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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 223 **17 March 2015**

RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION

The Governing Body of the Commission for Conciliation, Mediation and Arbitration hereby publishes the Rules in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended, effective from the 1st April 2015.

Act

As published under GNR1448 in GG 25515 dated 10 October 2003
as amended by

Notice	Government Gazette	Date
R1512	25607	17 October 2003
R1748	25797	05 December 2003
R1793	25826	12 December 2003
R530	26279	30 April 2004
R531	26279	30 April 2004
R532	26279	30 April 2004
R380	27490	22 April 2005
R 97	29587	09 February 2007
R1176	31564	07 November 2008
R705	34577	02 September 2011
R494	35435	12 June 2012

COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION

Under section 115 (2A) of the Labour Relations Act 1995 (Act No. 66 of 1995), as amended, the Commission for Conciliation, Mediation and Arbitration hereby publish the Rules as amended, effective from the 1st of April 2015.

This gazette is also available free online at www.gpwonline.co.za

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COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

The Governing Body of the Commission for Conciliation, Mediation and Arbitration hereby, in terms of Rule 115(2A) of the Labour Relations Act 66 of 1995, publishes the Rules as amended.

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PART ONE
SERVING AND FILING DOCUMENTS

1 How to contact the Commission

1) The addresses, telephone and telefax numbers of the offices of the Commission are listed in Schedule One to these Rules.

2) Documents may only be filed with the Commission at the addresses, telefax numbers and e-mail addresses listed in Schedule One.

2 When are the offices of the Commission open

1) The head office and the regional offices of the Commission will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h30 and 16h30, or as determined by the Commission.

2) Documents may be filed with the Commission during the hours referred to in sub-rule (1).

3) Notwithstanding sub-rule (2), documents may be faxed and e-mailed at any time to the Commission.

3 How to calculate time periods in these Rules

1) For the purpose of calculating any period of time in terms of these Rules -

   a) day means a calendar day; and

   b) the first day is excluded and the last day is included, subject to sub-rule (2).

2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January.

4 Who must sign documents

1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.

2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

5 How to serve documents on other parties

1) A party must serve a document on the other parties -

a) by handing a copy of the document to -

i) the person concerned;
ii) a representative authorised in writing to accept service on behalf of the person;
iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time; or
iv) a person identified in sub-rule (2);

b) by leaving a copy of the document at -

i) an address chosen by the person to receive service; or
ii) any premises in accordance with sub-rule (3);

c) by e-mailing, faxing or telexing a copy of the document to the person's e-mail, fax or telex number respectively, or an e-mail address, fax or telefax number chosen by that person to receive service;

d) by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service.

2) A document may also be served -

a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;

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

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

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

e) on a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;

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

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

3) If no person identified in sub-rule (2) is willing to accept service, service may be effected by affixing a copy of the document to -

a) the main door of the premises concerned; or

b) if this is not accessible, a post-box or other place to which the public has access.

4) The Commission or a commissioner may order service in a manner other than prescribed in this Rule.

5A Notice of proceedings before the Commission

The Commission may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, by means of any of the methods prescribed in Rule 5 and may, in addition, give notice by means of short message service.

6 How to prove that a document was served in terms of the Rules

1) A party must prove to the Commission or a commissioner that a document was served in terms of these Rules, by providing the Commission or a commissioner -

a) with a copy of proof that the document has been mailed by registered post to the other party;

b) with a copy of the telegram or telex transmitting the document to the other party;

c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document;

d) if a document was served by hand -

i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or

ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises; and

e) if a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned.

2) If proof of service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by e-mail.

3) The Commission may accept proof of service in a manner other than prescribed in this Rule, as sufficient.

7 How to file documents with the Commission

1) A party must file documents with the Commission -

a) by handing the document to the regional office or the office of the Department of Labour at the address listed in Schedule One;

b) by sending a copy of the document by registered post to the regional office or an office of the Department of Labour at the address listed in Schedule One; or

c) by faxing or e-mailing the document to the regional office or an office of the Department of Labour at a number or e-mail address listed in Schedule One. Documents filed by means of e-mail must be transmitted in a format that is compatible with software used by the Commission at the time of filing.

2) A document is filed with the Commission when -

a) the document is handed to the regional office or an office of the Department of Labour listed in Schedule One;

b) a document sent by registered post is received by the regional office or an office of the Department of Labour listed in Schedule One;

c) the transmission of a fax is completed; or

d) the e-mail is received in the regional office or an office of the Department of Labour listed in Schedule One, as provided for in the Electronics Communications and Transactions Act 25 of 2002.

3) A party must only file the original of a document, if requested to do so by the Commission or a commissioner. A party must comply with a request to file an original document within seven (7) days of the request.

8 Documents and notices sent by registered post

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

9 How to seek condonation for documents delivered late

1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules.

2) A party must apply for condonation, in terms of Rule 31, when delivering the document to the Commission.

3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:

   a) the degree of lateness;

   b) the reasons for the lateness;

   c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;

   d) any prejudice to the other party; and

   e) any other relevant factors.

4) The Commission may assist a referring party to comply with this Rule.

PART TWO
CONCILIATION OF DISPUTES

10 How to refer a dispute to the Commission for conciliation

1) A party must refer a dispute to the Commission for conciliation by delivering a completed LRA Form 7.11 ('the referral document').

2) The referring party must -

   a) sign the referral document in accordance with Rule 4;

   b) attach to the referral document written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute;

   c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3) read with Rule 31.

3) The Commission must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

11 When must the Commission notify parties of a conciliation

The Commission must notify the parties in writing of a conciliation hearing at least fourteen (14) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Commission. If a notification is sent by registered mail an additional seven (7) days must be allowed.

12 Commission may seek to resolve dispute before conciliation

The Commission or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

13 What happens if a party fails to attend at conciliation

1) If a party on whose behalf a matter has been referred fails to attend the commissioner may -

   a) continue with the proceedings;

   b) adjourn the conciliation to a later date within the 30-day period; or

   c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.

2) In exercising a discretion in terms of sub-rule (1), a commissioner should take into account, amongst other things -

   a) whether the party has previously failed to attend a conciliation in respect of that dispute;

b) any reason given for that party's failure to attend;

c) whether conciliation can take place effectively in the absence of one or more of the parties;

d) the likely prejudice to the other party of the commissioner's ruling; and

e) any other relevant factors.

14 How to determine whether a commissioner may conciliate a dispute

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Commission has the jurisdiction to conciliate the dispute through conciliation, provided that all jurisdictional issues requiring evidence may be deferred to arbitration.

15 Issuing of a certificate in terms of Section 135(5)

A certificate issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the Commissioner during the conciliation proceedings.

16 Conciliation proceedings may not be disclosed

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

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

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

17 Conduct of con-arb in terms of Section 191(5A)

1) The Commission must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Commission unless sent by registered mail in which case an additional seven (7) days must be allowed.

2) A party that intends to object to a dispute being dealt with in terms of Section 191(5A), must deliver a written notice to the Commission and the other party, at least seven (7) days prior to the scheduled date in terms of sub-rule (1).

3) Sub-rule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.

4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1), the commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1).

5) Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).

6) The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.

7) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (1), the Commission must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21.

PART FOUR
ARBITRATIONS

18 How to request arbitration

1) A party may request the Commission to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13.

2) The referring party must -

   a) sign the referral document in accordance with Rule 4;

   b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with Rule 6; and

   c) if the referral document is served out of time, attach an application for condonation in accordance with Rule 9(3).

3) The Commission must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

4) This Rule does not apply to con-arb proceedings held in terms of Section 191(5A).

19 When must the parties file statements

1) The Commission or a commissioner may direct -

   a) the referring party in an arbitration to deliver a statement of case; and

   b) the other parties to deliver an answering statement.

2) A statement in terms of sub-rule (1) must -

   a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and

   b) be delivered within the time-period specified by the commissioner.

3) The commissioner has a discretion to continue with the matter despite non-compliance with a commissioner's directive. However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

20 When the parties must hold a pre-arbitration conference

1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2), if directed to do so by the Convening Senior Commissioner or the Senior Commissioner in charge of a region, or the presiding commissioner.

2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:

a) any means by which the dispute may be settled;

b) facts that are agreed between the parties;

c) facts that are in dispute;

d) the issues that the Commission is required to decide;

e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;

f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;

g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;

h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;

i) which party must begin;

j) the necessity for any on-the-spot inspection;

k) securing the presence at the Commission of any witness;

l) the resolution of any preliminary points that are intended to be taken;

m) the exchange of witness statements;

n) expert evidence;

o) any other means by which the proceedings may be shortened;

p) an estimate of the time required for the hearing;

q) the right of representation; and

r) whether an interpreter is required and, if so, for how long and for which languages.

3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.

4) A minute in terms of sub-rule (3) may also deal with any other matter listed in sub-rule (2).

5) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner within seven (7) days of the conclusion of the pre-arbitration conference.

6) The commissioner may, after receiving a pre-arbitration minute -

a) enroll the matter for arbitration;

b) direct the parties to hold a further pre-arbitration conference; or

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

7) The parties to an arbitration may agree to hold a pre-arbitration conference in terms of sub-rule (2).

21 When must the Commission notify parties of an arbitration

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

22 How to determine whether a commissioner may arbitrate a dispute

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

23 How to postpone an arbitration

1) An arbitration may be postponed -

a) by written agreement between the parties; or

b) by application and on notice to the other parties in terms of sub-rule (3).

2) The Commission must postpone an arbitration without the parties appearing if -

a) all the parties to the dispute agree in writing to the postponement; and

b) the written agreement for the postponement is received by the Commission at least seven (7) days prior to the scheduled date of the arbitration.

3) If the conditions of sub-rule (2) are not met, any party may apply in terms of Rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Commission before the scheduled date of the arbitration.

4) After considering the written application, the Commission may -

a) without convening a hearing, postpone the matter; or

b) convene a hearing to determine whether to postpone the matter.

PART FIVE
RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

24 Where a conciliation or arbitration will take place

1) A dispute must be conciliated or arbitrated in the region in which the cause of action arose, unless a senior commissioner in the head office of the Commission directs otherwise.

2) The Commission within a region determines the venue for conciliation or arbitration proceedings.

25 Representation before the Commission

(1) (a) In conciliation proceedings a party to the dispute may appear in person or be represented only by -

i) if the party is an employer, *a director or employee* of that party and, in addition, if it is a close corporation, a member of that close corporation;

ii) any *office bearer, official* or member of that party's registered *trade union* or *registered employers' organization;*

iii) if the party is a registered *trade union,* any *office bearer, official* or member of that trade union authorized to represent that party; or

iv) if the party is a registered *employers' organization,* any *office bearer or official* of that party or *a director* or *employee* of an employer that is a member of that employers' organization authorized to represent that party.

(b) Subject to paragraph (c), in any arbitration proceedings a party to the *dispute* may appear in person or be represented only by -

i) a *legal practitioner;* or

ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).

(c) If the *dispute* being arbitrated is *about the* fairness of a *dismissal* and a party has alleged that the reason for the dismissal relates to the *employee's* conduct or capacity, a party is not entitled to be represented by a *legal practitioner* in the proceedings unless -

i) the commissioner and all the other parties consent;

ii) the commissioner concludes that it is unreasonable to expect a party to deal with the *dispute* without legal representation, after considering -

a) the nature of the questions of law raised by the *dispute* ;
b) the complexity of the *dispute*;

c) the public interest; and
d) the comparative ability of the opposing parties or their representatives to deal with the *dispute*.

(d) No person representing a party in proceedings before the Commission in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by the Commission.

(2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this Rule, the commissioner must determine the issue.

(3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.

(4) A representative must tender any documents requested by the commissioner for the purposes of sub-rule (2), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.

5) Despite the provisions of sub-rule (1), a commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organization as an employer party, or a member of an employers' organization that is a party to proceedings, if the commissioner, after enquiring into the matter and considering relevant representations, believes that –

(a) the representative joined the employer's organization for the purpose of representing parties in the Commission; or

(b) the representative's participation in the dispute resolution process –

(i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;

(ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or

(iii) may have the consequence of unfairly disadvantaging another party to the dispute."

26 How to join or substitute parties to proceedings

1) The Commission or a commissioner may, at any stage prior to the conclusion of an arbitration hearing, join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.

2) A commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

3) A commissioner may make an order in terms of sub-rule (2) -

a) of its own accord;

b) on application by a party; or

c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

4) An application in terms of this Rule must be made in terms of Rule 31.

5) When making an order in terms of sub-rule (2), a commissioner may -

a) give appropriate directions as to the further procedure in the proceedings; and
b) make an order of costs in accordance with these Rules.

6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Commission for an order substituting that party for an existing party, and a commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.

7) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents. The application may be made at any stage prior to the conclusion of an arbitration hearing.

8) Subject to any order made in terms of sub-rules (5) and (6), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

27 How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Commission may of its own accord, by consent of the parties or on application and on notice to the parties concerned, correct the error or defect.

28 When the Commission may consolidate disputes

The Commission or a commissioner may, of its own accord, by consent of the parties or on application, and on notice to the parties concerned, consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

29 Disclosure of documents

1) At any time after the request for arbitration, either party may request a commissioner to make an order as to the disclosure of relevant documents or other evidence.

2) The parties may agree on the disclosure of documents or other relevant evidence.

30 What happens if a party fails to attend arbitration proceedings before the Commission

1) If a party to the dispute fails to attend or be represented at any arbitration proceedings before the Commission, and that party-

a) had referred the dispute to the Commission, a commissioner may dismiss the matter by issuing a written ruling; or

b) had not referred the matter to the Commission, the commissioner may -

i) continue with the proceedings in the absence of that party; or

ii) adjourn the proceedings to a later date.

2) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).

3) If a matter is dismissed, the Commission must send a copy of the ruling to the parties within 14 days.

PART SIX
APPLICATIONS

31 How to bring an application

1) This Rule applies to any -

   a) application for condonation, joinder, substitution, variation, rescission, or postponement;

   b) application in a jurisdictional dispute; and

   c) other preliminary or interlocutory application.

2) An application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application.

3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state -

   a) the title of the matter;

   b) the case number assigned to the matter by the Commission, if available;

   c) the relief sought;

   d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;

   e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within five (5) days after the application has been delivered to it;

   f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and

   g) that a schedule is included listing the documents that are material and relevant to the application.

4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out -

   a) the names, description and addresses of the parties;

   b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;

   c) a statement of legal issues that arises from the material facts, in sufficient detail to enable any party to reply to the document;

   d) if the application is filed outside the relevant time period, grounds for condonation in accordance with Rule 9; and

e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.

5) a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) days from the day on which the application was served on that party.

b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.

6) a) The party initiating the proceedings may deliver a replying affidavit within three (3) days from the day on which any notice of opposition and answering affidavit are served on it.

(b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.

7) A commissioner may permit the affidavits referred to in this Rule to be substituted by a written statement.

8) In an urgent application, the Commission or a commissioner-

a) may dispense with the requirements of this Rule; and

b) may only grant an order against a party that has had reasonable notice of the application.

9) a) The Commission must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

b) The Commission must notify the parties of the date, time and place of the hearing of the application.

c) Applications may be heard on a motion roll.

10) Despite this Rule, the Commission or a commissioner may determine an application in any manner it deems fit, provided that the Commission or the commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

32 How to apply to vary or rescind arbitration awards or rulings

An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

33 How to apply to refer a dismissal dispute to the Labour Court

1) An application in terms of Section 191(6) of the Act to refer a matter to the Labour Court, must be delivered -

a) within ninety (90) days of a certificate that the dispute has not been resolved being issued; or

b) by a party that has not requested arbitration, within fourteen (14) days of the referral for arbitration being filed.

2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).

3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.

4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.

5) The Commission must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.

PART SEVEN
Section 188A INQUIRY

34 How to request an inquiry in terms of Section 188A

1) An employer requesting the Commission to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Commission.

2. The employee must sign the LRA Form 7.19 unless the employee has agreed in terms of Section 188A(4)(b)[1] to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the contract or the collective agreement must be attached to the Form.

3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Commission. Payment of the fee may only be made by -

   a) bank guaranteed cheque; or

   b) electronic transfer into the bank account of the Commission.

4) Within seven (7) days of receiving a request in terms of sub-rule (1) and payment of the prescribed fee, the Commission must notify the parties to the inquiry of when and where the inquiry will be held.

5) Unless the parties agree otherwise, the Commission must give the parties at least seven (7) days notice of the commencement of the Inquiry.

6) The Commission is only required to refund a fee paid in terms of sub-rule (3), if the Commission is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

[1] Only an employee whose earning exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, (currently R205 433.30 per annum) my consent to an inquiry in a contract of employment

PART EIGHT
GENERAL

35 Condonation for failure to comply with the Rules and form

1) The Commission or a commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.

2) In exercising its powers and performing its functions the Commission may act in such a manner as it deems expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise.

36 Recordings of Commission proceedings

1) The Commission must keep a record of -

   a) all processes except conciliations, unless otherwise stated in these Rules;

   b) any arbitration award or ruling made by a Commissioner.

2) The record must be kept by means of a digital recording and, if practically possible, also by legible notes.

3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2), on payment of the costs where applicable.

37 How to have a subpoena issued

1) Any party who requires the Commission or a commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.

2) A party requesting the Commission to waive the requirement for the party to pay witness fees in terms of Section 142(7) (c) must set out the reasons for the request in writing at the time of requesting the Commission to issue a subpoena in respect of that witness. The Commission's decision must be made in writing and delivered when issuing the subpoena.

3) An application in terms of sub-rule (1) must be filed with the Commission at least fourteen (14) days prior to the arbitration hearing, or as directed by the commissioner hearing the arbitration.

4) The Commission may refuse to issue a subpoena if-

   a) the party does not establish why the evidence of the person is necessary;

   b) the party subpoenaed does not have seven (7) days in which to comply with the subpoena;

c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees and, reasonable travel costs and subsistence expenses of the person subpoenaed.

5) A subpoena must be served on the witness subpoenaed -

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

b) accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the *Government Gazette* in terms of Section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.

6) Sub-rules (4)(c) and (5)(b) do not apply if the Commission, in terms of Section 142(7)(c), has waived the requirement to pay witness fees.

37A Expert witnesses

A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Commission and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

38 Payment of witness fees

1) A witness subpoenaed in any proceedings in the Commission must be paid a witness fee in accordance with the tariff of allowances published by notice in the *Government Gazette* in terms of Section 142(7) of the Act.

2) The witness fee must be paid by -

a) the party who requested the Commission to issue the subpoena; or

b) the Commission, if the issuing of the subpoena was not requested by a party or if the Commission waives the requirement to pay witness fees in terms of Section 142(7)(c) .

3) Despite sub-rule (1), the commissioner may, in appropriate circumstances, order that a witness receives no fee or reasonable travel costs and subsistence expenses or only part of such fees or expenses.

39 Order of costs in an arbitration

1) In any arbitration proceedings, the commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to -

a) the measure of success that the parties achieved;

b) considerations of fairness that weigh in favour of or against granting a cost order;

c) any with prejudice offers that were made with a view to settling the dispute;

d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner –

i) by proceeding with or defending the dispute in the arbitration proceedings, or
ii) in its conduct during the arbitration proceedings;

e) the effect that a cost order may have on a continued employment relationship;

f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;

g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;

h) any other relevant factor.

2) A commissioner may make an award of costs in favour of a party who is represented in arbitration by a person contemplated by rule 25(1)(a) in respect of reasonable disbursements actually incurred in the conduct of its case in the arbitration. A commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.

3) A commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner, only if the other parties to the arbitration were represented by a legal practitioner.

4) An award of costs for costs in terms of sub-rule (3) must be in the amount of –

(a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R6 000-00 (VAT inclusive);
(b) in respect of each additional day of an arbitration – R4 000-00 (VAT inclusive).

5) The Director may appoint taxing officers to determine any dispute that may arise from any award of costs in terms of this Rule.

6) Any dispute concerning an award of costs must be submitted on LRA Form 7.17 to which any relevant documentation must be annexed.

40 Certification of arbitration awards

1) An application to have an arbitration award certified must be made on -

a) LRA Form 7.18 in respect of an award by a commissioner;
b) LRA Form 7.18A in respect of an award in arbitration conducted under the auspices of a bargaining council.

2) Any arbitration award that has been certified in terms of Section 143 of the Act that -

a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business;

b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.

3) For the purposes of sub-rule (2), an arbitration award includes an award of costs in terms of Section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of Section 140(2).

41 What words mean in these Rules

Any expression in these Rules that is defined in the Labour Relations Act, 1995 (Act 66 of 1995), has the same meaning as in that Act and -

'Act' means the Labour Relations Act, 1995 (Act 66 of 1995), and includes any regulation made in terms of that Act;

'Association' means any unincorporated body of persons;

'Commission' means the Commission for Conciliation, Mediation and Arbitration established by Section 112 of the Act;

'Commissioner' means a Commissioner appointed in terms of Section 117 of the Act;

'Con-arb' means proceedings held in terms of Section 191(5A);

'Deliver' means serve on other parties and file with the Commission;

'Director' means the Director of the Commission appointed in terms of Section 118 of the Act, and includes any person delegated by the Director to perform any of the functions of the Director;

'File' means to lodge with the Commission in terms of Rule 7;

'Labour Court' means the Labour Court established by Section 151 of the Act and includes any judge of the Labour Court;

'Party' means any party to proceedings before the Commission;

'Regional Registrar' means the regional registrar of the Commission appointed in terms of Section 120 of the Act in each of the regions, or any other person authorised to act in the place of the regional registrar;

'Public holiday' means a public holiday referred to in Section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

'Rules' means these Rules and includes any footnote to a rule;

'Senior Commissioner' means a senior commissioner appointed in terms of Section 117 of the Act and includes any person delegated by the senior commissioner to perform any of the functions of the senior commissioner;

'Serve' means to serve in accordance with Rule 5 and 'service' has a corresponding meaning;

'Taxing officer' means any employee of the Commission appointed by the Director in terms of Rule 39.

SCHEDULE ONE

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Estcourt
75 Phillip Street, Estcourt
PO Box 449, Estcourt, 3310
Tel: (036) 342 9361/9369; Fax: (036) 352 3364

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Corner Parker and Hope Street, Kokstad
P O Box 260, Kokstad, 4700
Tel: (039) 727 2140/5643/4931/5361; Fax: (039) 727 1942

Ladysmith
35 Keate Street, Ladysmith
Private Bag X9926, Ladysmith, 3370
Tel: (036) 638 1900/1/2/3; Fax: (036) 638 1914

Newcastle
29 Scott Streets, Newcastle
P O Box 985, Newcastle, 2940
Tel: (034) 312 6038/3334; Fax: (034) 312 6047

Pietermaritzburg
370 Langalibalele Street, Pietermaritzburg
Private Bag X9048, Pietermaritzburg, 3200
Tel: (033) 341 5300; Fax: (033) 394 5069

Pinetown
49 Kings Road, Pinetown, 3610
PO Box 1025, Pinetown, 3600
Tel: (031) 701 7740; Fax: (031) 701 7782

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17 Bisset Street, Port Shepstone
P O Box 379, Port Shepstone, 4240
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Prospecton
1 Prospecton Place, Prospecton
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11 Lira Rink Road, Richards Bay
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Private Bag X56, Ulundi, 3838
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99 Landrose Street, Vryheid
P O Box 430, Vryheid, 3100
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LIMPOPO

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Magistrate's Complex, Lebowakgomo
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Private Bag X695, Lephalale, 0555
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Investec Building, Mphephu Street, Thohoyandou
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MPUMALANGA

Barberton
Shop No 11, Eurika Centre, Nourse Street, Barberton
Private Bag X1634, Barberton, 1300
Tel: (013) 712 3066/3353; Fax: (013) 712 5346

Bethal
9 Vuyisile Mini Street, Bethal
Private Bag X1029, Bethal, 2310
Tel: (017) 647 2383/5212; Fax: (017) 647 1678

Carolina
Chief Albert Luthuli Municipality Premises, Corner Voortrekker & Fersveldt Streets, Carolina
Private Bag X718, Carolina, 1185
Tel: (017) 843 1077/2111; Fax: (017) 843 1178

Emalahleni (Witbank)
36 Mandela Avenue, Corner Escombe & Nelson Mandela Streets, Emalahleni
Private Bag X27293, Emalahleni, 1035
Tel: (013) 653 3800/656 1422-28; Fax: (013) 653 3849/656 1429

Eestehoek
89 Embhuleni Hospital Road, Mkwanazi Complex, Elukwatini
Private Bag X 1013, Elukwatini, 1192
Tel: (017) 883 2414

Ermelo
Merino Trust Building, Corner De Jager and Joubert Streets, Ermelo
Private Bag X9054, Ermelo, 2350
Tel: (017) 819 7632/3010; Fax: (017) 811 5223/4113

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Building No 6, Government Building, KwaMhlanga
Private Bag X4016, KwaMhlanga, 1022
Tel: (013) 947 3173/2484/3378; Fax: (013) 947 2073

Malelane
Malelane Labour Centre, 1st Floor ABSA Building, 19 Lorenco Road, Malelane
P O Box 1112, Sidlamafa, 1332
Tel: (013)-7901528 /1682/1359; Fax: (013) 7901584

Mashishing (Lydenburg)
51 De Klerk Street, Lydenburg
Private Bag X20081, Lydenburg, 1120
Tel: (013) 235 2368/9; Fax: (013) 235 1436

Mbombela (Nelspruit)
29 Brown Street, Alroe Park, Nelspruit
Private Bag X11298, Nelspruit, 1200
Tel: (013) 753 2844/5/6 or (013) 755 2640; Fax: (013) 752 3270

Middelburg
Emily Hobhouse Building, 175 Cowen Ntuli Street, Middelburg
Private Bag X251833, Middelburg, 1050
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Piet Retief
Balalas Building, 42 Kotze Street, Piet Retief
Private Bag X34, Piet Retief, 2380
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Private Bag X9057, Secunda, 2302
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Caroto Building, 14 Vry Street, Standerton
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NORTH WEST

Brits
Reinaldo Building, Corner McClean and Korporasie Streets, Brits
P O Box 2978, Brits, 0250
Tel: (012) 252 3068; Fax: (012) 252 3091

Christiana
Suidwes Building, 3 Pretorius Street, Christiana
P O Box 558, Christiana, 2680
Tel: (053) 441 2120; Fax: (053) 441 2278

Klerksdorp
Corner Voortrekker and Anderson Streets, Klerksdorp
P O Box 461, Klerksdorp, 2570
Tel: (018) 464 8700; Fax: (018) 462 7751

Lichtenburg
45 Church Street, Lichtenburg, 2748
P O Box 1162, Lichtenburg, 2740
Tel: (018) 632 4323; Fax: (018) 632 1895

Mafikeng
25 Lex Court Building, Tillard Street, Mafikeng
Private Bag X2154, Mafikeng, 2754
Tel: (018) 381 1010/11; Fax: (018) 381 5231

Mogwase
Block K, Ground Floor, Mogwase Shopping Complex, Mogwase
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Tel: (014) 555 5693; Fax: (014) 555 5663

Potchefstroom
Old Volkskas Building, 90 Church Street, Potchefstroom
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Rustenburg
1st Floor, Shoprite Checkers Building, Church Street, Rustenburg
P O Box 262, Rustenburg, 0300
Tel: (014) 592 8214; Fax: (014) 597 1288

Taung
Stand 232, Behind Taung Station Post Office, Taung Station
P O Box 518, Taung Station, 8580
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27 Nelson Street, Vryburg, 8600
P O Box 1822, Vryburg, 8600
Tel: (053) 927 5221; Fax: (053) 927 5006

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Calvinia
Department of Labour, 21 Dorp Street, Calvinia
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De Aar
New Lisbon Building, 23 Main Street, Corner Main and Voortrekker Streets, De Aar
P O Box 622, De Aar, 7000
Tel: (053) 631 0455; Fax: (053) 631 1172

Kimberley
Laboria House, Corner Pniel & Compound Streets, Kimberley, 8300
Private Bag x 5012, Kimberley, 8300
Tel: (053) 838 1500; Fax: (053) 838 1618

Kuruman
Magistrate Complex, 818 Seweding Road, Kuruman
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Tel: (053) 712 3870; Fax: (053) 712 3953

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Springbok
126B Overberg Avenue, Springbok
P O Box 510, Springbok, 8240
Tel: (027) 718 1058/9; Fax: (027) 712 2433

Upington
Old Post Office Building, Schroder Street, Upington
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4 Voortrekker Street, Beaufort West
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P O Box 1789, Bellville, 7535
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P O Box 872, Cape Town, 8000
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Labour Centre, 35 Albert Street, Albert, George
Private Bag X6545, George, 6530
Tel: (044) 801 1200; Fax: (044) 801 1251

Knysna
Old Van Halderens Building, Clyde Street, Knysna
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Tel: (044) 302 6800; Fax: (044) 382 5159

Mitchell's Plain
Old Post Office Building, 5th Ave Polka Square, Town Centre, Mitchell's Plain
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Tel: (021) 391 0591; Fax: (021) 391 0761

Mossel Bay
Shoprite Building, Corner Marsh and Church Streets, Mosselbay
P O Box 2538, Mosselbay, 6500
Tel: (044) 691 1140/1; Fax: (044) 691 1519

Oudtshoorn
13 Regent Street, Oudtshoorn
P O Box 336, Oudtshoorn, 6620
Tel: (044) 203 6100/279 2386; Fax: (044) 272 4804

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68 Breda Street, Paarl
P O Box 24, Paarl, 7620
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Somerset West
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P O Box 404, Somerset West, 7130
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Vredenburg
85 Main Road, Vergelegenpark, Vredenburg
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