

RULES FOR THE CONDUCT OF

PROCEEDINGS IN THE

FRAUD, WASTE AND ABUSE TRIBUNAL

(Published in terms of section 9, section 7(d)(h) and Section 8(k) of the Medical Schemes Amendment Bill 131 of 1998)

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FWA TRIBUNAL RULES
REGULATING THE FUNCTION OF THE FWA TRIBUNAL
Part 1- General Provisions

1. Preamble

The Fraud, Waste and Abuse Tribunal is established to resolve complaints lodged in relation to the prevention, detection, investigation, sanction, or restitution of funds under section 59 of the Medical Schemes Act, 1998 (Act 131 of 1998) ("MS Act"), read with Regulations 5 and 6 to the MS Act, which may involve members of the medical schemes, service providers, and medical schemes. The Fraud, Waste and Abuse Tribunal Rules are to provide for the functions and powers of the Fraud, Waste and Abuse Tribunal; for application of penalties to be applied to a medical scheme or administrator in respect of late payment of benefits owing to a member or services in contravention of section 59(2) of the MS Act as contemplated under section 67(1)(o) of the MS Act; for reporting of acts or omissions of any person in contravention of the provisions of the MS Act as envisaged under section 67(1)(p) of the MS Act; to provide for the protection and promotion of rights on charges and payment of claims as contemplated under section 59 read with Regulation 6 to the MS Act; for coordinating penalties imposed in terms of section 42(1) of the Health Professions Act, 1974 (Act 56 of 1974) against a health professional.

2. Short title

The Fraud, Waste and Abuse (FWA) Tribunal Rules may be cited as the Tribunal Rules.

3. Scope of Tribunal

The FWA Tribunal is a body established as per the private health care industry with the view to:

- 3.1. Resolve disputes relating to methods used to prevent, detect, investigate, sanction, and retribute funds in FWA-related matters according to section 59 of the Medical Schemes Act, 1998 (Act No. 131 of 1998)("the MS Act").
- 3.2. Implement the FWA Code of Good Practice as per the Batho Pele Principles.

4. Interpretation

- 4.1. Unless the context indicates otherwise in the Tribunal Rules, a word or expression defined in the MS Act bears the same meaning in these Rules as in the MS Act.
- 4.2. In these Rules:
- (a) A reference to a section by a number refers to the corresponding section of the MS Act
 - (b) A reference to a Rule by a number refers to the corresponding item of these Rules; and
 - (c) A reference to a sub-rule or paragraph by a number refers to the corresponding item of the Rule in which the reference appears.
- 4.3. In these Rules unless the context indicates otherwise
- (a) **"Certified Copy"** means a copy of a document certified by a Commissioner of Oaths;
 - (b) **"Chairperson"** means the chairperson of the FWA Tribunal contracted by the Council in accordance with section 8(c) of the MS Act for a resolution of an FWA complaint contemplated under section 59 of the MS Act;
 - (c) **"Complaint"** means a complaint against any person whose conduct or professional activities are regulated by the MS Act, or any person or the conduct of any person registered under any Act of Parliament, and alleging that such person has—
 - (a) acted, or failed to act, in contravention of the MS Act;
 - (b) acted, or failed to act, in contravention of any Act of Parliament regulating the registration of a health care professional;
 - (c) acted improperly in relation to any matter which falls within the jurisdiction of the Council for Medical Schemes ("CMS") or the Health Professionals Council of South Africa ("HPCSA"); or
 - (d) acted, or failed to act, in a manner that constitutes disgraceful, fraudulent, wasteful, or abusive conduct relating to a medical scheme

- (c) **"FWA Tribunal"** means a panel of persons contracted by the Council in accordance with section 8(c) of the MS Act constituted to resolve an FWA complaint contemplated under section 59 of the MS Act;
- (d) **"Panel"** means the group of members assigned by the chairperson to hear any matter before the Tribunal;
- (e) **"Referral"** includes, where applicable, all the documents and other records appended to a complaint;
- (f) **"Registrar"** means the incumbent appointed as the Registrar of Medical Schemes, and shall assume the same meaning as defined in the MS Act;
- (g) **"Secretariat"** means a person appointed or delegated the duty to perform the secretarial support functions of the Tribunal.

5. Office hours and address of Tribunal

- 5.1. The offices of the Tribunal are open to the public every Monday to Friday from 08h30 to 13:00 and from 13h30 to 15h30, excluding public holidays.
- 5.2. Despite sub-paragraph (1)-
 - 5.2.1. In exceptional circumstances, the Secretariat may accept documents for filing on outside the stipulated hours; and
 - 5.2.2. The Secretariat must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.
- 5.3. Any communication to the Tribunal or a member of the staff of the Tribunal may be –

- 5.3.1. Delivered by hand to;

The Secretariat,

The FWA Tribunal

Block A Eco Glades 2 Office Park

420 Witch - Hazel Avenue Eco Park

Centurion

0157

5.3.2. Addressed by post to:

Private Bag X34

Hatfield, 0028

5.3.3. Communicated by telephone on 27 12 431 0500

5.3.4. Transmitted by Fax (086) 206 8260; or

5.3.5. Transmitted by electronic mail to FWA.Tribunal@medicalschemes.com

6. Composition of the Tribunal

6.1. The Tribunal consists of a chairperson and not more than 10 (ten) other members appointed by the Council in terms of section 8(c) of the Medical Schemes Act, of whom-

- (a) At least three members must be practising legal practitioners with a minimum of 10 (ten) years' experience or judges who have been discharged from active service, one of whom must be the chairperson; and
- (b) The remainder must be persons who are appointed from professional regulatory bodies, including the Health Professionals Council of South Africa (HPCSA), Pharmacy Council and the South African Nursing Council (SANC).

6.2 A member of the Tribunal is appointed for a period of 3 (three) years.

7. Powers and duties of the Tribunal

The Tribunal may-

- 7.1. resolve any complaint referred to in sub-rule 7.2 to determine whether a beneficiary, health care provider or medical scheme has contravened section 59 of the MS Act provisions in submitting a claim; payment of a claim; prevention, detection, investigation or deducting or recovering an amount under FWA.
- 7.2. enforce the FWA Code of Good Practice.

- 7.3. impose penalties to be applied to a medical scheme or administrator in respect of the late payment of benefits owing to a member or a supplier of service, in contravention of section 59 (2);
- 7.4. refer any acts or omissions of any person in contravention of the provisions of this Act to the Council for reporting;
- 7.5. coordinate imposition of penalties against a health professional contemplated in section 42(1) of the Health Professionals Act;
- 7.6. apply to court for its decision to be made an order of court.

The Tribunal shall be accountable to the Council of Medical Schemes and all relevant stakeholders.

Part 2- Delivery of Documents

8. Delivery of Documents

- 8.1. A notice or document may be delivered according to clause (4)3
- 8.2. A document delivered by a method listed in clause (4)3 will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method
- 8.3. In the event that, it proves impossible to serve a document in any manner provided for in these Rules –
 - 8.3.1. The Tribunal, where it requires to serve the document, may direct the Secretariat to apply to the High Court for an order of substituted service or edictal citation; and
 - 8.3.2. In any other case, the person concerned may apply to the Tribunal for an order of substituted service or edictal citation.
- 8.4. If the date and time for the delivery of a document falls outside of the office hours of the Tribunal, as set out herein, that document will be deemed to have been delivered on the next business day.
- 8.5. A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must accompany a cover message, in either case setting
 - 8.5.1. the name, address, and telephone number of the sender;

8.5.2. the name of the person to whom it is addressed, and the name of that person's attorney, if it is being sent to the attorney for a participant

8.5.3. the date and time of the transmission;

8.5.4. the total number of pages sent, including the cover page; and

8.5.5. the name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful

9. Issuing documents

9.1. If the Act or these Rules require the Tribunal to issue a document –

9.1.1. the document shall be deemed to have been issued by the Tribunal when they has been signed, and served on any person to whom it is addressed; and

9.1.2. the document may be signed and served at any time of day, despite Rule 4(1).

10. Filing Documents

10.1. The Secretariat must assign distinctive case numbers to each initiating document.

10.2. Before serving a copy of an initiating document on any person, the initiating party must

10.2.1. obtain a case number for that document from the Secretariat; and

10.2.2. note the case number on every copy of that document

10.3. The Secretariat must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.

10.4. The Secretariat may refuse to accept a document from any party subsequently filed in respect of the same proceedings if the document is not properly marked with the case number.

10.5. A person who files any document in terms of the Act or these rules must provide to the Secretariat that person's-

- 10.5.1. Legal Name;
- 10.5.2. Address for service
- 10.5.3. Telephone number;
- 10.5.4. If available, email address and fax number;
- 10.5.5. if the person is not an individual, the name of the individual authorized to deal with the Tribunal on behalf of the person filing the document; and
- 10.5.6. if the person filing the document does so as the representative of another person, they must comply

Part 3 - Tribunal Procedures

Section A – Complaint Procedures

11. Initiating Complaint proceedings

- 11.1. A Complaint Referral may be filed by any complainant;
- 11.2. If, in respect of a matter, more than one person files a Complaint Referral, the Secretariat must combine those referrals under a common case number.
- 11.3. The person who files a Complaint Referral must serve a copy of it within 3 business days after filing on-
 - 11.3.1. The respondent; and
 - 11.3.2. On each other person who has previously filed a Complaint Referral in that matter or any party who would potentially be affected by the outcome of the matter.

12. Complaint Referral

- 12.1. A Complaint proceeding may be initiated only by filing a Complaint
- 12.2. A Complaint Referral must be supported by an affidavit setting out in numbered paragraphs -

- 12.2.1. A concise statement of the grounds of the complaint; and
- 12.2.2. The material facts or the points of law relevant to the Complaint and relied on Tribunal or Complainant, as the case may be.

12.3. A complaint Referral may allege alternative prohibited practices based on the same facts.

13. Answer

13.1. Within 30 (thirty) business days after being served with a Complaint Referral filed by the FWA Tribunal, a Respondent who wishes to oppose the Complaint Referral must -

- 13.1.1. Serve a copy of their Answer on the Tribunal; and
- 13.1.2. File the Answer with proof of service

13.2. Within 20 business days after being served with a Complaint Referral filed by a person other than the Tribunal, a respondent who wishes to oppose the complaint Referral must –

- 13.2.1. File the Answer with proof of service

13.3. An Answer that raises only a point of law must set out the question of law to be resolved.

13.4. Any other Answer must be in affidavit form, setting out in numbered

- 13.4.1. A concise statement of the grounds on which the Complaint Referral is opposed;
- 13.4.2. The material facts or points of law on which the respondent relies; and
- 13.4.3. An admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

13.5. An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an Answer will be deemed to have been admitted

13.6. In an answer, the Respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

14. Reply

- 14.1. Within 15 business days after being served with an Answer that raises issues not addressed in the Complaint Referral, other than a point of law alone, the person who filed the Complaint Referral may-
- 14.1.1. Serve a Reply on the Respondent and the Tribunal, if the Tribunal did not file the Referral, and on each other person who filed a Complaint Referral in the matter; and
 - 14.1.2. File a copy of the Reply and proof of service
- 14.2. A Reply must be in affidavit form, setting out in numbered paragraphs –
- 14.2.1. An admission or denial of each new ground or material fact raised in the Answer; and
 - 14.2.2. The position of the replying party on any point of law raised in the Answer.
- 14.3. If a person who filed a Complaint Referral does not file a Reply, they will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to each of those issues.

15. Amending Documents.

- 15.1. The person who filed a Complaint Referral may apply to the Tribunal, at any time prior to the end of the hearing, for an order authorizing them to amend the Complaint, as the case may be, as filed.
- 15.2. If the Tribunal allows the amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time allowed by the Tribunal.

16. Completion of Complaint File

The filing of documents is complete when a Complaint Referral or Answer has not been responded to within the time allowed.

17. Pre-Hearing Conferences

17.1. Before, or within 20 business days after, the filing of documents is completed, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference on a date and at a time determined by that member with -

17.1.1. The Tribunal;

17.1.2. Each complainant who has filed a Complaint Referral,

17.1.3. Interveners; and

17.1.4. The Respondent If a point of law has been raised, and it appears to the assigned member of the Tribunal at a pre- hearing conference to be practical to resolve that question before proceeding with the Conference, the member may -

17.1.4.1.1. Direct the Secretariat to set only that question down for hearing by the Tribunal; and

17.1.4.1.2. May adjourn the pre-hearing conference pending the resolution of that question by the Tribunal, and the Court, if applicable.

17.2. The assigned member of the Tribunal may adjourn a pre-hearing conference from time to time

17.3. Pre-hearing conferences may be conducted in person, telephonically or virtually, and need not follow formal rules of procedure, and are not open to the public.

18. Other powers of members at pre- hearing conference

18.1. At a pre-hearing conference, the assigned member of the Tribunal may:

18.1.1. Establish procedures for protecting confidential information, including the terms under which participants may have access to that information;

18.1.2. Direct the Tribunal to investigate specific issues or obtain certain evidence; or

- 18.1.3. Give directions in respect of -
 - 18.1.3.1.1. Technical or formal amendments to correct errors in any documents filed in the matter;
 - 18.1.3.1.2. Any pending Notices of Motion
 - 18.1.3.1.3. Clarifying and simplifying the issues;
 - 18.1.3.1.4. Obtaining admissions of facts or documents;
 - 18.1.3.1.5. The production and discovery of documents whether formal or informal;
 - 18.1.3.1.6. Witnesses to be called by the Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;
 - 18.1.3.1.7. A timetable for
 - 18.1.3.1.7.1. The exchange of summaries of expert opinions or other evidence that will be presented at the hearing; and
 - 18.1.3.1.7.2. Any other pre- hearing obligations of the parties;
 - 18.1.4. Determine the procedure to be followed at the hearing, and its expected duration;
 - 18.1.5. A date, time and schedule for the hearing; or
 - 18.1.6. Any other matters that may aid in resolving the complaint
- 18.2. At a pre-hearing conference, the assigned member of the Tribunal may require each participant to submit at a date to be determined, but before the hearing, a written statement summarizing its argument, if any, with respect to the complaint, and identifying what it believes are the major unresolved issues. After concluding a pre-hearing conference, the assigned member of the Tribunal must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing Conference.
- 18.3. A member of the Tribunal assigned by the Chairperson may schedule a further pre-hearing conference on their own motion, and the provisions of this rule apply to such a conference.

19. Settlement conference

At any time before the Tribunal makes a final order in a complaint proceeding, the Tribunal, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach agreement on any outstanding issue.

20. Confidentiality

- 20.1. If any party to Complaint supplies information to the FWA Tribunal and requests, in writing, that it is treated as confidential information, the FWA Tribunal shall not disclose that information to any other party, except with the written consent of the first mentioned party.
- 20.2. As far, as is practical and at the sole discretion of the Tribunal, all documentation should be provided to both parties to a dispute. However, it is not necessary for documents and information used by the Tribunal to be provided to both parties as long as the Tribunal's written reasons in the case of a recommendation and ruling, clearly identify the documents or information relied on and the identified documents or information are provided on request.

Section B - Interim relief

21. Initiating interim relief procedures

- 21.1. A person wishing to apply for interim relief must file a Complaint using the prescribed Form, and with a supporting affidavit setting out the facts on which the application is based;
- 21.2. The applicant must serve a copy of the Complaint and affidavit on the Tribunal and each Respondent named in the complaint, within 3 business days after filing it;
- 21.3. A complaint in terms of this Rule must-
 - 21.3.1. allege each prohibited practice in respect of which the application is made by specific reference to the relevant section, subsection, paragraph or sub paragraph of the Act;
 - 21.3.2. indicate the order sought, and the section of the Act under which that order may be granted;

21.3.3. state the name and address of each person in respect of whom an order is sought.

21.4. A complaint may allege alternative prohibited practices based on the same facts.

22. Answering and Replying Affidavits

22.1. Within 15 business days after being served with a Complaint, a respondent against whom an interim order is sought-

22.1.1. May serve an answering affidavit on the FWA Tribunal, the Applicant and any person against whom the order is sought; and

22.1.2. Must file proof of service with the affidavit.

22.2. Within 10 business days after being served with an answering affidavit that raises issues not addressed in the Complaint or its supporting affidavit, the applicant may-

22.2.1. Serve a replying affidavit on the Respondent, the Tribunal and on any other person against whom the order is sought; and

22.2.2. File a copy of the replying affidavit and proof of service

23. Interim relief hearings

23.1. Rule 21, read with the changes required by context, apply to the pre-hearing procedures of an interim relief application.

23.2. Evidence on an application for interim relief must be by affidavit.

23.3. In urgent circumstances, the Tribunal on good cause shown may shorten any period or dispense with any formalities provided for in this Division.

24. Answering and Replying affidavits

24.1. Within 10 business days after being served with a Complaint applying for any relief other than condonation, a respondent against whom an order is sought-

- 24.1.1. May serve an answering affidavit on the applicant, and on any other person against whom the order is sought; and
- 24.1.2. Must file the affidavit with proof of service.
- 24.2. Within 10 business days after being served with an answering affidavit that raises issues not addressed in the Complaint or its supporting affidavit, the applicant may-
 - 24.2.1. Serve a replying affidavit on the respondent, the Commission and on any other person against whom the order is sought; and
 - 24.2.2. File a copy of the Replying affidavit and proof of service.

25. Unreasonable complaints

- 25.1. The Tribunal may, at its sole discretion, determine that a dispute should not be considered on the grounds that the complainant is pursuing it:
 - 25.1.1. in an unreasonable manner; or
 - 25.1.2. in a frivolous, vexatious, offensive, threatening or abusive manner.

Part 4 - Representation of Parties, Interveners, Witnesses, and Interpreters

26. Representation of Parties

27.

- 27.1. A representative acting on behalf of any person in any proceedings must notify the Secretariat and every other party, advising them of the following particulars;
 - 27.1.1. The representative's name,
 - 27.1.2. The postal address and place of employment or business
 - 27.1.3. If a fax number and telephone number are available, those numbers.
- 27.2. A person who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the Secretariat and

every other party of that termination, and of the appointment of another representative, if any, and include that representative's particulars.

- 27.3. On receipt of a notice, the address of the representative or the party will become the address of record for notices to and for service on that party of all documents in the proceedings.
- 27.4. A person who, before receiving a notice, has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Tribunal orders otherwise.
- 27.5. A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- 27.6. A notice delivered must state the names and addresses of each party who is being notified.
- 27.7. After receiving a notice, the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.
- 27.8. Legal representation will be allowed if good cause is shown by party requesting same or by consent.

28. Summoning witnesses

- 28.1. If the Tribunal requires a witness to attend any proceedings to give evidence, the presiding member may have a summons issued for that purpose.
- 28.2. If a witness is required to produce evidence, which may include but not limited to any document, item, or material, that is in the witness's possession, the summons must specify the document, material or item to be produced.
- 28.3. After the summons have been issued, it must be served by the sheriff in manner authorized by Rule 4 of the High Court Rules.

28.4. A witness who has been required to produce any document or item or material/s at the proceedings must hand it over to the Secretariat, as soon as possible after service of the summons.

29. Witness fees

29.1. A witness in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and published by notice in the Gazette in terms of section 42 of the Supreme Court Act, 1959 (Act 59 of 1959).

29.2. The Tribunal may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

30. Interpreters and Translators

30.1. Before an interpreter may interpret in Tribunal proceedings, the interpreter must take an oath or make an affirmation in the following form before a member of the Tribunal:
"I,.....(full names) swear/ affirm that whenever I am called on to interpret in any proceedings before the Tribunal, I will correctly interpret to the best of my ability from the language I am called on to interpret into one or her of the official languages, and vice versa."

30.2. An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the High Court Rules, read with the changes required by context and a printed copy of the oath or affirmation must be signed by the interpreter.

30.3. Any person admitted and enrolled as a sworn translator of any division of the High Court is deemed to be a sworn translator for the Tribunal.

Part 5 - Withdrawals, Postponements, Set-down, and Matters Struck off

31. Withdrawals and Postponements

- 31.1. At any time before the Tribunal has determined a matter, the initiating party may withdraw all or part of the matter by-
- 31.1.1. serving a Notice of Withdrawal on each party; and
 - 31.1.2. filing the Notice of Withdrawal with proof of service
- 31.2. If the parties agree to postpone a hearing, the initiating party must notify the Secretariat as soon as possible.

32. Set-down of matters

- 32.1. If a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the Secretariat for it to be re-enrolled but no preference may be given to that matter on the roll, unless the Chairperson decides otherwise.
- 32.2. The Secretariat must allocate a time, date and place for the hearing and send a Notice of Set – Down.
- 32.3. If a matter is postponed to a specific date, the Secretariat need not send a Notice of Set-Down to the parties.

33. Matters struck-off

- 33.1. The Tribunal member presiding at a hearing may strike a matter off the Roll if the initiating party is not present.
- 33.2. If a matter is struck off the roll, the matter may not be re-enrolled unless;
- 33.2.1. that party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and

- 33.2.2. a member of the Tribunal assigned by the Chairperson, on considering the explanation offered, orders the matter to be re-enrolled.

34. Default orders

- 34.1. If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order sought issued against that person by the Tribunal
- 34.2. On application in terms of sub-rule(1), the Tribunal may make an appropriate order-
- 34.2.1. After it has heard any required evidence concerning the motion; and
- 34.2.2. If it is satisfied that the initiating document was adequately served.
- 34.3. Upon an order being made the Secretariat must serve the order on the person and on every other party

Part 6- Procedures Generally

35. Late filing, extension and reduction of time

- 35.1. A party to any matter may apply to the Tribunal to condone the late filing of a document, or to request an extension or reduction of the time for filing a request
- 35.2. Upon receiving a request in terms of sub-rule (1), the Secretariat, after consulting the parties to the matter, must set the matter down for hearing at the earliest convenient date.

36. Conduct of hearings

- 36.1. If, during proceedings, a person is uncertain as to the practice and procedure to be followed, the member of the Tribunal presiding over a matter;
- 36.1.1. may give directions on how to proceed; and
- 36.1.2. for that purpose, if a question arises as to the practice or procedure to be followed in cases not provided for by these Rules, the member may have regard to the High Court Rules.

36.2. Subject to these Rules, the member of the Tribunal presiding over a matter may determine the time and place for the hearing before the Tribunal.

36.3. The Tribunal may condone any technical irregularities arising in any of its proceedings.

37. Guidelines

The Tribunal, by notice published in the Gazette, may issue guidelines or requirements concerning the form and style of any documents provided for in these Rules.

38. Record of hearing

The Secretariat must compile a record of any proceeding in which a hearing has been held including –

- a) The initiating document;
- b) The notice of any hearing;
- c) Any interlocutory orders made by the Tribunal or a member;
- d) All document evidence filed with the Tribunal;
- e) The transcript, if any, of the oral evidence given at the hearing and
- f) The final decision of the Tribunal and the reasons.

Part 7 - Orders, Costs and Taxation

39. Costs and Taxation

39.1. Upon making an order under Part 4, the Tribunal may make an order for costs

39.2. Where the Tribunal has made an award of costs, the following provisions apply;

- 39.2.1. The fees of one representative may be allowed between party and party, unless the Tribunal authorizes the fees of additional representatives
- 39.2.2. The fees of any additional representative authorized in terms of paragraph (a) must not exceed one half of those of the first representative unless the Tribunal directs otherwise.
- 39.2.3. The costs between party and party allowed in terms of an order of the Tribunal, or any agreement between the parties, must be calculated and taxed

by the taxing master at the tariff determined by the order or agreement, but if no tariff has been determined, the tariff applicable in the High Court will apply.

- 39.2.4. Qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the Tribunal during the proceedings
- 39.2.5. The Secretariat may perform the functions and duties of a taxing master or appoint any person as taxing master who in the Secretariat's opinion is fit to perform the functions and duties signed to or imposed on a taxing master by these rules
- 39.2.6. The taxing master is empowered to tax any bill of costs for services rendered in connection with proceedings in the Tribunal
- 39.2.7. At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- 39.2.8. The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.
- 39.2.9. Notice need not be given to a party-
 - 39.2.9.1. Who failed to appear at the hearing either in person or through a representative; or
 - 39.2.9.2. Who consented in writing to the taxation-taking place in that party's absence.
 - 39.2.9.3. Any decision by a taxing master is subject to the review of the High Court on application.

40. Cost: Funding Model

40.1. To lodge a Complaint to the Tribunal:

40.1.1. We propose a fee of two thousand eight hundred Rands (R2, 800) to any party who intends to lodge a Complaint to the Tribunal

40.1.2. Where good cause is shown, the applicable fee shall be exempted

41. Amendments to terms of reference

The Tribunal may make recommendations to the Council for changes to these Terms of Reference and Operational Procedures

42. Conflicts

If there is a conflict between the provisions of these Terms of Reference and the provisions of the Medical Schemes Act, the latter takes precedence.