DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 3318 **21 April 2023**

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 publish the Rules in terms of section 115(2A) of the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended, effective from the 24 of April 2023.

Act

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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 Section 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

The addresses, telephone numbers and e-mail addresses of the offices of the Commission are listed in Schedule One to these Rules.

1A Compliance with legislation regarding personal information

When a party serves or files documents on the Commission or on the other party in terms of these Rules, or processes documents that contain personal information with the other party, such party must:

a) be responsible for complying with their respective obligations under applicable Data Protection Legislation, including, but not limited to the Protection of Personal Information Act 4 of 2013 (POPIA), when processing personal information;

b) take appropriate technical and organisational measures and implement security safeguards to prevent the unauthorised or unlawful processing of personal information and/ data of the other party or of another data subject;

c) process the other party's personal information and/or data only in accordance with that party's instructions (having regard to the Data Protection Legislation), or as required by law; and not disclose the other party's personal information and/or data except in accordance with that party's instructions or as required by law.

2 When are the offices of the Commission open

(1) The 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 e-mailed or referred using the official Commission electronic referral online portals at any time and on any day of the week 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 or public holiday and will be the first working day following the Sunday or public holiday.

(3) Sub-rule 2 will apply, unless clearly indicated otherwise in terms of these Rules or applicable legislation.

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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.

(1A) Where a document has not been signed or was signed by a person who is not entitled to represent that party in terms of the Act or these Rules, the intention of that party to submit that document may be confirmed by the subsequent appearance of the party at the convened proceedings before the commissioner or by any other method of confirmation that may be placed on record at the Commission.

(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.

(3) For purposes of these Rules, a signature includes an electronic signature inclusive of an electronic referral made through the Commission's electronic referral online portals as included in Schedule One.

5 How to serve documents on other parties

(1) Unless otherwise provided for in these Rules, 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 apparently 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 -

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(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 works 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 chairperson or secretary of the managing or other controlling body of the association, as the case may be;

(e) on a municipality, by serving a copy of the document on the municipal manager or any 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 direct or accept service in a manner other than prescribed in these Rules.

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 or 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 -

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(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 or the service of a notice of proceedings by short message service as permitted by Rule 5A.

(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 hand delivery of the document to the regional office of the Commission or the office of the Department of Employment and Labour at the addresses listed in Schedule One;

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

(c) by e-mailing the document to a Commission regional office at only an e-mail address listed in Schedule One. Documents filed by means of e-mail must be transmitted in MS Word or PDF format.

(2) A document is filed with the Commission when -

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

(b) a document sent by registered post is received, or presumed to be received as provided for in Rule 8, by an office of the Commission listed in Schedule One;

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(c) the e-mail is received in the regional office, as provided for in the Electronic Communications and Transactions Act 25 of 2002; or

(d) the online referral or condonation application is received through the Commission's electronic referral online portals as listed in Schedule One.

(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 Presumption when service is done 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 referral documents and applications delivered late

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

(2) A party must apply for condonation in terms of Rule 31.

(2A) Condonation may also be applied for using the official Commission electronic referral online portals as included in Schedule One.

(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 party's 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 prescribed LRA Form 7.11, which may include the Commission electronic referral electronic online portals.

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(2) When referring a dispute by means other than the official Commission electronic referral online portals as set out in Schedule One, the referring party -

(a) must 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.

(b) must attach to the referral document, an application for condonation if the referral is referred after the relevant time limit has expired.

(3) Despite Rule 10(2)(b) where a referral has been referred out of time and if condonation has not been attached to the referral, the Commission will decide whether the condonation will be determined at a hearing or by written submissions received from the parties.

11 When must the Commission notify parties of a conciliation or facilitation

(1) The Commission must notify the parties in writing of a conciliation hearing at least –

(a) seven (7) days prior to the scheduled date in matters relating to section 64, section 65(2)(a) or section 189A(8) of the Act;

(b) fourteen (14) days prior to the scheduled date, in the case of any other matter.

(2) Despite sub-rule 1, the Commission may give the parties a shorter period of notice, if the parties have agreed or reasonable circumstances require a shorter period.

(3) An additional seven (7) days must be provided, if a notice of conciliation in terms of this Rule is sent by registered mail only.

12 Commission or a commissioner may attempt 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 attempt to resolve the dispute.

13 What happens if a party fails to attend at conciliation

(1) If a party fails to attend or to be represented as contemplated in Rule 25(1)(a), 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;

(1A) In the event that a dispute relates to section 64 of the Act, picketing rules must be established before a certificate of non-resolution is issued, unless a party provides a signed picketing rules agreement as required by section 69(6A) of the Act.

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(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.

14A Extension of conciliation period in terms of section 135(2A) of the Act

(1) The conciliating commissioner or a party to a conciliation process may request an extension of the conciliation period referred to in section 135.

(2) The request must be made on the prescribed form and before the expiry of the conciliation period as determined in terms of section 135.

(3) The Director must within 2 (two) days of receipt of the request -

(a) consider whether:

(i) an extension is necessary to ensure a meaningful conciliation process;

(ii) the refusal to agree to the extension is unreasonable; and

(iii) whether there are reasonable prospects of reaching agreement.

(b) The Commission must advise the parties on whether the extension is granted and where the extension is granted, the period of such extension.

(4) The Director may not extend the conciliation period if the State is the employer party.

15 Issuing of a certificate in terms of section 135(5) of the Act

A certificate issued in terms of section 135(5) of the Act 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

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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 or a commissioner conducting an arbitration.

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

17 Conduct of con-arb in terms of section 191(5A) of the Act

(1) The Commission must notify the parties in writing of a con-arb 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. If a notification is sent by registered mail 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) a dispute relating to the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation;

(b) a dispute relating to a compliance order referred in terms of section 69(5) of the BCEA; or

(c) claims for failure to pay any amount owing referred in terms of section 73A of the BCEA

(4) If a party fails to appear or to be represented at a hearing scheduled in terms of sub-rule (1):

(a) The commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1), irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).

(b) Where the provisions of sub-rule 3 are applicable or no notice of objection has been lodged in terms of sub-rule (2), the commissioner must commence with the arbitration immediately after certifying that the dispute remains unresolved.

(c) Notwithstanding sub-rule 4(b), the commissioner having commenced the arbitration, retains a discretion, as contemplate in section 138(5) of the Act, to adjourn the proceedings to a later date.

(5) 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.

(6) 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.

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PART FOUR
ARBITRATIONS

18 How to refer a request for arbitration to the Commission

(1) A party may request the Commission to arbitrate a dispute by delivering a duly completed LRA form 7.13, which may include using the official Commission electronic referral online portals.

(2) When referring a request by means other than the official Commission electronic referral online portals as set out in Schedule One, the requesting party must:

(a) attach to the request, written proof, in accordance with Rule 6, that the request was served on the other parties to the dispute;

(b) is required to attach to the request, an application for condonation if the request for condonation is referred after the relevant time limit has expired.

(3) Despite Rule 18(2)(b) where a request has been referred out of time and if condonation has not been attached to the request, the Commission will decide whether the condonation will be determined at a hearing or by written submissions received from the parties.

(4) This Rule does not apply to con-arb proceedings held in terms of section 191(5A) read together with Rule 17.

19 When must the parties file statements

(1) The Commission or a commissioner may direct -

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

(b) the other parties to deliver an answering statement or affidavit.

(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 Commission or commissioner.

(3) The commissioner has a discretion to continue with the matter despite non-compliance with a directive of the Commission or commissioner in terms of sub-rule (1). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

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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 (3), if:

(a) both parties are represented by a trade union, employers' organisation, legal practitioner and/or candidate attorney.

(b) both parties agree to hold a pre-arbitration conference; or

(c) directed to do so by the Provincial or Regional Senior Commissioner or the Senior Commissioner in charge of a region or the presiding commissioner.

(2) A pre-arbitration conference convened in terms of sub-rule (1)(a) and (b) must be convened at least fourteen (14) days prior to the date of the scheduled arbitration.

(3) 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;

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(q) the right of representation; and

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

(4) 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.

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

(6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner seven (7) days prior to the date scheduled for the arbitration.

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

(a) direct the parties to hold a further pre-arbitration conference; and / or

(b) issue any other directive to the parties concerning the conduct of the arbitration, including rescheduling the matter for hearing on another date.

(8) The commissioner has a discretion to continue with the matter despite non-compliance with the directive in terms of sub-rule (1), or the provisions of sub-rule (4), (5) and/or (6). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

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. If a notification is sent by registered mail only, 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) Subject to sub-rules (2) – (6), an arbitration may be postponed -

(a) if the Commission is satisfied that there is written confirmation to postpone by both parties; or

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

(2) The Commission may postpone an arbitration without the parties appearing if:

(a) all the parties to the dispute confirm in writing that they agree to the postponement; and

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(b) the written confirmation 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 or confirmation, the Commission may -

(a) without convening a hearing, determine whether or not to postpone the matter; or

(b) convene a hearing to determine whether to postpone the matter; or

(c) determine the application in any manner the Commission deems fit.

(5) There is no right to postponement and arbitration will proceed as scheduled unless the Commission or commissioner notifies the parties that the matter has been postponed.

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

24 Where a hearing will take place

(1) A dispute must be heard in the region in which the cause of action arose or where the employer's principal place of business is located; unless a Senior Commissioner in the head office of the Commission directs otherwise.

(2) The Commission or commissioner within a region determines the venue for the hearing; which venue may include an online hearing held via a digital platform.

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 or employee of that close corporation;

(ii) any member of that party's registered trade union or registered employers' organisation or an office bearer or official as defined in the Act or an office bearer or official as defined in the Act of a registered federation of trade unions or registered federation of employers' organisations;

(iii) if the party is a registered trade union, any member of that trade union or any office bearer or official as defined in the Act and authorised to represent that party or an office bearer or official as defined in the Act of a registered federation of trade unions and authorised to represent that party; or

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(iv) if the party is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or an official or office bearer as defined in the Act and authourised to represent that party or an office bearer or official as defined in the Act of a registered federation of employers' organisations and authorised to represent that party.

(v) if a party is the Department of Employment and Labour, any employee or official of the Department of Employment and Labour.

(b) Subject to sub-rule 1(c), in any arbitration proceedings a party to the dispute may appear in person or be represented only by -

(i) a legal practitioner;

(ii) a candidate attorney; or

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

(c) If the dispute being arbitrated is referred in terms of section 69(5), 73 or 73A of the BCEA or 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 or a candidate attorney 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) In any facilitation of large scale retrenchments as contemplated in section 189A(3) of the Act, a party may appear in person or be represented by:

(i) a director or employee of the party, and, if a close corporation, a member or employee of that close corporation;

(ii) any member, office-bearer or official of that party's registered trade union; or

(iii) any member, office-bearer or official of that party's registered union or registered employers' organisation.

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(e) No representation by a legal practitioner or candidate attorney shall be allowed in facilitations of large scale retrenchments as contemplated in section 189A(3) of the Act.

(f) No person representing a party in proceedings before the Commission in a capacity contemplated in sub-rule (1)(a) or (b), other than a legal practitioner or candidate attorney contemplated in sub-rule (1)(b)(i) and (ii), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party.

(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 (3), including constitutions, payslips, contracts of employment, documents and forms or recognition agreements and proof of membership of a trade union or employers' organisation.

(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' organisation as an employer party, or a member of an employers' organisation 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 employers' organisation 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.

(6) Despite the provisions of this Rule, but subject to the provisions of sub-rule (1)(f), the commissioner may, on application brought in accordance with Rule 31, allow a person not contemplated by sub-rule (1) to represent a party at arbitration proceedings before the Commission, after considering -

(a) whether it is unreasonable to expect the applicant party to deal with the dispute without representation, after considering the factors set out in sub-rule 1(c)(ii)(a) to (d);

(b) the reason why a person contemplated in Rule 25 cannot represent the applicant party, which includes affordability, if applicable;

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(c) the ability of the proposed representative to meaningfully represent the applicant;

(d) whether the proposed representative is subject to the oversight and discipline of a professional or statutory body;

(e) whether the proposed representative will contribute to the fairness of the proceedings and the expeditious resolution of the dispute;

(f) prejudice to the other party; and

(g) any other relevant factors.

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 or hearing, make an order joining any number of persons as parties in the proceedings if:

(a) the right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim; or

(b) the party to be joined has a substantial interest in the subject matter of the proceedings; or

(c) the party to be joined may be prejudicially affected by the outcome of the proceedings.

(2) A Commission or a commissioner may make an order in terms of sub-rule (1) -

(a) on 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.

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

(4) When making an order in terms of sub-rule (1), 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.

(5) 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.

(6) 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, including the referral form, unless the person concerned or that person's representative

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is already in possession of the documents. The application may be made at any stage prior to the conclusion of an arbitration hearing.

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

27 How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Commission or commissioner may on 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

(1) 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.

(2) The Commission or a commissioner may order consolidation of separate disputes of right, where-

(a) the relief sought in each of the separate disputes to be consolidated, depends on the determination of similar or substantially the same questions of law and fact;

(b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;

(c) the balance of convenience favour such consolidation; and

(d) the Commission has jurisdiction in all disputes sought to be consolidated.

29 Disclosure of documents or material related to the dispute

(1) At any time after the certificate of outcome is issued or the expiry of the 30-day conciliation period, but not less than fourteen (14) days prior to the hearing date, either party may, on application, request the other party to disclose any documents or material relevant to the dispute.

(2) Subject to Rule 31(5)(a) and (b), the party to whom the application is made must respond to the application within five (5) days from the date on which the application was received. The party initiating the application may deliver a replying written statement or affidavit within three (3) days from the day on which any answering written statement or affidavit was served on it.

(3) A commissioner may either before or during the proceedings at the commissioner's own accord, or on application, make an order as to the disclosure of relevant documents or material relevant to the dispute.

(4) Notwithstanding the above, the parties may agree on the disclosure of documents or materials relevant to the dispute.

(5) This Rule is to be distinguished from disclosure of information disputes in terms of section 16 of the Act.

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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) was the referring party, the commissioner appointed to arbitrate, must attempt to establish the reason for non-attendance. If there appears to be a good reason for the absence, the commissioner must direct that the matter be rescheduled for arbitration; or

(b) if the absence is, on the face of it, willful or unexplained, or the commissioner does not accept the explanation, the commissioner may remove the matter from the roll;

(c) 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).

PART SIX
APPLICATIONS

31 How to bring an application

(1) This Rule applies to any application, including but not limited to –

(a) condonation, joinder, substitution, variation, rescission, postponement and disclosure of documents;

(b) application in a jurisdictional dispute; and

(c) other preliminary or interlocutory application.

(2) Subject to Rule 32, 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;

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(e) that any party that intends to oppose the matter must deliver a notice of opposition and answering written statement or 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 a written statement or affidavit. The written statement or 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 written statement or 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 written statement or 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 written statement or affidavit within three (3) days from the day on which any notice of opposition and answering written statement or affidavit are served on it.

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

(7) 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.

(8) Applications may be set down for a hearing or determined on the papers.

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(9) Where the application is set down for a hearing, the Commission must allocate a date for the hearing once a replying written statement or affidavit is delivered, or once the time limit for delivering a replying written statement or affidavit has lapsed, whichever occurs first. The Commission must notify the parties of the date, time and place of the hearing of the application.

(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.

31A How to apply for urgent picketing rules or the determination of disputes relating thereto

(1) This Rule applies to:

(a) applications for picketing rules in terms of section 69(6B) of the Act;

(b) disputes relating to the application or interpretation of a picketing agreement or picketing rules determined by the commissioner; and

(c) disputes relating to an issue concerning picketing contemplated by section 69(8) of the Act.

(2) An application must be brought in a prescribed form with supporting documentation.

(3) The application must be served on all relevant parties.

(4) Unless the parties agree otherwise, the Commission must set down the application within 2 (two) days of receipt of the application.

31B How to apply for the enforcement of written undertakings and/or compliance orders

(1) This Rule applies to any -

(a) application for an undertaking to be made an arbitration award in terms of section 68(3) of the BCEA; and

(b) application for a compliance order to be made an arbitration award in terms of section 73(1) of the BCEA.

(2) An application must be brought in a prescribed form, to which the following documents must be attached:

(a) a copy of the undertaking or compliance order;

(b) in the case of a compliance order, proof that the compliance order was served on the employer in accordance with the BCEA;

(c) any documents related to the securing an undertaking or issuing of a Compliance order, including, a complaint or grievance, an inspection report or other notes made during an inspection and any relevant records of the employer;

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(d) an Inspector Confirmatory affidavit, if the inspector is not the one signing the prescribed form;

(e) supporting witness or third partyaffidavits, where applicable;

(f) any other relevant documents.

(3) The application must be signed and commissioned by the referring party and served on all persons who have an interest in the matter, including the employer and the employee.

(4) An employer may, subject to the provisions of the BCEA, object to a written undertaking or compliance order being made an arbitration award by serving and filing an affidavit setting out its objections in accordance with the provisions of this Rule.

(5) An objection affidavit in terms of sub-rule 4 must be delivered, supported by relevant documents, to the Department of Employment and Labour and any affected employee(s) and filed with the Commission within five (5) days from the date on which the application was served on the employer.

(6) The party initiating the proceedings may deliver a reply within three (3) days from the day on which any objection is served on it.

(7) The reply must address only issues raised in the objection affidavit contemplated in sub-rule 4 and may not introduce new issues of fact or law.

(8) The Commission must, once a reply is delivered or the time limit for delivering a reply has lapsed, whichever occurs first, appoint a commissioner to determine the application by considering the documents filed in terms of this Rule.

(9) Despite sub-rule 7, the commissioner may, if appropriate, request allocation of a hearing date, in which event the Commission must notify the parties of the date, time and place of the hearing of the application.

(10) The application may be heard on a motion roll.

31C Request to have a matter re-enrolled

(1) A decision to remove the matter from the roll must be sent to the parties within fourteen (14) days of the date of the hearing.

(2) If the referring party who was absent from the arbitration hearing wishes to have the matter re-enrolled that party must submit the Request for Re-enrolment to the Commission within fourteen (14) days of the referring party becoming aware that the matter was removed from the roll. The Request for Re-enrolment form must be served on the other party. Upon receipt of the Request for Re-Enrolment, the other party has seven (7) days from date of receipt to file opposing papers.

(3) The commissioner considering the Request for Re-enrolment may decide whether the matter should be re-enrolled, based on the submissions received from the parties.

(4) The commissioner considering the request must issue a decision within fourteen (14) days from receipt of the answer from the other party or upon expiry of the seven (7) days and the Commission must inform the parties of the decision.

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(5) If a situation for which these Rules do not provide arises in proceedings or contemplated proceedings, the commissioner or the Commission may adopt any procedure that commissioner or Commission deems appropriate in the circumstances.

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

(1) 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.

(2) This Rule does not apply to a decision taken by the Commission or commissioner to remove a matter from the case roll in terms of Rule 30.

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) of the Act.

(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) of the Act within fourteen (14) days of receiving the objection.

(6) In the event that the request has been granted, the party who applied for the referral by the Director must refer the matter to the Labour Court in line with Rule 11 of the Rules for the Conduct of Proceedings in the Labour Court.

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 of the Act) 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.

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(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 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).

(7) Only an employee whose earnings exceed the amount determined by the Minister in terms of section 6(3) of the BCEA may consent to an inquiry in a contract of employment.

(8) An employee who, in terms of section 188A(11) of the Act, requests that an inquiry be conducted into allegations by the employer, into the conduct or capacity of that employee, must do so by delivering a completed LRA Form 7.19 to the Commission.

(9) Where an employee, in terms of sub-rule 8, has requested an Inquiry by Arbitrator, the employer must pay the prescribed fee to the Commission as set out in sub-rule 3.

PART EIGHT
GENERAL

35 Condonation for failure to comply with the Rules and form

(1) Subject to sub-rule (3), 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.

(3) The provisions of this Rule do not apply to Rule 25.

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.

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37 How to have a subpoena issued and served to secure the presence of a person

(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. A request for a subpoena does not apply to documents and material relevant to the dispute. Requests for documents and material must be made in terms of Rule 29.

(1A) The Commission or commissioner, in determining the request for subpoena, may require that -

(i) the party who requests the subpoena provide additional information within three (3) days of receipt of this request and in a manner as set out in the request; and

(ii) that the other party provides a written response to the request for subpoena within five (5) days of receipt of this request, or provides such a response in a manner as set out in the request.

(2) A party requesting the Commission to waive the requirement for the party to pay witness fees in terms of section 142(7) (c) of the Act must set out the reasons for the request in writing at the time of requesting the 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 or commissioner 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, reasonable travel costs and/or subsistence expenses of the person subpoenaed.

(5) A subpoena must be served 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 by;

(a) delivering a copy of it to the person subpoenaed personally;

(b) sending a copy of it by registered post to the subpoenaed person's –

(i) residential address;

(ii) place of business or employment; or

(iii) post office box or private bag number;

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(c) leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there or by e-mailing a copy of it to the e-mail address of the person subpoenaed.

(6) Service of a subpoena must be 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.

Sub-rules (4)(c) and (6) do not apply if the Commission, in terms of section 142(7)(c) of the Act, 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 –

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(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 appears or is represented in arbitration by a person contemplated in 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 or candidate attorney, only if the other parties to the arbitration were represented by a legal practitioner or candidate attorney.

(4) An award 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) – R 7 000-00 (VAT inclusive);

(b) in respect of each additional day of an arbitration – R 4 700-00 (VAT inclusive).

(5) An award for costs in respect of a candidate attorney must be 50 percent of the amount set out in sub-rule (4).

40 Certification and enforcement 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.

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

(4) The amount of money that may be enforced through execution by the Sheriff in terms of this Rule includes–

(a) the amount that is ordered to be paid in terms of the award;

(b) any interest on that amount calculated in terms of section 143(2) of the Act;

(c) the Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.

(5) In the event that the Commission financially assisted the party in whose favour the award was granted in the enforcement or execution thereof, the Commission may, if the costs of the execution were not realized therein, collect such costs, with interest, directly from the defaulting party.

40A Payment of an arbitration fee ordered in terms of section 140 of the Act

(1) Where the commissioner, having found that the dismissal was procedurally unfair, orders payment of an Arbitration fee in terms of section 140(2) of the Act:

(a) The arbitration fee shall be the fee set out in the Commission's Tariff of Fees, as gazetted annually.

(b) The employer must pay the prescribed fee to the Commission within 14 (fourteen) days of receipt of the award ordering payment of such a fee with the related invoice.

(c) Payment of the fee may only be made by electronic transfer into the bank account of the Commission.

41 What words mean in these Rules

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

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

(3) **'Association'** means any unincorporated body of persons;

(4) **'BCEA'** means Basic Conditions of Employment Act (Act 75 of 1997)'

(5) **'Commission'** means the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Act.

(6) **'Commissioner'** means a commissioner appointed in terms of section 117 of the Act;

(7) **'Con-arb'** means proceedings held in terms of section 191(5A) of the Act;

(8) '**Data subject**' in terms of the application of the Protection of Personal Information Act, 4 of 2013 (POPIA), means a person to whom personal information relates.

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(9) **'Deliver'** means serve on other parties and file with the Commission;

(10) **'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;

(11) **'Employment Law'** for the purposes of these Rules, includes the Labour Relations Act, 66 of 1995, and any other Act of which the administration has been assigned to the Minister of Employment and Labour and any of the following Acts:

a. The Basic Conditions of Employment Act (Act 75 of 1997)

b. The Employment Equity Act, (Act 55 of 1998)

c. The Mine Health and Safety Act, (Act 29 of 1996)

d. The National Minimum Wage Act, (Act 9 of 2018)
e. The Skills Development Act, (Act 97 of 1998)

(12) **'File'** means the delivery of a document with the Commission in terms of Rule 7;

(13) **'Labour Court'** means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

(14) **'Party'** means any party to proceedings before the Commission;

(15) **'Personal information'** [in terms of the application of POPIA] means "information relating to an identifiable, living natural person or juristic person as far as applicable, an identifiable, existing juristic person including, but not limited to -.

a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

b) information relating to the education or the medical, financial, criminal or employment history of the person;

c) any identification number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

d) the biometric information of the person;

e) the personal opinions, views or preferences of the person;

f) correspondence send by that person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

g) the views or opinions of another individual about the person; and

h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person."

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