



COMPLAINTS HANDLING PROCEDURES

OF

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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CHAPTER 1: PREAMBLE AND PURPOSE OF THESE PROCEDURES

1.1 PREAMBLE

The South African Human Rights Commission (the Commission) was established in terms of s181(1)(b) of the Constitution of the Republic of South Africa (the Constitution) to strengthen constitutional democracy to promote, protect, and monitor human rights, and to create a culture of human rights in South Africa.

The Commission fulfils several crucial roles in advancing human rights in South Africa. These include:

Protection mandate

The Protection mandate empowers the Commission to directly intervene in situations where human rights violations have occurred. This mandate is proactive and often immediate in nature, aiming to prevent further infringements and safeguard the rights of individuals or communities. It involves a variety of mechanisms to resolve complaints, such as:

- Alternative Dispute Resolution (ADR): A non-confrontational approach that aims to resolve issues through mediation, negotiation, or other non-litigious methods.
- Investigation: Fact-finding activities that may include interviews, document reviews, and site visits to gather evidence concerning the alleged violation.
- Litigation: Legal proceedings initiated to enforce human rights and seek remedies for violations.
- Hearings: Formal sessions where evidence and testimonies are presented to make determinations on human rights issues.
- Research: A study into the issues, laws, and trends related to human rights violations. This can involve analysing legal frameworks, societal impacts, historical data, and case studies to understand the extent of rights violations and to develop strategies for prevention and redress. Research is crucial for informing the Commission's actions and policies, providing evidence-based recommendations, and educating the public and stakeholders about human rights issues.

Promotion mandate

The Promotion mandate focuses on the long-term objective of ingraining a culture of human rights within society. It is more preventative and educational in nature,

targeting both the general populace and specific stakeholders. Elements might include:

- Awareness: Public campaigns, workshops, and publications aimed at improving understanding of human rights laws and principles.
- Education: Collaborating with educational institutions to integrate human rights topics into curricula or offering training sessions to members of the public, public and private organisations.
- Advocacy: Engaging with policymakers, non-governmental organisations, and other stakeholders to push for human rights-friendly policies and practices.

Monitoring mandate

The Monitoring mandate is oriented towards assessment and oversight. It serves as a continual check on the state of human rights in the country. This mandate involves:

- Monitoring: Routine and targeted checks to assess compliance with human rights standards by various entities, including governmental bodies.
- Assessment: Compiling data, analysing trends, and producing reports that evaluate the state of human rights.
- Identification of Challenges: Recognising persistent or emerging issues that require attention and possibly intervention, either through the Protection or Promotion mandates.

Each of these mandates complements the others, together forming a comprehensive approach to safeguarding human rights.

The South African Human Rights Commission Act, 40 of 2013 (the Act) further empowers the Commission to perform its constitutional mandate and perform its functions.

1.2 PURPOSE

1.2.1 The Purpose and Importance of the Complaints Handling Procedures

1.2.1.1 The Complaints Handling Procedures (CHP) form a foundational element of the Commission's commitment to addressing human rights grievances. These procedures provide a structured framework for individuals and entities to present their concerns, seek resolutions, and pursue appropriate remedies.

1.2.1.2 By adhering to the CHP, the Commission ensures that human rights violations are

not merely identified but also effectively addressed, in line with its constitutional responsibilities.

1.2.2 Navigating the Chapters Ahead

1.2.2.1 This document, organised into distinct chapters, explains the process through which complaints are received, assessed, and ultimately resolved by the Commission. Each chapter addresses specific aspects of this journey, guiding both Complainants and Respondents through the procedures that uphold the dignity and rights of all South Africans.

1.2.2.2 In appropriate circumstances, the Commission may deviate from the application of all or any part of these Procedures. Where a procedural matter arises that is not covered by these Procedures or the Act, the Commission may nevertheless deal with it in such manner as it deems appropriate in the circumstances in line with the constitutional mandate of the Commission and principles of natural justice.

CHAPTER 2: DEFINITIONS

The words and terms used in these Procedures have the same meaning as they do in the Act. In these Procedures:

Assessment means the process of screening a complaint to determine whether the complaint should be registered as a formal complaint or be processed as an enquiry and whether the Commission is best placed to address a complaint as contemplated in s13(3)(a) of the Act or whether the complaint should be referred. Direction and guidance may also be given on the further handling of the complaint during the assessment.

Association means a group of persons organised for a joint purpose.

Categorisation means a determination by a Provincial Manager, Head of Legal Services, the Legal Sub-Committee or the Body of Commissioners that a complaint should be categorised as a Commissioner-facilitated Matter.

Chairperson means the Chairperson of the Commission.

Child means any person under the age of 18 years.

Child complaint means a complaint:

- from a child about an alleged rights violation; or
- about an alleged rights violation of a child or children; or
- about an alleged rights violation that further impacts the rights of a child or children.

Commission means the South African Human Rights Commission established by s181(1)(b) of the Constitution.

Commissioner means a Commissioner in terms of s 5(1) of the South African Human Rights Commission Act

Commissioner-facilitated hearing means a hearing involving human rights violations and parties that are high-profile in nature, have national impact, carry high risk, or is otherwise determined by a Provincial Manager, HOLS, the Legal Committee or the Body of

Commissioners to be a hearing most appropriately facilitated by a Commissioner or Commissioners as opposed to provincial offices.

“Commissioner-facilitated investigation” means an investigation (other than a hearing) involving human rights violations and parties that are high-profile¹ in nature, have national impact², carry high risk³, or is otherwise determined by a Provincial Manager, HOLS, the Legal Sub-Committee, or the Body of Commissioners to be a matter most appropriately facilitated by Commissioners as opposed to provincial offices.

“Complainant” means any person, group or class of persons, association, organisation or organ of state who lodges a complaint.

“Complaint” means an oral, written, or electronic communication alleging conduct in violation of human rights addressed to the Commission.

“Conciliation” means the alternate dispute resolution process of reconciling a matter between parties.

“Constitution” means the Constitution of the Republic of South Africa, 1996.

“Day” means any business day and excludes Saturdays, Sundays and public holidays.

“File handler” is an official of the Commission who is assigned to deal with a complaint.

“Finding” means a conclusion reached by the Commission after the investigation of a complaint or a hearing regarding an alleged violation of or a threat to human rights.

“The Frontline Advice Unit” means a unit within the South African Human Rights Commission provincial offices that pre-screens complaints received and, where appropriate, provides immediate assistance prior to the registration of the complaint.

¹ This refers to cases that have garnered significant media attention or involve parties who are well-known figures in society. The high-profile nature of the case often attracts public scrutiny and may have implications for public opinion on related issues.

² These are cases that have the potential to set a precedent or influence policy on a national scale. They are not limited in their ramifications to a local or regional level but have the potential to indirectly or even directly affect the country as a whole.

³ High-risk cases are those that involve serious potential consequences for the parties involved, the Commission, or society at large. This could be in terms of legal repercussions, public safety, social cohesion or the reputation of the Commission. High-risk cases often require a heightened level of sensitivity and expertise to handle effectively.

“Human Rights” means the rights referred to in the Constitution.

“Head Office” means the seat of the Commission in terms of s3(1) of the Act.

“HOLS” means the Head of Legal Services, who is an official of the Commission who leads the Legal Services Unit.

“Hearing” means a specific form of investigation set out in s15(1)(c) read with s13 of the Act.

“Hearing report” means a report of the Commission emanating from a hearing as defined above and set out in Chapter 8 of these procedures, containing findings, recommendations and, if appropriate, directives of the Commission.

“Intake Officer” means a Commission official who receives and registers a complaint on behalf of the Commission.

“Investigation” means any investigation, other than a hearing, as contemplated in s13(3) and s15 of the Act.

“Investigative report” means a report of the Commission arising from an investigation as defined above and envisaged in Chapter 7 of these procedures, containing findings and recommendations of the Commission.

“Legal Services Unit” is a unit in the Commission that provides legal support and guidance to the Commission, oversees national litigation matters and investigations and provides legal oversight in respect of the Commission’s protection mandate.

“Mediation” means a confidential and voluntary alternative dispute resolution process, the objective of which is to resolve all or parts of a complaint or matter with the purpose of reaching a written settlement between the parties.

“Mental Health Care User” means a person receiving care, treatment rehabilitation services or using a health service at a health establishment aimed at enhancing the mental health status of this person. Where the mental health care user is below the age

of 18 years or is incapable of taking decisions, in certain circumstances such a person may be represented by:

- A person authorised by any other law or court order to act on the Mental Health Care User's' behalf.
- An administrator or curator appointed in terms of the Mental Health Care Act, 17 of 2002; and

“Negotiation/Conciliation” means the process of discussion with the parties in order to reach an agreement.

“Organisation” means an organised body, including a business, political party, trade union or charity, whether formalised or otherwise.

“Organ of State” means an organ of State as defined in s239 of the Constitution.

“Own Accord Intervention” means an intervention of the Commission to address a potential or actual human rights violation initiated by the Commission of its own volition.

“panel” means a body constituted by the Commission for the purpose of facilitating a hearing and preparing a hearing report.

“PEPUDA” means the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.

“Provincial Office” means one of the offices of the Commission in each of the nine provinces as contemplated in s3(2) of the Act.

“Respondent” means any party allegedly in violation of or a threat to a human right.

“Sheriff” means a person appointed in terms of s2 of the Sheriffs Act 90 of 1986 and or a person appointed in terms of s5 and s6 of that Act as an acting sheriff and a deputy sheriff, respectively.

“Standard hearing” means any hearing of the Commission that is not categorised as a Commissioner-facilitated hearing.

“Standard investigation” means any investigation (other than a hearing) in which the Commission intervenes that is not categorised as a Commissioner-facilitated investigation.

“The Act” means the South African Human Rights Commission Act, 40 of 2013.

“Urgent Complaint” means any complaint that requires an immediate intervention outside the stipulated timeframes herein in order to obtain timely, appropriate and effective relief, due to a severe threat to a human right, a prospect of dire harm or which relates to a class of persons or person considered to be vulnerable including but not limited to women, children, the elderly and persons with disabilities.

CHAPTER 3: THE LEGAL COMMITTEE

- 3.1 The Legal Committee (LC) is a committee established in terms of Section 11 (1) of the Act by the Commission, and consists of no fewer than three Commissioners, the Chief Operations Officer, and one other member of staff.
- 3.2 The LC will exist in perpetuity until and unless dissolved by the Commission.
- 3.3 The quorum of the LC is three members, at least two of whom must be Commissioners, and decisions are taken by a majority vote of members.
- 3.4 If the Chairperson of the LC is not part of the quorum during any decision-making process of the LC, one of the other two Commissioners will chair in the Chairperson's absence.
- 3.5 The functions of the LC are:
- a) Considering requests from Provincial Offices and Units (with the approval of the CEO), the Steering Committee or Focus Area Commissioners to litigate in respect of any matter, supporting or not supporting such request, and thereafter tabling its recommendations to the Commission for approval.
 - b) Approving pleadings in court proceedings, including affidavits on behalf of the Commission and dealing with any matter that may arise during litigation by providing instructions on how to proceed and/or general advice, unless, on request by a Provincial Manager in lower court matters, the LC agrees that a Provincial Office may perform these powers and exercise these functions.
 - c) Making recommendations to the Commission in terms of Section 12(3) of the SAHRC Act or in respect of any other matter referred to it by the Commission.
 - d) Advising the Secretariat on the handling of complex legal investigations and high profile, high risk, high impact or public interest complaints.
- 3.6 The LC will consider all requests expeditiously, particularly urgent requests, if needs be electronically, via email or by teleconference.

CHAPTER 4: LODGING COMPLAINTS

4.1 Who Can Lodge a Complaint

Complaints can be lodged by anyone (including an organisation), either on their behalf, on behalf of someone else, or in the public interest.

4.2 How to Lodge a Complaint

Complaints can be lodged in various ways:

- Call the Commission using the contact numbers provided on our website or send an email to complaints@sahrc.org.za.
- Utilise the electronic complaint form available on the Commission's website.
- Visit any of the nine Provincial Offices (the addresses are available on the Commission's website).
- Complainants can contact the Commission at 011 877 3600 should they have any questions on how to connect with the relevant office of the Commission.

4.3 Format of Lodging Complaints

4.3.1 Complaints may be submitted in writing to the Provincial Office located in the province where the violation occurred. Complainants can use the complaint form available as "Annexure A."

4.3.2 Complaints can also be submitted verbally in person and will be written down by the Commission official receiving the complaint and then read back to the Complainant to ensure accuracy.

4.4 Types of Complaints Investigated

4.4.1 The Commission may investigate any alleged or apparent violation of human rights, but it may refer a matter to another institution if that institution would be better placed to address the complaint.

4.5 Complaints Not Investigated

4.5.1 The Commission does not investigate complaints about events that occurred before 27 April 1994, complaints that do not , or complaints about violations that occurred more than three years ago, unless there are compelling reasons to do so.

4.6 Own accord interventions

4.6.1 The Commission is empowered in terms of s13(3)(a) of the Act, to take steps, on its own initiative, to address an alleged or apparent violation of human rights.

4.6.2 In exercising this power, the Commission may, in its sole discretion, through any source, identify an alleged violation of a human rights and decide to intervene, through an investigation, hearing, litigation, ADR or other intervention that the Commission deems appropriate in the circumstances.

4.6.3 The decision of the Commission to initiate an own accord intervention into any alleged violation of human rights may be taken by a Provincial Manager, HOLS or the Body of Commissioners.

4.7 Referrals of Complaints

4.7.1 If the Commission is unable to assist with a complaint or is of the view that another institution is better placed to assist, it will provide an explanation and direct the Complainant to the appropriate institution for assistance.

4.8 Complaints Rejected by the Commission

4.8.1 Complaints may be rejected under specific conditions, such as:

- a) when a matter is sub judice (before court) or there is already a court order that applies to the matter;
- b) if the dispute forming the basis of the complaint has been resolved through settlement;
- c) if the complaint is anonymous (subject to the Commission's discretion, as

certain complaints may be capable of investigation even if they are lodged anonymously); or

- d) if the complaint is abusive, frivolous, vexatious, non-sensical or not in compliance with the Act or these procedures;

4.9 Information Required to Lodge a Complaint

4.9.1 When lodging a complaint, Complainants must provide the following information:

- a) Their personal details or the details of the person or organisation on whose behalf they are lodging the complaint.
- b) Details of the alleged violation, including the date, location, nature, and the parties involved.
- c) Information regarding any previous attempts to resolve the matter.
- d) Indicate the urgency of the matter, if applicable.
- e) Include any supporting documents or relevant information;
- f) Any other information that may be required in the Commission's Complaints Form, which may be updated as needed.

4.10 Complaints Older Than 3 Years

4.10.1 In certain cases, the Provincial Manager or HOLS Unit may determine that the Commission shall investigate such a complaint where, upon assessment by the Provincial Manager, it is just and reasonable to do so taking into account any form of relief the complainant may have received; the evidence available at the time the complaint is received; the seriousness of the violation complained of; the redress available to the complainant; whether the matter has prescribed or is at risk of prescription; and any other relevant factor. Where a complaint is rejected on this basis, written reasons must be provided to the complainant.

4.11 Frontline Advice Unit (FAU)

4.11.1 Prior to registering a complaint, the FAU, consisting of staff of the provincial offices duly authorised by the Provincial Manager, may attempt to advise the Complainant on whether a prima facie human rights violation exists in their complaint.

- 4.11.2 The FAU will also inform the Complainant of any alternate remedies or institutions they should consider first to address their complaint.
- 4.11.3 If the Complainant accepts the advice of the FAU to use alternative remedies or institutions to address the complaint, the Commission will record this interaction as a “once-off enquiry”.
- 4.11.4 However, if the FAU is of the view that a complaint should be registered, or if the Complainant insists on complaint registration despite the advice of the FAU to the contrary, the complaint will proceed to registration by the intake officer and assessment by the Provincial Manager.
- 4.11.5 The FAU must complete the process of advising the Complainant and, if registration of a complaint is necessary or requested by the Complainant, send the matter to the intake officer for registration, within 7 days of receipt of the complaint.
- 4.11.6 If the FAU determines, at any point during its engagements with the Complainant under this section, that the complaint in question in fact falls within the jurisdiction of another Provincial Office of the Commission, the FAU will immediately advise the Complainant of this and direct the Complainant to lodge their complaint with the applicable Provincial Office.
- 4.11.7 Whether a Provincial Office utilises the FAU processes above in respect of a complaint or complaints more generally, is within the discretion of the Provincial Manager. Provincial Offices may therefore proceed to registration of a complaint or complaints without implementing the processes of the FAU in this paragraph, should the Provincial Manager find this more appropriate.

4.12 **Process After Registration of a Complaint**

Assessment

- 4.12.1 The process after registration of a complaint begins once the FAU process (if any) has concluded and it has been determined that a complaint should be registered.
- 4.12.2 All new complaints must be registered within 3 days of the FAU referring the matter to the intake officer for registration or, where FAU processes are not

utilised, within 3 days of receipt of the complaint.

4.12.3 Upon registration of a complaint:

- a) The Commission will acknowledge receipt and provide the Complainant with a reference number.
- b) The complaint will be assessed by the Provincial Manager within 7 days of registration, during which assessment the Provincial Manager will decide on an appropriate pathway to resolution, unless further information is required from the Complainant first.
- c) If the Commission requires further information from a Complainant during the assessment phase -
 - it will communicate this to the Complainant during the initial assessment period of the complaint and allow the Complainant 14 days to respond;
 - if the Complainant does not respond with this further information within 14 days, the Commission will close its file;
 - if the Complainant does respond within 14 days, the Commission will have a further 7 days thereafter to assess the matter using the further information provided.

If a complaint is NOT accepted for further intervention

4.12.4 If a complaint is not accepted for further investigation the Complainant will be informed and provided with reasons in writing within 14 days of the Provincial Manager's decision to reject the complaint.

4.12.5 If a complaint falls outside the Commission's jurisdiction or would be better addressed by another institution, it may be referred to an appropriate organisation, and the Complainant will be notified. The Commission will inform the Complainant of this referral in writing within 14 days of the Provincial Manager assessing the matter and determining that it should be referred.

4.12.6 The Commission may assist Complainants in finding legal representation, if necessary, but is not obliged to provide any person with legal representation.

4.12.7 If, during the assessment phase, the Provincial Manager determines that the matter should be addressed by another Provincial Office, this will be communicated immediately to the Complainant and the complaint will be

transferred, with relevant documentation included, to the appropriate Provincial Office for intake and assessment within 3 days.

If a complaint is accepted for further intervention

- 4.12.8 If the Commission decides to accept a matter for further intervention. following its assessment, this intervention should conclude within 3 calendar months of initiation of the processes involved in the pathway to resolution chosen to address the matter, with the possibility of extension being granted by the COO on request of the Provincial Manager or Head of Legal of Services. However, the conclusion of the Commission's interventions should not be extended past 6 months.
- 4.12.9 The time limits above do not apply in cases where the Commission has decided to institute court action as a form of relief in a complaint, or where the Commission is forced to issue a subpoena against any party to an investigation or hearing.
- 4.12.10 What it means to conclude a complaint will depend on the facts and circumstances of each matter.
- 4.12.11 If a complaint is accepted for further intervention by the Commission, the complaint will be assigned to a file handler within 7 days of being accepted, and the Commission will follow the processes set out in the next Chapter.

Compliance with these processes and timelines

- 4.12.12 The Commission prioritises compliance with the processes and timelines set out in this CHP as far as possible, and while deviations from these procedures are allowable when just and equitable, the Commission will make every effort to not allow delays in the processing of matters.
- 4.12.13 The Commission therefore encourages Complainants to inform the Commission, using the service delivery complaints procedures set out in Annexure G, of any undue delays in the handling of a complaint at any stage of the complaints process. This will allow the Commission to take internal steps to improve its service and ensure the effective realisation of its mandate to uphold the Bill of Rights.

4.12.14 Should the Commission be unable to comply with any of the relevant timeframes in the handling of complaints, this does not in itself affect the validity of any steps taken by the Commission in relation to a complaint.

CHAPTER 5: FIRST STEPS AND PATHWAYS TO RESOLUTION FOR ACCEPTED COMPLAINTS

5.1 Introduction

- 5.1.1 Once a complaint has been accepted for further intervention by the Commission, it enters a phase aimed at achieving resolution. This chapter outlines the various pathways to resolution a complaint may follow, emphasising the Commission's dedication to addressing human rights violations effectively and efficiently.
- 5.1.2 In the pursuit of justice and the protection of human rights, the Commission offers a range of resolution pathways for complaints. These pathways are designed to address complaints or instances of human rights violations effectively and efficiently and ensure that individuals and communities receive the redress they are entitled to when it is found that their rights have been violated or threatened.
- 5.1.3 The Commission will aim as far as reasonably possible to utilise Alternative Dispute Resolution (ADR) methods, such as negotiation, conciliation, and mediation, as the first resolution pathway for complaints.
- 5.1.4 However, when ADR is not suitable or effective to address a complaint, the Commission will, depending on the needs of each particular case, employ either a formal investigation, a hearing process, or even litigation as resolution pathways.
- 5.1.5 When embarking on investigations or hearings (as opposed to ADR or litigation, which each have their own processes as well), the Commission will first establish whether the matter in question is a standard matter, or a matter requiring facilitation by a Commissioner or Commissioners. This categorisation will have an impact on the way in which matters are addressed, with standard matters being addressed and finalised primarily by the relevant provincial office, and Commissioner-facilitated matters being addressed with direct oversight from the COO, CEO and a Commissioner or Commissioners.
- 5.1.6 These resolution pathways, although different in nature, all aim to converge at

the same outcome, namely, to assist Complainants to secure redress for human rights violations.

5.1.7 The Commission's commitment to justice and human rights ensures that every accepted complaint is addressed through the most appropriate resolution pathway, promoting access to redress for all.

5.1.8 After preliminary steps are taken by the file handler in a complaint (which are set out in section 5.2 below) the matter will proceed to the appropriate pathway to resolution, which may include ADR, investigation, hearing, litigation or another appropriate intervention. In certain cases, however, the Commission may forego these preliminary steps and proceed either immediately or in an expedited fashion to the relevant pathway to resolution.

5.2 **Deciding on pathways to resolution**

5.2.1 During assessment of an accepted complaint, the Provincial Manager, will make the following considerations, ordinarily in the order presented:

a) **Suitability for ADR**

The Provincial Manager will consider whether the matter should be addressed through ADR and if so, proceed with the ADR in terms of these procedures. If not, the matter proceeds to the next consideration.

b) **Suitability for investigation**

The Provincial Manager will consider whether the matter should be addressed as a normal investigation (as opposed to a hearing) and if so, categorise the matter as either a standard investigation or a Commissioner-facilitated investigation and proceed in terms of these procedures. If not, the matter proceeds to the next consideration.

c) **Suitability for hearing**

The Provincial Manager will consider whether the matter should be addressed through a hearing and if so, categorise the hearing as either a standard hearing or a Commissioner-facilitated Hearing and proceed therewith in terms of these procedures. If not, move onto the next consideration.

d) **Suitability for litigation**

The Provincial Manager will consider whether the matter should be addressed

through litigation and if so, proceed to follow the appropriate processes through the Legal Committee and Commissioners to litigate as needed.

Discretion of the Provincial Manager

- 5.2.2 The considerations and decisions outlined in paragraph 5.2.1 above are within the discretion of the Provincial Manager and are only a guide for the kinds of decisions the Provincial Manager may make and the order in which they are made.
- 5.2.3 In spite of the above, whichever decision the Provincial Manager makes to attempt to resolve a complaint, such decision must be made, and resolution reached within the relevant time periods set out in these procedures, although extension of these time periods is allowable under certain circumstances, as explained where relevant in these procedures.

Pathways to resolution

- 5.2.4 Once a decision has been made in terms of this section, it will be communicated to the parties as set out in the processes dealing with the relevant chosen pathway to resolution and the Commission will follow these processes accordingly.

5.3 Requests for further information

- 5.3.1 The file handler of a complaint may request additional information from a Complainant at any time during the handling of a complaint.
- 5.3.2 Within 14 days of receiving this request, the Complainant is expected to provide the requested particulars to the File Handler. If the Complainant does not have the information, they should inform the file handler. In such cases, the Complainant should provide reasons for its unavailability and suggest potential ways to obtain it, or why the complaint can proceed without it.
- 5.3.3 Failure to provide the information within this period may lead to the Commission closing the file.

- 5.3.4 If the Complainant fails to provide the requested information within the specified timeframe or if the information remains insufficient to warrant further Commission intervention, the file handler will document this failure. A memorandum will be submitted to the Provincial Manager, recommending the closure of the file. The final decision to close the case will require written approval from the Provincial Manager, and the Complainant will be notified of the case closure.
- 5.3.5 If the Complainant's complaint is closed under this section, they can approach the Provincial Office to request the reopening of their complaint, provided they can demonstrate a valid reason. The Provincial Manager will decide whether to reopen the matter. If the Provincial Manager decides to reopen the complaint, the Commission will provide the complainant with a new file and reference number and proceed accordingly in terms of these procedures. If the Provincial Manager decides against reopening the matter, the Complainant has the option to seek judicial review in court.
- 5.3.6 Any time period during which the Commission is waiting for a Complainant to provide further information in terms of this section will not be counted toward any further step in the complaints handling process or the overall time allowed to finalise the complaint by these processes.

CHAPTER 6: ALTERNATIVE DISPUTE RESOLUTION

6.1 Introduction

6.1.1 Should ADR be chosen as the appropriate pathway to resolution in a matter, and should the parties to the complaint agree to this pathway, this Chapter will apply.

6.1.2 The Commission recognises the importance of providing effective and accessible avenues for resolving complaints. This chapter delves into the various mechanisms of Alternative Dispute Resolution (ADR) employed by the Commission. ADR methods, such as mediation, conciliation, and negotiation, are designed to facilitate the resolution of disputes efficiently and amicably. This chapter offers insight into the processes, principles, and considerations that guide these methods, ensuring that Complainants and Respondents alike have accessible and effective means to address their grievances.

6.2 Negotiation and/or conciliation

6.2.1 Negotiation/conciliation involves communication between the Commission and the parties involved, with the objective of reaching a compromise or agreement that is aimed at resolving the matter.

6.2.2 The Commission may assist in negotiation/conciliation processes to achieve a resolution that respects human rights. This is a less formal type of ADR that can present itself in different ways, so long as the matter is resolved to the satisfaction of both the Complainant and Respondent and such resolution is recorded by the Commission in writing and communicated to the parties.

6.2.3 If this pathway to resolution is chosen, the file handler will within 7 days of the decision, explain to the parties the Commission's intention to embark upon the process of negotiation and/or conciliation, request the parties' consent to engage in this process of ADR, and broadly set out the manner in which the process will

unfold.

- 6.2.4 Negotiation/conciliation may be achieved through written correspondence, telephonic communication, meetings, other means or a combination thereof. The process will be organic to allow the parties to most comfortably deal with any disputes that may exist between them and resolve the complaint.
- 6.2.5 All information shared during the negotiation/conciliation process is confidential and without prejudice between the parties, provided the parties act in good faith during the process.
- 6.2.6 The Commission will aim to resolve the matter through negotiation in a period of 14 days but depending on the facts and circumstances of each case. This may vary, provided the matter is resolved within 3 calendar months of acceptance.
- 6.2.7 If the Provincial Manager determines that the Commission's attempts at negotiation/conciliation between the parties have resulted in resolution of the matter, this will be communicated in writing to parties within 7 days of such determination and the file may thereafter be finalised as a successful ADR.
- 6.2.8 If, however, if the Provincial Manager is satisfied that the negotiation/conciliation process has not been or will not be successful in resolving the matter, this will be communicated to the parties within 14 days of the determination. The Provincial Manager will immediately thereafter revert to reconsidering alternative pathways to resolution and proceed accordingly. At this point, any time spent by the Commission and parties attempting in good faith to negotiate/conciliate the matter, will not be counted toward the requirement to finalise a matter in 3 calendar months, unless determined otherwise by the Provincial Manager.

6.3 **Mediation**

- 6.3.1 Mediation involves a mediator (either an appropriate official from within the Commission or a third-party mediator as necessary and determined by the Provincial Manager in agreement with the parties) facilitating a discussion between the Complainant and the Respondent. It aims to find a mutually

acceptable solution to the dispute, avoiding the need for lengthy legal proceedings. The Commission may utilise mediation when it appears to be a suitable method of resolution.

- 6.3.2 Mediation may be conducted if all parties agree, as determined by the HOLS or Provincial Manager.
- 6.3.3 The file handler of the complaint will manage the process and another official of the Commission, who has not been involved in the assessment and handling of the matter, will facilitate the mediation (and such mediator shall not be involved in any other processes relating to the complaint, should the matter proceed to investigation, hearing or litigation for any reason, except with the express permission of all parties). The mediator will assess presentations, facilitate discussions, and examine the parties' positions during the mediation sessions.
- 6.3.4 In case a party decides to withdraw or no longer participate, Commission staff will explore alternative resolutions.
- 6.3.5 The outcome of the mediation will be communicated in writing to the Complainant, Respondent, and, if relevant, the Equality Court clerk within 15 days.
- 6.3.6 If mediation does not lead to a mediated settlement agreement, the HOLS or Provincial Manager will decide the next steps. This may include considering a hearing or initiating legal action.

Conducting Proceedings

- 6.3.7 The conduct of the proceedings will be determined by Commission staff or an independent third party. They will do this in consultation with the parties involved.
- 6.3.8 All mediated complaints must conclude within three calendar months from acceptance to ensure timely resolution.

- 6.3.9 The venue for mediation will be decided through consultation with the parties, ensuring accessibility and convenience.
- 6.3.10 At any stage of the proceedings, the HOLS, Provincial Manager, or any designated staff member may decide to postpone or adjourn the proceedings as needed.
- 6.3.11 Mediation is deemed to fail if it is unsuccessful in resolving the dispute, if the Complainant decides to withdraw their complaint, or if the parties do not respond to the Commission's mediation notice within 14 days.
- 6.3.12 If required, a third-party mediator from outside the Commission may be appointed with the consent of all parties involved.
- 6.3.13 The full processes involved in these forms of ADR are set out in Annexure B to these procedures.

CHAPTER 7: INVESTIGATIONS

7.1 General

- 7.1.1 Should an investigation be chosen as the pathway to resolution in a matter, this Chapter will apply.
- 7.1.2 Investigations are a kind of intervention where the Commission utilises investigative techniques (other than those employed in a hearing) to determine the facts and circumstances surrounding a complaint and come to a finding and recommendations, if any.
- 7.1.3 Investigations, unless they are discontinued for appropriate and compelling reasons, will ordinarily result in investigative reports of the Commission with findings and, if appropriate, recommendations, within 3 calendar months of initiation under this Chapter. This time period may be extended in particularly complex matters or matters where crucial information is outstanding from a party to the investigation and the Commission needs to follow special processes (such as a subpoena) to obtain this information. Some investigations may also not result in investigative reports, depending on the facts and circumstances of each matter, provided that the Commission is able to adequately address the matter through other means within the relevant time periods in this Chapter.
- 7.1.4 Investigative reports are finalised and signed either by the Provincial Manager of the investigating Provincial Office, or the relevant Focus Area Commissioner/s depending on whether the investigation in question is categorised as a standard investigation or a Commissioner-facilitated investigation (CFI) respectively.

7.2 Classification of standard and Commissioner-facilitated investigations

7.2.1 Simultaneously with deciding to proceed to an investigation as a pathway to resolution (which must happen within 7 days of finalising the preliminary enquiry process), the Provincial Manager must categorise the investigation as either a standard investigation or a CFI.

7.2.2 **Commissioner-facilitated investigations (CFIs)** are generally identifiable (although the final determination will depend on the facts and circumstances of each case) through the following characteristics, among others:

- a) they involve matters national (or potential national) importance or impact;
- b) they involve high-profile parties, including political role players and senior national or provincial government officials;
- c) they involve the potential of significant reputational risk to the Commission; or
- d) a combination of one or more of the above characteristics.

7.2.3 The interventions in CFIs are characterised by more direct involvement of Commissioners as well as executive members of the Secretariat (COO and CEO) where necessary and generally the following will apply:

- a) The relevant focus area Commissioner will have closer involvement in the matter.
- b) Correspondence in the matter will ordinarily be signed by a Commissioner, the HOLS, COO or CEO.
- c) The matter will ordinarily be handled by LSU instead of a Provincial Office (or through collaboration of both) in most instances.
- d) The investigative report emanating from a CFI will be submitted by the HOLS to Commissioners for approval and signed by the appropriate Commissioner following relevant internal processes.

7.2.4 An investigation is only deemed a CFI if this categorisation by the Provincial Manager or HOLS is confirmed by the Legal Committee. If an investigation is categorised as a CFI by the Provincial Manager or HOLS, they must ensure that the matter serves before the Legal Committee as soon as possible and no longer than 14 days after making this categorisation.

7.2.5 **A standard investigation** is any investigation undertaken by the Commission that is not a CFI.

7.2.6 Standard investigations proceed mainly from within the Provincial Office investigating the matter and the following practices, among others, apply:

- a) General handling of the matter is overseen solely or primarily by the investigating Provincial Office.
- b) Correspondence in these matters is signed by relevant provincial office officials.
- c) The investigative reports are compiled and signed by the Provincial Manager of the relevant province, to whom the power is conferred to make appropriate findings and recommendations on behalf of the Commission in such investigations.

7.3 **General procedure in investigations**

7.3.1 **First step: Obtaining information for the investigation**

- a) The Commission will write to the Respondent/s informing them of the Complaint against them and clearly outlining the allegations contained in the complaint⁴;
- b) The Respondent/s will be given a timeframe in which to respond to the above correspondence. This timeframe will depend on the nature and urgency of the matter, but ordinarily Respondents will be given 21 days to respond to the Commission;
- c) The Commission may also choose to, either instead of or in combination with the steps in a) and b) above, call a meeting with the relevant parties to ask questions and obtain the relevant information in person. This process is less formal than a hearing process, information is not presented under oath and the Commission has broad discretion in how and when the meeting will proceed.⁵

⁴ Such requests for information are in terms of section 15(1)(b) of the Act, which provides the Commission broad powers to obtain information from any party for the purposes of an investigation.

⁵ Meetings of this nature are also in terms of section 15(1)(b) of the Act (see footnote 3 above), as this section does not specify how such information must be requested and/or provided, and thus the Commission is not limited to only using written correspondence

- d) If the Respondent/s fail/s to cooperate with the Commission's attempts to obtain information in steps a), b) and c) above, the Commission may exercise, among others, its powers to:
- i) Lodge a criminal case with the SAPS in terms of section 22(g) for failing to provide the necessary assistance to the Commission (only if the Respondent is an organ of state) and section 22(h) for hindering the functions of the Commission (if the Respondent is an organ of state, private person or any other body);
 - ii) issue a subpoena against the Respondent; or
 - iii) continue with the investigation despite the non-response, if possible and appropriate (the Commission still has the discretion to lodge a criminal case as set out in i) above in this instance and continue its own investigation while the criminal matter proceeds).
- e) The Commission has the discretion to provide an opportunity to the Complainant to reply to the information provided by the Respondent (if any) if doing so would assist the Commission in its investigation. If such an opportunity is afforded by the Commission, the Complainant will be given 14 days to submit their reply.

7.3.2 **Second step: The investigative report**

- a) When the Commission has obtained sufficient information and evidence through its investigation, it will proceed to draft an investigative report with appropriate findings and recommendations that will be released to parties once relevant processes have been complied with.
- b) **In standard investigations**, this report is prepared by relevant officials of the investigating Provincial Office and approved and signed by the relevant Provincial Manager. These reports do not require prior approval from the Body of Commissioners before release, as internal appeal processes apply should any party be dissatisfied with the report.
- c) **In CFIs**, the investigative report is drafted by the HOLS or Provincial Manager (as relevant), reviewed by the COO, and signed by the relevant Focus Area Commissioner and finally approved by the Body of Commissioners before

as a means of communication with the parties during an investigation.

release.

- d) In both standard investigations and CFIs, the Commission has a discretion, before releasing a final report, to first release a confidential provisional report to any party affected by the findings and recommendations therein and provide these parties with a reasonable time within which to respond to the report with any comments or inputs they have. The Commission will thereafter amend the provisional report, if necessary, based on the inputs of the parties and thereafter proceed to release the final report.
- e) However, if the facts and circumstances of the matter, urgency or other factors result in it being just and equitable to forego the provisional report and rather proceed directly to release of the final report, the Commission may do so.
- f) The Commission will aim to release its final investigative report within 3 calendar months of acceptance of the complaint, although this may be extended depending on the complexity of the matter, the time required to obtain inputs to the provisional report (if any), the need to issue a subpoena against any party to the investigation etc.

7.3.3 Once the investigative report has been finalised and released, the Commission follows the processes set out in Chapter 9 below.

7.3.4 The Commission may, at any stage during an investigation, determine that the matter in question should rather be addressed through another pathway to resolution if it becomes apparent during the investigation, including ADR, litigation or a hearing. If such a determination is made, the Commission will proceed immediately to initiate and follow the processes of the chosen alternative pathway to resolution.

CHAPTER 8: HEARINGS

8.1 Introduction

8.1.1 For certain complaints, depending on the circumstances, a formal hearing may be necessary. Hearings are conducted by the Commission and follow a structured process to gather evidence and make informed decisions.

8.1.2 If a hearing is chosen as the pathway to resolution in a particular matter following the preliminary enquiry process, the Provincial Manager must, simultaneously with this decision, categorise the hearing as either a standard hearing or a Commissioner-facilitated hearing (CFH).

8.2 Standard hearings and CFHs

8.2.1 A hearing is determined to be either a standard hearing or a CFH using the same considerations that apply to investigations and the categorisation of a hearing as a CFR is confirmed by the Legal Committee following the same processes that apply to investigations in Chapter 6.

Standard hearings

8.2.2 In standard hearings, the Provincial Manager of the relevant province will be the Chairperson of the hearing with all the necessary powers associated with being the Chairperson of a hearing of the Commission. All references to the “Chairperson of the hearing” in Annexure C, refer to the Provincial Manager of the relevant province in standard hearings.

8.2.3 The Provincial Manager may assign a competent member of their provincial team as a co-chairperson to assist the hearing panel convene and collect evidence as necessary should the Provincial Manager be unable to sit on the hearing panel at a given time, provided all the evidence is still considered in full by the Provincial Manager as the Chair of the hearing and the hearing report is finalised and signed by the Provincial Manager.

Commissioner-facilitated hearings

8.2.4 In CFHs, the Chairperson of the Commission (or another Commissioner appointed by the Body of Commissioners) will be the Chairperson of the hearing.

8.3 General Procedure in hearings and the hearing report

Procedure and timeframes

8.3.1 This Chapter only highlights some of the more fundamental procedural aspects of hearings. Annexure C contains further procedures related to hearings.

8.3.2 Hearings include the presentation of evidence, witness testimonies, and legal arguments (if appropriate and in the interests of justice) from both parties. The Commission ensures a fair and impartial process, adhering to principles of justice and human rights protection.

8.3.3 A hearing concludes when the Chairperson of the hearing is of the view that the Commission has received the necessary evidence, information and testimony required for it to make appropriate findings, recommendations and directives.

8.3.4 Following the conclusion of a hearing, the Commission will make a decision based on the evidence presented and the law and release a hearing report. The hearing report will be released by the hearing panel as soon as possible, preferably within 3 calendar months of the conclusion of the hearing.

8.3.5 However, matters that require hearings as a pathway to resolution (especially CFHs) very often involve more complex issues and time-consuming processes, and therefore one can expect they will take more time to conclude than, for example, an ADR or investigation. Therefore, it may be appropriate for the chairperson of the hearing to extend the time taken to finalise the hearing and release the report, but preferably not beyond a period of 6 calendar months of the hearing having commenced.

8.3.6 The above with regards to time periods in finalising hearings must be understood with the condition that even the extended period of 6 calendar months may be further extended. This may happen if there are extenuating circumstances, such as the need to subpoena a party to the hearing, new information coming to light during the hearing that alters the trajectory of the matter, severe illness, or incapacity of a party to the hearing etc.

The hearing report

8.3.7 In the hearing report, should the Commission find that human rights violations or threats of such violations have occurred and/or are prevalent, the Commission will make recommendations and/or issue directives as to what remedial action should be taken by the relevant party or parties to secure appropriate redress.

8.3.8 If appropriate, the Chairperson of the hearing may make findings and recommendations and/or issue directives at any stage and communicate them to parties verbally during the hearing or in writing. This would usually only be necessary should a particular aspect of the matter require urgent attention and would not bar the Commission from releasing a full and final report once the entire hearing process had concluded to deal with the totality of issues under consideration.

8.3.9 The Commission has a discretion, before releasing a final hearing report, to first release a confidential provisional hearing report to any party affected by the findings and recommendations therein and provide these parties with a reasonable time within which to respond to the report with any comments or inputs they have.

8.3.10 The Commission will thereafter amend the provisional report, if necessary, based on the inputs of the parties and thereafter proceed to release the final hearing report.

8.3.11 Provisional and final hearing reports in standard hearings are approved, signed and released to parties by the Provincial Manager of the relevant province as the Chairperson of the hearing, without needing the prior approval of the Body of Commissioners, as these reports are subject to internal processes should affected parties be dissatisfied with the final report.

- 8.3.12 A provisional report in a CFH and standard hearings can be finalised and shared with parties by the Chairperson of the hearing without needing the approval of the Body of Commissioners. Final hearing reports in CFHs, however, must always be approved by the Body of Commissioners before being issued.
- 8.3.13 However, if the facts and circumstances of the matter, urgency or other factors result in it being just and equitable to forego the provisional hearing report and rather proceed directly to release of the final hearing report (following the relevant approval processes for such a report), the Commission may do so.

Possible settlement

- 8.3.14 It is also permissible for parties to reach settlement on certain aspects or the entirety of a matter/complaint/dispute at any time during the hearing process, if reasonable and possible, and to inform the Commission accordingly. However, any attempts at settlement between the parties shall not unduly delay the hearing process and the Chairperson of the hearing may determine timeframes within which such settlement processes should be completed. The Commission may thereafter finalise the matter with or without a hearing report, depending on the outcome of settlement proceedings and what would best serve the interests of justice and human rights.

Once the final hearing report has been finalised and released, the Commission follows the processes set out in Chapter 9 below.

CHAPTER 9: THE EFFECT OF INVESTIGATIVE AND HEARING REPORTS

9.1 Introduction

- 9.1.1 Following an investigation under Chapter 7 or a hearing under Chapter 8, the Commission will release an investigative report or a hearing report respectively.
- 9.1.2 This Chapter deals with both investigative reports (stemming from an investigation under chapter 7) and hearing reports (stemming from a hearing under Chapter 8), Both these kinds of reports may contain findings and recommendations that arise from an intervention from the Commission aimed at assisting the victims of human rights abuses secure appropriate redress.
- 9.1.3 However, only hearing reports may contain directives of the Commission. This Chapter explains the effects of findings and recommendations, on the one hand, and directives, on the other.

9.2 Findings and recommendations

- 9.2.1 A report emanating from an investigation or a hearing will ordinarily make findings as to whether a human rights violation or threat thereof occurred in the matter.
- 9.2.2 If the investigation or hearing concludes that there was no violation, the matter will ordinarily be finalised on this basis with no further action required from the Commission or the parties. Should the Commission deem it necessary, however, the Commission may still release an Investigative or hearing report that confirms the finding of no violation in such a matter.
- 9.2.3 However, should the investigation or hearing determine, on a balance of probabilities, that a human rights violation or threat thereof did in fact occur or persists, this finding will be reflected in the report.

- 9.2.4 The report will then, if applicable, make recommendations to the appropriate parties on what actions should be taken to provide appropriate relief and/or redress to the victims of the human rights violations in question.
- 9.2.5 The Commission will thereafter monitor the implementation of its recommendations using whichever methods are most appropriate on a case-by-case basis.
- 9.2.6 Reports emanating from standard investigations and standard hearings may be taken on internal appeal within the Commission by any affected party who is not satisfied with the findings and recommendations of the report. This internal appeal process is explained further in Annexure E.
- 9.2.7 Reports emanating from CFIs and CFHs, on the other hand, do not follow an internal appeal process and must be taken on review to the High Court by any affected party who is not satisfied with the findings and recommendations in the report.
- 9.3 **The Commission's findings and recommendations cannot simply be ignored**
- 9.3.1 The Commission and the law (as will be explained below) at the very least expect a party against whom findings and recommendations are issued from the Commission, to engage with these findings and recommendations.
- 9.3.2 No person, organisation or organ of state may hinder the Commission in the performance of its powers and functions, and doing so is a criminal offense. One of the Commission's functions is to assist persons adversely affected by human rights violations to secure redress and take steps to secure appropriate redress where human rights have been identified. The findings and recommendations of the Commission are one of the central ways in which and steps it takes, to secure redress for human rights violations.
- 9.3.3 Therefore, should any person or body ignore a recommendation from the Commission aimed at securing appropriate redress for a human rights violation, and refuse to internally appeal or judicially review (as relevant) the Commission's

decision or otherwise meaningfully engage with the Commission regarding the decision, such person or body would be hindering the Commission in the performance of this important function and be guilty of a criminal offense in terms of section 22(g) of the Act.

Alternate forms of engagement

- 9.3.4 The Commission understands that some cases may require compromise or the exploration of other solutions, even after the Commission has shared its findings and recommendations with the parties upon conclusion of an investigation or hearing.
- 9.3.5 If a party is unable to fully comply with the Commission's recommendations but does not wish to challenge the Commission's report through internal appeal or judicial review, this party still has an opportunity to engage with the Commission if such intention is conveyed to the Commission within 21 days (or within a reasonable time period specified by the Commission depending on the facts and circumstances of the matter) after receipt of the report. Provided the aforementioned party cooperates genuinely and in good faith with the Commission to find common ground or alternative ways to address the human rights violations found in the report, this party's inability to fully and immediately implement all recommendations in a report of the Commission generally would not be considered a hindrance to the Commission in the performance of its functions.
- 9.3.6 In such a case, the Commission would consider the principles of natural justice, cooperative governance (if applicable), the progressive realisability of certain rights and other relevant factors to engage meaningfully with parties to resolve the human rights violations identified in the report.
- 9.3.7 If, despite the abovementioned engagement, the matter cannot be appropriately resolved, the Commission will consider further options in terms of these procedures and the law to address the violations identified in the report.

Internal appeal as an option of engagement on recommendations

- 9.3.8 Recommendations stemming from standard investigations and standard hearings

may be internally appealed (following the processes in Annexure E) below.

- 9.3.9 A party exercising the right to internal appeal of the recommendations of an appropriate report of the Commission, provided it is not done vexatiously, frivolously or with undue delay, would not be hindering the Commission in the performance of its functions.
- 9.3.10 Should the internal appeal process be unsuccessful, the recommendations of the Commission will stand, and the next step would either be for the appellant to
- a) comply with the recommendations;
 - b) engage in alternate forms of engagement (as set out above from paragraph, 9.3.4, if not already exhausted); or
 - c) proceed to judicial review.

Judicial review as an option of engagement on recommendations

- 9.3.11 Recommendations stemming from CFIs and CFHs, and other recommendations that have been subject to an unsuccessful internal review as set out in paragraph 9.3.10 above, must be taken on review to the High Court should any party affected thereby be dissatisfied with the recommendation.
- 9.3.12 A party exercising the right to judicial review of the recommendations of a report of the Commission, provided it is not done vexatiously, frivolously or with undue delay, would not be hindering the Commission in the performance of its functions.
- 9.3.13 Should a party wish to judicially review a recommendation of the Commission, a notice of this party's intention to do so must be provided in writing to the Commission within 180 days (or within a reasonable time period specified by the Commission depending on the facts and circumstances of the matter) of the affected party becoming aware of the recommendation.

If the Commission's recommendations are simply ignored

- 9.3.14 If any person, organ of state, organisation or other entity chooses to simply ignore

any recommendation of the Commission directed at them in a report and does not in good faith exercise their right to internal appeal or judicial review, or otherwise reasonably engage as discussed above, this would constitute a severe hindrance of the Commission's functions and ability to help affected persons secure appropriate redress for human rights violations. Should such an unfortunate situation occur, the Commission will proceed to register a criminal complaint against the aforementioned person (or person responsible for the relevant body) with the SAPS and NPA for the committal of a statutory offense under section 22 of the Act.

9.4 Directives

9.4.1 Hearing reports, as opposed to investigative reports, may contain directives of the Commission. directives may be contained in hearing reports from both standard hearings and CFHs.

9.4.2 A directive of the Commission is an instruction –

- arising from a finding in a hearing report that there has been an occurrence and/or there is a prevalence of human rights violations or threats thereof based on the facts and law applicable to a matter before a hearing of the Commission;
- directing any relevant person, organisation, organ of state or other body, to provide appropriate relief and/or redress to any person, people or community affected by the aforementioned human rights violations.

9.4.3 A directive of the Commission may include an instruction as to what such appropriate relief and/or redress will entail depending on the facts and circumstances of the matter in question.

9.4.4 Directives of the Commission carry more weight than recommendations and must either be obeyed fully, internally appealed (if applicable) or taken on judicial review by the party against whom the directive is made.

Internal appeal of directives stemming from standard hearings

- 9.4.5 Directives stemming from standard hearings may be internally appealed (following the processes in Annexure E) below.
- 9.4.6 A party exercising the right to internal appeal of the directives of a report stemming from a standard hearing, provided it is not done vexatiously, frivolously or with undue delay, would not be hindering the Commission in the performance of its functions.
- 9.4.7 Should the internal appeal process be unsuccessful, the directives of the Commission will stand, and the next step would either be for the appellant to comply with the directives (according to the instructions of the Appeal Tribunal) or proceed to judicial review.

Judicial review of directives

- 9.4.8 Any party who is dissatisfied with a directive in a report stemming from a CFI, or the directive in a standard hearing that has been upheld on internal appeal by the Appeal Tribunal, must judicially review this directive in High Court.
- 9.4.9 The notice of intention to judicially review in paragraph 9.4.8 above must be provided in writing to the Commission within 180 days (or within a reasonable time period specified by the Commission depending on the facts and circumstances of the matter) of the affected party becoming aware of the directive or of the outcome of the internal appeal (whichever is applicable).

The directives of the Commission cannot simply be ignored

- 9.4.10 Any party who fails to obey a directive of the Commission is guilty of an offense under section 22(d) and (g) of the Act unless that party gives appropriate and timely notice to the Commission of its intention to judicially review the directive.

CHAPTER 10: CONCLUSION OF COMPLAINTS

- 10.1** A complaint is concluded under the following circumstances:
- 10.1.1 If, after an assessment, the complaint is rejected.
 - 10.1.2 In the case of a referral no further action is required.
 - 10.1.3 When a Complainant or Respondent in a complaint has passed away in the course of an investigation, the complaint lapses unless the Commission is of the view upon consideration of the facts before it, that it would be in the interests of justice and in the public interest to conclude the investigation.
 - 10.1.4 In the case of a referral where the Commission determines to monitor the matter, and which may be reopened by the Commission where required.
 - 10.1.5 If the complaint is resolved by means of alternative dispute resolution.
 - 10.1.6 After an investigation it is found that there was no violation of human rights or threat of human rights violations.
 - 10.1.7 After investigation it is found that the violation of human rights has been remedied and / or redress has been secured, considering the circumstances of the case.
 - 10.1.8 If a complaint is withdrawn by the Complainant and the HOLS or Provincial Manager as applicable is satisfied that there are no compelling reasons to proceed with the investigation or hearing.
 - 10.1.9 If a Complainant does not provide further particulars as requested and the complaint is dealt with as provided for in these Procedures, provided that the complaint may be re-opened at the discretion of the COO in consultation with the Provincial Manager upon motivation in writing by the Complainant.
 - 10.1.10 After issuing and fulfilment where applicable of findings and recommendations plus directives relating to an investigation.

- 10.1.11 If a complaint is resolved through the conclusion of legal proceedings in any court or tribunal.
- 10.1.12 Legal proceedings in a competent court or tribunal as contemplated in s13(3)(b) of the Act read with these Procedures and as contemplated in s 20(1)(f) of PEPUDA are initiated and concluded.

CHAPTER 11: GENERAL PROVISIONS

11.1 FORMAT AND PROCEDURE OF INTERVENTIONS

- 11.1.1 The Commission shall determine the format of an intervention.
- 11.1.2 Interventions can take the form of ADR, investigations, hearings, litigation or any other appropriate action of the Commission to address a complaint.
- 11.1.3 In appropriate circumstances, the Commission may decide to discontinue an intervention in a complaint. If the Commission makes such a determination, it shall communicate the reasons for this decision to the affected parties in writing.

11.2 JOINT INTERVENTIONS

- 11.2.1 The HOLS or Provincial Manager as applicable may conduct a joint intervention with another institution or organ of state if:
- a. the mandate of that institution or organ of state overlaps with the mandate of the Commission in respect of the resolution of the complaint;
 - b. the Commission does not have the resources, capacity or in-house expertise to resolve the matter without assistance of that institution or organ of state;
 - c. the nature and the complexity of the matter warrants the assistance of that institution or organ of state; or
 - d. a memorandum of agreement exists between the Commission and the other institution or state organ and the matter falls within the mandate of both, and that institution or organ of state agrees to such a joint intervention.
- 11.2.2 Joint interventions will be conducted in terms of the agreed rules, procedures and timelines between the Commission and the relevant institution. Such agreed rules, procedures and timelines must be communicated to all parties.

11.3 NOTICE TO APPEAR BEFORE THE COMMISSION

11.3.1 During the course of an intervention, the Commission may require any person to appear before it in terms of s15(1)(c) of the Act. All relevant provisions of the Act are applicable to this section.

11.3.2 Any person required to appear before the Commission must:

- e. answer all questions put by the Commission to them regarding any fact or matter connected with the investigation notwithstanding that the answer may incriminate them; and
- f. produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
- g. If it is in the interests of justice, the Commission may direct that any person or group of persons (including representatives of the media) may not be present at these proceedings.
- b) Upon a consideration of application made for confidentiality of proceedings, the Commission shall consider such application, and communicate its decision to the affected person **within 10 days** of such application.

11.4 ENTERING AND SEARCH OF PREMISES

11.4.1 In the investigation of any alleged violation of human rights, any Commissioner, or any member of staff or a police officer authorised by a Commissioner may enter and search any premises and collect any evidence as contemplated in s16 of the Act.

11.4.2 All the relevant provisions of the Act will apply to this process.

11.5 INSTITUTION OF LEGAL PROCEEDINGS

11.5.1 The Commission may institute legal proceedings in a competent court or tribunal, as contemplated in s13(3)(b) of the Act, in its own name, or on behalf of a person or a group or class of persons, association, institution or organisation at any stage.

- 11.5.2 The Commission may institute legal proceedings in its own name, or on behalf of a person or a group or class of persons as contemplated in s20(1)(f) of PEPUDA.
- 11.5.3 If the Provincial Manager or HOLS is of the view that legal proceedings would be an effective means of addressing the violation, approval for litigation is to be obtained from the Commissioners.
- 11.5.4 The Commission does not need to formally investigate a matter before it can litigate in respect of that matter. Section 13(3)(a) of the Act states that the Commission is competent to investigate complaints and take necessary steps to assist Complainants, while section 13(3)(b) states that the Commission is competent to bring proceedings in court in its own name or on behalf of others. Neither of the aforementioned sections of the Act are conditional upon one another in any way. The Commission may therefore proceed to institute legal proceedings in its discretion without needing to invoke any of the investigative processes set out in the CHP first, although there is no bar on the Commission to litigating in a matter that is already under investigation if appropriate.

11.6 CONFIDENTIALITY

- 11.6.1 All personal information provided to the Commission will be treated as protected from disclosure outside of the Commission and is protected under the Protection of Personal Information Act 4 of 2013, unless consent is expressly provided for the disclosure of such information.
- 11.6.2 If the Complainant is a mental health care user or a child Complainant, the personal information of the Complainant must be kept confidential and may not be made public. The Complainant's identity may only be disclosed, where necessary to assist the Complainant to secure appropriate redress.
- 11.6.3 A Complainant may request that his or her personal particulars and any documentation provided be kept confidential and not be disclosed to any person outside the Commission's offices during the investigation. This request must be supported by a written statement explaining why the information is confidential.

- 11.6.4 If a Complainant requests that their particulars be kept confidential and the Commission is of the view that these particulars must be disclosed in order to resolve the complaint, it must, in writing –
- a. Inform the Complainant as soon as is reasonably possible after receipt of such request of its view.
 - b. Explain its reasons to the Complainant; and
 - c. Request the Complainant's written consent to disclose such particulars.
 - d. Should the Complainant fail to provide the Commission with written consent to disclose their particulars the Commission may decline to investigate the complaint and as soon as reasonably possible, inform the Complainant, in writing, of this decision, giving reasons.
 - e. No person may disclose to any other person the contents of any document in the possession of a Commissioner or a member of staff, or the record of evidence given before the Commission during an investigation; unless the Commission determines otherwise.

11.7 JOINING OR SUBSTITUTING PARTIES

- 11.7.1 The HOLS or Provincial Manager may on their own accord or in response to a written application by a party to investigative proceedings, join or substitute any person, association, organisation or organ of state as parties in the proceedings if:
- a. Both complaints depend on substantially the same question of law or fact or
 - b. The parties so joined or substituted have a substantial interest in the subject matter of the proceedings.
- 11.7.2 An application to join or substitute a person, association, organisation, or organ of state as a party in investigative proceedings must contain the following information:
- a. full particulars of the person, association, organisation, or organ of state concerned.
 - b. The grounds of the application and copies of all relevant and supporting documents.
 - c. If during any proceedings it becomes necessary to substitute a person, association, organisation or organ of state for an existing party, any party to the proceedings may apply to the HOLS or Provincial Manager for a determination

substituting that party for an existing party and the HOLS or Provincial Manager may make such a determination or give appropriate directions as to the further procedure in the proceedings.

- d. Subject to any determination made by the HOLS or Provincial Manager in terms of this section, the joining or substitution of a person, association, organisation, or organ of state in proceedings in terms of these Procedures does not affect any steps already taken regarding the proceedings.

11.8 CONSOLIDATION OF COMPLAINTS

11.8.1 The HOLS or Provincial Manager may, on his or her own accord or on written application by a party to an investigation, or proceedings, consolidate 2 or more complaints and deal with these complaints in the same intervention.

11.8.2 The HOLS or Provincial Manager may, in consultation with any relevant stakeholders, determine that a class of complaints be addressed together.

11.8.3 The Commission will inform all parties to a matter in writing, within 7 days, of any party being joined to a proceeding in terms of this section.

11.9 RECORDING PROCEEDINGS, INVESTIGATIONS, INQUIRIES AND HEARINGS

11.9.1 Any proceedings or hearings in terms of the Act and these Procedures and any, oral submissions made or evidence given as part of an investigation must be recorded by the Chairperson of the panel, the HOLS, the Provincial Manager or any member of staff, as duly designated.

11.9.2 The Chairperson of the panel, the HOLS, the Provincial Manager or any member of staff, as duly designated, must, before the commencement of any recording, inform the persons present of the fact that a recording will be made and of the manner of recording.

11.9.3 The manner of recording (which may include but is not limited to audio, video, written recording or a combination thereof) will be determined by the Chairperson of the panel, the HOLS, the Provincial Manager or any other member of staff, as duly designated, depending on relevant circumstances.

11.10 LANGUAGE USED DURING PROCEEDINGS, INVESTIGATIONS, INQUIRIES AND HEARINGS

- 11.10.1 All proceedings, investigations and hearings in terms of the Act and these Procedures will be conducted in English, unless a party requests that the proceedings be conducted in another official language.
- 11.10.2 Parties are entitled the service of an interpreter during any proceedings, hearing or investigation. A party who needs the services of an interpreter must give reasonable notice to the Chairperson of the panel, the HOLS, the Provincial Manager or any member of staff, as duly designated, who must make the necessary arrangements for such service.
- 11.10.3 Persons with disabilities who may require reasonable accommodation to participate in hearings, investigations and proceedings must give reasonable notice to the Chairperson of the panel, the HOLS, the provincial manager or the duly designated member of staff if known, who must make the necessary arrangements for such accommodation.

11.11 COSTS

- 11.11.1 The Commission will not charge any fee for the handling of complaints.
- 11.11.2 Any person who is represented by an advocate or attorney in a matter before the Commission is responsible for the costs involved in securing such services.
- 11.11.3 Any person appearing before the Commission in terms of s15(1)(c) who is not in the public service, is entitled to receive witness fees as prescribed in s17 of the Act in appropriate circumstances.

11.12 DEVIATION FROM THESE PROCEDURES

- 11.12.1 These procedures may be deviated from in the following circumstances:
- a. The complaint is of such urgency that abiding by these Procedures would cause

the Complainant/s further harm.

- b. There is an imminent threat to life or property.
- c. The complaint involves the Commission or a staff member of the Commission.
- d. The complaint involves a public office bearer.
- e. Unforeseeable events that cannot be controlled, or a national disaster that would make abiding by these Procedures not possible.
- f. Any other circumstances that, in the view of the Commission, justify deviation in the pursuit of justice and/or the avoidance of prejudice to any affected party.

11.13 APPEAL AND REVIEW

Any party who is aggrieved by the outcome of complaint may once it has been concluded, internally appeal or judicially review the decision in terms of **Annexure E and F** (as applicable) attached hereto.

11.14 REPEAL OR AMENDMENT OF PROCEDURES

These Procedures remain in force until repealed or amended by the Commission on public notice.

11.15 SHORT TITLE AND COMMENCEMENT

These Procedures are called the South African Human Rights Commission Complaints Handling Procedures and come into operation on the date of publication on the Commission's website and repeal of the previous procedures by publication in the Gazette.

ANNEXURE A – COMPLAINT FORM

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

27 Stiemens Street Private Bag X 2700

Braamfontein Houghton

2041 219

For office use only

Province	City/town	Reference
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Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.

If there is more than one person who would like to send a complaint to us, each person must complete a separate form

PART A: YOUR DETAILS

Name and surname

Your full name(s) and surname: _____

Your nickname(s), if any _____

ID number

Your ID number _____

If you do not have an ID number, your date of birth _____

If you do not know your date of birth, your age _____

Race (information required for statistical purposes only)

Please state your race _____

Gender (information required for statistical purposes only)

SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINTS HANDLING PROCEDURES

Please state whether you are male or female or identify as non-binary _____

Person with a disability: Please state whether you are a person living with any disability, and if so whether you will require assistance, and if so what this assistance will consist of

Address and contact numbers.

The address where you live _____

Postal Code _____

The address where we can send letters to _____

Postal Code _____

Telephone number at work _____

Telephone number at home _____

Cell phone number _____

Any other telephone number where we can contact you _____

Whose telephone number is it _____

Fax number _____

E-mail address _____

Important:

Part B must only be filled in if you are writing on behalf of somebody else, for an association or organisation – do not fill this in if your own rights have been violated.

PART B: DETAILS OF PERSON ON WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)

Name and surname of person on whose behalf you are completing this form.

His or her full name(s) and surname: _____

His/her nickname(s), if any _____

ID number

His or her ID number _____

If he or she does not have an ID number, his or her date of birth _____

If he or she does not know his or her date of birth, his or her age

Race (information required for statistical purposes only)

Please state his or her race _____

Gender (information required for statistical purposes only)

Please state whether he or she is male or female _____

Address and contact numbers.

The address where he or she lives _____

Postal Code _____

The address where we can send letters to _____

Postal Code _____

Telephone number at work _____

Telephone number at home _____

Cell phone number _____

Any other telephone number where we can contact him or her _____

Whose telephone number is it _____

Fax number _____

E-mail address _____

Details of association, organisation or organ of state on whose behalf you are completing this form.

Full name of the association, organisation or organ of state

SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINTS HANDLING PROCEDURES

Registration number _____

What does it do (e g civil, business, retailer, factory, NGO, etc) _____

Who should we talk to there _____

What is contact person's position (e g colleague, chairperson, director, secretary)

The address where we can send letters to _____

Postal Code _____

Telephone number _____

Cell phone number _____

Any other telephone number where we can contact him or her _____

Whose telephone number is it _____

Fax number _____

E-mail address _____

PART C: THE COMPLAINT

Date

On what date did it happen _____

Is it still happening?

Yes _____ No _____

Where did it happen?

Place _____ Town _____ Province _____

If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated _____

If you know, the full name(s) and surname(s) of person(s), association, organisation or

organ of state who violated these rights, please tell us.

Where can we contact them?

If you do not know his/her/its/their names, please tell us anything you do know about him/her/it/them.

Did anybody see or hear what happened (only people who actually saw or heard what happened, not people who heard about it from someone else)?

Full name(s) and surname(s) _____

How and where can we get in touch with them _____

In your own words, tell us exactly what happened (include all information but be as brief as possible).

Have you reported the matter to anyone else?

Yes _____ No _____

If yes, who (e g Police, lawyer, Public Protector) _____

Were any steps taken by the person/association/organisation/organ of state to resolve the matter?

Yes _____ No _____

If yes, please tell us what steps

What you would like to achieve with this complaint and the relief sought?

Do you need an interpreter when attending any proceedings, investigations or hearing at our offices?

Yes _____ No _____

If yes, the language you speak _____

NOTE: Chapter 7 (Article 5(1)) of the Human Rights Commission Complaints Handling Procedures provides that all proceedings, investigations and hearings will be conducted in English, unless you request that the proceedings be conducted in another official language.

Can we use your name in news reports or letters we write regarding this matter/complaint?

Yes _____ No _____

NOTE: Chapter 7 (1(3)) of the Human Rights Commission Complaints Handling Procedures provides that you may request that your personal particulars be kept confidential and not be

disclosed to any person outside the South African Human Rights Commission's office in order to protect your identity.

Please tell us how you heard about the South African Human Rights Commission (e.g. radio advert, newspaper, poster, from a friend, etc.)

Signature/mark of Complainant

Date

(on behalf of yourself, another person, association, organisation or organ of state)

If on behalf of another person (including a child or a person with a mental disability), association, organisation or organ of state:

Signature of representative, parent, appropriate adult or guardian

Remember:

To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.

To attach any copies of documents which can assist in this matter.

What to do once you have filled in the form. Once you have filled in this form, please post or fax it to us at:

Johannesburg - Private Bag X 2700, Houghton 2041

Tel: 011 – 877-3600/3601 Fax: 011 403 0682/0668

Free State - P O Box 4245, Bloemfontein 9300

SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINTS HANDLING PROCEDURES

Tel: 051 - 447 1130 Fax: 051 447 1128

Eastern Cape - P O Box 972, East London 5200

Tel: 043 – 722-7821/25/28 Fax: 043 -722-7830

KwaZulu Natal - P O Box 1456, Durban 4000

Tel/Fax: 031- 304 7323/4

Northern Province - P O Box 55796, Pietersburg 0700

Tel: 015 - 291 3500/3504 Fax: 015 - 291 3505

Western Cape - P O Box 3563, Cape Town 8001

Tel: 021 - 426 2277 Fax: 021 - 426 2875

North West P O Box 9586 Rustenburg 0300

Tel (014) 592 0694 Fax (014) 594 1089

Mpumalanga P O Box 6574 Nelspruit 1200

Tel (013) 752-8292 Fax (013) 752-6890

Northern Cape P O Box 1816, Upington 8800

Tel No (054) 332-3993/4 Fax No (054) 332-7750

ANNEXURE B – MEDIATION, CONCILIATION OR NEGOTIATION BY COMMISSION

COMMISSION MAY MEDIATE, CONCILIATE OR NEGOTIATE ANY COMPLAINT

- 1) The Commission may, by mediation, conciliation or negotiation try to resolve any accepted complaint.

CONCILIATION AND NEGOTIATION PROCEEDINGS

- 2) The HOLS, Provincial Manager or any member of staff, as duly designated, may decide whether conciliation or negotiation of a complaint is most appropriate for the resolution of such complaint.
- 3) The method of negotiation or conciliation shall be determined by the Provincial Manager or designated member of staff.
- 4) The HOLS, Provincial Manager or any member of staff, as duly designated, must, where appropriate set up a conciliation or negotiation process.
- 5) All complaints conciliated or negotiated by the Commission must be finalised within three calendar months from acceptance of the complaint.
- 6) Deviations from the three calendar month period may be permissible on reasonable grounds such as the availability of parties, or on the basis of an order of the Equality Court.
- 7) These time periods may also be extended by the HOLS or Provincial Manager, where reasonably necessary, on notice to the parties.
- 8) The Complainant and the Respondent, and if applicable, the clerk of the Equality Court, must be notified of the outcome of the negotiation or conciliation, in writing within 7 days of the outcome.

MEDIATION PROCEEDINGS

- 9) The HOLS or Provincial Manager may determine that mediation proceedings be conducted in respect of a complaint, subject to the consent of the parties.
- 10) The HOLS, Provincial Manager, or any member of staff, as duly designated, must facilitate the mediation proceedings and examine and evaluate the presentations of the parties.
- 11) The HOLS, Provincial Manager, or any member of staff, as duly designated, may determine an appropriate way to resolve a complaint if a party no longer wishes to participate in the mediation.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINTS HANDLING PROCEDURES

- 12) The Complainant and the Respondent, and if applicable, the clerk of the Equality Court must, within 7 days of finalisation of proceedings, be notified by the HOLS, Provincial Manager or any member of staff, as duly designated, of the outcome of the proceedings, in writing.
- 13) In instances where the complaint cannot be resolved by mediation proceedings, the HOLS or Provincial Manager as applicable must in consultation with the COO decide on the appropriate action within 10 days, which may include a hearing or the institution of legal proceedings.
- 14) The HOLS, Provincial Manager or any member of staff, as duly designated, may dismiss a complaint if the Complainant, without just cause:
 - a) Fails to participate in the conciliation, negotiation or mediation proceedings;
or
 - b) Fails to attend any of the proceedings.
- 15) When dismissing a complaint as set out above, the HOLS, Provincial Manager or any member of staff, as duly designated, must take into account
 - a. whether the party has previously failed to co-operate with the proceedings of the Commission;
 - b. reasons provided for the failure to attend the proceedings or to co-operate;
 - c. whether the proceedings can continue effectively in the absence of that party;
 - d. the impact of the decision of the Provincial Manager or any member of staff, as duly designated, on the complaint and on the other party;
 - e. whether or not the party has been properly notified of the date, time and place of the proceedings and has been provided with an opportunity to be heard or provide information; and
 - f. any other relevant factor the Provincial Manager or any member of staff, as duly designated, may deem relevant.
- 16) The HOLS, Provincial Manager or any member of staff, as duly designated, must, within 7 days of the dismissal, notify the parties thereof and the reasons therefore, in writing.
- 17) If the parties reach an agreement the HOLS, Provincial Manager or any member of staff, as duly designated, must ensure that such agreement is reduced to writing and signed by the parties within 7 days of agreement being reached.
- 18) The HOLS, Provincial Manager or any member of staff, as duly designated, may, on request of a party to the proceedings or by agreement of the parties to the proceedings, make a determination regarding the disclosure of relevant

documents.

CONDUCTING OF PROCEEDINGS

- 19) The HOLS, Provincial Manager or any member of staff or independent third party, as duly designated, must determine the manner in which the proceedings relating to mediation must be conducted, in consultation with the parties.
- 20) All complaints mediated by the Commission must be finalised within three calendar months from acceptance of the complaint.
- 21) The HOLS, Provincial Manager or any member of staff, as duly designated, must determine the venue where the conciliation, negotiation or mediation is to take place, in consultation with the parties.
- 22) At any time during the proceedings, the HOLS, Provincial Manager or any member of staff, as duly designated, may postpone or adjourn the proceedings as may be appropriate.
- 23) The HOLS, Provincial Manager or any member of staff, as duly designated shall deem the mediation to have failed if:
 - 24) the mediation is unsuccessful;
 - 25) the Complainant withdraws the complaint forming the basis of a mediation;
 - 26) the parties do not respond to the Commission's notice recommending mediation within 14 days of receipt.
- 27) The HOLS, Provincial Manager or any accredited mediator member of staff, as duly designated, will facilitate the mediation proceedings and examine and evaluate the presentations of the parties. The Commission may, however, in its discretion appoint a third party mediator from outside the Commission in appropriate cases, provided the parties agree thereto.
- 28) The HOLS, Provincial Manager, or any member of staff, as duly designated, may determine an appropriate way to resolve a complaint if a party no longer wishes to participate in the mediation.
- 29) The Complainant and the Respondent, and if applicable, the clerk of the Equality Court must, within 7 days of the determination, be notified by the HOLS, Provincial Manager or any member of staff, as duly designated, of the outcome of the proceedings, in writing.
- 30) In instances where the complaint cannot be resolved by mediation proceedings, the HOLS or Provincial Manager as applicable must in consultation with the Chief Operating Officer decide on the appropriate action within 10 days, which may include a hearing or the institution of legal proceedings.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINTS HANDLING PROCEDURES

- 31) In matters referred to the Commission by the Equality Court for mediation, the HOLS or Provincial Manager as applicable must, within 15 days after the determination that a complaint cannot be resolved by mediation proceedings, submit a report to the clerk of the Equality Court, providing reasons for such failure.

ANNEXURE C – HEARINGS

CONDUCTING HEARINGS

- 1) The HOLS or Provincial Manager, as applicable, may on his or her own accord or on receipt of a written request by one or both of the parties, in consultation with the parties decide that a standard hearing, as contemplated in section 15 of the Act, be conducted or recommend to the Legal Sub-Committee for a decision that a CFI be conducted, as contemplated in section 15 of the Act under the circumstances they deem fit, including the following:
 - a. If a complaint cannot be resolved by any other means referred to in the Act and these Procedures;
 - b. The alleged violations are systemic and complex in nature;
 - c. If a hearing will offer an appropriate solution regarding the complaint;
 - d. If it is in the public interest;
 - e. If the complaint cannot be fairly decided on the basis of documentary evidence or written statements submitted by the parties or any other person having information relevant to the complaint only; or
 - f. If a party requesting a hearing furnishes the Commission with reasonable grounds for a hearing.
 - g. Unless convened by the Commission of its own accord, a party requesting a hearing must do so in writing setting out:
 - i. the reasons, with due regard to the provisions of these Procedures, as to why a hearing is desirable; and
 - ii. The material issues any party wishes to raise during the hearing.
 - h. The hearing procedures, as contained in these Procedures, are relevant to all hearings of the Commission unless, with due regard to the circumstances of each case, the Commission determines an appropriate procedure, the particulars of which procedure shall be made known publicly in advance of the hearing.

HEARING PANEL

- 1) A panel, representing the Commission, must preside over hearings.
- 2) The panel must consist of the following persons:
 - a) In a CFH, the Chairperson of the Commission or any Commissioner, who will serve as the Chairperson of the panel.

- b) In a standard hearing, the Provincial Manager of the relevant provincial office, who will serve as the chairperson of the panel, who may be represented on the panel by a co-chairperson appointed by the Provincial Manager;
 - c) At least one other person appointed by the chairperson of the panel, which may include any member of staff of the Commission.
- 3) In a CFI, where the complaint which is the subject of a hearing alleges human rights violations involving more than one focal area (as determined by the Annual Performance Plan of the Commission), the Chairperson may appoint the relevant focal area Commissioners as co-chairpersons of the panel. Co-Chairpersons of any panel may decide among themselves which of them shall preside over the hearing or in what manner they will divide the duty to preside between or among them.
 - 4) The panel may decide to appoint one or more assessors to provide expert advice or guidance to the panel and who may or may not be present for the entire hearing proceedings, such panel members shall however not participate in the deliberations regarding the outcome of a complaint except to provide their expert guidance.

NOTICE OF HEARING

- 5) The Commission must give notice of the hearing to the parties, outlining the terms of reference of the hearing.
- 6) The Commission may publicise the set down of the hearing outlining the terms of reference of the hearing.
- 7) The Chairperson of the panel may, on request of the parties, issue a notice to any witness required to attend the hearing.
- 8) The panel may, under the hand of a member of the Commission issue a Notice to Appear, to be delivered by a sheriff or member of staff of the Commission to any person:
 - a) who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on the complaint.
 - b) to appear before the panel to be questioned at a time and place specified in the Notice; or
 - c) to deliver or produce to the panel any book, document or other object that has a bearing on the complaint at a time and place specified in the Notice to

Appear.

- 9) The Chairperson of the panel must keep record of the service and return of service of such notice.
- 10) The Chairperson of the panel may, issue a notice to any person in possession of any information relevant to the complaint to appear at the hearing.
- 11) The notice must contain the following information:
 - a) The place where the hearing will be held;
 - b) the time and date of the hearing;
 - c) The aspects in respect of which evidence will be required;
 - d) The names of the other persons who will attend the hearing and give evidence;
 - e) An invitation to the parties to bring any person who has personal knowledge about the matters in respect of which evidence is to be given, to the hearing;
 - f) An indication whether or not a person who will attend the hearing must bring any article or document to the hearing; and
 - g) The right of such party to be represented by a suitable person including a legal representative;
 - h) The right of that party to examine a witness who may implicate him or her in a human rights violation;
 - i) Any other information which the Chairperson of the panel deems fit.

PERSONS ALLOWED TO ATTEND HEARINGS

- 12) A hearing is open to the public unless the panel determines that the public disclosure of evidence would –
 - a) Prejudice the successful conducting of the hearing;
 - b) Threaten the security of any person involved in the hearing;
 - c) Frustrate the successful functioning of the Commission; or
 - d) Pose a threat to national security or public safety.
- 13) Provided that when the hearing deals with a child complaint or a mental health care user, no person may be present at the hearing, unless his or her presence is necessary in connection with the proceedings or the Chairperson of the panel has granted him or her permission to be present.
- 14) The Commission may, on application of the Chairperson of the panel, direct that any person or category of persons or all persons the presence of whom is not desirable, shall not be present at the hearing or part thereof and provide reasons for said decision.

- 15) Before deciding on taking evidence in camera, all affected parties must be allowed a reasonable opportunity to address the panel in that regard.
- 16) The panel may give any directions in respect of the disclosure or publication or prohibition in respect of any information or evidence obtained in camera -
 - a) that would be in compliance with the Children's Act 38 of 2005, where it would be in the best interest of the child not to disclose the identity of minors; and
 - b) of a mental health care user that would be prejudiced by the disclosure of his or her identity.
 - c) that the panel may deem appropriate based on the nature of the complaint and the evidence before it and taking into consideration the right of the public to have access to information - provided that in the case of a child or a mental health care user, his or her identity may not be disclosed.

NATURE OF HEARINGS

- 17) The panel may at any stage of a hearing -
 - a) put any question to a witness;
 - b) rephrase a question put to a witness by a person or a party;
 - c) clarify any uncertainties in respect of any evidence given;
 - d) elicit information from any witness; and
 - e) take such steps as it deems appropriate at any stage of the hearing to ensure fairness, objectivity, security and independence of the hearing.
- 18) The Chairperson of the hearing may determine a change in the composition of the panel at any stage of the proceedings should such change be required for the purposes of determining the complaint in accordance with the mandate of the Commission.
- 19) The Chairperson of the panel or any commissioner of oaths present shall administer an oath or affirmation to a person who is summoned to appear or to provide information to the hearing.
- 20) The panel before whom a person is required to deliver any book, document or other object -
 - a) may interrogate such person named in the Notice to Appear;
 - b) may retain any such book, document or other object for examination for a period not exceeding 2 months, or for such longer period as the panel, on

- application and on good cause shown, may allow; and
- c) must inform a summoned person that they are not obliged to answer any question if the answer would be self-incriminating and must reference s15(2)(b) of the Act.

PROCEDURE AT HEARINGS

- 21) The Chairperson of the panel must, before the commencement of the hearing, explain -
 - a) the purpose of the hearing;
 - b) the inquisitorial nature of the hearing; and
 - c) the procedures which will be followed at the hearing.
- 22) The Chairperson of the panel must commence the hearing by summarising the complaint and the issues to be decided during the hearing.
- 23) The panel shall determine the order for leading evidence.
- 24) The panel must make a determination about any article, document or information to be disclosed at the hearing.
- 25) The panel must give directions on any other aspect of the hearing.
- 26) The panel may receive evidence in any manner it deems fit, including by teleconference and videoconference, or by written affidavit, and in the case of a child or a mental health care user, through an intermediary.
- 27) The decision of the Chairperson of the panel shall be determinative of decisions made by the panel.
- 28) Any party appearing at the hearing is entitled to be represented by another person, including a legal representative.
- 29) Any party appearing at the hearing is entitled to peruse all documentation in the possession of the Commission relevant for the purpose of the hearing, at an appropriate time, place and in the manner to be determined by the panel.
- 30) The parties must be given a reasonable opportunity to respond to the evidence given at the hearing, including being afforded the opportunity to cross examine any witnesses whose evidence may implicate that party either personally or via his or her legal representative, in a manner as determined by the panel.
- 31) The panel must conduct the hearing in a fair and impartial manner.
- 32) The panel must take any steps necessary to establish the truth and correctness of any statement, submission or evidence given.
- 33) The parties must be given a reasonable opportunity to make closing statements.
- 34) A party may make a statement personally, through his or her legal

representative or in the event of a child through his or her parent, an appropriate adult or a guardian.

CONCLUSION OF HEARINGS AND ISSUING OF FINDINGS

- 35) The panel must conclude the hearing by considering the evidence submitted at the hearing in conjunction with all other available information and evidence obtained otherwise. A hearing concludes when the Chairperson of the hearing is of the view that the Commission has received the necessary evidence, information and testimony required for it to make appropriate findings, recommendations and directives.
- 36) Following the conclusion of a hearing, the panel will proceed to make findings on the facts and giving full reasons for the decision reached and make a finding regarding remedial action, if necessary.
- 37) The deliberations of the panel as amongst itself, and not included in the report of the hearing, shall be regarded as confidential.
- 38) The panel must, as expeditiously as possible after the conclusion of the hearing and no longer than three calendar months thereafter prepare a report summarising the evidence, stating the findings (including the majority and minority findings) and any proposed remedial action and issue the report to the parties and to any person, association, organisation, or organ of state implicated in any finding of the report.
- 39) If the Chairperson of the panel deems it necessary to give findings and any recommendations or directives as a matter of urgency, the panel may give the findings, recommendations or directives of the panel *ex tempore* and orally before concluding the hearing, alternatively must prepare and issue the report on an expedited basis.

ANNEXURE D – INVESTIGATIVE REPORTS

PRODUCING AN INVESTIGATIVE REPORT EMANATING FROM AN INVESTIGATION

1. The file handler must draft and submit a report with findings and recommendations to the Provincial Manager (in a standard investigation) or HOLS through the Provincial Manager (in a CFI).
2. If the file handler is of the view that further investigation is required, the file handler must submit a report to the Provincial Manager or HOLS, as applicable, detailing the status of the investigation, an investigation plan and motivating for an extension of time for the submission of the preliminary investigation's report.
3. An extension may be granted by the Provincial Manager or HOLS if satisfied that further investigation is required and for such period as the Provincial Manager or HOLS deems reasonably necessary.
4. **In a standard investigation**, once the Provincial Manager is satisfied with the content of the report and is of the view that -
 - a) on a balance of probabilities there is sufficient evidence to support each finding;
and
 - b) the findings justify all the directives/recommendations contained in the report -
they will sign the report and issue it to parties as soon as possible.
5. **In a CFI**, the investigative report is drafted by the HOLS or Provincial Manager (as relevant) and submitted by HOLS to the COO for review before onward submission to the Focus Area Commissioner for signature. The Focus Area Commissioner, if satisfied with the report, will sign the report and seek final approval by the Body of Commissioners before release. Before submitting the draft report to the Focus Area Commissioner/s for approval, the HOLS shall consider the report, may make recommendations and shall certify in writing that -
 - a) on a balance of probabilities there is sufficient evidence to support each finding;
and
 - b) the findings justify all the directives/recommendations contained in the report.

SHARING A PROVISIONAL REPORT (IF ANY) WITH PARTIES

6. Should the Commission choose to issue a provisional report in an investigation prior

to release of the final report, then no later than **7 days** after the provisional report is completed in a standard investigation or a CFI, the Provincial Manager or HOLS, as applicable, shall make available the provisional investigation report to the parties and any person, association, organisation or organ of state impacted by any finding or recommendation therein. Provisional reports do not need to be approved by Commissioners and may be shared by the Provincial Manager or HOLS, as applicable, with parties for input.

7. The Commission will provide the abovementioned recipients of the provisional report a reasonable period within which to give any inputs they may have in respect of the report. This process is strictly confidential as between the parties and the Commission.

FINAL INVESTIGATION REPORTS

8. Following the receipt of inputs from parties to the provisional report (if applicable), the Commission will consider such inputs (if any) and prepare a final version of the report, following the relevant processes set out in paragraphs 4 and 5 above.
9. Approval of the final investigative report, where no provisional report is drafted, must occur within 20 days of the final report being sent to the Provincial Manager or tabled with Commissioners, as applicable, for approval.
10. Where a provisional report is drafted, approval of the final investigative report must occur within 20 days of the closing date for inputs to the provisional report, unless the inputs received necessitate more time for the Commission to consider its report.
11. Final investigative reports in standard investigations are approved by the relevant Provincial Manager, while final investigative reports in CFIs are approved by the Body of Commissioners.
12. The Provincial Manager or HOLS must, within 5 days of the final report being approved by the relevant Commissioner or Commission official, provide the final report to the parties and to any person, association, organisation or organ of state, as may be necessary and relevant.
13. A written record of the issuing of the final report shall be maintained.

PROMOTIONAL AND TRANSFORMATIVE INTERVENTIONS

14. The Commission may in its discretion conceptualise and carry out programmes for the promotion of human rights and the transformation of society.

15. Where a matter reveals a systemic violation of human rights, the Commission may, in addition to investigating the complaint, implement interventions to promote and strengthen a culture of respect for human rights.

MONITORING THE FINAL REPORT

16. The Provincial Office or legal services unit shall monitor compliance with the directives and/or recommendations of the Commission with the assistance of relevant focal area Commissioners.

17. The Provincial Manager or HOLS must take steps where responsible parties have not complied with the directives and/or recommendations of the Commission. The enforcement actions shall be taken on a case-by-case basis.

ANNEXURE E – INTERNAL APPEALS

- 1) The decision of a Provincial Manager to close or finalise a file prior to acceptance of a complaint (either as a referral, rejection or closure based on non-compliance with the CHP or Act) is not open to appeals under this section. Decisions of this nature can only be overturned on judicial review.
- 2) If the Complainant or the Respondent feels aggrieved by any determination, decision or finding resulting from an *accepted* complaint (excluding reports emanating from CFIs and CFHs), they may lodge an internal appeal, using an appeals form that can be requested from any Provincial Office or the Legal Services Unit of the Commission, **within 45 days** from the date of being notified of such determination,
- 3) Once received, the Chairperson, or the duly delegated Commissioner, shall establish an appeals tribunal to consider the appeal consisting of three members. The Chairperson, or the duly delegated Commissioner, may exercise their discretion in selecting the members of the appeals tribunal from among Commissioners and senior staff members.
- 4) Nothing in these procedures shall prevent the Chairperson, or duly delegated Commissioner from serving on the Appeals Tribunal.
- 5) A Commissioner or staff member who has participated in the assessment or investigation of a complaint, the outcome of which becomes the subject of an appeal, whether as the Focal Area Commissioner, the duly designated Chairperson of a hearing panel or in any other capacity, shall not be entitled to participate in deliberations regarding the appeal.
- 6) The Commission may for the purpose of facilitating the expeditious disposal of appeals make use of the services of contractors appointed for that specific purpose who shall assist with any research, drafting of reasons or preparation of records for purposes of considering an appeal, provided that such contractors shall in no manner participate in deliberations regarding the appeal.
- 7) If the appeal is lodged after the 45 days of being notified of the determination, condonation must be sought by the party lodging the appeal where they provide reasons for the delay in lodging the appeal.
- 8) The appeals tribunal must within 60 days of the hearing of the appeal, make a written finding or determination.
- 9) Parties who remain aggrieved by a determination on their appeal may approach courts or any appropriate forum for recourse.

ANNEXURE F – JUDICIAL REVIEW

- 1) Where a Complainant or a Respondent feels aggrieved at the procedure followed in the resolution of a complaint or where they are of the view that the procedure followed adversely impacted the outcome of a complaint such person may take the matter on review to a Provincial Division of the High Court having jurisdiction in the applicable province in which the complaint has been attended to. The aggrieved party should, however, first exhaust the internal appeals process (if relevant to the matter at hand) before approaching the court, as administrative law ordinarily requires applicable internal remedies to be exhausted before seeking judicial review.
- 2) Where any affected party is aggrieved with the findings, recommendations and/or directives emanating from a CRI or CRH, this party must also follow the abovementioned process of judicial review.
- 3) The Rules of the High Court as contained in the Uniform Rules (available on the website of the Department of Justice and Constitutional Development) will be applicable to such proceedings.
- 4) The Complainant or Respondent is advised to seek the services of an attorney for purposes of having a decision of the Commission reviewed and such party may approach Legal Aid South Africa should they not be of the means to afford the services of an attorney. Alternatively, such person may approach the Registrar of the applicable High Court for assistance in terms of Rule 40 of the Uniform Rules (In forma Pauperis) and may also approach the Legal Practice Council in the province for referral to attorneys who may be able to assist them on a pro bono basis.
- 5) Parties are advised that the organisations or bodies approached will however assess their request for legal representation in terms of their own rules and that assistance is not guaranteed where such bodies are approached. In this regard specifically it is noted that applicants for legal representation or assistance are likely to be subjected to a means test in terms of which they will be required to disclose financial information to show their inability to afford such assistance.
- 6) Parties are further advised that the bodies or organisations approached are also likely to make an assessment of the merits of the matter (an assessment of the viability of a matter based among others on the prospects of the matter being successfully prosecuted) in respect of which pro bono legal

representation or assistance is sought and that even should they qualify for assistance based on the outcome of the means test, they may nevertheless be declined assistance based on the outcome of the merits assessment.

- 7) Parties are further advised that should they successfully take a decision of the Commission on review that the outcome which they could expect is that the decision of the Commission is reviewed and set aside, the matter is remitted to the Commission for reconsideration or the Court may if appropriate substitute its own decision for what it considers would have been the more appropriate decision on all of the circumstances.

ANNEXURE G – REPORTING MISCONDUCT AND POOR SERVICE DELIVERY

- 1) Where a Complainant or a member of the public is aware of misconduct on the part of a Commissioner or member of staff of the Commission (**including failure to adhere to applicable complaints handling timelines within these procedures**), such person is encouraged to bring this misconduct to the attention of the Chief Executive Officer in respect of staff members or the Chairperson of the Commission in respect of Commissioners.
- 2) On receipt of a complaint the CEO or Chairperson as the case may be, will assess the complaint and determine whether the facts disclosed warrant further investigation and action as indicated by the applicable laws.
- 3) Staff members of the Commission are subject to ordinary labor processes and should a decision be taken in respect of a staff member that such staff member is to be charged for a disciplinary infraction such decision will be shared with the person who complained of the misconduct. The further conduct and outcome of such proceedings are however confidential and no further information may therefore be provided save that the Commission in its commitment to transparent and accountable conduct will keep records of any such action.
- 4) Where a complaint alleges misconduct on the part of a Commissioner, the Chairperson of the Commission will assess the complaint and if appropriate will advise the person making the complaint of misconduct of further steps to be taken, if any.
- 5) In the event that the Complaint alleges serious misconduct, and the Chairperson is of the view that the facts disclosed would if proven amount to an offense for which the Commissioner concerned may face impeachment, the Chairperson shall advise the person lodging the complaint of the process to be followed to bring the misconduct to the attention of Parliament for it to determine the process to be followed.
- 6) The Commission operates a Fraud hotline via an independent service provider for purposes of reporting fraud. The telephone number of this hotline is available on the website of the Commission and parties may also make use of this facility to report alleged misconduct. The independent auditors who operate this fraud hotline will bring the complaint of misconduct to the attention of the CEO or

Chairperson as the case may be and are obliged in terms of their contract to follow up on the outcome of the complaint until such is resolved as above.