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## GOVERNMENT NOTICE

### DEPARTMENT OF LABOUR

No. R. 194

19 February 1999

LABOUR RELATIONS ACT, 1995

#### LIQUOR, CATERING AND ACCOMMODATION TRADES, SOUTH COAST, NATAL: EXTENSION OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdlalana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Liquor, Catering and Accommodation Trades, South Coast, Natal, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that industry, with effect from 1 March 1999 and for the period ending 31 August 1999.

M. M. S. MDLADLANA  
Minister of Labour

### UMNYANGO WEZEMISEBENZI

No. R. 194

19 February 1999

UMTHETHO WEZEMISEBENZI KA 1995

#### IZIPHUMO, UKUPHAKELA, IZINDAWO ZOKUHLALA NOKULALA ENZANZI NASENATALI: UKUQHUBEKISWA KWESIVUMELWANO ESIBUTHELA ABANGASENHLANGANWENI

Mina, Membathisi Mphumzi Shepherd Mdlalana, Ungongqoshe womnyango weziSebenzi, ngiyamemezela mayelana noMthetho 32 (2) wokuphatha iziSebenzi, ka 1995 (Labour Relations Act, 1995), ukuthi iSivumelwano esibuthela ndawonye esisehlelweni lesingisi kulokhu nesaqedwa emkhandlwini wokuvumelana ngeZiphuzo, ngoKuphakela, nangeZindawo Zokudla noKulala enzanzi naseNatali (Bargaining Council for the Liquor, Catering and Accommodation Trades, South Coast, Natal) siyisbopho mayelana noMthetho 31 wokuphatha iziSebenzi ka 1995 kulamaqembu abeqeda iSivumelwano siyabopha bonke agaqashi nabaqashwa kulemisebenzi kusukela ku 1 March 1999 luzekube 31 August 1999.

M. M. S. MDLADLANA  
UNgongqoshe wezemiSebenzi

**Qaphela:** Amakhophi esiZulu alesivumelwano angatholakala kumkhandlu wokuvumelana ophethe iZiphuzo ikuPhakelaiZindawo zoKudla noKulala enzanzi naseNatali.

**SCHEDULE****BARGAINING COUNCIL FOR THE LIQUOR, CATERING AND ACCOMMODATION  
TRADES, SOUTH COAST, NATAL****MAIN COLLECTIVE AGREEMENT****INDEX**

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### BARGAINING COUNCIL FOR THE LIQUOR, CATERING AND ACCOMMODATION TRADES, SOUTH COAST, NATAL

#### COLLECTIVE AGREEMENT

The parties to this Agreement are Natal South Coast Accommodation Association, Natal Liquor and Catering Trades Employees' Union and Hotel Allied Restaurant Workers' Union of South Africa.

This Agreement incorporates two different sectors, being—

- (1) the Private Hotel and Boarding House Trade consisting of the Natal South Coast Accommodation Association representing the employers and Natal Liquor and Catering Trades Employees' Union representing the employees; and
- (2) the Liquor and Catering Trade consisting of the Natal South Coast Accommodation Association representing the employers and Natal Liquor and Catering Trades Employees' Union and Hotel and Allied Restaurant Workers' Union of South Africa representing the employees.

In accordance with the provisions of the Labour Relations Act, No. 66 of 1995, this Agreement is entered into between the Natal South Coast Accommodation Association, representing the employers in the Private Hotel and Boarding House Trade (hereinafter referred to as "the employers" or the "employers' organisation") and Natal Liquor and Catering Trades Employees' Union representing the employees in the Private Hotel and Boarding House Trade (hereinafter referred to as the "employees" or the "trade union") of the first part; and on the second part Natal South Coast Accommodation Association, representing the employers in the Liquor and Catering Trade (hereinafter referred to as "the employers" or the "employers' organisation") and Natal Liquor and Catering Trades Employees' Union and Hotel Allied Restaurant Workers' Union of South Africa, representing the employees in the liquor and catering trade (hereinafter referred to as "the employees" or the "trade unions") of the second part, being parties of the Bargaining Council for the Liquor, Catering and Accommodation Trades, South Coast, Natal.

### 1. SCOPE OF APPLICATION OF AGREEMENT

1. (1) The terms of this Agreement shall be observed in the Liquor Trade, the Catering Trade and the Private Hotel and Boarding House Trade—

- (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions;
- (b) in the Magisterial Districts of Durban (excluding the area within a radius of 16 kilometres of the General Post Office, Durban), Port Shepstone and Umzinto.

(2) Notwithstanding the provisions of subclause 1 (1), the terms of this Agreement shall only apply in respect of employees for whom wages are prescribed in the Main Agreement.

(3) The terms of clauses 1 (1) (a), 2, 15 (1), 18, 19, 20 and 22 (5) of this Agreement should not apply to employers and employees who are not members of the said organisation or unions.

### 2. PERIOD OF OPERATION

This Agreement shall come into operation on such date fixed by the Minister of Labour in terms of sections 32 of the Labour Relations Act, 1995, and shall remain in force until 31 August 1999.

### 3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Act shall have the same meaning as in that Act, and unless the contrary intention appears, words importing the masculine gender shall include the female gender and any reference to any Act shall include any amendments thereof; and unless inconsistent with the context—

**"Act"** means the Labour Relations Act, 1995,

**"assistant manager"** means an employee who assists the manager in the performance of his duties and who may act for him during his absence: Provided that for the purpose of this definition a manager includes a director of a limited liability company, member of a close corporation, trustee of a trust, partner or proprietor who regularly performs the duties of a manager;

**"barman"** means an employee, other than a wine steward, engaged in the sale of liquor over a counter or from the bar of an establishment, and includes a barmaid;

**"Basic Conditions of Employment Act"** where it is referred to in Chapter 2 applicable to the Liquor and Catering Trade, means the Basic Conditions of Employment Act, 1997;

**"board and lodging"** means—

- (i) the supply of meals (board); and
- (ii) accommodation (lodging),

to persons who are employed in any capacity in an establishment; and where such board and lodging forms part of the total remuneration payable to an employee, this shall not include 'the supply of board and lodging or board or lodging' to the employee's dependants, unless a written agreement is entered into with the employer that such a dependant shall form part of such remuneration to the employee concerned;

**"bookkeeper"** means an employee who is engaged in writing up books of account to trial balance;

**"caretaker"** means an employee in charge of a block of residential flats or rooms who directs and supervises the work of the cleaning staff or on behalf of the proprietor or employer, lets flats or rooms, receives payment of rent or engages or pays or discharges employees, or deals with complaints from tenants;

**"cashier"** means an employee who is engaged wholly or mainly in receiving or handling cash and in performing clerical work connected therewith;

**"casual employee"** means an employee who is engaged for a period not exceeding four days in a week, and specifically includes employees engaged for a special function or a seasonal period;

**"Catering Trade"** means the trade carried on by an employer in terms of the Restaurant, Refreshment or Tearoom Keeper's Licence under item 20 of Part 1 of the Second Schedule to the Licences Act, 1962, and his employees engaged in the activities authorised under such licence; and where the said employer is also a holder of a Liquor Licence under the Liquor Act, 1928, permitting the supply of liquor in his restaurant, or refreshment or tearoom, it includes such supply to the customers therein by such employer and his employees;

**"clerical employee"** means an employee engaged in writing, typing, receiving or handling cash or in any form of clerical work but does not include any other class of employee elsewhere defined in this Agreement, notwithstanding the fact that clerical work may form part of such employee's duties;

**"cook"** means an employee other than general service employees or waiters who is engaged in any operation in the preparation or cooking of food;

**"Council"** means the Bargaining Council for the Liquor, Catering and Accommodation Trades, South Coast, Natal;

**"daily wage"** means, in the case of—

- (a) handymen, laundrymen, bookkeepers, clerical employees and off-sales attendants in the Liquor and Catering Trade and employees in the Private Hotel and Boarding House Trade, the weekly wage divided by five and half;
- (b) watchmen and all other employees in the Liquor and Catering Trade, the weekly wage divided by six;



**"emergency work"** means any work which, owing to unforeseen circumstances such as storms, fire, accident, acts of violence, epidemic, illness or theft must be done without delay in order to maintain necessary services;

**"employer"** shall have the same meaning as in the Act: Provided that in the Trade of Letting Flats and/or Rooms, "employer" shall include the agents to whom the letting, maintenance and/or cleaning of an establishment or several establishments are entrusted;

**"establishment"** means any premises in which one or more employees are employed in the Private Hotel and Boarding House Trade and the Trade of Letting Flats and Rooms and shall be deemed to include any other establishment of the same employer;

**"experience"** means the total period of employment an employee has had in the occupation in which he is employed in the Private Hotel and Boarding House Trade and the Liquor and Catering Trade: Provided that experience in respect of a clerical employee shall include periods of employment as such in any similar trade;

**"general service employee"** means an employee engaged wholly or mainly in one or more of the following occupations:

- (a) Cleaning or polishing premises, furniture, utensils, baths, wash basins, windows, footwear, vehicles or other articles;
- (b) dusting or tidying any room or other parts of an establishment;
- (c) the making of beds;
- (d) guarding premises and the contents, luggage, parcels or other articles;
- (e) assisting in receiving and/or mending household linen; laundering, washing, ironing of articles and handling of laundry;
- (f) cleaning and/or preparing food for consumption by guests and staff, but excluding the cooking thereof;
- (h) attending to foodstuffs in the process of cooking, under the supervision of a cook;
- (i) receiving goods, packing and the like;
- (j) gardening work;
- (k) carrying, moving or stacking, utensils, luggage or other articles;
- (l) delivering letters, messages or parcels;
- (m) assisting a handyman;
- (n) carrying baggage; and
- (o) carrying meals or tea or coffee or similar beverages to guests who are partaking of meals in the diningroom of an establishment;

**"guest"** means any person who resides either permanently or temporarily in an establishment and includes a table boarder or visitor, but does not include the employer or his family or an employee or the family of such employee;

**"handyman"** means an employee who is wholly or mainly engaged in making minor repairs to furniture, plant or other equipment and who may effect minor repairs or renovations to buildings and who may in addition be required to do painting;

**"head cook"** means a cook who is employed to supervise the work in a kitchen, prepare menus and/or attend to the ordering of supplies;

**"head waiter"** means an employee wholly or mainly engaged in showing customers to seats and generally supervising the service to customers and one who is in charge of a subordinate staff of waiters;

**"hourly wage"** means the weekly wage of the employee divided by the number of ordinary weekly hours of work specified in clauses 28 and 44 for an employee of his class;

**"housekeeper"** means an employee who is specially appointed to direct or supervise the work of general service employees and who may in addition perform any of the duties of a general service employee;

**"kitchen supervisor"** means an employee who is in supervision over other employees who are employed in a kitchen of any establishment and who may be in charge of kitchen stores and ordering of provisions;

**"laundry supervisor"** means an employee who is in charge of a laundry in establishment;

**"Liquor Trade"** means the trade carried on by employers and their employees, other than employees the major portion of whose time is spent in or in connection with the Catering Trade, when conducting, whether temporarily or permanently, a business where the sale of liquor is carried on and in connection with which one or more of the following licences under the provisions of the Liquor Act, 1928, are held:

- Restaurant Liquor Licence;
- Hotel Liquor Licence;
- Wine and Malt Liquor Licence;
- Theatre and Sports Ground Liquor Licence;
- Temporary Liquor Licence;
- Late Hours Occasional Licence;
- Meal Time Wine and Malt Licence; and
- Special Authority Licence issued in terms of section 100bis of the Liquor Act, 1928;

**"manager"** means an employee other than an assistant manager, a director of a limited liability company, a member of a close corporation, a trustee of a trust and a partner, who has overall—

- (a) supervision over;
- (b) responsibility for; and
- (c) direction of;

the activities of an establishment and the employees therein;

**"motor vehicle"** means any power-driven vehicle with an engine capacity exceeding 200 cc used for conveying goods and passengers;

**"motor vehicle driver"** means an employee engaged in driving a motor vehicle, and for the purpose of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive or any period during which he is not actively engaged in driving a vehicle but may be required to perform duties by the establishment;

**"night porter"** means an employee other than a watchman or general service employee, the greater portion of whose duties fall within the hours of 19:00 and 07:00 and who is wholly or mainly engaged in receiving guests at night, attending to baggage to and from an establishment and may in addition be required to serve refreshments to guests;

**"off-sales attendant"** means an employee who is wholly or mainly engaged in the sale of liquor for consumption off the licenced premises;

**"off-sales manager"** means an employee, other than an assistant manager, a restaurant manager, a director of a limited liability company and a partner, who is in charge of the off-sales department of an establishment and who has overall—

- (a) supervision over;
- (b) responsibility for; and
- (c) direction of;

the activities of all employees in such off-sales department;

**"part-time employee"** means an employee other than a special function employee who is employed by the week or month for not more than five ordinary hours of work on any day;

**"porter"** means an employee engaged wholly or mainly in meeting motor vehicles and/or any other form of transport, arranging for guests and their luggage to be taken to or from an establishment and who may in addition drive the establishment's vehicles, receive or deliver messages or packages, or assist in serving meals or refreshments;

**"Port Shepstone District"** means the Magisterial District of Port Shepstone;

**"Private Hotel and Boarding House Trade"** means the trade of the letting of flats or rooms, hotel-keeper, boarding or lodging house-keeper carried on by persons who are required to hold the licence specified under item 4 of Part 1 of the Second Schedule to the Licences Act, 1962 (excluding establishments in respect of which a licence is held under the provisions of the Liquor Act, 1928);

**"public holidays"** means a public holiday as defined in the Public Holidays Act, 1994;

**"receptionist"** means an employee mainly engaged in writing, typing, computer processing, receiving or handling of cash, making reservations, attending to correspondence, facsimile machine and the telephone in connection with such reservations and attending to the registration of guests upon arrival;

**"restaurant manager"** means an employee, other than an assistant manager, a director of a limited liability company, trustee of a trust and a partner, who is in charge of an establishment which does not provide accommodation for lodgers and who has overall—

- (a) supervision over;
- (b) responsibility for; and
- (c) direction of;

the activities in and the employees of such restaurant;

**"secretary"** means the secretary or secretaries of the Bargaining Council;

**"special function"** means a specific event or occasion, including a banquet, conference, dance, exhibition, reception, seminar, show or similar event or occasion;

**"telephone switchboard operator"** means an employee who is wholly or mainly engaged in operating a telephone switchboard and in performing clerical work connected therewith;

**"Trade of Letting Flats and/or Rooms"** means the trade in which employers and their employees are associated for the purpose of carrying on the business of letting residential flats and/or rooms;

**"trainee"** means an employee employed in the various departments of an establishment for management training, and whose employment as trainee in any particular establishment for management training has the prior approval of the Council;

**"tipping"** means an amount in cash given voluntarily and directly to an employee by the customer in addition to the amount that the customer has to pay, but does not include any service percentage charge accruing in any way;

**"Umzinto District"** means the Magisterial District of Umzinto;

**"wage"** means that portion of the remuneration payable in money to an employee in respect of his ordinary hours of work referred to in clause 27 and 44 and as prescribed for him in clause 35 and 51 or, where an employer regularly pays to him in respect of such ordinary hours of work an amount higher than that so prescribed, it means such higher amount;

**"wage, weekly"** means the monthly wage prescribed in clause 16 divided by four and one-third;

**"waiter"** means an employee who is engaged for the purpose of serving guests at tables or any other part of the building occupied by guests, setting up and laying of tables, and performing such other service as the comforts and convenience of guests may require;

**"watchman"** means an employee wholly or mainly engaged in one or more of the following operations: Guarding premises, buildings, gates or other property, and who may in addition attend to guests and to establishment amenities;

**"wine steward"** means an employee other than a barman who is engaged in serving liquor to customers and who may receive payment for the liquor served and who may be called upon to perform the duties of a waiter.

For the purposes of the Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged.

#### 4. AGENTS

The Bargaining Council shall request the Minister of Labour in terms of section 33 (1) of the Act to appoint one or more specified persons to assist in giving effect to the terms of the Agreement, and it shall be the duty of every employer and employee to permit such designated agents to institute such enquiries and to examine such books and/or documents and to interrogate such persons as may be necessary for this purpose.

#### 5. ANNUAL LEAVE

5. (1) (a) All employees, other than casual employees, shall be granted in respect of each 49 weeks of employment in the same establishment or with the same employer 21 consecutive days' leave of absence on full pay.

(b) All employees other than part-time or casual employees who have completed more than three years' service with the same establishment shall be granted in respect of each 48 weeks of employment in the establishment 28 days' leave of absence on full pay.

(c) The employer may fix the time when such leave may be taken, but if the employer shall not have granted to his employee his period of leave at an earlier date, such leave shall be granted and taken so as to commence within 13 weeks after the termination of 49 weeks' employment, or 48 weeks: Provided that an employee by mutual agreement with his employer may accumulate leave over a period of two years.

(d) An employee whose contract of employment is terminated during any 12 months of employment in the same establishment or with the same employer before the period of leave specified in subclause (1) of this clause in respect of that period has accrued shall upon such termination and provided he has completed not less than one month's continuous service or, in the case of general service or part-time employees, not less than four months' continuous service in the same establishment, or with the same employer, be paid by the employer in respect of each completed week of such period of employment and, in addition to any other remuneration which may be due to him, an amount of not less than—

- (i) in the case of all employees who in terms of the provisions of subclause (1) (a) of this clause are entitled to three consecutive weeks' leave, three forty-ninths of the weekly wage;
- (ii) in the case of all employees who in terms of the provisions of subclause (1) (b) are entitled to four consecutive weeks' leave, four forty-eighths of the weekly wage.

(e) The period of leave referred to in subclause (1) of this clause shall not run concurrently with any period of sick leave granted in terms of clause 6 nor shall it be applicable to casual employees.

(f) An employee who has become entitled to a period of leave specified in subclause (1) of this clause and whose contract or employment terminates before such leave has been granted, shall upon such termination and in addition to any other remuneration which may be due to him be paid the amount he would have received in respect of the leave had the leave been granted to him as at the date of such termination.

(g) Termination of employment shall in the case of a sale of business or transfer of controlling rights be deemed to have taken place on the date of such sale or transfer. Upon such sale or transfer the employer shall pay to all staff in his employ wages due to them up to the date of such sale or transfer.

(h) An employee may by mutual agreement with his employer be paid in lieu of not more than one year's annual leave accumulated over a period of two years.

(2) For the purpose of this clause, the expression "employment" shall be deemed to include any period or periods during which an employee is absent—

- (a) on leave in terms of subclause (1) of this clause;
- (b) on sick leave in terms of clause 6;
- (c) on the instruction or at the request of the employer,

amounting in the aggregate in any year to not more than 10 weeks in respect of paragraphs (a), (b) and (c) and employment shall be deemed to commence—



- (i) in the case of an employee who had before the coming into force of this Agreement become entitled to a period of leave in terms of any law, on the date on which such employee has become entitled to such leave under such law;
- (ii) in the case of an employee who was in employment before the date of commencement of the Agreement and to whom any law providing for annual leave applied, but who had not become entitled to a period of leave in terms thereof, on the date on which such employment commenced;
- (iii) in the case of any other employee, on the date on which such employee entered his employer's service or the date of the coming into force of this Agreement, whichever is the later.

(3) No employee shall work for wages or any other consideration in the trades to which this Agreement applies while on leave of absence on full pay.

(4) An employer may set off against the period of annual leave specified in subclause (1) of this clause any days of occasional leave granted on full pay to his employee at the latter's written request during the period of employment to which the period of annual leave relates.

## 6. SICK LEAVE

6. (1) (a) An employer shall grant to his employee, other than a casual employee or a special function employee, who is absent from work through incapacity, one day's sick leave on full pay in respect of every completed 26 days' continuous employment with the same establishment: Provided that—

- (i) such incapacity is not compensable under the Compensation for Occupational Injuries and Diseases Act, 1993, but excluding any period of absence due to such incapacity in respect of which no disablement payments are payable in terms of the Act;
- (ii) he shall not become entitled to such sick leave until he has completed one month's continuous service with the same establishment;
- (iii) an employer may, as a condition precedent to the payment by him of any amount claimed in terms of this clause by an employee in respect of any absence from work require the employee to produce a certificate, signed by a registered medical practitioner stating the nature and duration of the employee's incapacity;
- (iv) where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pay such fees in respect of any incapacity, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause;
- (v) where such sick leave or part of such sick leave is not taken in any one year it shall be cumulative up to any period not exceeding six weeks in each cycle of 36 months of employment, which shall for the purposes of this clause be deemed to commence on the date on which such employee entered service at the establishment where employed;
- (vi) where during each cycle of 36 months of employment with the same establishment, an employee is absent owing to incapacity, he shall be entitled to be paid only in respect of such leave as has so accrued.

(2) For the purposes of this clause the expression—

- (a) **"employment"** shall be deemed to include any period during which an employee is absent—
  - (i) on leave in terms of clause 5;
  - (ii) on sick leave in terms of subclause (1);
  - (iii) with the consent or condonation of his employer;
- (b) **"incapacity"** means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct.

## 7. PUBLIC HOLIDAYS

7. (1) An employee, other than a casual employee, shall be entitled to and be granted leave on full pay on public holidays as provided for in the Public Holidays Act, 1994: Provided that an employee may be required to work on any such day: Provided further that any of the national public holidays shall be exchangeable for any other day that is fixed by agreement or agreed between an employer and employee.

(2) **Payment for work on public holidays:** Whenever an employee entitled to leave on full pay in terms of paragraph (a) of this subclause works or is on his normal day off on any of those days his employer shall pay him in respect of each such day and in addition to his normal wages remuneration at a rate of not less than his daily wage: Provided that where an employee was on his normal day off on such day his employer may, instead of paying him an additional day's wage, grant him an additional day off on full pay by mutual agreement.

(3) Where a paid holiday on which an employee shall in terms of paragraph (a) of the subclause be entitled to leave on full pay falls within the period of annual leave granted to him in terms of clause 5, another day shall, in substitution for each such day, be added to the said period of leave on full pay.



## 8. CERTIFICATE OF SERVICE

8. (1) Every employer shall issue a certificate of services free of charge to each employee at the time when he leaves such employer's service. A duplicate copy of each certificate issued shall be retained by the employer and a further copy shall be delivered within seven days by the employer to the Secretary of the Bargaining Council.

(2) Every employer shall when engaging an employee demand from the said employee the certificate issued by the previous employer and the said employee shall if he was previously employed in the trade under the jurisdiction of this Bargaining Council produce the said certificate.

## 9. BARGAINING COUNCIL FUNDS

The funds of the Bargaining Council, which shall be vested in and administered by the Bargaining Council, shall be provided in the following manner:

9. (1) An amount to be determined by the Bargaining Council, which shall not exceed R5 on commencement of this Agreement shall be deducted monthly by every employer from the earnings of each of his employees. The employer shall add a like amount to the amount so deducted and forward month by month by not later than the 15th day of each month the total sum together with a list of such employees to the Secretary of the Bargaining Council, PO Box 1590, Port Shepstone, 4240.

(2) Should any amount due and payable to the Bargaining Council in terms of subclause (1) not be received by the Bargaining Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount as remains unpaid, calculated at a compound rate of 2,5% per month or part thereof, subject to the Bargaining Council having the powers of reducing or increasing the rate of interest at its sole discretion from such final date specified in this subclause until the day upon which payment in cash is actually received by the Bargaining Council: Provided that the Bargaining Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof.

## 10. EXISTING CONTRACTS

Any contract of service in operation at the date of commencement of this Agreement shall be subject to the provisions of this Agreement.

## 11. EXEMPTIONS

11. (1) Any application for exemption from any or part of the collective agreements must be made in writing to the Council.

(2) The procedure for consideration of applications for exemptions by the Council and the independent body are as follows:

- (a) The applicant must furnish the latest audited financial statements as well as financial statements up to the date of application. (Only if the exemptions related to the finances of the establishment.)
- (b) A document signed by the employees in the presence of the trade union concerned stating that they understand and agree with the application for exemption must accompany the application.
- (c) The secretary must serve a copy of each application on the employer and trade union parties to the Council.
- (d) The parties to the Council may within 30 days of receipt of the application make written comments on the application.
- (e) The secretary must serve a copy of any comments made by the parties on the applicant who may within 30 days make a written response to any comments made by a party to the Council.
- (f) The Council must prepare a written decision on each application for an exemption. The secretary must supply a copy of every decision of an exemption to the applicant and to the parties to the Council.
- (g) If exemption has been denied, applications from non-parties should then be forwarded to the independent body appointed by the Council within 15 days for its consideration. The names of the members to the independent body shall be determined by the Council by minuted resolution with due cognisance of subsection 32 (4) of the Act.
- (h) The independent body must prepare a written decision on each application for an exemption from non-parties within 30 days from the date of submission. The secretary must supply a copy of every decision on an application for exemption considered by the independent body to the applicant and to the parties of the Council.

(3) The independent body may, having regard to the individual merits of each application, grant an exemption to an employer or an employee from this agreement if—

- (a) it is fair to the employer, its employees and other employers and employees in the sector;
- (b) it does not undermine the Agreement.
- (c) it will make a material difference to the viability of an applicant's business; and
- (d) it will assist to overcome economic hardship occurring during the currency of Agreement and will save unnecessary job loss.

## 12. AVAILABILITY OF THE AGREEMENT

Every employer shall have available a copy of the Agreement at all times upon his premises which shall be accessible to all employees.

## 13. INTERPRETATION OF BARGAINING COUNCIL AGREEMENT

13. (1) The Bargaining Council shall be the body responsible for the administration of this Agreement and may issue expressions of opinion not inconsistent with the provisions thereof for the guidance of the employer and employees.

(2) Any person or party in writing may refer a complaint concerning the interpretation and application, including enforcement, of any collective agreement concluded by the Council to the secretary.

(3) The secretary must initiate an investigation into the complaint and may require a designated agent to investigate the complaint.

(4) For the purpose of any investigation, a designated agent has all the powers referred to in section 33 (3) of the Act.

(5) A designated agent who, after having investigated a complaint, has reasonable grounds to believe that an employer or employee has not complied with a provision of a collective agreement—

(a) must endeavour to secure compliance with the agreement through conciliation;

(b) after affording the party allegedly in breach of the collective agreement an opportunity to comment upon a proposed order, may issue an order calling upon the party to comply in a specific manner with the provisions of the agreement.

(6) The designated agent must submit a written report to the secretary which—

(a) records the steps taken to secure compliance and whether these steps have been successful; or

(b) if the complaint remains unresolved, make recommendations for resolving the complaint, which may include a recommendation that the dispute be referred for further conciliation.

(7) A party to a complaint which is not resolved within 30 days of referral to the secretary in terms of subclause (2) may refer the dispute to the CCMA for arbitration.

(8) The secretary may initiate an investigation into and may direct a designated agent to investigate a failure by an employer or employee to comply with any agreement concluded by the Council even if there has been no complaint. Subclauses (4) and (6) apply to the investigation in terms of this provision.

(9) If a matter which is investigated in terms of subclause (8) is not concluded within 30 days, the secretary may refer the dispute to the CCMA for arbitration.

## 14. REGISTRATION OF EMPLOYERS

14. (1) Every employer who has not already done so in pursuance of any previous agreement shall within one month from the date on which this Agreement comes into operation and every employer entering one or more of the trades defined in this Agreement after that date shall within one month of commencement of operations by him, forward to the secretary of the Bargaining Council the information as set out in the form specified by the Bargaining Council.

(2) In the event of a change in any particulars required to be furnished in pursuance of subclause (1) of this clause, the employer shall within 10 days of such change give notice thereof, in writing, to the secretary of the Bargaining Council.

(3) An employer shall give seven days' notice, in writing, to the secretary of the Council of his intention to cease to be an employer in the trade.

## 15. SEVERANCE PAY

15. (1) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, but subject to a maximum amount as agreed upon between the employer body and the trade union represented on the Bargaining Council from time to time, or as agreed upon between an individual employer and the representative trade union.

(2) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult—

(a) any person whom the employer is required to consult in terms of a collective agreement;

(b) if there is no collective agreement that requires consultation, a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum;

(c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals;

(d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representative nominated for that purpose.

- (3) The consulting parties must attempt to reach consensus on—
- (a) appropriate measures—
    - (i) to avoid the dismissals;
    - (ii) to minimise the number of dismissals;
    - (iii) to change the timing of the dismissals; and
    - (iv) to mitigate the adverse effects of the dismissals; and
  - (b) the method for selecting the employees to be dismissed; and
  - (c) the severance pay for dismissed employees.
- (4) The employer must disclose in writing to the other consulting party all relevant information, including, but not limited to—
- (a) the reasons for the proposed dismissals;
  - (b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
  - (c) the number of employees likely to be affected and the job categories in which they are employed;
  - (d) the proposed method for selecting which employees to dismiss;
  - (e) the time when, or the period during which, the dismissals are likely to take effect;
  - (f) the severance pay proposed;
  - (g) any assistance that the employer proposed to offer to the employees likely to be dismissed; and
  - (h) the possibility of the future re-employment of the employees who are dismissed.
- (5) The provisions of section 16 of the Act apply, read with the changes required by the context, to the disclosure of information in terms of paragraph (4) above.
- (6) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter on which they are consulting.
- (7) The employer must consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
- (8) The employer must select the employees to be dismissed according to selection criteria—
- (a) that have been agreed to by the consulting parties; or
  - (b) if no criteria have been agreed, criteria that are fair and objective.

#### 16. TRANSFER OF CONTRACT OF EMPLOYMENT

16. (1) A contract of employment may not be transferred from one employer (referred to as “the old employer”) to another employer (referred to as “the new employer”) without the employee’s consent, unless,
- (a) the whole or any part of the business, trade or undertaking is transferred by the old employer as a going concern; or
  - (b) the whole or part of a business, trade or undertaking is transferred as a going concern—
    - (i) if the old employer is insolvent and being wound up or is being sequestered; or
    - (ii) because a scheme of arrangement or compromise is being entered into to avoid winding-up or sequestration for reasons of insolvency.
- (2) If the business is transferred in the circumstances envisaged by subclause (1) (a) and (b), unless otherwise agreed, the contracts of all employees that were in existence immediately before the transfer or the old employer’s winding-up or sequestration transfer automatically to the new employer, but all the rights and obligations between the old employer and each employee at the time of the transfer remain rights and obligations between the old employer and each employee, and anything done before the transfer by the old employer in respect of each employee will be considered to have been done by the old employer.
- (3) An agreement contemplated in subclause (2) must be concluded with the appropriate person or body referred to in clause 15.
- (4) A transfer referred to in subclause (1) does not interrupt the employee’s continuity of employment. That employment continues with the new employer as if with the old employer.
- (5) The provisions of this clause do not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of, and sentenced for, any offence.

#### 17. TIME, WAGE AND OVERTIME REGISTERS

17. (1) Every employer shall at all times keep records of wages and hours of work.
- (2) Every employer shall at all times keep in respect of all persons employed by him records of remuneration paid, of the time worked and of such other particulars as are prescribed by regulation (such records being generally known and referred to as a “wage book”, “wage register” or “time register”).



(3) The employer shall keep records required to be kept in terms of the said regulations written up in legible manner and in ink, and shall keep all such records continually at his establishment while his employee are working therein.

#### **18. TRADE UNION AND EMPLOYERS' ORGANISATION SUBSCRIPTIONS**

18. (1) Every employer shall deduct from the wages of each member of the party trade unions in his employ, the membership subscription payable by such employee to the trade union, and shall forward the total amount so deducted together with a list of such employees, to the Secretary of the Bargaining Council not later than the 15th of each month, such subscription to be deducted from the first payment of wages in each month. The subscription scale shall be as notified to the employers concerned from time to time by the secretary of the Bargaining Council. The secretary of the Council shall transmit all subscriptions so received to the trade union once a month.

(2) Every employer who is a member of the employers' organisation shall remit to the secretary of the Council his membership subscription to the employers' organisation on or before the 15th of each month. The secretary of the Council shall transmit all subscriptions so received to the employers' organisation once a month.

(3) Should any amount due and payable to the Council in terms of subclauses (1) and (2) not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount as remains unpaid, calculated at a compound rate of 2,5% per month or part thereof, from such final date specified in this subclause until the day upon which payment in cash is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof.

#### **19. SHOP STEWARDS**

Every employer shall recognise the appointed shop stewards of the party trade union in his establishment and grant him time off to attend the union matters on full pay. The trade union is to give seven days advanced notice in writing to the employer of such meetings.

#### **20. TRADE UNION REPRESENTATIVES ON THE BARGAINING COUNCIL**

Employers shall give to any of their employees who are representatives on the Bargaining Council every reasonable facility to attend to their duties in connection with the work of the Bargaining Council.

#### **21. PAYMENT OF REMUNERATION**

21. (1) No premium shall be charged or accepted for the training of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

(2) No fines of any kind shall be imposed upon any employee.

(3) No employee shall be required to purchase goods from the employer or from any person or place nominated by him.

#### **22. DEDUCTIONS**

No deductions of any kind other than the following shall be made from the remuneration of an employee:

22. (1) Except where otherwise provided in this Agreement whenever an employee is absent from work other than on instructions or at the request of his employer a pro rata amount may be deducted for the period of such absence.
- (2) With the written consent of an employee deductions may be made for holiday, sick, insurance, provident or pension funds, membership of which is not compulsory for the employee in terms of any agreement of the Bargaining Council.
- (3) Contributions to the Bargaining Council funds shall be deducted in terms of clause 9.
- (4) Where an employer is legally or by order of any competent court required to make payment for or on behalf of an employee the amount of such payment may be deducted.
- (5) Deductions for subscriptions to the trade union in terms of clause 18.
- (6) A deduction of any amount of remuneration advance by an employer to this employee.
- (7) Board and lodging as per clause 36 and 56.
- (8) Contributions to the Liquor, Catering and Accommodation Trades, South Coast, Natal, Provident Fund.

#### **23. INFORMATION ABOUT REMUNERATION**

An employer must give an employee the following information in writing on each day the employee is paid:

23. (1) The employer's name and address;
- (2) the employee's name and occupation;
- (3) the period for which the payment is made;
- (4) the employee's remuneration in money;
- (5) the amount and purpose of any deduction made from the remuneration;
- (6) the actual amount paid to the employee; and
- (7) if relevant to the calculation of that employee's remuneration—
  - (a) the employee's rate of remuneration and overtime rate;
  - (b) the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;
  - (c) the number of hours worked by the employee on a Sunday or public holiday during that period; and
  - (d) the total number of ordinary and overtime hours worked by the employee in the period of averaging.



## 24. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

24. (1) An employer shall supply and maintain in serviceable and clean condition free of charge any uniform, overall or other protective clothing which he requires his employee to wear or which by any law or regulation he is compelled to provide for his employee and any such uniform overall or other protective clothing shall remain the property of the employer.

(2) Waiters and wine stewards shall supply their own uniforms consisting of white shirts, black trousers and shoes and general service employees shall be supplied free of charge with uniforms, overalls or other protective clothing.

## 25. ULTRA VIRES

Should any of the provisions of this Agreement be declared *ultra vires* by any competent court of law, the remaining provisions of the Agreement shall be the Agreement and remain in force for unexpired period of this Agreement.

## 26. GENERAL

Nothing in this Agreement shall be deemed to authorise the employment of any person whose employment is prohibited by statutory law, or the employment of any person at any time or times prohibited by statutory law.

# CHAPTER 1

## ACCOMMODATION TRADE

## 27. HOURS OF WORK

The ordinary working hours of an employee shall not exceed—

27. (1) 44 hours in any five and a half days in the case of employees employed in the Private Hotel and Boarding House Trade;
- (2) 35 hours in any week from Monday to Sunday, inclusive, in the case of a part-time employee;
- (3) nine hours per day in the case of a casual employee;
- (5) 60 hours in any one week or 10 hours on any one day in the case of watchmen;
- (6) the number of days worked in any one week may, notwithstanding the provisions of subclause (1), by mutual agreement between the employer and his employees be extended to seven days of not more than the daily hours of work laid down during not more than eight consecutive weeks: Provided that an employee so permitted to work shall during the first week after the period so worked be granted one free day on full pay for each week so worked.

## 28. OVERTIME

All hours worked in excess of the ordinary hours of work prescribed in clause 27 shall be deemed to be overtime.

28. (1) **Limitation of overtime:** An employer shall not require or permit his employee to work overtime for more than eight hours in any week save under exceptional circumstances caused by a condition beyond the employer's control.

(2) **Payment for overtime:**

- (a) An employee who is requested or permitted to work on any day more than the ordinary working hours specified for him in clause 28 shall for each hour or part thereof be paid double his hourly wage or given leave for double the time he has worked.
- (b) Where overtime calculated on a weekly basis differs from that calculated on a daily basis, the basis more favourable to the employee shall be adopted.
- (c) Any claim for the payment of overtime shall become specified after a period of three months calculated from the latest date such overtime is claimed to have been worked.

## 29. SPREADOVER

The ordinary hours of work of an employee shall be completed and all meal intervals must be included in a spreadover of not more than 14 hours on any day.

## 30. MEAL INTERVALS

An employer shall not require or permit an employee other than a watchman to work for more than five hours continuously without a meal interval of not less than 30 minutes during which interval such employee shall not be permitted to perform any work.

## 31. SHORT TIME—PERMANENT EMPLOYEES

31. (1) Reduced hours with a corresponding reduction of laid-down wages may be worked, by mutual agreement between the employer and employee: Provided that exemption from the provisions of the Agreement relating to hours worked and wages to be paid has been granted by the Council or independent body for non-party employers.

(2) Application for such exemption must give the daily hours it is desired to work together with the wages to be paid and must be signed by the employer and employee concerned.

**32. EMERGENCY WORK**

Notwithstanding anything to the contrary in clauses 27, 28 and 29 no restrictions imposed by those clauses shall apply to any employee employed on emergency work and any employee may be employed on emergency work during his weekly time off.

**33. EXCLUSIONS**

The provisions of clauses 27, 28 and 29, shall not apply to a manager or caretaker (other than those employed as part-time employees) or to a special function employee.

**34. PROHIBITION OF EMPLOYMENT**

No person under the age of 16 years shall be employed in any establishment.

**35. REMUNERATION**

35. (1) The minimum wages to be paid to the undermentioned employees shall be as set out below: Provided that all employees having attended a training college or scheme recognised by the Council and holding a certificate of proficiency shall be eligible for an increase as agreed upon between the employer, the employee and the representative of the party trade union.

**SCHEDULE B1**

SCALE OF REMUNERATION IN THE ACCOMMODATION TRADE IN THE MAGISTERIAL DISTRICTS OF UMZINTO AND PORT SHEPSTONE WITH EFFECT FROM 1 JULY 1998 TO 31 DECEMBER 1998, IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES WITH EFFECT FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant manager .....	972,00	224,48	40,82	5,10	13,74	18,71
Caretaker (up to 10 flats) .....	864,00	199,54	36,28	4,54	12,22	16,63
Caretaker (more than 10 flats) .....	938,00	216,63	39,39	4,92	13,26	18,05
Clerical employee:						
First year of experience .....	925,00	213,63	38,84	4,86	13,08	17,80
Second year of experience .....	947,00	218,71	39,77	4,97	13,40	18,23
Thereafter .....	1 114,00	257,28	46,78	5,85	15,57	21,44
Cook:						
First year of experience .....	818,00	188,92	34,35	4,29	11,57	15,74
Second year of experience .....	901,00	208,08	37,83	4,73	12,74	17,34
Thereafter .....	925,00	213,63	38,84	4,86	13,08	17,80
General service employee .....	774,00	178,75	32,50	4,06	10,94	14,90
Handyman .....	818,00	188,92	34,35	4,29	11,57	15,74
Headwaiter .....	938,00	216,63	39,39	4,92	13,26	18,05
Housekeeper .....	925,00	213,63	38,84	4,86	13,08	17,80
Kitchen supervisor .....	793,00	183,14	33,30	4,16	11,21	15,26
Laundry supervisor .....	793,00	183,14	33,30	4,16	11,21	15,26
Manager .....	1 163,00	268,59	48,84	6,10	15,10	22,38
Motor vehicle driver .....	853,00	197,00	35,84	4,48	12,06	16,42
Porter/Night porter .....	853,00	197,00	35,82	4,48	12,06	16,42
Receptionist .....	1 068,00	246,65	44,85	5,61	15,10	20,55
Telephone switchboard operator .....	793,00	183,14	33,30	4,16	11,21	15,26
Waiter:						
First year of experience .....	783,00	180,83	32,88	4,11	11,08	15,07
Thereafter .....	829,00	191,46	34,81	4,35	11,72	15,96
Watchman .....	878,00	202,77	36,87	4,61	12,41	16,90

**SCHEDULE B2**

SCALE OF REMUNERATION IN THE ACCOMMODATION TRADE IN THE MAGISTERIAL DISTRICTS OF UMZINTO AND PORT SHEPSTONE WITH EFFECT FROM 1 JANUARY 1999 TO 30 JUNE 1999 IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES WITH EFFECT FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant manager.....	992,00	229,10	41,65	5,21	14,03	19,09
Caretaker (up to 10 flats) .....	884,00	204,16	37,12	4,64	12,50	16,67
Caretaker (more than 10 flats) .....	958,00	221,25	40,23	5,03	13,55	18,44
Clerical employee:						
First year of experience.....	945,00	218,25	39,68	4,96	13,36	18,19
Second year of experience.....	967,00	223,33	40,61	5,08	13,67	18,61
Thereafter .....	1 134,00	261,89	47,62	5,95	16,03	21,82
Cook:						
First year of experience.....	838,00	193,53	35,18	4,40	11,85	16,13
Second year of experience.....	921,00	212,70	38,67	4,83	13,02	17,73
Thereafter .....	945,00	218,25	39,68	4,96	13,36	18,19
General service employee.....	794,00	183,37	33,34	4,17	11,23	15,28
Handyman .....	838,00	193,53	35,18	4,40	11,85	16,13
Headwaiter .....	958,00	221,25	40,23	5,03	13,55	18,44
Housekeeper .....	945,00	218,25	39,68	4,96	13,36	18,19
Kitchen supervisor.....	813,00	187,76	34,14	4,27	11,50	15,65
Laundry supervisor .....	813,00	187,76	34,14	4,27	11,50	15,65
Manager .....	1 183,00	273,21	49,68	6,21	16,73	22,77
Motor vehicle driver .....	873,00	201,62	36,66	4,58	12,34	16,81
Porter/Night porter.....	873,00	201,62	36,66	4,58	12,34	16,81
Receptionist.....	1 088,00	251,27	45,69	5,71	15,38	20,94
Telephone switchboard operator .....	813,00	187,76	34,14	4,27	11,50	15,65
Waiter:						
First year of experience.....	803,00	185,45	33,72	4,22	11,35	15,45
Thereafter .....	849,00	196,08	35,65	4,46	12,01	16,34
Watchman.....	898,00	207,39	34,56	3,46	12,70	17,28

**SCHEDULE C1**

SCALE OF REMUNERATION IN THE ACCOMMODATION TRADE IN THE MAGISTERIAL DISTRICT OF DURBAN WITH EFFECT FROM 1 JULY 1998 TO 31 DECEMBER 1998 IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES WITH EFFECT FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant Manager.....	996,00	230,02	41,82	5,23	14,08	19,17
Caretaker (up to 10 flats) .....	996,00	230,02	41,82	5,23	14,08	19,17
Caretaker (more than 10 flats) .....	1 068,00	246,65	44,85	5,61	15,10	20,55
Clerical employee:						
First year of experience.....	925,00	213,62	38,84	4,86	13,08	17,80
Second year of experience.....	947,00	218,71	39,77	4,97	13,39	18,23
Thereafter .....	1 114,00	257,28	46,78	5,85	15,75	21,44

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Cook:						
First year of experience.....	818,00	188,92	34,35	4,29	11,57	15,74
Second year of experience.....	918,00	212,01	38,55	4,82	12,98	17,67
Thereafter .....	947,00	218,71	39,77	4,97	13,39	18,23
General service employee.....	803,00	185,45	33,72	4,22	11,35	15,45
Handyman .....	853,00	197,00	35,82	4,48	12,06	16,42
Headwaiter .....	947,00	218,71	39,77	4,97	13,39	18,23
Housekeeper .....	972,00	224,48	40,82	5,10	13,74	18,71
Kitchen supervisor .....	818,00	188,92	34,35	4,29	11,57	15,74
Laundry supervisor .....	818,00	188,92	34,35	4,29	11,57	15,74
Manager .....	1 186,00	273,90	49,80	6,22	17,14	22,83
Motor vehicle driver .....	878,00	202,77	36,87	4,61	12,41	16,90
Porter/Night porter .....	878,00	202,77	36,87	4,61	12,41	16,90
Receptionist.....	1 068,00	246,65	44,85	5,61	15,10	20,55
Telephone switchboard operator .....	804,00	185,68	33,76	4,22	11,37	15,47
Waiter:						
First year of experience.....	806,00	186,14	33,84	4,23	11,40	15,51
Thereafter .....	878,00	202,77	36,87	4,61	12,42	16,90
Watchman.....	903,00	208,55	34,76	3,48	12,77	17,38

**SCHEDULE C2**

SCALE OF REMUNERATION IN THE ACCOMMODATION TRADE IN THE MAGISTERIAL DISTRICT OF DURBAN WITH EFFECT FROM 1 JANUARY 1999 TO 30 JUNE 1999 IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES WITH EFFECT FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant manager .....	1 016,00	234,64	42,66	5,33	14,37	19,55
Caretaker (up to 10 flats) .....	1 016,00	234,64	42,66	5,33	14,37	19,55
Caretaker (more than 10 flats) .....	1 088,00	251,27	45,69	5,71	15,38	20,94
Clerical employee:						
First year of experience .....	945,00	218,25	39,68	4,96	13,36	18,19
Second year of experience.....	967,00	223,33	40,61	5,08	13,67	18,61
Thereafter .....	1 134,00	261,89	47,62	5,95	16,03	21,82
Cook:						
First year of experience .....	838,00	193,53	35,19	4,40	11,85	16,13
Second year of experience.....	938,00	216,63	39,39	4,92	13,26	18,05
Thereafter .....	967,00	223,33	40,61	5,08	13,67	18,61
General service employee .....	823,00	190,07	34,56	4,32	11,64	15,84
Handyman .....	873,00	201,62	36,66	4,58	12,34	16,80
Headwaiter .....	967,00	223,33	40,61	5,08	13,67	18,61
Housekeeper .....	992,00	229,10	41,66	5,21	14,03	19,09
Kitchen supervisor .....	838,00	193,53	35,19	4,40	11,85	16,13
Laundry supervisor.....	838,00	193,53	35,19	4,40	11,85	16,13
Manager .....	1 206,00	278,52	50,64	6,33	17,05	23,21



	Monthly	Weekly	Daily	Hourly	Pro rata leave (up to three years' service)	Pro rata leave (over three years' service)
Motor vehicle driver .....	898,00	207,39	37,71	4,71	12,70	17,28
Porter/Night porter .....	898,00	207,39	37,71	4,71	12,70	17,28
Receptionist .....	1 088,00	251,37	45,69	5,71	15,38	20,94
Telephone switchboard operator .....	824,00	190,30	34,60	4,33	11,65	15,86
Waiter:						
First year of experience .....	826,00	190,76	34,68	4,34	11,68	15,90
Thereafter .....	898,00	207,39	37,71	4,71	12,70	17,28
Watchman.....	923,00	213,16	35,53	3,55	13,05	26,10

**Casual employee other than one employed at a special function:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one twenty-sixth of the monthly wage prescribed for an employee who performs the same class of work as the casual employee is required to do: Provided that where the employer requires a casual employee to perform the work of a class of employee for whom wages on a rising scale are prescribed the expression "monthly wage" shall mean the monthly wage prescribed for a qualified employee of that class.

**Part-time employee:** A part-time employee who works for five ordinary hours of work on any day shall be paid not less than three-fourths of the wage prescribed in subclause (1) for an employee who performs the same class of work as that part-time employee is required to do so.

A part-time employee who works for less than five ordinary hours of work on any day shall for each hour of work performed be paid not less than the hourly wage prescribed in subclause (1) for an employee who performs the same class of work as that part-time employee is required to do so.

### 36. BOARD AND LODGING DEDUCTION

36. (1) Whenever an employee, other than a casual employee or a special function employee, is required to accept board and lodging or board or lodging with his employer a deduction may be made from the employee's remuneration subject to the representative trade union being present when such sum is determined: Provided that any such board and lodging or board or lodging shall be to the satisfaction of the Bargaining Council.

(2) No deductions for board and/or lodging shall be made from the remuneration of any employee during periods of annual leave or sick leave during the said periods the employee is away from his ordinary place of employment.

(3) For the purposes of this clause, the expression "board" means the regular provision by an employer of three meals per day, and nothing in this Agreement shall be so construed as to preclude an employer from engaging an employee on the condition that the employer shall provide him with board and lodging nor shall the employer's right to make the deduction prescribed for board and lodging be affected by an employee's refusal to avail himself of such board and lodging or meals which the employer so provides.

### 37. DIFFERENTIAL WAGE

37. (1) An employer who requires or permits an employee to perform for longer than one hour in the aggregate on any one day either in addition to his work or in substitution therefor work of another class for which either—

(a) a wage higher than that of his own class; or

(b) a rising scale of wages terminating in a higher wage than that of his own class,

is prescribed in clause 35, shall pay such employee in respect of the first four hours on which he performs such work the same hourly rate of pay as paid to a qualified employee doing the same class of work: Provided that should the time so worked exceed four hours on any one day, he shall be paid the higher daily rate of pay for the whole of that day.

(2) No learner shall be employed as a casual employee at a lower wage than is prescribed for a qualified employee in an establishment for the class of work on which such learner is employed.

(3) Any increase in wages to which a learner is entitled under the provisions of this clause shall become due and payable on the first pay day in the month after the completion of the period of employment entitling him to such increase.

(4) Nothing in this Agreement shall operate to reduce the wages which were being paid to any employee prior to the date of coming into operation of this Agreement.

(5) Basis of contract—For the purposes of this clause, the contract of employment of an employee, other than a casual employee, shall be on monthly basis. Save as provided in clause 36 an employee shall be paid in respect of a month not less than the full monthly wage prescribed in clause 35 read with subclause (1) for an employee of his class, whether he had in each week of such month worked the maximum number of ordinary hours of work applicable to him in terms of clause 28 or less.

**38. LATE-HOUR TRANSPORT**

Where an employee is required to perform work after the normal working hours, the employer shall provide or pay for such transport to the employee's residence or to a convenient place at or near such employee's residence.

**39. PAY DAY**

The remuneration of all employees other than casual or special function employees shall be paid monthly or weekly as the case may be during the hours of work on the usual pay day of the establishment or on termination of employment if this takes place before the usual pay day: Provided that no pay day shall be on a day later than the twenty-fifth of the month for monthly paid employees and the first working day after the remuneration of any employee became due. Provided further that casual employees or special function employees shall be paid the remuneration due to such employees in cash upon termination of such employment.

**40. ANNUAL BONUS**

Every employee in the Private Hotel and Boarding House Trade who has completed three months' service and is in the employ of the employer in December of any year shall be entitled to and be paid a minimum bonus calculated at 35% of his monthly wage by not later than 15 December: Provided that where an employee has completed less than 12 months' service the bonus shall be calculated *pro rata*.

**41. MATERNITY LEAVE**

Any employee leaving work through pregnancy who has completed 12 months' service as at the date of leaving shall be entitled to reinstatement without alteration to her condition of employment for up to a period of four months from the date of leaving and the employer may employ a temporary employee in her position.

**42. TERMINATION OF EMPLOYMENT**

42. (1) An employer or an employee, other than a casual employee and a special function employee, who desires to terminate the contract of employment shall give one day's notice during the first six months of employment and thereafter one week's notice in writing, of his intention to terminate the contract: Provided that this shall not affect—

- (a) the right of an employer or an employee to terminate the contract of employment without notice for any cause recognised by law as sufficient;
- (b) any written agreement between an employer and his employee which provides for a period of notice of equal duration on both sides and for longer than specified in this clause:

Provided further that an employer or his employee may terminate the contract without notice by paying the employee or paying or forfeiting to the employer, as the case may be, in lieu of notice, not less than—

- (i) in the case of one week's notice, one week's wage;
- (ii) where there is an agreement in terms of subclause (1)(b), the payment of forfeiture in lieu of notice which shall correspond to the period of notice agreed upon.

(2) The notice specified in subclause (1) of this clause shall run from the day on which it was given: Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence on leave granted in terms of clause 5 or sick leave granted in terms of clause 6.

**43. SANITARY ACCOMMODATION/REST ROOM/CHANGE ROOM FACILITIES**

An employer shall provide proper and adequate sanitary accommodation and rest/change room facilities for his employees.

**CHAPTER 2****LIQUOR AND CATERING TRADE****44. HOURS OF WORK**

44. (1) (a) All employees shall work 48 hours in six days or eight hours on any day, except for these job categories: Handyman, bookkeeper, clerical assistant or off-sales attendant, who shall work 45 hours in five and one half days.

(b) On the coming into effect of section 9 of the Basic Conditions of Employment Act, 1997, no employer may require or permit any employee, other than a watchman, to work more normal hours than—

- (i) 45 hours in any week;
- (ii) nine hours in any day if the employee works five days or fewer in a week; or
- (iii) eight hours in any day if the employee works more than five days in a week.

(2) An employee's normal hours of work in terms of subclause (1) may be extended by 15 minutes in a day but not more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after completion of ordinary hours of work. Any work extending beyond these times shall be treated as and limited to the provisions of clause 46 of the Agreement.

- (3) Watchmen, referred to in subclause (1), shall work 50 hours per week.
- (4) In the case of part-time employees 35 hours in any week from Monday to Sunday inclusive.
- (5) In the case of casual employees nine hours per day.
- (6) The number of days worked in any one week may, notwithstanding the provisions of subclause (1), by mutual agreement between the employer and his employees be extended to seven days of not more than the daily hours of work laid down during not more than eight consecutive weeks: Provided that an employee so permitted to work shall during the first week after the period so worked be granted one free day on full pay for each week so worked.

#### 45. OVERTIME

- 45. (1) All hours worked in excess of the ordinary hours of work prescribed in clause 44 shall be deemed to be overtime.
- (2) (a) **Limitation of overtime:** An employer shall not require or permit his employee to work overtime for more than eight hours in any week save under exceptional circumstances caused by a condition beyond the employer's control.
- (b) On the coming into effect of the Basic Conditions of Employment Act, an employer shall not require or permit his employee to work overtime for more than ten hours in any week save under exceptional circumstances caused by a condition beyond the employer's control.
- (3) **Payment for overtime:**
  - (a) An employee who is requested or permitted to work on any day more than the ordinary working hours specified for him in clause 44 shall for each hour or part thereof be paid double his hourly wage or given leave for double the time he has worked.
  - (b) Where overtime calculated on a weekly basis differs from that calculated on a daily basis, the basis more favourable to the employee shall be adopted.
  - (c) Any claim for the payment of overtime shall become specified after a period of three months calculated from the latest date such overtime is claimed to have been worked.

#### 46. SPREADOVER

The ordinary hours of work of an employee shall be completed and all meal intervals must be included in a spreadover of not more than 14 hours on any day.

#### 47. MEAL INTERVALS

An employer shall not require or permit any employee other than a watchman to work for more than five hours continuously within a meal interval of not less than 30 minutes during which interval such employee shall not be permitted to perform any work.

#### 48. LATER-HOUR TRANSPORT

Where an employee is required to perform work after the normal working hours, the employer shall provide or pay for such transport to the employee's residence or to a convenient place or near such employee's residence.

#### 49. SHORT TIME—PERMANENT EMPLOYEES

- 49. (1) Reduced hours with a corresponding reduction of laid-down wages may be worked by mutual agreement between the employer and employee: Provided that exemption from the provisions of the Agreement relating to hours worked and wages to be paid has been granted by the Council to independent body for non-party employers.
- (2) Application for such exemption must give the daily hours it is desired to work together with the wages to be paid and must be signed by the employer and employee concerned.

#### 50. PROHIBITION OF EMPLOYMENT

Except where a higher age limit is fixed under the Liquor Act, 1977, no person under the age of 16 years shall be employed in any establishment.

#### 51. REMUNERATION

The minimum wages to be paid to the undermentioned employees shall be as set out below: Provided that all employees having attended a training college or scheme recognised by the Council and holding a certificate of proficiency shall be entitled to a 20 per cent increase in the wages immediately upon the production of such certificate of proficiency.

**SCHEDULE A**

SCALE OF REMUNERATION WITH EFFECT FROM 1 SEPTEMBER 1998 IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES WITH EFFECT FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant manager.....	957,00	221,02	40,19	4,91	13,53	18,42
Barman:						
First year of experience.....	817,00	188,68	34,31	4,19	11,55	15,72
Second year of experience .....	866,00	200,00	36,36	4,44	12,25	16,67
Third year of experience .....	943,00	217,78	39,60	4,84	13,33	18,15
Thereafter .....	1 006,00	232,33	42,24	5,16	14,22	19,36
Bookkeeper .....	1 053,00	243,19	44,22	5,40	14,89	20,27
Cashier .....	832,00	192,15	34,94	4,27	11,76	16,01
Clerical employee:						
First year of experience.....	748,00	172,75	31,41	3,84	10,58	14,40
Second year of experience .....	761,00	175,75	31,96	3,91	10,76	14,65
Thereafter .....	859,00	198,38	36,07	4,41	12,15	16,53
Cook:						
First year of experience.....	743,00	171,59	31,20	3,81	10,51	14,30
Second year of experience .....	761,00	175,75	31,96	3,91	10,76	14,65
Third year of experience .....	786,00	181,52	33,00	4,03	11,11	15,13
Thereafter .....	833,00	192,38	34,98	4,28	11,78	16,03
General service employee.....	714,00	164,90	29,98	3,66	10,10	13,74
Handyman .....	761,00	175,75	31,96	3,91	10,76	14,65
Head cook .....	984,00	227,25	41,32	5,05	13,91	18,94
Head waiter .....	888,00	205,08	37,29	4,56	12,56	17,09
Hotel trainee:						
First year of experience.....	734,00	169,52	30,82	3,77	10,38	14,13
Second year of experience .....	790,00	182,45	33,17	4,05	11,17	15,20
Thereafter .....	865,00	199,77	36,32	4,44	12,23	16,65
Housekeeper .....	790,00	182,45	33,17	4,05	11,17	15,20
Kitchen supervisor .....	803,00	185,45	33,72	4,12	11,35	16,45
Laundry supervisor .....	803,00	185,45	33,72	4,12	11,35	15,45
Manager .....	1 208,00	278,98	50,72	6,20	17,08	23,25
Motor vehicle driver .....	790,00	182,45	33,17	4,05	11,17	15,20
Night porter.....	803,00	185,45	33,72	4,12	11,35	15,45
Off-sales attendant:						
First year of experience.....	761,00	175,75	31,96	3,91	10,76	14,65
Second year of experience .....	803,00	185,45	33,72	4,12	11,35	15,45
Third year of experience .....	838,00	193,53	35,19	4,30	11,85	16,13
Thereafter .....	1 011,00	233,49	42,45	5,19	14,30	19,46
Off-sales manager .....	1 021,00	235,80	42,87	5,24	14,44	19,65
Porter.....	768,00	177,37	32,25	3,94	10,86	14,78
Receptionist.....	859,00	198,38	36,07	4,41	12,15	16,53
Restaurant manager.....	1 093,00	252,43	45,90	5,61	15,46	21,04
Telephone switchboard operator .....	748,00	172,75	31,41	3,84	10,58	14,40
Waiter/wine steward:						
First year of experience.....	714,00	164,90	29,99	3,66	10,10	13,74
Second year of experience .....	723,00	166,98	30,36	3,71	10,22	13,92
Third year of experience .....	765,00	176,67	32,12	3,93	10,82	14,72
Thereafter .....	865,00	199,77	36,32	4,44	12,23	16,65
Watchman.....	720,00	166,28	27,71	3,46	10,18	13,86



## SCHEDULE A1

SCALE OF REMUNERATION WITH EFFECT FROM 1 DECEMBER 1998 WHEN THE BASIC CONDITIONS OF EMPLOYMENT ACT OF 1997 CAME INTO OPERATION IN RESPECT OF THE PARTIES AND IN RESPECT OF NON-PARTIES FROM THE DATE OF COMING INTO OPERATION OF THE AGREEMENT

	Monthly	Weekly	Daily	Hourly	<i>Pro rata</i> leave (up to three years' service)	<i>Pro rata</i> leave (over three years' service)
Assistant manager .....	957,00	221,02	40,19	4,91	13,53	18,42
Barman:						
First year of experience .....	817,00	188,68	34,31	4,19	11,55	15,72
Second year of experience .....	866,00	200,00	36,36	4,44	12,25	16,67
Third year of experience .....	943,00	217,78	39,60	4,84	13,33	18,15
Thereafter .....	1 006,00	232,33	42,24	5,16	14,22	19,36
Bookkeeper .....	1 053,00	243,19	44,22	5,40	14,89	20,27
Cashier .....	832,00	192,15	34,94	4,27	11,76	16,01
Clerical employee:						
First year of experience .....	748,00	172,75	31,41	3,84	10,58	14,40
Second year of experience .....	761,00	175,75	31,96	3,91	10,76	14,65
Thereafter .....	859,00	198,38	36,07	4,41	12,15	16,53
Cook:						
First year of experience .....	743,00	171,59	31,20	3,81	10,51	14,30
Second year of experience .....	761,00	175,75	31,96	3,91	10,76	14,65
Third year of experience .....	786,00	181,52	33,00	4,03	11,11	15,13
Thereafter .....	833,00	192,38	34,98	4,28	11,78	16,03
General service employee .....	714,00	164,90	29,98	3,66	10,10	13,74
Handyman .....	761,00	175,75	31,96	3,91	10,76	14,65
Head cook .....	984,00	227,25	41,32	5,05	13,91	18,94
Head waiter .....	888,00	205,08	37,29	4,56	12,56	17,09
Hotel trainee:						
First year of experience .....	734,00	169,52	30,82	3,77	10,38	14,13
Second year of experience .....	790,00	182,45	33,17	4,05	11,17	15,20
Thereafter .....	865,00	199,77	36,32	4,44	12,23	16,65
Housekeeper .....	790,00	182,45	33,17	4,05	11,17	15,20
Kitchen supervisor .....	803,00	185,45	33,72	4,12	11,35	16,45
Laundry supervisor .....	803,00	185,45	33,72	4,12	11,35	15,45
Manager .....	1 208,00	278,98	50,72	6,20	17,08	23,25
Motor vehicle driver .....	790,00	182,45	33,17	4,05	11,17	15,20
Night porter .....	803,00	185,45	33,72	4,12	11,35	15,45
Off-sales attendant:						
First year of experience .....	761,00	175,75	31,96	3,91	10,76	14,65
Second year of experience .....	803,00	185,45	33,72	4,12	11,35	15,45
Third year of experience .....	838,00	193,53	35,19	4,30	11,85	16,13
Thereafter .....	1 011,00	233,49	42,45	5,19	14,30	19,46
Off-sales manager .....	1 021,00	235,80	42,87	5,24	14,44	19,65

	Monthly	Weekly	Daily	Hourly	Pro rata leave (up to three years' service)	Pro rata leave (over three years' service)
Porter.....	768,00	177,37	32,25	3,94	10,86	14,78
Receptionist.....	859,00	198,38	36,07	4,41	12,15	16,53
Restaurant manager.....	1 093,00	252,43	45,90	5,61	15,46	21,04
Telephone switchboard operator.....	748,00	172,75	31,41	3,84	10,58	14,40
Waiter/wine steward:						
First year of experience.....	714,00	164,90	29,99	3,66	10,10	13,74
Second year of experience.....	723,00	166,98	30,36	3,71	10,22	13,92
Third year of experience.....	765,00	176,67	32,12	3,93	10,82	14,72
Thereafter.....	865,00	199,77	36,32	4,44	12,23	16,65
Watchman.....	720,00	166,28	27,71	3,46	10,18	13,86

**Casual employee other than one employed at a special function:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one twenty-sixth of the monthly wage prescribed for an employee who performs the same class of work as the casual employee is required to do: Provided that where the employer requires a casual employee to perform the work of a class of employee for whom wages on a rising scale are prescribed the expression "monthly wage" shall mean the monthly wage prescribed for a qualified employee of that class.

**Part-time employee:** A part-time employee who works for five ordinary hours of work on any day shall be paid not less than three-fourths of the wage prescribed in this clause for an employee who performs the same class of works as that part-time employee is required to do so.

A part-time employee who works for less than five ordinary hours of work on any day shall for each hour of work performed be paid not less than the hourly wage prescribed in this clause for an employee who performs the same class of work as that part-time employee is required to do.

## 52. NIGHT-SHIFT ALLOWANCE

An employer shall pay to an employee, except a watchman, who as part of his ordinary hours of work is required to work beyond 23:00 on any day, a night shift allowance of 12,5% on his hourly rate for each hour or part thereof worked after 23:00.

## 53. PAYDAY

The remuneration of all employees other than casual or special function employees shall be paid monthly or weekly as the case may be during the hours of work on the usual payday of the establishment or on termination of employment if this takes place before the usual payday: Provided that no payday shall be later than the last day of the month for monthly paid employees: Provided further that casual employees or special function employees shall be paid the remuneration due to such employees in cash upon termination of such employment.

## 54. PAYMENT FOR WORK ON SUNDAYS

54. (1) All employees who are required to work on a Sunday as part of their ordinary hours of work shall be granted paid time off in lieu of any additional payments bound on 1,5 x their hourly rate, which will become applicable on the coming into effect of section 16 (3) of the Basic Conditions of Employment Act.

(2) Should the operational requirements of the business prevent the employer from granting the paid time off referred to in subclause (1) above within four weeks of the employee becoming entitled to such time off, the employee shall be paid the additional amount required in terms of section 16 (3) of Basic Conditions Employment Act when it comes into effect.

(3) All employees who are required to work on a Sunday which is not part of their ordinary hours of work shall be granted double time off in lieu of any additional payments bound on 2 x their hourly rate, which will become applicable on the coming into effect of section 16 (3) of the Basic Conditions of Employment Act.

## 55. DIFFERENTIAL WAGE

55. (1) An employer who requires or permits an employee to perform for longer than one hour in the aggregate on any one day either in addition to his work or in substitution therefor work of another class for which either—

(a) a wage higher than that of his own class; or

(b) a rising scale of wages terminating in a higher wage than that of his own class,

is prescribed in clause 51, shall pay such employee in respect of the first four hours on which he performs such work the same hourly rate of pay as paid to a qualified employee doing the same class of work: Provided that should the time so worked exceed four hours on any one day, he shall be paid the higher daily rate of pay for the whole of that day.

(2) No learner shall be employed as a casual employee at a lower wage than is prescribed for a qualified employee in an establishment for the class of work on which such learner is employed.

(3) Any increase in wages to which a learner is entitled under the provisions of this clause shall become due and payable on the first payday in the month after the completion of the period of employment entitling him to such increase.

(4) Nothing in this Agreement shall operate to reduce the wages which were being paid to an employee prior to the date of coming into operation of this Agreement.

(5) **Basis of contract:** For the purposes of this clause, the contract of employment of an employee, other than a casual employee, shall be on monthly basis. Save as provided in clause 56 an employee shall be paid in respect of a month not less than the full monthly wage prescribed in subclause 51 read with subclause (1), for an employee of his class, whether he had in each week of such month worked the maximum number of ordinary hours of work applicable to him in terms of clause 44 or less.

#### 56. BOARD AND LODGING DEDUCTIONS

56. (1) Whenever an employee, other than a casual employee and a special function employee, is required to accept board and lodging or board or lodging with his employer a deduction not exceeding the amount specified hereunder may be made from the employee's remuneration: Provided that any such board and lodging or board or lodging shall be to the satisfaction of the Bargaining Council.

(2) No deductions for board and/or lodging shall be made from the remuneration of any employee during periods of annual leave or sick leave during the said periods the employee is away from his ordinary place of employment.

(3) An employer shall have the right to charge the employee a sum for board based on direct food costs to the employer: Provided that and subject to the representative trade union being present when such sum is determined. The employer shall not charge for lodging, unless there is a specific separate agreement between employer and employee for such charge for lodging.

(4) For the purposes of this clause, the expression "board" means the regular provision by an employer of three meals per day, and nothing in this Agreement shall be so construed as to preclude an employer from engaging an employee on the condition that the employer shall provide him with board and lodging nor shall the employer's right to make the deduction prescribed for board and lodging be as affected by an employee's refusal to avail himself of such board and lodging or meal which the employer so provides.

(5) Hotel trainees shall be provided with board and lodging free of charge. Meals are to be provided to employees free of charge only while on duty.

#### 57. MATERNITY LEAVE

57. (1) An employee is entitled to four consecutive months' unpaid maternity leave.

(2) An employee may commence maternity leave—

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or a midwife or a medical practitioner certifies that she is fit to do so.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

(5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

(a) commence maternity leave; and

(a) return to work after maternity leave.

(6) Notification in terms of subclause (5) must be given—

(a) at least four weeks before the employee intends to commence maternity leave; or

(a) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1996.

#### 58. FAMILY RESPONSIBILITY LEAVE

58. (1) This clause applies to an employee—

(a) who has been in employment with an employer for longer than four months; and

(b) who works for at least four days a week for that employer.

(2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days' paid leave, which the employee is entitled to take—

- (a) when the employee's child is born;
- (b) when the employee's child is sick; or
- (c) in the event of the death of—
  - (i) the employee's spouse or life partner; or
  - (ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (3) Subject to subsection (5), an employer must pay an employee for a day's family responsibility leave—
  - (a) the wage the employee would ordinarily have received for work on that day; and
  - (b) on the employee's usual pay day.
- (4) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (5) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (1) for which the leave was required.
- (6) An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.
- (7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this clause.

#### 59. EMERGENCY WORK

Notwithstanding anything to the contrary in clauses 44, 45, 46 and 52, no restrictions imposed by those clauses shall apply to any employee employed on emergency work and any employee may be employed on emergency work during his weekly time off.

#### 60. EXCLUSIONS

The provisions of clauses 44, 45, 46 and 52 shall not apply to a manager (other than those employed as a part-time employee) or to a special function employee.

#### 61. SANITARY ACCOMMODATION/RESTROOM/CHANGE ROOM FACILITIES

61. (1) An employer shall provide proper and adequate sanitary accommodation and rest/change room facilities for his employees.

(2) Employees will partake of their meals at venues to be determined by management in consultation with shop stewards of the union and such facilities shall be integrated.

#### 62. TERMINATION OF EMPLOYMENT

62. (1) An employer or an employee, other than a casual employee and a special function employee, who desires to terminate the contract of employment shall give one week's notice in the first month of employment and two weeks thereafter, in writing, of his intention to terminate the contract: Provided that this shall not affect—

- (a) the right of an employer or an employee to terminate the contract of employment without notice for any cause recognised by law as sufficient;
- (b) any written agreement between an employer and his employee which provides for a period of notice of equal duration on both sides and for longer than specified in this clause:

Provided further that an employer or his employee may terminate the contract without notice by paying the employee or paying or forfeiting to the employer, as the case may be, in lieu of notice, not less than—

- (i) in the case of one week's notice, one week's wage;
- (ii) where there is an agreement in terms of subclause (1) (b), the payment or forfeiture in lieu of notice which shall correspond to the period of notice agreed upon.

(2) The notice specified in subclause (1) of this clause shall run from the day on which it was given: Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence on leave granted in terms of clause 5 or sick leave granted in terms of clause 15.

Signed at Port Shepstone on behalf of the parties this 17th day of November 1998.

**D. G. COMINOS**

Chairman of the Council

**L. REDDY**

Vice-Chairperson of the Council

**S. E. BEZUIDENHOUDT**

Secretary for the Council





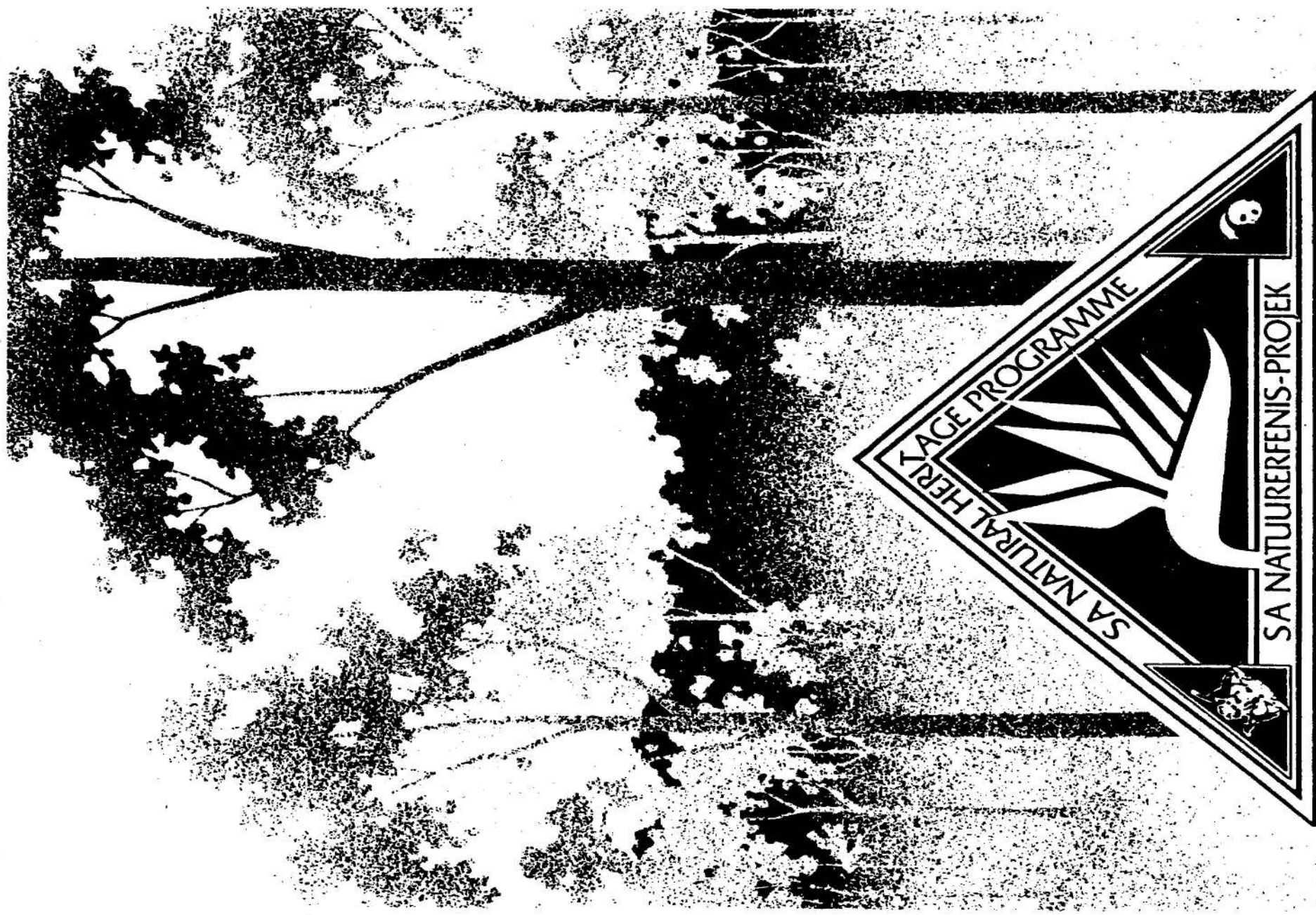
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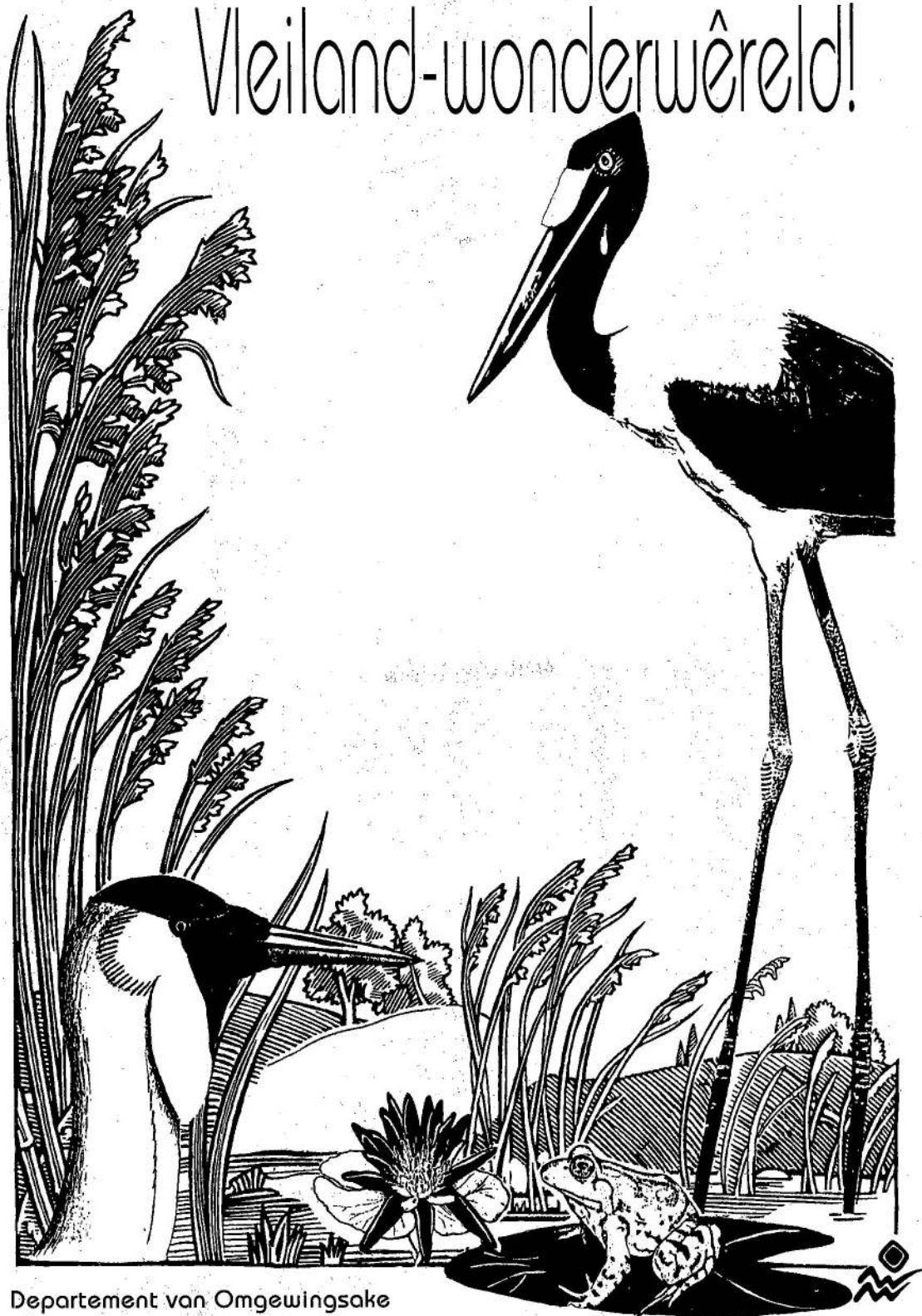


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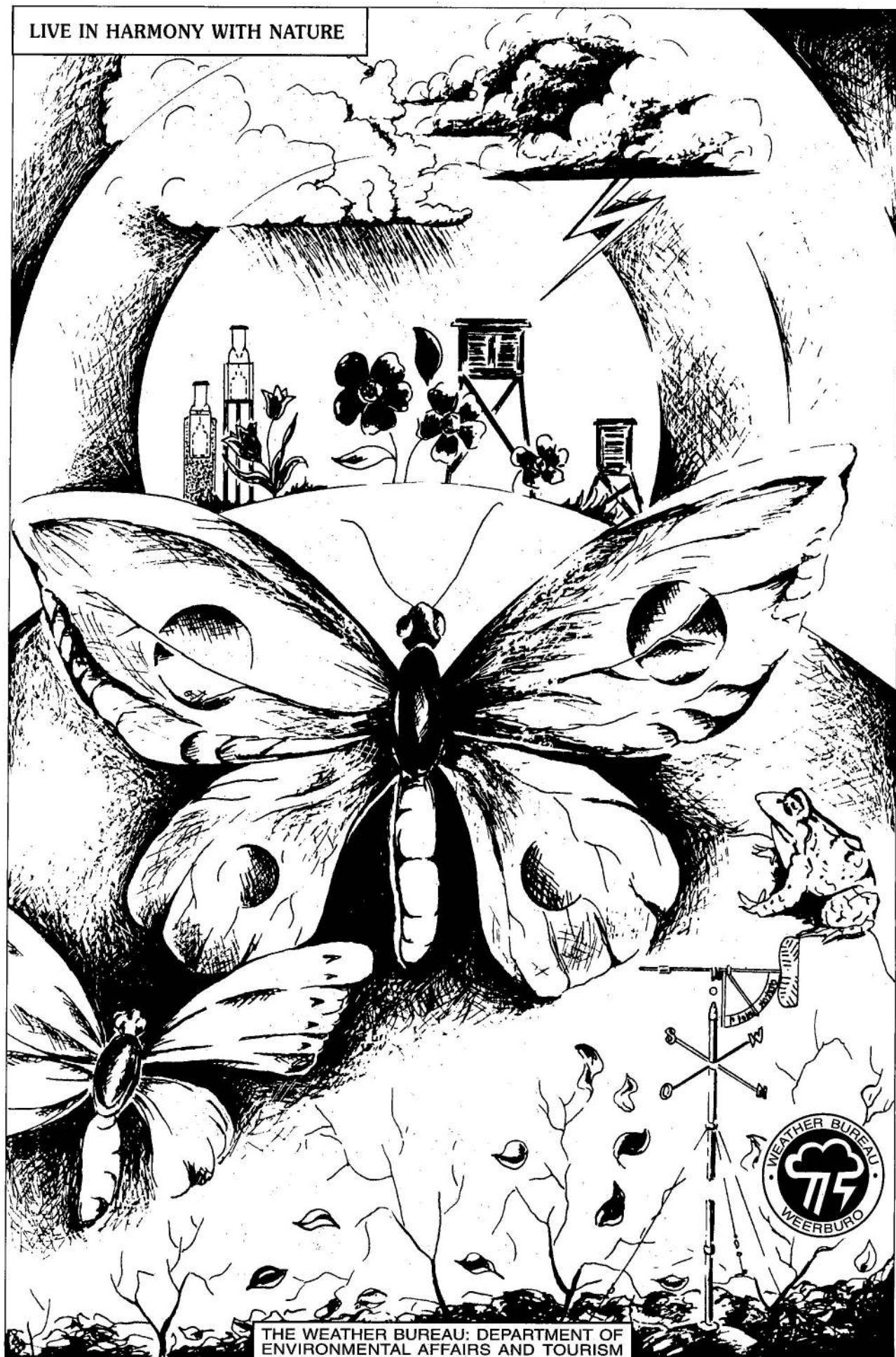
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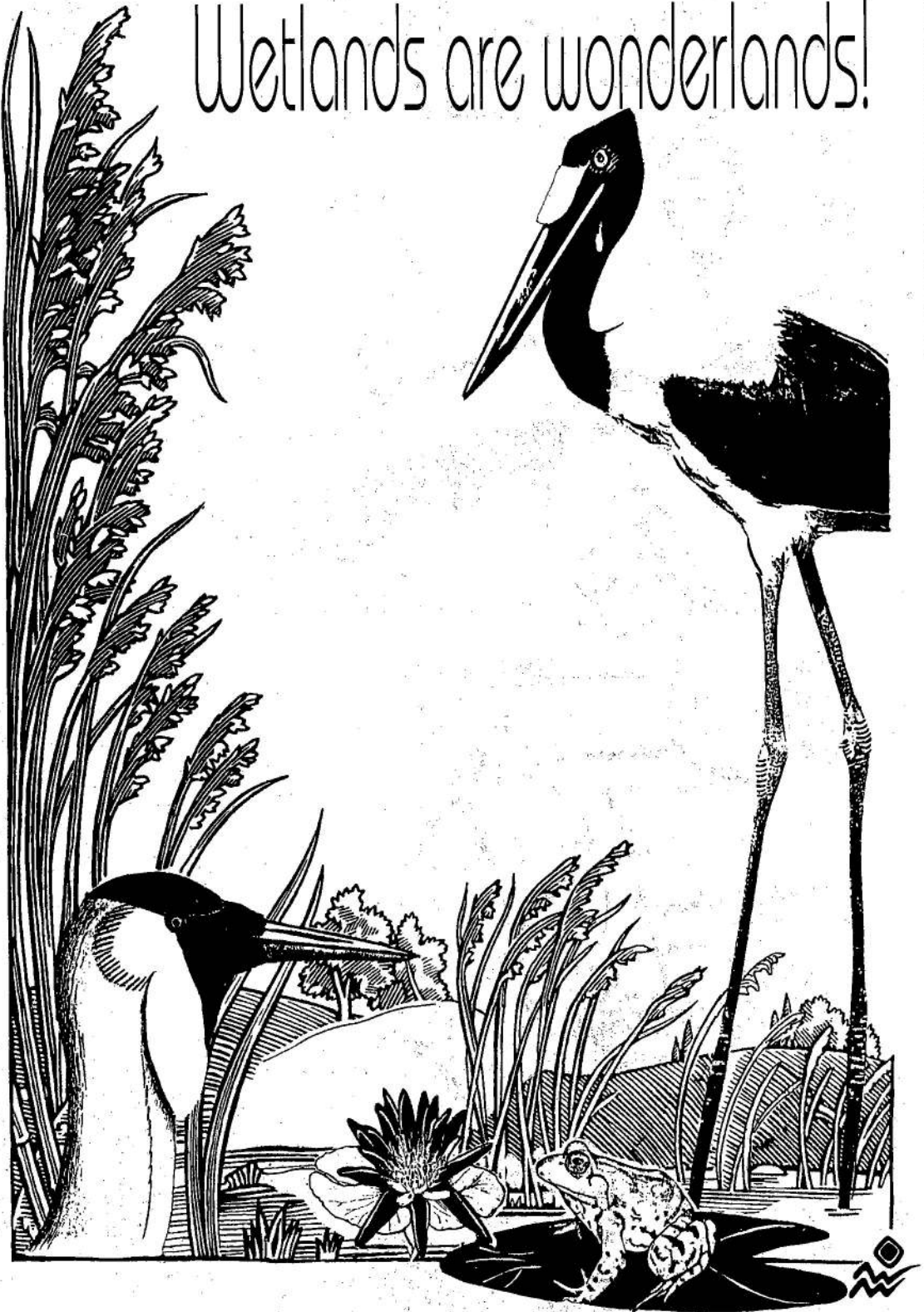
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