

PUBLIC SERVANTS ASSOCIATION OF SOUTH AFRICA (PSA)



# **MEMORANDUM OF INCORPORATION (MOI)**

**With amendments as approved on 1 AUGUST 2016**

# **PUBLIC SERVANTS ASSOCIATION OF SOUTH AFRICA (PSA)**

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### **INTRODUCTION**

#### **Name**

1. The name of the organisation shall be the PUBLIC SERVANTS ASSOCIATION OF SOUTH AFRICA (**PSA**) and acts under that name in its capacity as a legal persona.

#### **Legal persona**

2. The **PSA** is a legal persona with all powers associated thereto and is registered as a trade union under the Labour Relations Act, 1995. This trade union shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name.-The organisation is also registered as a non-profit company and incorporated under the Companies Act No 71 of 2008.

#### **Definition**

3. In this **Statute**, unless the context indicates otherwise:

“**Act**” means the Labour Relations Act, No 66 of 1995;

“**Annual General Meeting**” means a meeting of members as constituted according to section 51(2);

“**associate member**” means a person who has been admitted as a **member** under section 14 read with section 6;

“**Board**”, means the members of the Board of Directors elected under section 51(1)(f) read with sections 60, 61 and 62;

“**branch**” means a branch constituted under section 27;

“**branch meeting**” means one of the three meetings of the management of a branch referred to in section 31;

“**business day**” means the day between the happening of one event and another the exclusion of any public holiday, Saturday or Sunday and when the number of days must be calculated, it will be done by excluding the day on which the first such event occurs and including the day on or by which the second event is to occur;

**“committee”** means a **committee** of the Board or of any **branch** constituted under section 27;

**“Companies Act”** means the Companies Act, No 71 of 2008;

**“Congress”** is the annual meeting constituted according to section 50, read with section 51(2);

**“director of the Board”** means a director referred to in section 60;

**“employee”** means a person who has been appointed to an approved post on the Administration of the PSA ;

**“Financial year”** means the period from 1 April to 31 March;

**“General Manager”** means the person who is appointed in terms of section 68 and acts as the secretary of the PSA;

**“Head Office”** means the head office of the PSA in Pretoria;

**“Inter-sectoral members meeting”** means a mass meeting provided for in section 31 (5) of all the members within the jurisdiction area of a Provincial Office of the PSA;

**“Management member”** means a member who is a trade union representative who has been elected to the management of a **branch** or one of its **committees** but who is not an office bearer;

**“member”** means a person who has been admitted as a member under section 6 read with section 14;

**“member structure”** means a structure as defined in section 26;

**“office bearer”** means a member who holds one of the following offices in the PSA: President, Vice-President, Chairperson, Vice-Chairperson or a **director of the Board** and includes a Chairperson, Vice-Chairperson, Secretary or Treasurer of a **branch** or one of its **committees**;

**“organ of state”** means any department of state or administration in the national, provincial or local sphere of government, parastatal and State Agencies, or any other state functionary or institution as defined in section 239 of the Constitution of the Republic of South Africa;

**“Provincial Manager”** means an employee in charge of a Provincial Office of the PSA;

**“PSA”** is the Public Servants Association of South Africa;

**“trade union representative”** means a member of the PSA who is elected to represent members in a workplace and full-time shop stewards appointed in terms of the relevant council, and;

**“Statute”** means this Statute which is also the constitution of the PSA and the Memorandum of Incorporation as provided for in the Companies Act. All words and expressions used in the singular in this **Statute** also include the plural or a *vice versa* unless the contrary is expressly stated.

## OBJECTIVES

4. The objectives of the **PSA** are:-

- (1) to promote and to protect the rights and interests of its **members** by;
  - (a) representing its **members** in all negotiations with their employers;
  - (b) providing legal assistance to its **members** in connection with their employment;
  - (c) striving to secure a well-paid, efficient and contented workforce;
- (2) to take such steps as are deemed necessary to secure and maintain cordial relations and the fullest measure of co-operation with employers and the general public in matters affecting any **organ of state** with a view to efficiency and economy combined with the well-being of those employed: Provided that the **PSA** shall not endeavour to secure advantages to **members** by the exercise of political or other undue influence;
- (3) to suggest, promote, support, oppose legislation or other measures affecting the interests of its **members**;
- (4) to use every legitimate means to induce/attract those persons who are eligible in terms of section 6 and 14, to become **members**;
- (5) to advise the Government of the Republic of South Africa, or any **organ of state** upon all matters it refers to the **PSA**;
- (6) to issue literature for the information and enlightenment of its **members** and the public;
- (7) to affiliate, act jointly or merge with any association or union having the same or similar objectives of those of the **PSA**;
- (8) to affiliate with and participate in the affairs of any international workers' organisation or the International Labour Organisation;
- (9) to invest, borrow, lend, subscribe or donate money, for the purposes of the **PSA**; and to purchase, exchange, acquire by any other means and own, take or let or lease or hire, sell, donate or otherwise dispose of and mortgage, pledge, hypothecate or otherwise encumber movable and immovable property or any rights therein or thereto for the furtherance of the objectives of the **PSA**;
- (10) to conduct any lawful business in furtherance of the objectives of the **PSA**, and to secure for **members** special advantages in any mutual benefit, co-operative or other concerns; and
- (11) to do all such lawful acts and things as may appear to be in the interest of the **PSA** and its **members** and which are not inconsistent with the objectives or any matter specifically provided for in this **Statute**, the **Act** and the **Companies Act**.

## APPLICATION OF STATUTE

5. This **Statute** binds every **member** and **associate member** and all the structures referred to in section 26. This **Statute** is made available to all **members**.

## **MEMBERSHIP**

### **Purview**

6. Membership of the **PSA** is available to all persons employed by the State and any **organ of state**, other employee groups as may be designated by the **Board** or any organisation associated and/or related to any **organ of state** or public service and to those persons as described in section 14. This **Statute** may not restrict or regulate or provide for any restriction or regulation of membership that results to unfair discrimination as provided in section 9 of the Constitution.

### **Application**

7. Application for membership is considered on receipt by the **Head Office** of a completed application form prescribed by the **General Manager**.
8. An application for membership comes into effect as soon as it has been accepted by the **General Manager** where after membership fees are payable in terms of section 15.
9. The **General Manager** has the power to reject an application for membership provided that the **General Manager** informs the person of the decision in writing and gives reasons and informs him/her that he/she may appeal to the **Board** against the decision of the **General Manager**, in writing within three months. The decision of the **Board** in this regard is final and binding on the **PSA** and the person.

### **Resignation**

10. A **member** may cancel his/her membership by giving three months notice to the **General Manager** and employer in writing thereof. No cancellation shall take effect unless all moneys due to the **PSA** by the **member** concerned have been paid.

### **Termination**

11. The **General Manager** may on the contravention of any provision of the **Statute** or the code of conduct by a **member** on good cause shown, consider the termination of membership of any member on the motivation and recommendation of the affected **Branch**.

The **General Manager** must:

- (a) give prior written notice to the **member** and provide a reason for such envisaged termination; and
  - (b) offer the **member** the opportunity to react in writing within 21 days of the date of such communication.
12. The **Board** must consider any appeal based on the documentation upon which the decision to terminate was taken. The decision of the **Board** is final.
  13. A member may terminate membership by giving his/her employer written notice of such termination in terms of section 13 of the Labour Relations Act. Subject to section 18 the membership of a member who has terminated his/her membership will expire from the first day of the month following the end of the notice period.

### **Associate membership**

14. (1) When a **member's** employment terminates as a result of his/her retirement on pension, retrenchment or voluntary severance of employment such **member** ceases to be an office bearer with immediate effect and may still be is entitled to continued membership, provided such member informs the **General Manager** in writing of his/her pensioning, retrenchment or voluntary severance and pays the prescribed membership fees in terms of section 15(1)(ii).
- (2) The **Associate member's** membership lapses as soon as he/she is three months in arrears with his/her membership fees, in which case section 13 applies *mutatis mutandis*.
- (3) Associate membership does not provide to such a person the rights of an **employee** as defined in the **Act**, but he/she will still be entitled to all the benefits of membership of the **PSA**.

### **MEMBERSHIP FEES**

#### **Amounts**

15. (1) (i) Membership fees may be prescribed by the **Board** from time to time based on the operational requirements and in accordance with the objectives of the **PSA**, in an amount not exceeding R120,00 per month.
- (ii) An **Associate member** must pay a membership fee not exceeding R75,00 per month.
- (2) Subject to section 18 each **member** must pay the prescribed membership fee.
- (3) Membership fees come into effect from such date determined by the **Board**. Notice thereof be given to all **branches**. Membership fees (as referred to in section 15(1)) increase must comply with provisions of section 93 of the **Statute**.

#### **Payment**

16. (1) Membership fees are paid by means of a stop order, debit order or in cash. All stop orders or debit orders must remain valid when the membership fees are adjusted.
- (2) All stop orders or debit orders are made payable to the **PSA** and cash payments are made in the name of the **PSA**.
- (3) The onus rests on each **member** to ensure that his/her membership fees are paid over to the **PSA** and ceases when his/her membership ends.
17. Any claim for membership fees refunds incorrectly paid over to the **PSA** prescribe after three years.
18. A **member** who is suspended by his/her employer without salary or who is dismissed and where further **PSA** action is or may be necessary or whose payment of membership fees is terminated through no fault of his/her own and does not pay his/her membership fees can with the written request of such **member**, be exempted from the payment of membership fees for a period as determined by the **General Manager** during which period membership does not lapse.

## **VOTING RIGHTS AND BALLOTING BY BRANCHES AND COMMITTEES**

19. A **member** who has the right to be at a duly constituted **branch** or **committee** meeting has one vote and is entitled to vote during a ballot at a meeting of a **branch** under which he/she falls. In the case of those national departmental **branches**, where **members** are nominated by their constituencies, voting will take place during any normal duly constituted **branch meeting**.
20.
  - (1) Balloting for purposes of complying with the requirements of the **Act** or to decide on matters for which a ballot of **members** is required or requested will take place as follows: The **General Manager** shall, upon recommendation of the relevant **member structure**, determine whether a particular matter shall be subject to a ballot of **members** and the procedure to be followed shall be determined by the **General Manager**.
  - (2) In addition to those cases in respect of which the taking of a ballot of **members** of the whole trade union is compulsory in terms of this **Statute**, a ballot on any question shall be taken if the **Board** so decides, and shall also be taken -
    - (a) if demanded in writing by not less than ten percent of the **members** of the union as stipulated in terms of the **Companies Act**.
    - (b) on any proposal to declare or take part in any strike.
  - (3) Ballots shall be conducted in the following manner:
    - (a) Notice of a ballot shall be given to each **member/structure** in writing by the **General Manager**, at least three days before the ballot is to be taken: Provided that a ballot may be taken without notice at any **Congress** on the decision of a majority of the delegates present.
    - (b) Two scrutineers shall be appointed by the **Board** or the **Congress** to supervise any ballot and to ascertain the result thereof.
    - (c) Except in the case of postal ballots and ballots taken at **Congress** on the decision of a majority of the **members/structures** present, ballots shall be conducted at the offices of the **PSA** or at such other places as may be specified in the notice referred to in paragraph (a) of this sub clause on the date and during the hours specified in the said notice.
    - (d) Ballot papers shall be supplied by the **General Manager**. The issue to be voted upon shall be set forth clearly on the ballot papers and such papers shall not contain any information by means of which it will be possible to identify the voter.
    - (e) Ballot boxes shall be inspected by the scrutineers and sealed by the **General Manager** in their presence prior to the issuing of ballot papers.
    - (f) One ballot paper only shall be issued on demand at the place and during the hours fixed for the taking of the ballot to each **member** who is entitled to vote.

- (g) Each voter shall, in the presence of the scrutineers, be issued with one ballot paper which he/she shall thereupon complete, fold and deposit in a ballot box provided for the purpose.
  - (h) Ballot papers shall not be signed or marked in any way apart from the mark required to be made by a **member** in recording his/her vote. Papers bearing any other marks shall be regarded as spoilt and shall not be counted.
  - (i) On completion of a ballot or as soon as possible thereafter, the result thereof shall be ascertained by the scrutineers appointed in the presence of the **General Manager** and made known to the **Board**.
  - (j) Ballot papers, including spoilt papers, shall be placed in a container which shall be sealed after they have been counted and retained by **General Manager** for not less than three years.
- (4) The **Board** may decide that a postal ballot of **members** shall be taken, in which event the ballot shall be conducted in the following manner:
- (a) The **General Manager** shall send by registered post to each **member/structure** of the **PSA** a ballot paper and a stamped and addressed envelope marked "Ballot". The ballot paper shall on completion be inserted in the envelope provided for the purpose which shall be sealed and posted so as to reach the **General Manager** within twenty **business days** from the date of despatch from head office to such **member/structure**. On receipt of such envelopes, the **General Manager** shall immediately place such envelopes in a sealed ballot box.
  - (b) Two scrutineers shall be appointed by the **Board** to ascertain the result of the ballot. The ballot box shall be opened and the ballot papers counted by the scrutineers in the presence of the **General Manager**, who shall immediately advise the **Board** of the result of the ballot. The **General Manager** must within 10 **business days** after obtaining the results of the ballot deliver a statement describing the results of the vote to every **member**.
  - (c) The same procedure shall *mutatis mutandis* apply to a postal ballot confined to the **Board** and structures of the **Board**.
- (5) In any ballot conducted in connection with any election of candidates, the candidates up to the required number, receiving the highest number of votes shall be declared elected.
- (6) The **Congress** or the **Board** shall be bound to take action according to the decision of a majority of **members/structures** voting in a ballot.
- (7) Any business that is required by the **Statute** to be conducted at an **Annual General Meeting** be conducted by **members** other than at an **Annual General Meeting**.



## **STRIKES**

21. The **General Manager** shall, before calling a strike, conduct a ballot of those of its **members** in respect of whom it intends to call the strike. Notwithstanding anything to the contrary contained in this **Statute**, **members** of the **PSA** shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike if
- (a) no ballot was held about the strike; or
  - (b) a ballot was held, but a majority of the **members** who voted did not vote in favour of the strike.

## **CHANGE OF ADDRESS**

22. A **member** must give written notice to the **General Manager** of any change of address within 30 days of any such change.

## **MEETINGS AND RIGHT OF ADMISSION**

23. A **member** has the right to attend **branch meetings** provided he/she informs the secretary of the **branch** seven days in advance about his/her intended presence at the **branch meetings** and present reasonably satisfactory identification.
24. A **member** who is not a delegate can, at the written request of his/her **branch** and with approval of the **General Manager**, at his/her own expense - unless the **Board** decides differently in exceptional cases - attend the **Congress** and the **Annual General Meeting** as an observer.
25. A **member** who attends a meeting of a **branch** or who attends the **Congress** and the **Annual General Meeting** as an observer does not have a vote.

## **FUNCTIONAL STRUCTURES AND WORKING METHODS**

26. The structures within which the **members** and their elected representatives function, are:
- (a) **branches with committees;**
  - (b) **committees** of the **Board** as determined by the **Board** from time to time;
  - (c) the **Congress** which is constituted from **branch** delegates; and
  - (d) the **Board** which is elected by the **Congress** from **members**.

## **BRANCHES AND COMMITTEES**

### **Establishment**

27. The **Board** may on good cause shown approve the following **branches** and **committees** of the **PSA** in which the **members** and **Associate members** are represented:
- (1) One **branch** per national department or functional component as applies in the National Public Service as defined in Schedule 1 of the Public Service Act, 1994 as amended;
  - (2) Sectoral **branches** for each provincial government;
  - (3) One **branch** for each **organ of state** not mentioned in sub-section (1) or (2) above;
  - (4) A Group **branch** and **committees** for **Associate members**;
  - (5) **Committees** of a **branch** at the request of that **branch**; and
  - (6) **Committees** of the **Board** as determined by the **Board**.

### **Domestic rules**

28. The **Board** approves model domestic rules that are compatible with the provisions of this **Statute** which will be applicable to that **branch**. A **branch** can, with the approval of the **Board**, amend these rules to adapt to its specific needs.

### **Activities**

29. (1) No **branch** or any of its **committees** shall act autonomously against the employer;
- (2) A **member** can at any given time only be a representative of one constituent **branch**;
- (3) A **branch** must:
- (a) Identify matters of mutual interest for negotiating purposes in the relevant bargaining forums; and
  - (b) provide the necessary mandates on such matters.
- (4) The **office bearers**, **management members** and **trade union representatives** shall:
- (a) Give effect to decisions of the **Congress**, the **Board** and their **branch** management;
  - (b) Give effect to any decision or direction of the **General Manager**, given in compliance with the **PSA Statute**.
  - (c) Recruit **members** or **Associate members**;
  - (d) Promote and at all times act in the best interest of the **PSA** and its individual **members**;
  - (e) Where required, represent **members** in rights matters before the Commission for Conciliation,

- Mediation and Arbitration and accredited bargaining councils and the employer with grievances; and
- (f) Promote the interests of **members** in the relevant social dialogue structures.

### **Management**

30. (1) The management of the affairs of a **branch** or a **committee** is vested in the management of the **branch** or **committee** consisting of the **office bearers** and **management members**.
- (2) **Trade union representatives** shall be elected by the **members** in the relevant constituencies.
- (3) **Management members** shall hold office for a term of four years and are eligible for re-election on termination of their period of office.
- (4) Full-time shop stewards term of office is determined by collective agreement. Full time **PSA** shop stewards should be nominated and elected by their **branch** and confirmed by the **General Manager**.
- (5) Vacancies occurring on the management of a **branch** or **committee** shall be filled by an election by the relevant constituencies and shall be announced at the first ensuing **branch** or **committee** management meeting. A **member** so elected to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor. If an **office bearer** position of a **branch** or **committee** becomes vacant a **branch** management may elect a **member** from its ranks by means of a ballot where the chairperson shall have an ordinary and a casting vote.
- (6) The secretary is responsible for all secretarial and administrative duties of a **branch** or **committee** and shall be the channel of communication between the **branch** management and, the relevant **PSA** Provincial Office and in the case of a **committee**, the channel of communication is through the **branch**.

### **Frequency and notice of meetings**

31. (1) A **branch** or **committee** management must meet at least three times during a financial year at times and venues determined by its management in consultation with the **Provincial Manager**.
- (2) Seven days written notice shall be given before the meeting commences by the secretary.
- (3) Subject to section 32(1) and (2) the **PSA** will only bear the costs of three **branch** or **committee** management meetings during a financial year. **Branch** and **committee** management meetings are not held in public nor are they open to any **member** who has not been elected to such **branch** or **committee**.
- (4) The chairperson may, at his/her discretion allow any person or **member** to attend as visitor, observer or advisor provided that the meeting raises no objections.
- (4) In addition to the three **branch** or **committee** management meetings one **inter-sectoral members' meeting** may be held with **members** during a financial year which can be rotated in the main centres and which should be arranged by the relevant **Provincial Managers**. The costs to hold such an **inter-sectoral members' meeting** will be borne by the **PSA**.

### **Special meetings**

32. (1) A special **branch** management meeting shall be convened by the chairperson or at the written request of at least two of the **members** of the management for a date within thirty days of such decision or receipt of such request by the secretary, in consultation with the chairperson.
- (2) The **General Manager** may pay the costs of such a meeting on good cause shown.

### **Minutes**

33. Minutes shall be kept of all meetings and the secretary shall send a copy thereof *via* the **Provincial Manager** to the **General Manager** within thirty days after the meeting. The secretary shall specially draw the attention of the **General Manager** in writing to any matter in the minutes that requires specific attention.

### **Quorum**

34. Ten **members** shall form a quorum at any **inter-sectoral members' meeting**. A majority (fifty percent plus one) of management **members** at **branch** or **committee** management meetings form a quorum.

### **Dissolution**

35. The **Board** may dissolve **branches** and **committees** on good cause shown and report this to the **Congress**. All monies in possession of a dissolved **branch** or **committee** shall be paid over to the **PSA**.

### **Funds**

36. The **Board** may annually approve the payment of an allowance to each **branch** from the funds of the **PSA** for such **branch** and **committee** purposes as may be determined by the **Board**. Such allowance should be allocated equitably with due consideration of the size of the **branches**.

### **Extraordinary expenses**

37. No extraordinary expenses may be incurred except with the approval of the **General Manager**.

### **NATIONAL CHAIRPERSONS' FORUM**

38. The **national chairpersons' forum** is a member structure formed for the primary purposes of giving direction, guidance and mandates to the **Board** and the Administration regarding short and medium term matters of transverse interest and for serving as a sounding board for testing domestic matters and consists of chairpersons of **branches**.

### **Constitution**

39. The **national chairpersons' forum** is constituted by the following representation (delegates):
- (1) The chairperson from each **branch**. In his/her absence the vice-chairperson attends in his/her place or any other nominated **member** of the relevant management.
  - (2) The **members** of the **Board**.

### **Activities and duties**

40. The **national chairpersons' forum** undertakes the following activities:
- (1) The discussion of transverse matters of mutual interest of departmental or provincial nature, as well as matters in any **organ of state**, that affect the broad membership of the **PSA** in the short and medium term.
  - (2) Providing the **Board** and the Administration with the necessary direction and guidance in the short and medium term in respect of motions concerning the interests and rights of **members** arising from the service context placed on the agenda by the **Board** or the **General Manager** in consultation with the **Board**.

### **Delegates**

41. Particulars of delegates of **branches** are requested by the **General Manager** at least twenty one days before every meeting of the **national chairpersons' forum**. If a **branch** fails to nominate a delegate before the appointed time and furnishes his/her particulars, the **Board** is entitled to appoint a **member** of the **branch** concerned for the relevant meeting.

### **Chairperson**

42. The chairperson of the **Board** acts as the presiding officer during meetings of the **national chairpersons' forum**. In his/her absence the vice-chairperson of the **Board** acts in his/her place. Should both persons not be available for a meeting, the **Board** will appoint a person referred to under section 76 to act as the presiding officer for that particular meeting only.

### **Frequency of meetings**

43. The **national chairpersons' forum** meets as and when circumstances dictate but should meet at least once annually, on a date and time and at a venue as determined by the **Board**.

### **Notices**

44. The notice and agenda of the **national chairpersons' forum** is sent out by the **General Manager** to the delegates, **branches** at least fourteen days before the meeting commences.

## **Minutes**

45. Minutes of the **national chairpersons' forum** must be kept by the **General Manager** of which copies must be sent to **branches** within thirty days after conclusion of the meeting.

## **Quorum**

46. Fifty per cent plus one of the delegates constitutes a quorum. If within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the chairperson, which date must not be earlier than seven days and not later than twenty one days after the date of the meeting and the **members** present at such meeting constitute a quorum. Notice must be given of the new date for this meeting.

## **Voting and balloting**

47. A decision taken by the showing of hands or by ballot will be deemed to be a majority decision. In addition to his/her ordinary vote the chairperson or other presiding **member** shall also have a casting vote.

## **Special meetings**

48. In compliance with a decision by the **Board** or at the request of **branches** that represent at least thirty percent of the **members**, the **General Manager**, in consultation with the **Board**, gives within 30 days of receipt of such decisions of the **Board** or requests of the **branches**, at least seven days notice of a special meeting of the **national chairpersons' forum**, stating the purpose thereof. Only the business for which the meeting was called is dealt with by the meeting.

## **CONTROL**

### **CONGRESS**

49. The **Congress** when in session is the highest authority of the **PSA** and formulates policy and is responsible for the monitoring of such policy subject to the provisions of sections 50 and 51.

### **Constitution**

50. The **Congress** is constituted by the following representation:
- (1) One representative appointed by each **branch**.
  - (2) The members of the **Board**.

## **Activities**

51. (1) The **Congress** shall deal with the following matters:
- (a) Must consider and accept (or reject) the Directors Report and the Audit Committee Report;
  - (b) Must consider and approve (or disapprove) the audited financial statements for the immediately preceding financial year;
  - (c) The appointment of auditors for the ensuing financial year on the recommendation of the **Board** in terms of section 68(2);
  - (d) Consideration of any recommendations made by the **Board** in terms of section 68(4);
  - (e) The discussion of motions concerning the interests and rights of **members** arising from the service context, placed on the agenda by the **Board** or a **branch** at least ninety days before **Congress**;
  - (f) The election of the president, vice-president, chairperson and vice-chairperson and other members of the **Board** in terms of sections 61 and 64, elect four members of the **Congress**, who are not **Board members**, to the Remuneration Committee; and
  - (g) The consideration and approval of the amendment of this **Statute** in terms of section 91.
  - (h) The consideration of Appeals in terms of section 88 (3)(b) and (c).
- (2) The **Congress** will be constituted as an **Annual General Meeting** for the purposes of the consideration of the matters as stipulated in section 51(1) (a), (b), (c), (f), (g) and (h).

## **Delegates**

52. Particulars of delegates of **branches** are requested by the **General Manager** before every meeting of the **Congress**.

## **Frequency of meetings**

53. The **Congress** is held every second year and **Congress** sitting as **Annual General Meeting** is held annually both within six months after the end of the financial year, at a date, venue and time determined by the **Board**.

## **Extraordinary meetings**

54. (1) An extra-ordinary meeting of **Congress** may be called:
- (a) On the request of the **Board**; or
  - (b) at the request of **branches** that represent at least ten percent of the **members** of the **PSA** and based on resolutions passed at a properly constituted meeting thereof.

- (2) The **General Manager**, in consultation with the **Board** gives, within thirty days of receipt of all such resolutions of the **branches**, at least fifteen **business days** notice of an extraordinary meeting of the **Congress**, stating the purpose thereof. Only the business for which the meeting was called is dealt with by the meeting.

### **Notices**

55. The notice and agenda of the **Congress** is sent out by the **General Manager** to the delegates of **branches** at least fifteen **business days** before the meeting commences.

### **Minutes**

56. Minutes of the **Congress** must be kept by the **General Manager** of which copies must be sent to **branches** within three months after the **Congress**.

### **Binding power of resolutions**

57. Resolutions of the **Congress** and also in session as **Annual General Meeting** are binding on the **PSA** and its **members** insofar as they do not infringe upon the rights of **members** arising from any law or the rights in terms of this **Statute**.

### **Quorum**

58. (a) A quorum consists of fifty per cent plus one of the representatives of all **branches** and **committees**. The meeting must remain quorate for the full duration of the procedures.
- (b) If within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the chairperson, which date must not be earlier than seven days and not later than twenty one days after the date of the meeting and the **members** present at such meeting constitute a quorum. Notice must be given of the new date for this meeting.

### **Voting**

59. A majority decision taken by ballot is a resolution of the **Congress**. In addition to his/her ordinary vote the president or other presiding **member** shall also have a casting vote.
- (1) Each **branch** structure of the **PSA** qualifies for a minimum of one vote.
- (2) Each **branch** structure qualifies for an additional one vote should they have one thousand **members** or more.
- (3) Each **branch** structure qualifies for a further additional one vote should they represent more than fifty percent of the potential **members** in their constituency.



## **MANAGEMENT**

### **BOARD OF DIRECTORS**

#### **Constitution**

60. The **Board** consists of the specific offices of president, vice-president, chairperson, vice-chairperson plus the six additional Directors of the **Board** who are elected in terms of the provisions of sections 61 and 64.
61. (1) The **members** of the **Board** are elected by the **Congress** in the specific offices in terms of section 60, read with sections 51(1) and (2) and section 53. **Branches** submit written nominations for these offices to the **General Manager** at least sixty days before the **Congress** in session as **annual general meeting** during September of each year. A delegate is bound by the decision of his/her **branch** management as indicated in the minutes of the **branch's** meeting during which such a decision was taken.
- (2) In order to be duly nominated as a candidate for a specific office, president, vice-president, chairperson or vice-chairperson in terms of section 60 a **member** or **Board member** must be nominated by a **branch** and seconded by at least four other **PSA branches**.
62. (1) The majority votes for an office determines the election and in the event of an equal number of votes a ballot in terms of section 62(2) is conducted.
- (2) Subject to the provisions of section 51 in the case of the election of **members** to the **Board** as stipulated in section 61 where there is an equal number of votes for a specific office, the matter will be resolved by means of a postal vote.
63. The term of office of **members** of the **Board** of Directors is three years. An election of at least one third of those elected Directors must take place each year. Members of the **Board** step down from the **Board** at the **Congress** which takes place in the third year of their term, but may make themselves available for re-election.
64. If any of the offices as defined in section 60 become vacant the vacancy stands over until the next **Congress**: On the understanding that, if a specific office became vacant, the **Board** may elect a **member** from its ranks by means of a ballot where the chairperson or presiding **Board member** shall have an ordinary and casting vote.
65. **Members** already serving on the **Board** are eligible to be nominated to any specific office of the **Board**.
66. A **member** of the **Board** who is not re-elected to the **Board** or who is not re-elected in a specific office of the **Board** holds his/her position/office until the end of the proceedings of the relevant **Congress**.

#### **Powers and duties**

67. In the absence of the **Congress** in session, the **Board** acts in its stead, with powers and authority to carry out the following, but it is not restricted to this provided the actions are not irreconcilable with the stipulations of this **Statute**:
- (1) To realise the objectives as contained in section 4 and policy concerning the affairs of the **PSA** and to lay down the policy for this, for which purpose it may take all steps that are necessary or which will advance or assist in the achievement of such objectives; and

- (2) To carry out all such duties specifically entrusted to the **Board** in terms of this **Statute** and to carry out the resolutions of the **Congress** which includes the implementation and enforcement as approved by the **Congress** of a code of good conduct applicable to all structures referred to in section 26.

68. As extension and representative of the **Congress** the **Board** must -

- (1) arrange the administration of the **PSA** and appoint its **General Manager**;
- (2) submit to the **Annual General Meeting** of the **PSA** the audited financial statements of the **PSA**, showing the financial results for the financial year and the financial position at the end thereof, and recommend the appointment of the auditors for the **PSA** as referred to in section 51(2);
- (3) submit to the meeting of the **Congress** a written report on the control, management and administration of the affairs of the **PSA** during the term preceding the meeting as referred to in section 51(1)(a);
- (5) make recommendations to the **Congress** in respect of matters requiring a decision of **Congress**;
- (6) compile, amend or repeal codes for the exercising of its powers and the execution of its duties;
- (6) decide on the recommendations and execution of the recommendations of **branches**; and
- (7) act as principal, where necessary, on the execution of decisions concerning the interests and rights of the **PSA** and **members**.

69. The **Board** is empowered:

- (1) to compile a code of good conduct applicable to **members** of the **Board** and **management members** of **branches** and **committees**;
- (2) to make recommendations to the **Congress** on any matter;
- (3) to appoint **committees** to investigate any matter and make recommendations to the **Board** as the **Board** may deem necessary and to dissolve such **committees**;
- (4) to decide, in negotiations in any bargaining council, whether a dispute and, if necessary a deadlock, must be declared and to place in arbitration any matter arising from this or, in the case of **members** in non-essential services, on the lock-out of **members** by the employer, the exercising of the right to strike by **members**, to call a vote and, depending on the result of this, act according to the expressed will of the majority of the **members**;
- (5) to take part in the discussion at any meeting held in the name of the **PSA** and, insofar as this **Statute** allows it, exercise the right to vote;
- (6) to borrow or lend money for the purposes of the **PSA** to bridge a temporary cash shortfall or complete an investment;
- (7) to invest money that is available and not immediately required for current expenses, or to use such money as security and in such a way as the **Board** may decide and to realise such securities, adjust them and re-invest the returns thereof or deal with it in any other way as the **Board** may decide;

- (8) to purchase and sell fixed and movable assets for the **PSA**;
- (9) to institute, settle or defend legal proceedings in the interest of the **PSA**;
- (10) to institute, settle or defend legal proceedings to protect the rights and interests of **members**;
- (11) to serve, jointly or separately, as **members** of the **Board** and with the approval of the **Board**, as trustees or directors of the **PSA** or on any board of trustees of a trust fund or company or any other fund in which the **PSA** has an interest;
- (12) to delegate any of its powers under this section and this **Statute** to the **General Manager**, giving him/her the right to delegate it further, subject to such conditions as the **Board** lays down;
- (13) to give effect to the payment of the remuneration payable to the **members** of the **Board** of Directors as recommended by the Remuneration Committee to the **Board** and approved by the **members** at the **Annual General Meeting** within the previous two years;
- (14) to determine the honorarium of other **office bearers** on the recommendation of the Remuneration Committee and report to **Congress**.
- (15) to make contributions and donations to charity;
- (16) to award study bursaries; and
- (17) to meet at such intervals, venues and times and with such notice as it determines.

### **Quorum**

- 70. Fifty percent plus one members of the **Board** at any meeting of the **Board** shall form a quorum. If within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the chairperson, which date must not be earlier than seven days and not later than twenty one days after the date of the meeting and the members present at such meeting constitute a quorum. Notice must be given of the new date for this meeting.

### **Special meetings of the Board**

- 71. Should five or more Directors of the **Board** make a written request stating the purpose, the **General Manager**, on the instruction of the chairperson must call a special meeting of the **Board** within seven days to deal with the stated matter only.

### **Voting**

- 72. If consensus on any subject cannot be reached it shall be decided by the majority vote and the chairperson shall have the casting vote.

### **Function of President and Vice-president**

73. The president acts as presiding officer at the **Congress** and arranges, in consultation with the **General Manager**, the way in which the agenda is compiled. In his/her absence the vice-president takes his/her place. **Branches** wishing to submit an item(s) for discussion at the **Congress** must give written notice of this to the **General Manager** on a date as annually determined by the **Board**.

### **Function of the Chairperson and Vice-chairperson**

74. The chairperson of the **Board** acts as presiding officer at meetings of the **Board** and the **Congress** sitting as **Annual General Meeting**. In his/her absence, the vice-chairperson takes his/her place.

### **Chairpersons of committees of the Board**

75. The **Board** appoints the chairperson of any **committee** established by the **Board**.

### **Absence of presiding Board members**

76. When the **Board** members who are appointed as presiding officers in terms of section 73 and 74 are absent, the other members of the **Board**, in order of the office which they hold and seniority of those present, act as chairperson. In the absence of these members of the **Board**, the relevant meeting elects its own presiding officer to act for the duration of such absence.

## **ADMINISTRATION**

### **GENERAL MANAGER AND PERSONNEL**

#### **Appointment**

77. The **Board** appoints a **General Manager** and regulates his/her terms and conditions of service.

#### **Duties**

78. The **General Manager** is accountable and has administrative responsibility for the efficient administration of the affairs of the **PSA** and he/she is directly responsible to the **Board**. He/she -
- (1) acts as Secretary of the **Board** and is accountable to the **Board**;
  - (2) must ensure that minutes, books, registers and records are kept as are necessary for the proper functioning of the **PSA**, and regarding accounts in such a way that it facilitates the drawing up of audited financial statements;
  - (3) must ensure that all money received is paid into a bank account or accounts at a registered commercial bank or banks on which the **Board** decides;

- (4) can issue media and other statements on behalf of the **PSA** and generally takes the lead when outside action is taken on matters of policy;
- (5) shall perform all other duties as required by the **Act** and the **Companies Act**; and
- (6) shall be responsible for the appointment and dismissal of officials in terms of the applicable codes and policies.

## **FINANCIAL MATTERS**

### **Financial year and funds**

79. The financial and official year of the **PSA** is from 1 April in the one year to 31 March in the following year. The funds of the **PSA** shall be applied to the payment of expenses and for any lawful purpose towards the attainment of the objectives specified in section 4 as may be decided upon by the **Congress** or the **Board**.

### **Power of attorney**

80. All documents concerning the purchase, selling, mortgaging, leasing, rent investment, withdrawal or any other action of any nature whatsoever concerning the assets of the **PSA**, are regarded as duly executed when signed by one or more persons appointed for this purpose according to a decision of the **Board**.

### **Auditing**

81. The financial statements of the **PSA** are audited and certified by a firm of accountants registered in terms of the Public Accountants and Auditors Act 1991, the Public Accountants and Auditors Amendment Act 1994 and the **Companies Act**. If, for any reason whatsoever, the services of such a firm are terminated before the date of the **annual general meeting**, the **Board** appoints a firm for the unexpired period until the next **annual general meeting**.

### **Indemnity**

82. The **PSA** must indemnify each **member** of the **Board** and every **employee** of the **PSA** against all law suits, costs and expenses that arise from any claim concerning the **PSA**: Provided the claim is not the result of the **member's** dishonesty, wilful misconduct, and wilful breach of trust or fraud.

### **Fidelity guarantee**

83. The **General Manager** must, as instructed by the **Board**, arrange fidelity guarantee insurance for **members** of the **Board** and identified **employees** for such amounts as the **Board** may decide. The premiums thereof shall be paid from **PSA** funds.

## **Remuneration**

84. Remuneration is paid to **members** of the **Board** of Directors in terms of section 69(13) and to **office bearers**, as approved by the **Board** of Directors.

## **GENERAL MATTERS**

### **Affiliation, acting jointly and merging**

85. The **Board** may authorise the affiliation, acting jointly or merging with other unions in the interest of the **PSA**.

### **Confederation or federation**

86. The **Board** may authorise that the **PSA** affiliate with:
- (1) any duly constituted federation; and
  - (2) any duly constituted confederation, provided such federation or confederation shares the **PSA** ethos of being politically non-aligned.

## **Interpretation**

87. (1) Should any dispute arise about the interpretation of this **Statute** the **Board** shall follow a process to bring the matter to finality.
- (2) In the case of any difference between the texts, in any of the official languages, the meaning of the English text shall apply.

### **Vacating or termination of office**

88. (1) The term of office of any elected **office bearer** or **trade union representative** terminates may be terminated:
- (a) when his/her membership of the **PSA** terminates;
  - (b) if he/she infringes any of the provisions of this **Statute**;
  - (c) if he/she acts in an improper, disgraceful or unacceptable manner which is detrimental to the interests of the **PSA**;
  - (d) when in the case of the **Board** of Directors, his/her estate is sequestered or he/she enters into a compromise with his/her creditors;

- (e) when he/she has been absent from more than two consecutive **Board** or **branch** or **committee** management meetings without informing the chairperson;
  - (f) when a motion of no-confidence in the **office bearer** has been accepted at a meeting of the Congress with a two-thirds majority;
  - (g) when he/she is declared as a mentally disordered person; and
  - (h) when he/she has been convicted of a criminal offence and in respect thereof sentenced to imprisonment without the option of a fine.
  - (i) When a member is dismissed from duty by his/her employer and as a result thereof does not have a constituency that he/she represents.
  - (j) when his/her employment terminates as a result of retirement on pension, retrenchment or voluntary severance such member may however still be entitled to continued membership provided for in section 14.
- (2) No office bearer, may be removed from office unless he/she has been afforded an opportunity to state his/her case either personally or in writing to the applicable authority which is in the case of –
- (a) a management **member**, the **branch** or **committee** management;
  - (b) a **branch** or **committee** management, the **Board**;
  - (c) a **member** of the **Board**, the **Board**.
- (3) An **office bearer**, whose case has been considered by the applicable authority and who is dissatisfied with the decision of the body concerned shall have the right to appeal as follows in the case of:
- (a) a management **member**, to the **Board** of which notice of appeal shall be given to the **branch** or **committee** secretary, in writing within twenty-one days of the date on which the decision of the **branch** or **committee** management was communicated to the **member** concerned. The **Board** may reverse the decision of the **branch** or **committee** management and its decision shall be final;
  - (b) a **branch** or **committee** management, to the **Congress** of which notice of appeal shall be given to the **General Manager** in writing, within twenty-one days of the date on which the decision of the Board was communicated to the **members** concerned. The **Congress** may reverse the decision of the **Board** and its decision shall be final;
  - (c) a **member** of the **Board**, to the **Congress** of which notice of appeal shall be given to the **General Manager** in writing, within twenty-one days of the date on which the decision of the **Board** was communicated to the **member** concerned. The appeal shall be noted in the agenda of the **Congress** which may reverse the decision of the **Board** and its decision shall be final.

## **Disputes**

89. Any dispute between a **member** or **office bearer**, including the functional structures of the **PSA** if they cannot be solved mutually, will be settled by arbitration. The finding of the arbiter is final and binding on the parties. Such disputes and arbitration are arranged according to the following measures:



- (1) The parties each submit, separately, particulars of the dispute to the **General Manager** within fourteen days after the dispute arose.
- (2) The **General Manager** determines the terms of reference for the arbiter if the parties cannot agree on this within ten days.
- (3) The **General Manager** submits two names of arbiters to the parties and, if the parties cannot agree on an arbiter within 10 days, the **General Manager** appoints the arbiter by drawing a name of one of the two arbiters in the presence of two impartial **members**.
- (4) The parties make written submissions of their standpoint to the arbiter within fourteen days of the date of his/her appointment and make any such further comment to the arbiter in any way on which they may decide.
- (5) In the case of disputes between the functional organs of the **PSA**, the various **secretaries** thereof submit particulars of the dispute to the **General Manager** who then submits it to the **Board** and the finding of the **Board** is final and binding on both parties.

### **Matters for which no provision has been made**

90. Any matter for which no particular or inadequate provision is made in the **Statute** will be finalised by the **Board** and reported to Congress. The **PSA** is bound by this.

### **Amendment of Statute**

91. This **Statute** can only be amended by the **Congress**, provided that a two-thirds majority of the votes of the attending delegates who are entitled to vote at such meeting, vote in favour of such amendment. Any amendment to this **Statute** in terms of this section and section 92 must be announced in a circular letter of the **PSA** to **members**.
92. **Branches** wishing to propose an amendment to this **Statute**, must give written notice of this to the **General Manager** before 31 May each year. The **Board** may also propose amendments to this **Statute**. Each such proposed amendment must be included in the agenda of the **Congress** of that year and, after acceptance, particulars of the amendment must be published in a newsletter of the **PSA** to **members**.
93. Any amendment to this **Statute** takes effect from the date of both the Registrars of Labour Relations and Companies certification.

### **Winding-up**

94. (1) The **PSA** shall be wound up if at a ballot conducted in the manner prescribed in the **Statute**, not less than three-fourths of the total number of members of the **PSA** vote in favour of a resolution, namely that the organisation be wound up.
- (2) If a resolution for the winding-up of the **PSA** has been passed or if for any reason the **PSA** is unable to continue to function, the following provisions shall apply:



- (a) The last-appointed president of the **PSA**, or if he/she is not available, the available members of the last-appointed **Board** of the **PSA**, shall forthwith transmit to the Labour Court a statement signed by him/her (or them) setting forth the resolution adopted or the reasons for the **PSA's** inability to continue to function, as the case may be, and request the Labour Court to grant an order in terms of section 103 of the **Act**;
- (b) (i) The liquidator appointed by the Labour Court shall call upon the last-appointed **office bearers** of the **PSA** to deliver to him/her the **PSA's** books of accounts showing the assets and liabilities together with the register of members showing, for the twelve months prior to the date on which the resolution for winding-up was passed or to the date as from which the **PSA** was unable to continue to function, as the case may be, (hereinafter referred to as the date of dissolution), the membership fees paid by each **member** and his/her address as at the said date.
- (ii) The liquidator shall call upon the said **office bearers** to hand over to him/her all unexpended funds of the **PSA** and to deliver to him/her the **PSA's** assets and the documents necessary to liquidate the assets.
- (c) The liquidator shall take the necessary steps to liquidate the debts of the **PSA** from its unexpended funds and any other moneys realised from any assets of the **PSA**. If the said funds and moneys are insufficient to pay all creditors after the liquidator's fees and the expenses of winding-up have been met, the order in which creditors shall be paid shall be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the liquidator's fees and the expenses of winding-up shall rank in order as that of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- (d) Notwithstanding any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the **PSA**-
- (i) no past or present **member** or director, is entitled to any part of the net assets, after its obligations and liabilities have been met; and
- (ii) the entire net value must be distributed to one or more non-profit companies, external non-profit companies, voluntary associations or non-profit trusts,
- having objects similar to the **PSA** and carrying on activities within the Republic; and
  - as determined-
    - in terms of the company's **Statute**; or
    - by its **members**, if any, or its directors, at or immediately before the time of its dissolution; or
    - by the Labour Court, if the **Statute**, or the members or directors fail to make such a determination.
- (e) After the payment of all the liabilities, any assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation, Mediation and Arbitration (in accordance with section 103(5) of the **Act**),
- (f) The liability of members upon winding-up shall be limited to the amount of membership fees due by them to the **PSA** in terms of this **Statute** as at the date of dissolution.

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- (1) The Board will consist of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the PSA for income tax purposes;
  - (2) No single person will directly or indirectly control the decision-making powers relating to the PSA;
  - (3) The PSA will not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
  - (4) The PSA will utilise substantially the whole of its funds for the sole or principal object for which it has been established;
  - (5) No member will directly or indirectly have any personal or private interest in the PSA;
  - (6) Substantially the whole of the activities of the PSA must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
  - (7) The PSA will not have a share or other interest in any business, profession or occupation which is carried on by its members;
  - (8) The PSA will not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule to the Income Tax Act, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
  - (9) Substantially the whole of the PSA's funding will be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;
  - (10) The PSA will as part of its winding-up procedure in terms of Section 94 transfer its assets to—
    - (a) Another entity approved by the Commissioner for SARS in terms of section 30B of the Income Tax Act;
    - (b) A public benefit organisation approved in terms of section 30 of the Income Tax Act;
    - (c) An institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or
    - (d) The government of the Republic of South Africa in the national, provincial or local sphere;
  - (11) The persons contemplated in clause 95(1) will submit any amendment of the Memorandum of Incorporation and PSA Statute to the Commissioner for SARS within 30 days of its amendment;
  - (12) The PSA will comply with such reporting requirements as may be determined by the Commissioner for SARS from time to time; and
  - (13) The PSA will not knowingly become a party to, and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103 (5) of the Income Tax Act.