

CONSTITUTION OF THE PRESS COUNCIL OF SOUTH AFRICA

As updated and approved by the PCSA AGM on 13 September 2022

Preamble:

- Reaffirming that the South African Constitution and Bill of Rights guarantee freedom of expression - and thus freedom of the press - as a cornerstone of democracy;
- Believing that ethical journalism is essential to realising the promise of democracy;
- Acknowledging that South Africa is party to the 2019 *Declaration of Principles on Freedom of Expression and Access to Information in Africa*, drawn up by the African Commission on Human and Peoples' Rights, which states in Principle 16: "States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective, and promote high standards in the media";
- Believing that the press exists to serve society and that self-regulation by the press is enriched by public participation in a co-regulatory process;
- Accepting that co-regulation involving exclusively the press and the public will enhance journalistic standards and ethical conduct; and
- Noting that South African law allows for alternative dispute resolution:

We, the Constituent Associations, therefore establish a voluntary independent co-regulatory system involving exclusively representatives of the press and the public, with the aims and objectives set out in this Constitution.

1. Establishment of the Press Council of South Africa

1.1 The South African media, represented by the Constituent Associations, hereby establish the Press Council of South Africa ("PCSA" or the "Council") in order to achieve the aims and objectives set out in this Constitution.

1.2 The Constituent Associations are:

1.2.1 The Association of Independent Publishers (AIP);

1.2.2 The Forum of Community Journalists (FCJ);

1.2.3 The South African National Editors' Forum (SANEF); and

1.2.4 The Interactive Advertising Bureau South Africa (IABSA), representing online media.

1.3 The PCSA will be governed by a Council consisting of public and press representatives.

1.4 The Constituent Associations named in section 1.2 and the Subscriber Publications and Subscriber Members referred to in section 4 explicitly guarantee the independence of the PCSA, so that it can act without fear or favour in the interests of a free and ethical press, and in pursuit of the aims and objectives set out below.

1.5 The Council may invite representatives from the media industry not listed among the Constituent Associations and who are not Subscriber Publications or Subscriber Members to participate in the affairs of the Council in order to achieve national consensus on matters affecting the press.

2. Aims and Objectives

2.1 To uphold and promote the Constitution of the Republic of South Africa by preserving the right to freedom of expression and freedom of the press;

2.2 To promote and develop ethical practice in journalism and to promote the adoption of and adherence to these standards by the South African press;

2.3 To adopt “The Press Code of Ethics and Conduct for South African Print and Online Media” (“Press Code”) and to act as its custodian, noting that the “press” as described in this Constitution excludes the broadcast media, which are regulated by the Broadcasting Complaints Commission of South Africa.

2.4 To establish and maintain a voluntary independent mediation and arbitration process to deal cost-effectively and quickly with complaints from the public about journalistic ethics and conduct by Subscriber Publications and Subscriber Members;

2.5 To promote the concept of independent co-regulation of Subscriber Publications and content published by Subscriber Members; and public awareness of the PCSA's mediation and arbitration services to deal with complaints about journalistic practice; and

2.6 To undertake such other tasks as are necessary to further the objectives of the Council.

3. Powers and functions

The Council shall:

3.1 Have the power to consider and decide on any matter arising from this Constitution or the functioning of any office appointed in terms of this Constitution;

3.2 Perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Press Code, Complaints Procedures or any function considered necessary by the Council;

3.3 Establish a Finance and Human Resources (FHR) committee to fulfil the role defined in section 9 and such sub-committees as are necessary to deal with particular issues, and appoint both voting and non-voting members to these committees; and

3.4 Endeavour to collaborate with similar or like-minded organisations in South Africa to ensure that a cost-effective voluntary independent mediation and arbitration process is available to deal quickly with complaints from the public about journalistic ethics and conduct.

4. Subscriber Publications and Subscriber Members

4.1 Print and online publications and organisations involved in the production of editorial content and that subscribe to the Constitution of the PCSA, the Press Code and the Complaints Procedures, may be accepted as Subscriber Publications after completing an application form and paying an annual fee set by the Council, noting that at its sole discretion, the Council may allow select publications to subscribe to the Press Code without paying a subscription fee.

4.2 Subscription confirms an obligation by the member to display clearly the logo of the Council in its print and online publications, publicise and adhere to the Complaints Procedures, promote the work of the Council, display the Press Code in newsrooms and online and ensure that all practising journalists are familiar with the Press Code and its application.

4.3 Subscriber Publications must give the PCSA at least three years' notice of their intention to withdraw from the jurisdiction of the PCSA.

4.4 Individual journalists involved in the production of editorial content for non-subscriber publications/platforms may be accepted as Subscriber Members after completing an application form and paying an annual fee set by the Council, noting that at its sole discretion, the Council may allow select journalists to subscribe to the Press Code without paying a subscription fee.

4.5 Subscriber Members must declare their adherence to the Press Code and the Complaints Procedures in published content.

5. Composition of Council

5.1 The Council shall consist of a Chair and 12 individual Councillors, six representing the public and six representing the press.

5.2 The PCSA shall from time to time request the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Press Council for an initial period of five years, which appointment must be ratified by the Council and may also be renewed by the Council. The Council shall, from within its members, elect a Deputy Chair to stand in for and assist the Chair as and when necessary.

5.3 To ensure a separation of powers, the Chair of Council shall hold no other position in the PCSA and Councillors shall not be involved in the adjudication process.

5.4 Six of the Councillors shall be appointed by the Appointments Panel according to the criteria set out in section 7 from nominations received from members of the public, as set out in section 6.2.

5.6 Six of the Councillors representing the press shall be appointed by the Constituent Associations according to the criteria set out in section 7 as follows:

5.6.1 One by the Association of Independent Publishers (AIP);

5.6.2 One by the Forum of Community Journalists (FCJ);

5.6.3 Two by the South African National Editors' Forum (SANEF); and

5.6.4 Two by the Interactive Advertising Bureau South Africa (IABSA).

5.7 The Executive Director, Press Ombud and Deputy Press Ombuds and Public Advocate shall serve *ex-officio* on the Council, without voting rights.

6. Structures and Officers of the Council

The PCSA shall establish and maintain the following mechanisms:

6.1 Complaints Procedures

6.1.1 The Council shall establish a procedure to deal with complaints against the Subscriber Publications and Members (“The Complaints Procedures”), providing a non-statutory avenue for the mediation and arbitration of complaints.

6.1.2 The Subscriber Publications and Members are thus subject to the Press Code and to the jurisdiction of the PCSA's Complaints Procedures, both of which may be amended from time to time by the Council.

6.1.3 The structure and offices administering the Complaints Procedures, namely the Public Advocate, the Press Ombud, Deputy Press Ombuds, the Panel of Adjudicators and the Chair of Appeals, shall act independently of the Council and the Constituent Associations.

6.1.4 Where a complaint is made against a non-subscribing publication or a non-subscribing journalist producing editorial content for a non-subscribing publication, the Public Advocate, Press Ombud or Deputy Press Ombuds may approach the publication or individual to establish whether they subscribe to the principles of the Press Code and invite them to subject themselves to the jurisdiction of the PCSA for the purpose of adjudicating the complaint.

6.1.5 In the event that the non-subscribing publication or the non-subscribing journalist producing editorial content for a non-subscribing publication refuses to join the PCSA or to submit to the jurisdiction of the PCSA, the Public Advocate, Press Ombud or Deputy Press Ombuds shall advise the complainant and, where appropriate, refer them to an alternative dispute resolution process.

6.2. Appointments Panel

6.2.1 The Council shall request the Chief Justice of South Africa to recommend a judge who is no longer in active service to serve as part-time chair of an Appointments Panel for an initial period of five years, which appointment must be ratified by the Council and may also be renewed by the Council.

6.2.2 The Council must appoint up to four Councillors, preferably consisting of two press representatives and two public representatives, to assist the Chair of the Appointments Panel. One of the representatives must be a member of the FHR committee. The Executive Director will be an ex officio member of the Appointments Panel, without voting rights.

6.2.3 The Appointments Panel will appoint public representatives to the Council and the Panel of Adjudicators (but not the Chair of the Council or the Chair of Appeals), and also Press Council officers, being the Executive Director, Press Ombud, Deputy Press Ombuds and Public Advocate, taking into account the criteria set out in section 7.

6.2.4 The appointments by the Appointments Panel shall be made after the positions have been advertised, nominations received, and interviews conducted with shortlisted candidates.

6.2.5 In the event of a vacancy occurring for any reason, the Appointments Panel must reconvene to appoint a replacement, from previously shortlisted candidates or from new applicants.

6.2.6 All appointments made by the Appointments Panel, whether part-time or full-time, are for a period of five years and are renewable. Renewable positions are ratified by the Appointments Panel at least three months prior to the end of the term for Press Council officers and at least two months prior to the end of the term for public representatives.

6.2.7 All appointments of press representatives made by Constituent Associations are for a period of five years and are renewable. Renewable positions are ratified by Constituent Associations at least two months prior to the end of the term for press representatives.

6.3 The Executive Director

The Executive Director is the senior executive officer of the PCSA on a full-time, professional basis and is accountable for all operational matters.

6.4 The Press Ombud and Deputy Press Ombuds

6.4.1 The Press Ombud and Deputy Press Ombuds adjudicate complaints about journalistic ethics and conduct at Subscriber Publications and by Subscriber Members that cannot be resolved at the earlier level of mediation.

6.4.2 The Press Ombud and Deputy Press Ombuds may decide matters as per the Complaints Procedures on the written representations and submissions of both parties, without hearing evidence.

6.4.3 The Press Ombud and Deputy Press Ombuds may also conduct a hearing, at which he or she may be joined by one press representative and up to two public representatives from the Panel of Adjudicators.

6.4.4 The Press Ombud and Deputy Press Ombuds may also co-opt a suitably qualified assessor, without voting rights, to assist the Adjudication Panel with complex issues.

6.4.5 The procedure for lodging appeals against a ruling of the Press Ombud and Deputy Press Ombuds is set out in section 6.7.

6.5 The Public Advocate

6.5.1 The Public Advocate will assist members of the public to formulate their complaints about journalistic ethics and conduct at Subscriber Publications and by Subscriber Members, and attempt to resolve complaints amicably by liaising directly with the publication on behalf of the complainant.

6.5.2 Where the Public Advocate does not succeed in having a complaint settled within a reasonable period after the complaint was lodged with a publication, he or she will refer the unresolved dispute to the Press Ombud for adjudication as per the Complaints Procedures.

6.5.3 The Public Advocate may represent the complainant before the Press Ombud and/or the Appeals Panel.

6.6 Panel of Adjudicators

6.6.1 The Panel of Adjudicators shall consist of a chair and 14 individual adjudicators, eight representing the public and six representing the press.

6.6.2 The PCSA shall from time to time request the Chief Justice of South Africa to recommend a judge who is no longer in active service to serve as the part-time Chair of Appeals for an initial period of five years, which appointment must be ratified by the Council and may also be renewed by the Council. The Chair may be the judge who chairs the Appointments Panel.

6.6.3 The Appointments Panel shall, taking into account the criteria in section 7, appoint eight adjudicators to represent the public.

6.6.4 The Constituent Associations listed in section 1.2 shall, taking into account the criteria in section 7, appoint six Adjudicators to represent the press:

6.6.4.1 One nominated by the Association of Independent Publishers (AIP);

6.6.4.2 One nominated by the Forum of Community Journalists (FCJ);

6.6.4.3 Two nominated by the South African National Editors' Forum (SANEF); and

6.6.4.4 Two nominated by the Interactive Advertising Bureau South Africa (IABSA).

6.7 Appeals Procedure

6.7.1 Any party to a dispute may submit an application for leave to appeal to the Chair of Appeals against a ruling by the Press Ombud and Deputy Press Ombuds.

6.7.2 If the Chair of Appeals is of the opinion that the contemplated appeal has reasonable prospects of success, he or she will grant leave to appeal, otherwise he or she will refuse the application.

6.7.3 Notwithstanding the provisions of section 6.7.1, and in circumstances where no application for leave to appeal has been lodged by any of the parties to a particular dispute following a ruling by the Press Ombud and Deputy Press Ombuds; and the said ruling is brought to the attention of the Chair of Appeals, and he or she is of the opinion that the issues in that particular dispute are of great public interest and importance, and that an appeal has reasonable prospects of success, he or she may direct after due notice to the parties to the said dispute that an appeal hearing be convened.

6.7.4 Having granted leave to appeal, the Chair of Appeals must convene an Appeals Panel, where he or she is joined by one press representative and, at his or her sole discretion, up to three public members of the Panel of Adjudicators.

6.7.5 A person employed by a Subscriber Publication that is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.

6.7.6 The Appeals Panel may consider the matter with or without hearing oral argument or evidence and its decisions will be by majority vote.

6.7.7 The Chair of Appeals may deputise a member of the Panel of Adjudicators to act as the chairperson in a hearing.

6.7.8 Should an appeal against a ruling by the Press Ombud or Deputy Press Ombuds include a complaint about the conduct of any officer of the Council, the Chair of Appeals may refer the matter to the Chair of Council for resolution via the normal disciplinary process.

7. Eligibility of Councillors, Adjudicators and Officers

7.1 Chairs, Councillors, Adjudicators and Officers must be persons who are:

7.1.1 Citizens of and permanently resident in the Republic of South Africa;

7.1.2 Committed to the values underpinning the South African Constitution;

7.1.3 Of high standing and integrity with a strong interest in the press and subscribe fully to the principles of a free press;

7.1.4 Committed to act in the furtherance of the aims and objectives of the Council and the Press Code; and

7.1.5 Suitably qualified and available to fulfil their obligations to the PCSA and the public at large

7.2 Press representatives on the Council are required to be working journalists at publications associated with one of the Constituent Associations, or who have wide experience in this field.

7.3 Press representatives on the Panel of Adjudicators must have extensive knowledge of media and its workings and must be former or current senior journalists.

7.4 Public representatives on the Council and the Panel of Adjudicators are required to have a strong sense of fairness and balance, and the skills to apply their minds to issues in the press. In addition, they are required to have a keen interest in communications, media and in social and political issues, and be advocates for freedom of expression and freedom of the press, but may not be in the employ of the press.

7.5 The Press Ombud, Deputy Press Ombuds and the Public Advocate must have extensive press experience, a fair understanding of the workings of the South African legal system and a finely tuned sense of public service and commitment.

7.6 The following persons may not be appointed to any position on the PCSA:

7.6.1 Persons under the age of 21;

7.6.2 Any person who is not legally able to manage his or her own affairs;

7.6.3 Any person who is disqualified from being or remaining a director in terms of any legislation with respect to the formation and management of companies;

7.6.4 Any person who occupies a seat in a local, provincial or national legislative body;

7.6.5 Any person who is an office-bearer of a political party or movement or is in the employ of the public service;

7.6.6 Any person who is an unrehabilitated insolvent; and

7.6.7 Any person who was convicted of an offence after April 1994, whether in South Africa or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

7.7 A person who has a financial interest in the press may be appointed to any position in the PCSA subject always to the principle that such person may not participate in any matter in which he/she has a conflict of interest. Councillors, Adjudicators and Officers shall be under an obligation to declare any conflict of interest, however remote, and the decision of the Council or the relevant forum on whether a conflict of interest exists will be final.

8. Termination of Appointments

8.1 A person will cease to be a Chair, Councillor or Adjudicator if he or she:

8.1.1 Resigns;

8.1.2 Becomes incapable for whatever reason of fulfilling his or her duties, provided that if a dispute arises between the incumbent and the Council in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner that he or she deems fair; or

8.1.3 Is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.

8.2 Any Councillor or Adjudicator who no longer meets the eligibility criteria set out in section 7 will automatically cease to hold the post as from the date of such ineligibility.

8.3 The Council may, by a two-thirds majority at a general meeting at which two-thirds of the Councillors are in attendance, suspend or terminate the appointment of any Councillor or Adjudicator should they:

8.3.1 Bring the good name of the PCSA into disrepute; or

8.3.2 Fail to attend two formally constituted meetings in a year without good cause acceptable to the Council; and

8.3.3 In the case of an Adjudicator, fail to be available if requested for two adjudication hearings in a year without good cause acceptable to the Chair of Appeals.

8.4 The termination of employment contracts of PCSA officers will be in accordance with their employment contracts and the relevant legislation.

9. Finance and Human Resources (FHR) committee

9.1 The Council shall establish a Finance and Human Resources committee to advise and assist Council and the Executive Director with oversight of financial and human resource management, good governance, internal control systems and the financial reporting and audit processes. In this regard the FHR shall:

9.1.1 Oversee the financial affairs of the PCSA.

9.1.2 Oversee the human resources affairs of the PCSA.

9.1.3 On an annual basis, negotiate the structure and funding of the organisation with media owners and funders.

9.1.4 Submit an annual proposal on remuneration structure for staff members to Council.

9.1.5 Appoint, compensate and oversee the work of a registered auditing firm.

9.1.6 Retain independent counsel, accountants, or others to advise the committee or assist in the conduct of investigations into the financial or compliance affairs of the organisation.

9.2 A suitably qualified Councillor or Adjudicator shall chair the FHR, supported by as members:

9.2.1 At least two other councillors;

9.2.2 Suitably qualified members of the Adjudication Panel;

9.2.3 Independent volunteers from outside bodies with required skills, such as the Chartered Institute of Accountants; and

9.2.4 The Executive Director.

9.3 The FHR will annually prepare a rolling three-year budget for approval by the publisher representatives and ratification by the Council. The budget will cover:

9.3.1 The core activities of the PCSA (which shall be taken to mean the line items historically covered in the annual budget based on achieving the organisation’s core mission); and

9.3.2 Other activities such as advocacy and training programmes that are crucial to the work of the Press Council.

9.4 In the event of representatives of media owners not supporting the “core” elements of the draft budget in advance of the financial year-end, the matter will be mediated by the Chair of Council in consultation with the relevant publishing houses.

9.5 Based on the budget submitted by the FHR and ratified by Council, Subscriber Publications and Members shall cover in advance the annual cost of the “core activities” of the PCSA by way of an annual subscription fee according to a formula approved by the FHR and ratified by the Council.

9.6 The FHR will, with the approval of the Council, also establish a “Sustainability Fund” to sustain the operations of the PCSA in the event of default by a funder or sponsor; or any other emergency at the sole discretion of the Council.

9.7 Remuneration guidelines

9.7.1 The Chair of Council and the Chair of Appeals will be remunerated by way of a retainer and a daily fee, plus costs, while the Chair of the Appointments Panel will receive a daily fee plus costs.

9.7.2 Public representatives on the Council and Adjudication Panel and press representatives who are not in full-time employment will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.

9.7.3 Where Adjudicators serve in a hearing convened by the Press Ombud or Deputy Press Ombuds or in an Appeal Hearing, their costs and a reasonable daily rate for attendance will be paid by the PCSA.

9.7.4 Press representatives on the Council and Panel of Adjudicators who participate in the work of the PCSA as part of their duties on various publications, will not be compensated for carrying out the bona fide functions of the PCSA.

9.7.5 The retainers and daily remuneration arrangements will be determined by the PCSA and increased annually by at least the official inflation rate (consumer price index excluding mortgage costs – “CPIX”), but always subject to the availability of funds in the annual “core activities” budget of the PCSA.

10. Meetings

10.1 The Council will hold as many meetings per year as the Chair deems necessary, with a minimum of four meetings per year, and a minimum of seven days' written notice by the Chair for each ordinary meeting, where the quorum will be 50 percent plus one of the Councillors.

10.2 Where three Councillors request the Chair to hold a meeting on a specific matter, he or she shall do so within 21 days.

10.3 Resolutions will be taken by majority vote except where this Constitution requires otherwise. The Chairperson has a casting vote where the votes on a resolution are equal.

10.4 Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof, provided that proper notice of such a meeting was given to all members and a quorum is in attendance.

10.5 Minutes must be kept of the proceedings of meetings.

10.6 Provision must be made for members of the Adjudication Panel to attend at least one Council meeting a year, and also the Council AGM, as non-voting members so that matters of common interest can be canvassed.

10.7 Adjudicators must meet in a workshop at least once a year to familiarise themselves with the Press Code, evolving case law and media trends.

11. Amendments

11.1 No amendment to the PCSA Constitution, the Press Code or the Complaints Procedures will be valid unless approved by the AGM; or approved at a Special General Meeting, called with at least 21 calendar days written notice at which the proposed amendment will be considered, has been given to all Councillors, Constituent Associations and the Subscriber Publications and Subscriber Members.

11.2 Any amendment to this Constitution, the Press Code or the Complaints Procedures shall require the approval of two-thirds of the Councillors, voting either personally or by proxy, and the concurrence of the Constituent Associations.

11.3 Proxy votes submitted in absentia shall be in writing, signed by the relevant Councillor and be recorded for or against the proposed amendment, and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

12. Arbitration

12.1 In the event of any dispute within the PCSA (other than a dispute regarding the “core activities” budget referred to in section 9.5), or between the PCSA and its Constituent Associations, that is not capable of resolution between the parties within a period of two months, the Council and the associations shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.

12.2 The cost of the arbitrator will be shared equally by the disputing parties except in the case where the arbitrator decides otherwise.

12.3 The decision of the arbitrator will be final and binding.

13. Seat of the PCSA

The seat of the PCSA is Johannesburg and meetings will be held in Johannesburg unless decided otherwise.

14. Dissolution

14.1 In the event of the PCSA being dissolved:

14.2 Not less than 21 days' notice shall be given of any such meeting and such notice must give particulars of the purpose for which the meeting is called.

14.3 A resolution to dissolve the PCSA can be passed only at a special meeting called for this purpose, by a two-thirds majority of the Councillors present, which two-thirds majority may not be less than a simple majority of the Council.

14.4 The fixed assets of the PCSA and any remaining cash reserves set aside for the “core activities” budget will be handed to the Subscriber Publications according to the formula referred to in 9.5.

14.5 The funds generated by the PCSA for special projects and/or the “Sustainability Fund” will be distributed at the sole discretion of Council to organisations that promote freedom of speech and a free press.

As amended at the Annual General Meeting held on