

OFFICE OF THE PUBLIC SERVICE COMMISSION

NOTICE 682 OF 2016

PUBLIC SERVICE COMMISSION ACT, 1997

The Public Service Commission has, under section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), made the Rules contained in the Schedule.



CHAIRPERSON

OF THE PUBLIC SERVICE COMMISSION

SCHEDULE

PUBLIC SERVICE COMMISSION RULES ON REFERRAL AND INVESTIGATION OF GRIEVANCES OF EMPLOYEES IN PUBLIC SERVICE

Definitions

1. In these rules, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context indicates otherwise—

"aggrieved employee" means an employee—

- (a) on whose behalf a grievance is referred to the Commission; or
- (b) who has lodged a grievance with the Commission;

"Cluster Commissioner" means a commissioner appointed in terms of section 196(7)(a) of the Constitution, and who has been assigned responsibility by the Commission to be the overseer of a particular department in order to assist the Commission in executing its mandate in terms of the Constitution;

"Condonation Application Form" means the form prescribed in Annexure B to these rules;

"department" has the meaning ascribed to it by the Public Service Act;

"employee" has the meaning ascribed to it by the Public Service Act;

"executive authority" has the meaning ascribed to it in the Public Service Act;

"grievance" means a dissatisfaction or complaint formally lodged in writing by an aggrieved employee over an official act or omission contemplated in section 196(4)(f)(ii) of the Constitution, but excludes a grievance over an unfair dismissal;

"Grievance Referral Form" means the form prescribed in Annexure A to these rules;

"head of department" has the meaning ascribed to it by the Public Service Act;

"investigator" means a person authorised or delegated by the Commission in terms of section 13 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), to investigate grievances as provided for in section 196(4)(f)(ii) of the Constitution of the Republic of South Africa, 1996 (Act No. 106 of 1996);

"Public Service Act" means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"representative" means a fellow employee, official of a recognised trade union or family member;

" Provincially-based Commissioner" means a commissioner appointed in terms of section 196(7)(b) of the Constitution;

"the Act" means the Public Service Commission Act, 1997 (Act No. 46 of 1997).

CHAPTER 1 PURPOSE OF RULES

Purpose of rules

2. The purpose of these rules is to—
- (a) provide for the investigation by the Commission of grievances by aggrieved employees and the recommendation by the Commission of appropriate remedies;
 - (b) determine the procedure for the referral of grievances to the Commission;
 - (c) determine the procedure for the direct lodging of grievances by heads of departments;
 - (d) provide for timeframes within which grievances may be referred to or lodged with the Commission;
 - (e) determine the procedure for the investigation and consideration of grievances by the Commission;
 - (f) determine service standards applicable to the Commission in investigating and resolving grievances; and
 - (g) provide for mechanisms of monitoring grievances management by departments.

CHAPTER 2 REFERRAL OF GRIEVANCES TO COMMISSION

Referral of grievances to Commission

3. (1) Subject to subrules (2) and (3), an executive authority must submit a grievance lodged with the executive authority by an employee in terms of section 35(1)(a) of the Public Service Act to the Commission if the grievance in question is not resolved to the satisfaction of the employee.

(2) If the grievance in question is not resolved to the satisfaction of the employee, the employee must inform the executive authority of his or her dissatisfaction in writing within 10 days of receipt of the executive authority's decision and must request the executive authority in writing to refer his or her grievance to the Commission for investigation.

(3) The executive authority must submit the grievance to the Commission within 10 days of the receipt of the written request by the employee in terms of subrule (2).

(4) An employee may submit a grievance to the Commission if the executive authority fails—

- (a) to provide the employee with the outcome on the investigation of his or her grievance within the timeframe applicable to the executive authority or on the lapse of the agreed date of extension between the employee and the executive authority; or
- (b) to refer the employee's grievance to the Commission for investigation within 10 days of receiving a written request in terms of subrule (2).

(5) If an official of a recognised trade union as representative of an employee act on behalf of the employee in terms of subrule (4), the relevant part in the Grievance Referral Form must be completed by both the employee and representative.

(6) In case of the lodging of a collective grievance, all employees concerned must sign the Grievance Referral Form.

(7) (a) If the employee who lodged a grievance with the executive authority became seriously ill to the extent that he or she could not personally pursue the grievance, his or her representative may refer the matter to the Commission.

(b) Paragraph (a) applies with the changes required by the context in a case where the employee passed on before the matter could be resolved.

(8) The representative referring the grievance in terms of subrule (7) must submit a statement containing proof that he or she qualifies to refer the grievance in terms of that subrule.

Manner of referral of grievance

4. (1) A grievance submitted to the Commission in terms of rule 3 must be addressed to "The Chairperson of the Public Service Commission" or Commissioner based in that particular Province, using either the postal or physical address of the Commission as listed in Annexure D.

(2) Grievances may be referred to the Commission by—

- (a) registered post, in which case the employee or executive authority must keep proof that the grievance was posted;
- (b) e-mail using the following e-mail address: grievances@opsc.gov.za;
- (c) facsimile, in which case the employee or executive authority must keep proof that the facsimile was successfully transmitted to the Commission; or
- (d) delivered by hand at any of the offices of the Commission, in which case the Commission must provide the employee or executive authority with proof of receipt.

(3) Subject to rule 5, referrals must be signed and dated by the employee and must be accompanied by a copy of the duly completed Grievance Form, signed and dated by the aggrieved employee, the designated employee appointed by the relevant

department to facilitate the resolution of grievances, and where applicable, also signed and dated by the relevant executive authority.

(4) (a) An aggrieved employee who cannot write may visit any office of the Commission and may request to be assisted with the completion the Grievance Referral Form.

(b) The Commission must request that employee to affix his or her left thumb print to the Grievance Referral Form.

Requirements for referral of grievances

5. (1) (a) Referral by an executive authority in terms of rule 3(1) must be done in writing by the executive authority, or an employee so delegated by the executive authority, within the timeframe prescribed in rule 3(3), using the Grievance Referral Form.

(b) The delegated employee must provide proof that he or she has the delegated authority to decide or refer grievances to the Commission.

(2) The executive authority must, when referring a grievance in terms of subrule (1), provide the Commission with the following:

- (a) The executive authority's decision and reasons for the decision;
- (b) a copy of the investigation report together with its annexures;
- (c) a copy of the letter of the outcome of the investigation furnished to the aggrieved employee;
- (d) a copy of the aggrieved employee's Grievance Form;
- (e) copies of policies and other relevant prescripts and information used in dealing with the grievance; and
- (f) the aggrieved employee's request for referral of the grievance to the Commission that was addressed to the executive authority.

(3) Referral by the aggrieved employee or his or her representative in terms of rule 3(4), (5) or (6) must be done—

- (a) within the timeframe prescribed in the department's grievance procedure for such referral after the lapse of the prescribed timeframe for the executive authority to deal with the grievance, or on the lapse of the agreed date of extension between the employee and the department or executive authority; and
- (b) after following the necessary steps provided for in the department's grievance procedure.

(4) In referring the grievance in terms of rule 3(4) (5), or (6) the aggrieved employee must—

- (a) complete and sign the Grievance Referral Form in full in order to provide the Commission with the information required in the Grievance Referral Form;
- (b) provide the Commission with a copy of the Grievance Form used to lodge the grievance with the executive authority, which Grievance Form must have been signed by both the aggrieved employee and the representative of the executive authority as proof that the grievance procedure of the department was followed;
- (c) provide the Commission with proof that the aggrieved employee had directed an inquiry in writing to the department or executive authority regarding the status of his or her grievance and that he or she was not provided with a response within five days; and
- (d) provide the Commission with copies of all correspondence between the aggrieved employee and the department or executive authority on the grievance in question.

(6) The Commission will not consider any grievance that was not lodged formally with the executive authority.

Office hours

6. Grievances may be referred to or lodged with the Commission any day from Monday to Friday, excluding public holidays, between the hours of 08h00 (8am) to 16h30 (4.30pm).

CHAPTER 3

REFERRAL AND LODGING OF GRIEVANCES BY HEADS OF DEPARTMENTS

Referral and lodging of grievances by heads of departments

7. (1) A head of department may refer a grievance which he or she has lodged with the executive authority in terms of section 35(3)(a) of the Public Service Act to the Commission if the grievance is not resolved within 45 days of receipt thereof by the executive authority or within the timeframes agreed between them in writing.

(2) In referring a grievance in terms of subrule (1) the head of department must—

- (a) attach a copy of the Grievance Form used to lodge the grievance with the executive authority;
- (b) attach copies of documents relevant to the grievance;
- (c) submit information relating to the steps taken in an attempt to resolve the grievance, including dates on which those steps were taken; and

(d) attach proof that he or she enquired with the executive authority about the finalisation of his or her grievance and that five days has lapsed without any feedback.

(3) (a) An executive authority may refer a grievance of a head of department to the Commission for consideration, if the executive authority is of the opinion that the executive authority would not be able to deal with the grievance.

(b) If the executive authority refers the grievance in terms of paragraph (a), the executive authority must—

- (i) do so in writing within five days of receipt thereof;
- (ii) provide reasons in writing why the executive authority is of the view that the executive authority would not be able to deal with the grievance; and
- (iii) inform the head of department in writing that the executive authority has referred the grievance to the Commission.

(c) An executive authority must refer a grievance of a head of department to the Commission for consideration if, after having provided feedback to the head of department, the head of department—

- (i) informs the executive authority of his or her dissatisfaction in writing within 10 days of receipt of the feedback;
- (ii) provides reasons for his or her dissatisfaction in writing; and
- (iii) requests the executive authority in writing to refer the grievance to the Commission.

(4) An executive authority must, when referring a grievance, attach the head of department's Grievance Form and its annexures, copy of the investigation report, copy of the outcome letter to the head of department and all relevant documentation including applicable policies and other prescripts.

(5) (a) A head of department may lodge his or her grievance directly with the Commission if—

- (i) the executive authority has refused to receive his or her Grievance Form;
- (ii) when trying to resolve the grievance informally with the executive authority before completing a Grievance Form, the executive authority—
 - (aa) fails to respond to his or her correspondence; or
 - (bb) refuses to advise him or her by when the matter would be resolved.

(b) A head of department may lodge a grievance with the Commission directly within 90 days of becoming aware of the official act or omission by—

- (a) completing the Grievance Referral Form;
- (b) attaching copies of all documents relevant to the grievance;
- (c) indicating the steps taken to resolve the grievance before referring it to the Commission;
- (d) providing written reasons for direct referral;

- (e) informing the executive authority of the direct lodging of the grievance with the Commission by—
 - (i) serving the executive authority with a copy of the Grievance Referral Form and documents submitted to the Commission; and
 - (ii) requesting acknowledgement of proof of receipt; and
- (f) providing the Commission with proof that the executive authority was properly informed.

CHAPTER 4

TIMEFRAMES APPLICABLE TO REFERRAL OR LODGING OF GRIEVANCES WITH COMMISSION

Timeframes to be complied with

8. (1) Strict compliance with the timeframes prescribed in the department's grievance procedure and these rules is mandatory in order to ensure a speedy resolution of grievances and promote sound labour relations.

(2) Subject to subrule (3), the Commission may deal with the grievance only if the grievance was lodged with the executive authority by the aggrieved employee within 90 days of the aggrieved employee becoming aware of the official act or omission.

(3) The Commission may deal with grievances that were lodged with the executive authority by the aggrieved employee after the expiry of the 90 days period referred to in subrule (2), if—

- (a) the department's grievance procedure permits for the lodging of grievances outside that period; and
- (b) the department's prescribed timeframe was complied with.

(4) An executive authority referring a grievance that was lodged after the 90 days period or outside the department's prescribed timeframe for the lodging of a grievance, must provide the Commission with—

- (a) written reasons why the grievance was considered despite the non-compliance with the prescribed timeframes; or
- (b) proof that condonation was applied for by the aggrieved employee and granted by the executive authority.

(5) An aggrieved employee referring a grievance that was lodged outside the prescribed timeframe must provide proof that condonation was granted by the executive authority, which then afterwards failed to finalise the matter within the prescribed timeframe.

(6) The Commission must finalise the investigation of a properly referred grievance and provide the aggrieved employee concerned and relevant executive authority with the outcome within 30 days of receipt of all information.

(7) The Commission must, in cases where it foresees that it will not be able to meet the timeframe prescribed in subrule (6), advise the aggrieved employee concerned and relevant executive authority of its inability to finalise the grievance within the timeframe, and must provide them with reasons for the delay.

Application for condonation

9. (1) The aggrieved employee or executive authority must, if one of them wishes to refer a grievance which is outside the timeframe prescribed for referral to the Commission, first apply for condonation for the late referral to the Commission.

(2) (a) The party applying for condonation must complete the Condonation Application Form.

(b) In the case of an executive authority, the Condonation Application Form may be completed by an employee so delegated by the executive authority.

(3) (a) The Commission must within five days of receipt of the Condonation Application Form, request the executive authority or the aggrieved employee, as the case may be, to comment on the request for condonation.

(b) The party responding to the request must use the Condonation Application Form and must furnish the Commission with his or her comments within five days of receipt of the Commission's request for comments.

(4) The Commission may finalise the application for condonation without the responding party's comments if the latter fails to respond within the stipulated timeframe.

(5) The Commission must consider the application for condonation and provide the party applying for condonation with its decision within 10 days of receipt of the application.

(6) The party applying for condonation must address the following issues in its application for condonation:

- (a) The degree of lateness;
- (b) The reasons for lateness;
- (c) The extent of prejudice likely to be suffered if the Commission does not investigate the grievance sought to be referred;
- (d) Any prejudice to the other party;
- (e) Any practical remedy for, or possible solution, to the grievance;

- (f) Any prospects that the outcome of the Commission's investigation will resolve the grievance;
- (g) Any special circumstances why the grievance should be considered; and
- (h) Any other relevant factors.

(7) The Commission must consider the application for condonation based on the issues referred to in subrule (6) and must provide reasons for its decision.

(8) Applications for condonation must be considered by the Cluster Commissioner responsible for the department involved and in the Commission's provincial offices, the Provincially-based Commissioner must consider the application for condonation.

(9) The Cluster Commissioner or Provincially-based Commissioner contemplated in subrule (8) must within the timeframe prescribed in subrule (5) issue the aggrieved employee concerned or relevant executive authority with his or her decision by completing the relevant section in the Condonation Application Form.

(10) In cases where condonation is granted, the party applying for condonation must refer his or her grievance documents to the Commission within five days of receipt of the decision referred to in subrule (9).

(11) This rule applies to any of the timeframes prescribed in these Rules, except for the timeframe to comment on the draft report provided for in rule 17(9).

CHAPTER 5

PROCESSING AND CONSIDERATION OF GRIEVANCES RECEIVED BY THE PSC

Registration and allocation of grievances received

10. (1) The Commission must upon receipt of a grievance—

- (a) open a file for the grievance and register it in either of the following database:
 - (i) Database for properly referred grievances; or
 - (ii) Database for no jurisdiction / not properly referred cases;
- (b) number the grievance with a consecutive number for the year during which it was received and in the category under which it falls; and
- (c) acknowledge receipt of the grievance within 48 hours of receipt thereof.

(2) The Commission must within three days of receipt of a grievance—

- (a) conduct a pre-assessment of the grievance to determine whether or not the Commission has jurisdiction to investigate the grievance and must advise the referring party accordingly; and
- (b) where the Commission has jurisdiction, assign the grievance to one or more Commissioners, or to an investigator for investigation.

(3) The investigator to whom a grievance has been assigned must keep the referring party updated of developments in the investigation of the grievance under consideration at all material times.

(4) The Commission must provide the aggrieved employee and executive authority with the contact details of the investigator to whom the grievance has been allocated, and the aggrieved employee and executive authority may address any enquiries with the investigator concerned.

Request for additional information

11. (1) The investigator to whom a grievance has been assigned may, upon receipt of a grievance, request the aggrieved employee or executive authority to provide additional information in order to enable the Commission to make a proper analysis and an informed decision on the finding of the grievance.

(2) Additional information from the department or executive authority may be requested—

- (a) telephonically, followed by a written request, whether by e-mail or a faxed letter to the relevant employee of the department or to the executive authority;
- (b) through a letter directed to the head of the relevant department;
- (c) through consultation or interviews with the relevant employees from the relevant department or with the executive authority, provided that the request for a consultation or an interview is confirmed in writing, whether through e-mail or letter to the employees involved; or
- (d) by visiting the relevant department or executive authority to obtain information or interview relevant employees.

(3) (a) In a case where employees from the department are not cooperating in providing the requested information, the Director-General of the Office of the Commission must request the information in an official letter addressed to the head of department concerned.

(b) The letter must contain a warning clause that failure by the head of department to provide the Commission with the required information within a period of 10 days, will result in summons being issued against him or her and any of the employees from whom the information was originally requested.

(4) If after receipt of the letter referred in subrule (3) the head of department fails to provide the information requested, the Commission may issue a summons, calling on the head of department and the employees from whom the information was originally

requested to appear before the Commission to be questioned at a time and place specified in the summons.

(5) The Cluster Commissioner or the Provincially-based Commissioner, as the case may be, or any Commissioner so delegated by the Commission must conduct or lead the enquiry emanating from the issue of the summons.

(6) The Commission may report any executive authority that fails to provide the Commission with information required in its investigations to the National Assembly or relevant Provincial Legislature, as the case may be.

Consideration of grievances by Commission

12. (1) The Commission may after pre-assessment decide to—

- (a) close the grievance without any further investigation;
- (b) resolve the grievance through mediation;
- (c) investigate the grievance and subject it to deliberations before a Panel of Commissioners, who must make a finding—
 - (i) that the allegation is true, supported by evidence and therefore substantiated;
 - (ii) that the allegation is not true, not supported by evidence and therefore unsubstantiated;
 - (iii) of no jurisdiction; or
 - (iv) that the matter must be deferred for further investigation;
- (d) conduct a formal inquiry into the matter in terms of section 10 of the Act; or
- (e) refer the matter to an appropriate public body or authority, including the Public Protector appointed as such in terms of section 1A of the Public Protector Act, 1994 (Act No. 23 of 1994).

(2) The Commission must record its findings and reasons for any decision taken in subrule (1) in writing and where applicable also make written recommendations to the relevant department.

(3) The Commission must communicate the outcome of its investigation in writing to the executive authority and where the grievance was referred by an aggrieved employee, also to the aggrieved employee.

(4) Once the Commission has made a finding on a grievance and has made recommendations, it may not reconsider the finding or alter the recommendations.

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Grievances closed without further investigation

13. (1) The Commission must close grievances without further investigation if—
- (a) there is *prima facie* no compliance with the grievance procedure of the relevant department and the aggrieved employee has, after having been afforded an opportunity to provide proof of compliance, failed to do so within the period prescribed by the Commission;
 - (b) the aggrieved employee has failed to complete the Grievance Referral Form;
 - (c) after referral the aggrieved person informs the Commission in writing that he or she is withdrawing the grievance;
 - (d) after referral the executive authority or the aggrieved employee informs the Commission in writing that the grievance was subsequently resolved internally;
 - (e) the Commission is informed by the aggrieved employee or the executive authority that the same matter is pending before a bargaining council, court, other alternative dispute resolution forum or any other institution that has jurisdiction to entertain the matter;
 - (f) the grievance was referred by a former employee on a matter which he or she raised with the executive authority after his or her termination of service, in which case the grievances must be referred to the executive authority for further handling in terms of section 3(8) of the Public Service Act;
 - (g) the grievance relates to allegations of unfair dismissal; or
 - (h) the grievance relates to a matter which is the subject of a disciplinary action being taken against the aggrieved employee.

(2) The Commission must close a grievance if, after receipt thereof, the aggrieved employee or the employee against whom the grievance is lodged passes on and continuation of the investigation would not have an outcome which has any bearing on the aggrieved employee's financial benefits and integrity.

Panels of Commissioners to consider and make findings on certain grievances

14. (1) The Commission may establish a Panel of Commissioners to consider grievances assigned to investigators for investigation.

(2) A grievance investigated in terms of rule 12(1)(c) must be presented to a Panel of Commissioners to consider and make a finding on the grievance in question.

(3) A meeting of a Panel to consider a grievance is a closed internal session only open to Commissioners and internal investigators of the Commission.

Communication by Commission of outcome of grievance investigation

15. (1) The Commission must, after investigating a grievance, communicate the outcome thereof in writing to the executive authority.

(2) Communication of the outcome must be through a letter containing the following:

- (a) The name and PERSAL number of the aggrieved employee whose grievance was referred to the Commission;
- (b) A brief summary of the facts;
- (c) The findings of the Commission and reasons therefor, which must include the applicable law and prescripts; and
- (d) Recommendations, where this is applicable.

(3) The executive authority to whom a recommendation has been made must, within 10 days of receipt of Commission's letter, provide the Commission with comment indicating whether or not the executive authority is going to implement recommendations made by the Commission.

(4) The executive authority must, if he or she is not going to implement the recommendations of the Commission, provide the Commission with reasons for not implementing.

Mediation of grievances referred or lodged directly with the Commission

16. (1) This rule applies to grievances that were properly referred or lodged with the Commission.

(2) The Commission may follow a mediation process in order to resolve a grievance, where it is clear that there is—

- (a) a misunderstanding of the prescripts on the part of either the aggrieved employee or executive authority;
- (b) an unrealistic solution proposed by the aggrieved employee in a case where the prescripts have been properly followed and applied;
- (c) *prima facie* evidence that the executive authority mistakenly omitted to include the aggrieved employee when taking a particular action towards a certain category or group of employees.

(3) (a) The Commission must give the aggrieved employee or executive authority at least five days written notice of the intended mediation, unless the aggrieved employee or executive authority agree to a shorter notice.

(b) The written notice must outline the procedure to be followed during the process and the venue where the proceedings will be conducted.

(4) The Commission must, before the commencement of the mediation proceedings, require the parties to sign a mediation agreement which must include, among others, the following:

- (a) That the proceedings and any correspondence pertaining to such proceedings are private and confidential.
- (b) That neither the aggrieved employee nor executive authority or any other person may use the contents of any discussion during those proceedings or such correspondence at any subsequent hearing or proceedings, unless the Commission and everybody involved in the mediation so agree in writing.

(5) The Commission must determine the manner in which the proceedings will be conducted and the manner in which the parties will conduct themselves during the proceedings.

(6) The Commission must assist the aggrieved employee and executive authority in concluding a settlement agreement, which must be in writing, signed and dated by both parties, and witnessed by the Cluster Commissioner, Provincially-based Commissioner or assigned investigator.

(7) The Commission must ensure that the mediation, including the settlement agreement, is finalised within 30 days of having notified the parties of the mediation process.

(8) (a) The Commission must close the grievance if the aggrieved employee fails to attend the proceedings without providing any explanation in writing of his or her inability to attend the mediation.

(b) In such a case the grievance must be closed within 10 days of the date on which the mediation was scheduled.

(9) (a) The Commission must continue with its investigation and make a finding and recommendations on the matter if the executive authority fails to attend the mediation proceedings without providing any written explanation.

(b) The Commission must note in its investigation report that the executive authority failed to attend the mediation proceedings.

(10) Where the Commission continues with the investigation in terms of subrule (9), the matter must be finalised within 45 days of the date on which the mediation was scheduled.

(11) The Commission may only mediate a grievance that has been properly referred to it in terms of these rules.

(12) Where a settlement agreement was entered into, the executive authority must provide the Commission with proof of implementation within 30 days of the date of agreement.

(13) Legal representation is not permitted in the process since the intention is to facilitate a speedy resolution of the grievance.

(14) (a) An informal mediation process may be followed by an investigator, in which case a mediation agreement is not necessary.

(b) Where a grievance was resolved through an informal mediation process the parties must confirm in writing that the grievance has been resolved, and the Commission must close the grievance file.

Conducting of inquiry to investigate grievance

17. (1) The Commission may, in terms of section 10 of the Act, conduct an inquiry into a grievance—

- (a) referred or lodged directly by a head of department, if the Commission is of the opinion that the subject matter of the grievance cuts across or has or is affecting different operations of the relevant department;
- (b) relating to an employee other than a head of department, if—
 - (i) the Commission is of the opinion that the subject matter of the grievance cuts across or has or is affecting different the operations of the relevant department; and
 - (ii) the grievance, although lodged and referred by one employee, affects other employees;
- (c) if the Commission is of the opinion that the subject matter of the grievance is of a complex nature and requires the Commission to call for written or oral evidence of experts in particular fields of study involved in the subject matter of the grievance.

(2) (a) The decision to conduct a formal enquiry on the grievance must be made by the Chairperson of the Commission, Deputy Chairperson of the Commission, Cluster Commissioner or Provincially-based Commissioner.

(b) The other Commissioners on the Panel of Commissioners and investigators assigned to the investigation of the grievance may participate in the hearing.

(3) The Commission must notify the aggrieved employee or executive authority in writing that a formal inquiry will be conducted on the grievance.

(4) The Commission must summons any person required to provide information or documentary evidence to the Commission in terms of section 10(2) of the Act.

(5) The Commission must follow an inquisitorial and not an adversarial approach during the inquiry.

(6) The inquiry is an internal closed process which may be chaired by either—

- (a) the Chairperson of the Commission;
- (b) Deputy Chairperson of the Commission;
- (c) Cluster Commissioner; or
- (d) Provincially-based Commissioner, who must before the commencement of the hearing—

- (a) welcome the parties and explain the purpose of the hearing;
- (b) formally record the details of the participants and their designations;
- (c) explain the inquisitorial nature of the hearing and the procedure to be followed;
- (d) summarise the grievance and state the issue to be determined;
- (e) indicate the order in which evidence will be taken from the witnesses and the role of other participants during the process;
- (f) make a determination on how documentary evidence will be taken; and
- (g) make any other determination necessary on any other aspect of the hearing.

(7) The chairperson of the hearing may, if he or she deems it necessary, administer an oath or accept an affirmation from a witness.

(8) The chairperson must make a determination on the admissibility of evidence.

(9) At the conclusion of the inquiry the Panel of Commissioners must evaluate the evidence and produce a provisional report with findings and recommendations, which, where necessary, must be made available to the parties to comment or respond thereon within the timeframe provided by the Commission.

(10) The Commission must issue the final report with findings and recommendations, where necessary, after considering the comments or response from all the parties.

(11) The Commission must, if no comments or response is received after the date contemplated in subrule (9), continue to finalise the report.

(12) The Commission must, if it does not agree with any aspect of the comments or response from any of the parties—

- (a) continue to finalise the report regardless of the comments or response;
- (b) indicate in the report any aspect with which the Commission does not agree and the reasons for disagreement; and
- (c) attach the response of the party to the final outcome of the inquiry as an annexure.

(13) Legal representation is not permitted in the process since the intention is to facilitate a speedy resolution of the grievance.

(14) (a) The hearing must be conducted in English, unless a witness requests otherwise.

(b) A witness contemplated in paragraph (a) must inform the Commission within three days of receipt of the Commission's notification of the hearing in which language he or she wishes to testify.

(c) The Commission must then obtain the services of an interpreter if necessary.

Guiding principles and standards in investigations and consideration of grievances

18. The Commission, when it investigates and considers grievances, must—

- (a) be independent and impartial and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration;
- (b) promote the highest standard of professional ethics;
- (c) strive to finalise grievance investigation within the prescribed timeframes;
- (d) apply the rules of administrative justice;
- (e) follow the inquisitorial approach and be objective;
- (f) provide departments with legally sound and implementable recommendations;
- (g) encourage speedy resolution of grievances; and
- (h) promote sound labour relations.

CHAPTER 6

COMMISSION TO MONITOR RECOMMENDATIONS

Commission to monitor recommendations

19. (1) The Commission must issue its findings and make recommendations in respect of a grievance investigation to the executive authority, who must within 10 days of receipt of the findings and recommendations notify the Commission whether or not the executive authority is going to implement the recommendations made by the Commission.

(2) The executive authority must, in the case where the executive authority decides not to implement the recommendations by the Commission, provide the Commission with reasons for not doing so within the 10 days' period referred to in subrule (1).

(3) The executive authority must, in the case where the executive authority decides to implement the recommendations by the Commission, provide the Commission with an update and proof of that implementation, within 60 days of the date of receipt of the findings and recommendations in terms of subrule (1).

(4) The Commission must, on a six-monthly basis request a head of department to provide the Commission with information relating to grievance resolution in his or her department, in order to enable the Commission to—

- (a) analyse trends and to promote a cultivation of good human resource management and career-development in order to maximise human potential in the public service;
- (b) promote accountability in public administration; and
- (c) report annually to the—
 - (i) National Assembly; and
 - (ii) provincial legislatures.

(5) The Commission must in its annual report in terms of subrule (4)(c) also report about departments who fail to comply with subrules (1), (2) and (3).

CHAPTER 7

GENERAL

Customer service

20. (1) Enquiries about services rendered in respect of any grievance lodged or referred to the Commission may be made with the investigator concerned.

(2) Any person may raise his or her dissatisfaction with the handling of the grievance by the Commission by completing the Grievance Service Complaint Form prescribed in Annexure C to these rules and by submitting the form to the Commission.

Transitional measures

21. Grievances lodged or referred to the Public Service Commission in terms of the Rules published by Government Notice R.1012 of 25 July 2003 and Government Notice 816 of 17 September 2010 before the gazetting of the rules shall be dealt with by the Public Service Commission in the same manner as was dealt with before the gazetting of these rules."

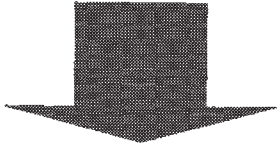
Short title and commencement

22. These Rules are called the Public Service Commission Rules on Referral and Investigation of Grievances of Employees in the Public Service and come into operation on the date of publication in the *Government Gazette*.

ANNEXURES

- A. Grievance Referral Form
- B. Condonation Application Form
- C. Grievance Service Complaint Form
- D. Physical and postal addresses of Commission

ANNEXURE A

READ THIS FIRST 	GRIEVANCE REFERRAL FORM	
WHAT IS THE PURPOSE OF THIS FORM? <i>This form is to be completed when referring the grievance to the Public Service Commission.</i> WHO FILLS IN THIS FORM? ☐ The aggrieved employee or his representative if the department has failed to deal with the grievance within the timeframe prescribed in the grievance procedure; ☐ Representative of the Department if the aggrieved is not satisfied with the decision of the executive authority and has requested referral to the PSC; or ☐ The HOD requesting an investigation into his / her grievance. <i>Representative must attach proof of delegation / authorisation.</i>	1. DETAILS OF THE AGGRIEVED EMPLOYEE / HOD REQUESTING INVESTIGATION Initials and Surname : _____ PERSAL Number : _____ Designation / Rank : _____ Salary Level : _____ Tel: _____ Fax: _____ Cell: _____ Email: _____ Postal Address : _____ _____ _____ Name of Department : _____ Where stationed : _____ 2. DETAILS OF THE REPRESENTATIVE ACTING ON BEHALF OF THE AGGRIEVED EMPLOYEE / EXECUTIVE AUTHORITY (DEPARTMENT) Initials and Surname : _____ Capacity / Relationship with the aggrieved: _____ Reason for representing the aggrieved: _____ Proof attached: Yes / No _____ Reason why proof not attached: _____ Contact Number : _____	

WHERE DOES THE FORM GO? <i>Once completed the form may be e-mailed to grievances@opsc.gov.za or be sent to the either the PSC office in Pretoria (for grievances emanating from national departments) or to the relevant provincial office at the addresses listed in Annexure D of the Rules.</i>	E-mail Address : _____ Postal Address: _____ _____ _____ OR Name of Union : _____ Contact Number : _____ E-mail Address : _____ Postal Address: _____ _____ _____
WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED? <i>The grievance will be registered and case be allocated to an investigator. The aggrieved / department will be provided with the grievance case number and the details of the investigator.</i>	3. REASON FOR REFERRAL Answer: Yes / No Referral in terms of Rule 3(3): _____ The executive authority failed to refer the grievance in terms of rule 3(4)(a): _____ The executive authority failed to refer the grievance in terms of rule 3(4)(b): _____ Referral in terms of rule 7(1): _____ Referral in terms of rule 7(3): _____ Direct lodging with the PSC in terms of rule 7(5): _____
COMPLIANCE WITH TIMEFRAMES <i>The PSC will not deal with grievances that were lodged / referred outside the prescribed timeframes, unless if condonation was granted.</i>	4. DETAILS OF THE GRIEVANCE Date of becoming aware: _____ Summary of the grievance: _____ _____ _____ _____ Proposed solution: _____ _____

Documents attached ○ <i>Copy of Grievance Form</i> ○ <i>Proof in terms of rule 3(8)</i>	5. SIGNATURES AND ATTACHMENTS Aggrieved Employee: Signature _____ Day / Month / Year _____ _____ Date: __/__/20__ Name of representative of aggrieved / designated employee of department): _____ Rank (relationship in case of family member): _____ Signature _____ Day / Month / Year _____ _____ Date: __/__/20__ Name of Executive / Delegated Authority: Mr/Ms/Prof/Dr/ _____ Rank (in case of delegated authority): _____ Signature _____ Day / Month / Year _____ _____ Date: __/__/20__

ANNEXURE B**CONDONATION APPLICATION
FORM****APPLICANT: DETAILS OF THE AGGRIEVED EMPLOYEE / REPRESENTATIVE / DEPARTMENT**

Initials and Surname : _____

PERSAL Number : _____

Designation / Rank : _____

Salary Level : _____

Department _____

Capacity (e.g. delegated by the aggrieved : _____

or the executive authority, etc. *(Provide proof)*

Tel : _____ Fax : _____

Cell : _____ Email: _____

Postal Address:

AND**RESPONDENT: DETAILS OF THE AGGRIEVED EMPLOYEE / REPRESENTATIVE / DEPARTMENT**

Initials and Surname : _____

PERSAL Number : _____

Designation / Rank : _____

Salary Level : _____

Department _____

Capacity (e.g. delegated by the aggrieved : _____

or the executive authority, etc. *(Provide proof)*

Tel : _____ Fax : _____

Cell : _____ Email: _____

Postal Address:

AFFIDAVIT

1. BACKGROUND

1.1 The grievance relates to _____

1.2 The aggrieved became aware of the official act or omission on / The Department received the grievance / request from the aggrieved employee / his or her representative on _____

1.3 The applicant followed the following internal procedure: _____

2. DEGREE OF LATENESS

2.1 The referral is _____ days late (excluding the 90 days as stipulated in the Rules)

2.2 Applicant did the following after becoming aware of the official act or omission / The Department did the following after receiving the grievance or request from the aggrieved employee or his / her representative:

2.2.1 _____

2.2.2 Applicant telephoned _____ on _____.

2.2.3 Applicant signed the referral form on _____

2.2.4 Other:

3. REASONS FOR LATENESS

The reason/s the applicant referred the matter late is / are the following:

4. PROSPECTS OF SUCCESS

Applicant believes that he/she has good cause because

5. PREJUDICE

5.1 As the applicant (employee / department), if condonation is not granted, I will be prejudiced because _____

5.2 As the respondent (employee / department), if condonation is granted, I will be prejudiced because _____

6. GENERAL

Any other relevant information _____

7. The respondent must, in terms of rule 9(3)(b) of the Rules, comment on the application for condonation or file an affidavit opposing an application for condonation by the applicant within five days of receipt of this affidavit from the Commission.

8. It should be noted that the Commission may finalise the application for condonation without the responding party's comments if the latter fails to respond within the stipulated timeframe.

Signature of Applicant

Signature of Respondent

Date: ____/____/20____

Date: ____/____/20____

Signed before me on _____ at _____
by the deponent who acknowledges that he/she knows and understands the contents of the affidavit, has no objection to taking the oath/affirmation and considers it binding upon his/her conscience.

Commissioner of Oaths _____

Name _____

Address _____

Capacity _____

DECISION OF THE COMMISSION

After considering submissions made on the condonation application, the Commission has decided
☐ to grant / ☐ not to grant condonation based on the following:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

NAME OF COMMISSIONER: __________
Signature

Date: ____/____/20____

ANNEXURE C

GRIEVANCE SERVICE COMPLAINT FORM



NB: This form can only be used to register a complaint with regard to the service rendered/being rendered on the investigation of a grievance that has already been referred to the Public Service Commission, and for which a case number has been allocated. E.g. Not receiving an update; taking long to finalise the grievance; etc

DETAILS OF THE COMPLAINT

Grievance Case Number : _____

Date referred to the PSC : _____

Name of investigator : _____

Name of aggrieved employee / representative : _____

Tel : _____ Fax: _____

Cel : _____ Email : _____

Reason for dissatisfaction with regard to the PSC service :

Signature

Day / Month / Year

_____ Date: ____/____/20____

ANNEXURE D

**PHYSICAL AND POSTAL
ADDRESSES OF THE
COMMISSION**



POSTAL ADDRESS	PHYSICAL ADDRESS
NATIONAL OFFICE OF THE PUBLIC SERVICE COMMISSION PRIVATE BAG X121 PRETORIA 0001 Tel: (012) 352 1000 Fax: (012) 328 6105	ABSA BUILDING CNR PRETORIUS & LILLIAN NGOYI STREETS PRETORIA 0001 grievances@opsc.gov.za
EASTERN CAPE P.O. BOX 2167 KING WILLIAM'S TOWN 5600 Tel: (043) 643 4704 Fax: (043) 642-1371 / 0866476021	91 ALEXANDRA ROAD KING WILLIAM'S TOWN 5601 grievances@opscec.gov.za
FREE STATE PRIVATE BAG X20572 BLOEMFONTEIN 9300 Tel: (051) 448 8696 Fax: (051) 448-4135 / 0866476056	62 FEDSURE BUILDING 3RD FLOOR ST ANDREW STREET BLOEMFONTEIN 9301 grievances@opscfs.gov.za

GAUTENG P.O BOX 8962 JOHANNESBURG 2000 Tel: (011) 833 5701/2/3/4/5 Fax: (011) 834-1200	16TH FLOOR TEN SIXTY-SIX BUILDING 35 PRITCHARD STREET (CORNER HARRISON STREET) JOHANNESBURG 2000 grievances@opscgp.gov.za
KWAZULU-NATAL PRIVATE BAG X 9130 PIETERMARITZBURG 3200 Tel: (033) 345 9998 Fax: (033) 345-8505	221 PIETERMARITZ STREET 1 ST FLOOR, PRESTASIE HOUSE PIETERMARITZBURG 3201 grievances@opsckzn.gov.za
LIMPOPO PRIVATE BAG X 9543 POLOKWANE 7000 Tel: (015) 291 4783 Fax: (033) 345-8505 / 0866476086	KIRK PATRICK BUILDING 40 SCHOEMAN STREET POLOKWANE 0701 grievances@opsclp.gov.za
MPUMALANGA P.O BOX 11303 NELSPRUIT 1200 Tel: (013) 755 4070 Fax: (013) 752-5814	19 RUSSEL STREET NELSPRUIT 1201 grievances@opscmp.gov.za
NORTHERN-CAPE PRIVATE BAG X 5071 KIMBERLEY 8300 Tel: (053) 832 6222 Fax: (053) 832-6225 / 0866479837	WOOLWORTHS BUILDING 1ST FLOOR CNR LENNOX AND CHAPEL STREET KIMBERLEY grievances@opscnc.gov.za

NORTH-WEST PRIVATE BAG X 2065 MMABATHO 2735 Tel: (018)384 1000 Fax: (018) 384-1012	 SHOP 112, GROUND FLOOR UNIT 1, MEGACITY SHOPPING CENTRE CNR SEKAME STREET AND DR JAMES MOROKA DRIVE MMABATHO 2735 grievances@opscnw.gov.za
WESTERN-CAPE P.O BOX 2078 CAPE TOWN 8000 Tel: (021) 421 3980 Fax: (021) 421-4060 / 0865297499	 21 ST FLOOR SANLAM GOLDEN ACRE BUILDING ADDERLY STREET CAPE TOWN 8001 grievances@opscwc.gov.za