

PRESENTATION ON THE PROPOSAL FOR THE ESTABLISHMENT OF SOCIAL DEVELOPMENT DEPARTMENTAL BARGAINING CHAMBER

PHSDSBC

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social development
Department:
Social Development
REPUBLIC OF SOUTH AFRICA

 **NDA**
National
Development
Agency

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SOUTH AFRICAN SOCIAL SECURITY AGENCY

1. PURPOSE

- To present to Council the proposal for the establishment of social development departmental bargaining chamber.

2. BACKGROUND

- On 24 August 2020 the Ministers of Health and Social Development convened a meeting which took a decision to investigate the historical background, challenges, proposal, and analysis of implications for the establishment of the Department of Social Development Chamber.
- The Ministers further directed that the legal opinion should be sought.

3. PROBLEM STATEMENT

- The portfolio of Social Development and its mandate has expanded, and have become more distinct and complex, hence the request for the establishment of separate Departmental Bargaining Chamber.
- The current joint national chamber for both Social Development and Health poses challenges to the internal existence of collective bargaining mechanism in dealing with rights and/or mutual interest related matters within the Department.



4. MOTIVATION

- A benchmark was conducted with the Public Service Coordinating Bargaining Council (PSCBC) and other sector councils i.e GPSSBC and SSSBC.
- The proposal is further motivated by the fact that both current Ministers of Health and Social Development granted concurrence for the matter to be tabled and negotiated at this Council.

5. CONSTITUTIONAL AND LEGAL IMPLICATIONS

- In terms of Clause 16.1 of the PHSDSBC Constitution, the Council may from time to time establish, amalgamate, or dissolve Committees or Chambers and on such conditions as it may determine, delegate any of its functions to any such Committee or Chamber.
- Decisions of the Chamber, excluding decisions on short term operational issues, shall be reported to the Council for consideration.

7. LABOUR RELATIONS IMPLICATIONS

- The definition of ‘workplace’ as contained in Section 213 of the Labour Relations Act, Act 66 of 1995 (as amended) by implication covers the Department of Social Development.
- Therefore, the departmental bargaining chamber is regarded as a formal internal workplace structure to deal with collective bargaining matters at the departmental level.

8. ANALYSIS OF IMPLICATIONS

- The White Paper for Social Welfare emphasise that welfare personnel are encouraged to organise themselves to be represented in collective bargaining structures to address their needs.
- This arrangement should by no means affect the functioning of Council but instead ensure compliance and promote sound labour relations in the department and the sector in general.

9. MANDATING AND MANAGEMENT OF NEGOTIATIONS

- Section 78 (3)(b) of the Public Service Regulations reads, “If a sector consists of more than one Department, Cabinet shall nominate one of the departments’ Executive Authority to be responsible for collective bargaining on behalf of the State as Employer”.
- In the case of the public health and social development sector, the Minister of Health is the nominated and responsible executive authority.

10. FINANCIAL IMPLICATIONS

- Levies are the main source of income for the Council.
- Therefore, Council should efficiently utilise the employees' levy contribution to implement the proposal for the DSD chamber.
- The Council may on good cause shown increase the levy where necessary to cover administrative related costs.

11. LEGAL OPINION

- The legal opinion expressly states that at best, the concurrence by the Minister of Health amount to an agreement between the two respective Ministers, for the employer to table a proposal at Council and to motivate for the establishment of the social development bargaining chamber as contemplated in the Constitution of the Public Health and Social Development Sectoral Bargaining Council.



12. PROPOSAL

- The legal opinion confirmed that there is nothing in law that prevents the Department of Social Development from making an application to the Council for the establishment of a Departmental Bargaining Chamber.
- It is proposed that Council support the request for the establishment of the Bargaining Chamber for the Department of Social Development.

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