbitration for its own use.
- 71.7 Liability of members shall for the purpose of this clause be limited to the amount of membership fees due by them to the Union in terms of the Constitution at the date of dissolution.

PART 24: GENERAL

LEVIES

72. The National Executive Committee may at any time, with a view to securing funds for any particular lawful purpose contemplated in terms of this Constitution, impose a levy provided that not less than 14 (fourteen) days notice of the proposed levy has been given to all Provinces and provided further that any Provincial Executive Committee may demand that a ballot of members of the Union be taken on the subject. The purpose of the levy shall

be clearly set out in the notice as well as the period of operation of such levy. Such levies may differentiate on the basis of earnings and may be either fixed amounts or a percentage of earnings. Under no circumstances may such a levy exceed 2,5 (two and a half) percent of a member's earnings for any calendar year and shall not apply for more than 1 (one) year.

CLAIMS INDEMNIFICATION

73. A member who resigns or is expelled from membership of the Union shall have no claim on the funds of the Union or of any Province or Branch thereof.
74. Union Office Bearers as contemplated by this Constitution and all officials of the Union shall, provided they have acted in good faith, be indemnified by the Union against all proceedings, costs and expenses incurred by them by reason of any act done or performed in accordance with the provisions of this Constitution by them.
75. Provided that if any member, committee member or paid official incurs expenditure not provided for in this Constitution or contrary to any lawful resolution taken by the Union, or without the necessary authorisation such person shall be held liable to refund the amount in question to the Union.

AMALGAMATION AND MERGER

76. If a special National Congress, by a 2/3 (two thirds) majority vote in favour thereof, resolves that the aims and objectives as described in this Constitution will be better achieved by amalgamating or merging with any other trade union/s, organisation or association, such amalgamation or merger shall be effected.
77. If the National Executive Committee by 2/3 (two thirds) majority in favour thereof, resolves that the aims and objectives as described in this Constitution will be better achieved by entering into co-operation agreements or working-together relationships with other trade unions, organisations or associations,

such agreements and relationships shall be effected. Such amalgamation or merger shall be effected by the Registrar in terms of Section 102 of the Labour Relations Act 1995.

INTERPRETATION OF THE CONSTITUTION

78. The responsibility for the interpretation of this Constitution or any matter arising in connection therewith shall be vested in the National Executive Committee and its decision shall be final and binding. The General Secretary is the custodian of this Constitution and all matters arising shall be addressed to him.

(THE END)