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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 629

28 May 1999

LABOUR RELATIONS ACT, 1995

CLOTHING INDUSTRY (WESTERN CAPE): EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, 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 Clothing Industry Bargaining Council (Western Cape) 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 7 June 1999 and for the period ending 30 June 2000.

M. M. S. MDLADLANA

Minister of Labour

No. R. 629

28 Mei 1999

WET OP ARBEIDSVERHOUDINGE, 1995

KLERASIENYWERHEID (WES-KAAP): UITBREIDING VAN KOLLEKTIEWE VOORSORGFONDSOOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Engelse Bylae hiervan verskyn en wat in die Bedingingsraad vir die Klerasienywerheid (Wes-Kaap) aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 7 Junie 1999, en vir die tydperk wat op 30 Junie 2000 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

Nota: 'n Afrikaanse vertaling van die Ooreenkoms by die Engelse kennisgewing is beskikbaar by die Raad.

SCHEDULE**CLOTHING INDUSTRY BARGAINING COUNCIL (WESTERN CAPE)****PROVIDENT FUND COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

Cape Clothing Association

and the

Cape Fabric Knitting Association

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"), of the other part,

being the parties to the Clothing Industry Bargaining Council (Western Cape).

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
- (a) by the employers and employees who are members of the employers' organisations and the trade union, respectively, and who are engaged or employed in the Industry;
 - (b) in the Magisterial Districts of—
 - (i) The Cape, Simonstown, Bellville, Goodwood, including those portions of the Magisterial Districts of Goodwood, Simonstown and Bellville from which the Magisterial District of Mitchells Plain was constituted on 2 March 1992, Somerset West, Strand, George and Worcester, on the operations set forth in paragraphs (a) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement;
 - (ii) Malmesbury, including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice No. 2649, in respect of that part of the Industry in which employers and employees are associated for the making of all classes of women's and girls' wear, including parts of such garments and cloth belts;
 - (iii) Wynberg, including that portion of the Magisterial District of Wynberg included when the Magisterial District of Mitchells Plain was constituted on 2 March 1992, on the operations set forth in paragraphs (a) and/or (b) and/or (c) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
- (a) only apply in respect of employees for whom wages are prescribed in the Main Collective Agreement, the Knitting Division Collective Agreement and the Country Areas Collective Agreement;
 - (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1 (2) (b) of the Main Collective Agreement of the Council.
- (3) Notwithstanding the provisions of subclauses (1) and (2), the terms of this Agreement shall apply in respect of employees and working directors who were contributors as at the date of coming into operation of this Agreement.
- (4) Clauses 1 (1) (a), 2 and 16B of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 30 June 2000.

3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, or the Main Collective Agreement, shall have the same meaning as in that Act or Agreement, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context—

"Act" means the Labour Relations Act, 1995;

"beneficiary" means a person appointed by a contributor to whom any benefits accruing to such contributor at the time of his death may be paid;

"Clothing Industry" or "Industry", which consists of the clothing, knitting and shirt sections, shall include—

- (a) the making of all classes of men's and boys' tweed and linen hats and caps and all classes of outer and undergarments (including knitted garments) for day or night wear, including shirts, collars, ties, socks, scarves, parts of garments and cloth belts (excluding belts made from leather or synthetic material), pyjamas and other nightwear;
- (b) the making of all classes of garments, including quantity production tailoring made to the order of any government department or provincial administration, the South African Transport Services or local authorities; but shall not include the making of millinery or the making of ladies' or girls' coats and costumes or any other outer garments made to the measurement of individual persons; and
- (c) the making of ladies' and/or men's gloves;

"Clothing Section" means—

- (a) that section of the Clothing Industry in which all classes of men's and boys' tweed and linen hats and caps and all classes of outer and undergarments are made;
- (b) the making of all classes of garments, including quantity production tailoring made to the order of any government department or provincial administration, the South African Transport Services or local authorities; but does not include shirts, collars, ties, pyjamas and other nightwear, millinery and the making of ladies' and girls' coats and costumes or any other outer garments made to the measurement of individual persons;
- (c) the making of ladies' and/or men's gloves;

"contributor" means any person employed in the Clothing Industry [except those excluded in terms of clause 1 (2) (b) of this Agreement] and from whose wages deductions are made or have been made or were required to have been made, in terms of clause 6 (1) of this Agreement;

"Council" means the Clothing Industry Bargaining Council (Western Cape) registered in terms of section 29 of the Act, 1995;

"Country Areas Collective Agreement" means the Agreement of the Council which prescribes wages for employees employed in the Industry in the Magisterial Districts of George and Worcester;

"dealer" or "general dealer" means a person holding a licence under item 3 of the First Schedule to the Registration and Licensing of Businesses Ordinance, Ordinance No. 15 of 1953, as amended by Ordinance 19 of 1972;

"dependant" means—

- (a) a person in respect of whom a contributor is legally liable for maintenance;
- (b) a person in respect of whom a contributor is not legally liable for maintenance, if such person—
 - (i) was, in the opinion of the Management Committee, upon the death of the contributor in fact dependent on the contributor for maintenance; or
 - (ii) is the spouse of the contribution, including a party to a customary union according to Black law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion;
- (c) a person in respect of whom a contributor would have become legally liable for maintenance, had the contributor not died;

"employees' contributions" means the contributions deducted from the wages of employees in accordance with the provisions of clause 6 (1) of this Agreement;

"employees' share" means the accumulated value, as determined by the Management Committee, of the contributions made by an employee, taking into account the expenses of the Fund, plus interest, the rates of which shall also be determined by the Management Committee from time to time;

"employee's voluntary contributions" means the contributions made on a voluntary basis by employees at any time prior and up to 31 March 1993;

"employers' contributions" means the contributions made by employers in accordance with the provisions of clause 6 (2) of this Agreement;

"employers' share" means the accumulated value, as determined by the Management Committee, of the contributions made by the employer in respect of an employee, taking into account the expenses of the Fund, plus interest, the rates of which shall also be determined by the Management Committee from time to time;

"experience" shall for the purpose of this Agreement be in accordance with the definition of "experience" in the Main Agreement, Knitting Division Agreement or Country Areas Agreement;

"Fund" means the Provident Fund established under this Agreement;

"Fund credit" means, for each contributor, the total of the employee's share and his employer's share and any other amount as may be authorised by the Management Committee and credited to his account in the records of the Fund;

"Knitting Division Collective Agreement" means the Agreement of the Council which prescribes wages for employees employed in the Knitting Division of the Industry;

"Knitting Section" means that section in which employers and their employees are associated for the knitting of fabric and/or hosiery and/or garments knitted on circular, flat and/or full-fashioned machinery, and includes the making up of garments from knitted fabric in the establishment in which the said fabric was knitted;

"Main Collective Agreement" means the Main Collective Agreement of the Council which prescribes wages for employees employed in the Industry, other than in the Magisterial District of George and Worcester and those employed in the Knitting Division;

"Management Committee" means the Management Committee of the Fund appointed in terms of clause 5 (1) of this Agreement;

"payweek" means the period of seven days within which the working week of an establishment ordinarily falls and includes any period during which the establishment observes a closure period for leave purposes;

"retiring age" means the age of 55 or any age thereafter, but not later than the contributor's 65th birthday;

"Secretary" means the Secretary of the Council and includes any official appointed to assist the Secretary;

"service" means employment in the Industry;

"wage" or **"salary"** means the amount of money payable to an employee in respect of his ordinary hours of work, excluding payments for overtime worked.

4. PROVIDENT FUND

The Fund established under Government Notice No. R. 493 of 12 March 1954, and known as the Cape Clothing Industry Provident Fund, is hereby continued for the purpose of providing benefits to contributors as set out in this Agreement.

The Fund shall consist of—

- (a) any moneys standing to the credit of the Fund;
- (b) contributions paid into the Fund in accordance with the provisions of this Agreement;
- (c) interest derived from the investment of any moneys of the Fund;
- (d) any other sums to which the Fund may become entitled.

5. ESTABLISHMENT AND FUNCTIONS OF MANAGEMENT COMMITTEE

(1) The administration of the Fund shall be vested in a Management Committee consisting of four employers' representatives and four employees' representatives appointed by the Clothing Industry Bargaining Council (Western Cape) in terms of the Constitution of the Council at a duly constituted meeting of the Council together with the Chairman and Vice-Chairman of the Council who shall be *ex officio* members of the Management Committee.

The Chairman and Vice-Chairman of the Management Committee shall be elected at the meeting of the Management Committee held in December of each year.

(2) For each representative an alternate shall be appointed in the manner provided for in the Constitution of the Council.

(3) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority of votes. The Chairman shall have a deliberative vote only, alternates of members who are absent may be counted as full representatives for the purposes of a quorum and if no quorum is present within 30 minutes of the time fixed, the meeting shall stand adjourned to a date not later than seven days thereafter fixed by the Chairman. At such adjourned meeting, of which members shall be given written notice, those present shall form a quorum. For the purpose of a quorum, the Chairman and Vice-Chairman of the Council shall, if present, be regarded as representatives.

(4) If any representative is absent from any meeting and is not represented by an alternate, the voting power of the side he represents shall be reduced and a similar reduction shall be made on the other side to preserve equality of voting power. No motion shall be considered unless seconded, and all matters forming the subject of motions shall be decided by majority vote of those present.

(5) All expenses of administration shall be a charge against the Fund.

(6) The Management Committee shall have power to—

- (a) sanction all payments and expenditure on behalf of the Fund;
- (b) engage and dismiss paid servants of the Fund, fix their remuneration, and define their duties;
- (c) supervise the working of any local committee appointed;
- (d) appoint subcommittees to help in the administration of the Fund;
- (e) draft rules for the payment of benefits and fix the time and place for such payments;
- (f) perform all such other duties as the Committee may deem necessary or desirable for the proper administration of the Fund;
- (g) subject to clause 7 (2) (a) purchase or in any other manner acquire immovable property and to sell or in any other manner alienate any immovable property so acquired.

(7) Two copies of the Rules of the Fund and any amendments thereof shall be lodged with the Secretary of the Council who shall transmit one copy to the Registrar of Labour Relations.

6. CONTRIBUTIONS

(1) *Employees' contributions:* Every employer shall, save as provided for in terms of clause 1 (2) (b) of this Agreement, each week or each month, as the case may be, deduct from the wages of each of his weekly paid or monthly paid employees (hereinafter referred to as "contributor") who has worked 8½ ordinary hours or more during any payweek, an amount equal to a percentage of his wage as follows:

- (a) 3,75% in respect of employees for whom wages are prescribed in the Council's Main Collective Agreement and for the Garment Knitting Sector as contained in the Council's Knitting Division Collective Agreement with effect from the date of coming into operation of this Collective Agreement; and
- (b) 4,0% in respect of employees for whom wages are prescribed for the Fabric Knitting Sector as contained in the Council's Knitting Division Collective Agreement with effect from the date of coming into operation of this Collective Agreement:

Provided that no deduction shall exceed 3,75% or 4,0% as the case may be, of the highest minimum wage as prescribed in clause 4 of the Main and Knitting Division Collective Agreements of the Council. Fractions of a cent shall be regarded as one cent when assessing the rate of contribution payable by the contributor and his employer in terms of this clause:

Provided further that no deductions shall be made from the wage of any employee who is 65 years of age or older.

(2) *Employees contributions:* An employer shall each week, in the case of weekly paid employees, or each month, in the case of monthly paid employees, contribute to the Fund an amount equal to a percentage of all amounts contributed by each of his employees for whom contributions are deducted as provided in subclause (1), as follows:

- (a) 4,25% in respect of employees for whom wages are prescribed in the Council's Main Collective Agreement and for the Garment Knitting Sector as contained in the Council's Knitting Division Collective Agreement with effect from the date of coming into operation of this Collective Agreement; and
- (b) 5,0% in respect of employees for whom wages are prescribed for the Fabric Knitting Sector as contained in the Council's Knitting Division Collective Agreement with effect from the date of coming into operation of this Collective Agreement.

(3) *Maternity leave contributions:* Where a contributor is on maternity leave both the contributor's and employer's contributions shall be paid by the employer as provided for in the Main Collective Agreement of the Council, or the corresponding provisions of any amendments to such Agreement, and such contributions shall be assessed on the contributor's wage immediately prior to the date of her proceeding on maternity leave.

(4) No new contributor shall be admitted to membership at 65 years of age or older.

(5) (a) An employer shall forward to the Council month by month, but not later than the 14th day of each month, the total sum due to the Fund made up as follows:

- (i) Employee's contributions in terms of subclause (1);
- (ii) employer's contributions in terms of subclauses (2) and (3).

(b) Should any amount due in terms of this clause not be received by the Council by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Council from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment 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 in any individual instance.

(c) In the event of the Council incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to forthwith pay all such costs of whatever nature as between attorney and client and all such collection commission, and the Council shall be entitled in its absolute discretion to allocate any payment by the employer firstly in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

(6) Subject to the provisions of subclauses (1), (2) and (3) the total sum of employees' contributions and employers' contributions shall be recorded and forwarded to the Council, in a form and manner as specified and supplied by the Council, reflecting *inter alia* the following:

- (a) The contributor's service record card number;
- (b) the contributor's surname and full first names;
- (c) for each month in question, the amount of each contribution deducted from the wage of a weekly paid contributor during each week and the amount of each contribution deducted from the monthly wage of a monthly paid contributor, and the total amount of each employee's contributions;
- (d) the total of the employers' contribution in respect of the month in question.

(7) An employer shall not deduct the whole or part of his own contribution from the remuneration of a contributor or receive any consideration from the contributor in respect of such contribution.

(8) When a contributor is on leave on full pay or less than full pay, both his and the employer's contributions shall be continued.

(9) If any contribution is made in error to the Fund, the Fund shall not be liable to repay the contribution after the lapse of three months from the date of such payment.

(10) Whenever any benefit has been mistakenly paid to a contributor as a result of contributions having been made to the Fund which were not due, the Management Committee may set off the amount of benefit so paid—

- (a) against any sum claimed from the Fund as a repayment of such contributions which were not due; and
- (b) against any future benefits that may become due by the Fund to the said contributor.

(11) Subject to the provisions of this Agreement, only those contributions received by the Fund in respect of a contributor will be taken into account when assessing the value of the contributor's benefit in terms of clause 9 of this Agreement.

(12) Subject to the provisions of this Agreement, a contributor's death or disability benefits will not be prejudiced in respect of any period of employment during which he should have contributed to the Fund and in respect of which his employer failed to submit contributions for and on behalf of such contributor to the Fund.

7. FINANCE

(1) All moneys received by the Fund shall be deposited in a banking account opened in the name of the Fund. An official receipt shall be issued for all moneys received into the Fund and withdrawals from the Fund shall be by cheque signed by such persons as may from time to time be authorised by the Management Committee.

(2) Any moneys not required to meet current payments shall be invested by the Management Committee in—

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
- (b) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
- (c) a registered unit trust;
- (d) housing loans in terms of clause 8;
- (e) the name of the Fund through the agency of an insurance company or any other financial institution approved by the Registrar in terms of the Act, in such manner and with such persons as the insurance company or financial institution deems fit: Provided the limitations prescribed in the Pension Funds Act, 1956 (Act No. 24 of 1956), are not exceeded;
- (f) any other manner approved by the Registrar.

(3) The Management Committee may, by resolution, at a duly constituted meeting of the Committee, authorise the transfer of interest earned on investments in terms of subclause (2) hereof to a Special Cases Account for the purposes of clause 11 of this Agreement: Provided that the amount in interest so transferred shall in no period of six months ending 30 June and 31 December, respectively, exceed the amount in interest actually received by the Fund during such period, less the administration expenses of the Fund for the period in question.

(4) The Management Committee shall appoint a public accountant whose remuneration shall be paid out of the Fund.

(5) The accounts shall be audited every six months from the periods ended 30 June and 31 December, respectively, and a copy shall be transmitted to the Secretary of the Council and a copy to the Registrar of Labour Relations.

8. HOUSING LOANS

(1) The Management Committee may, from interests on investments of the Fund or from moneys forfeited to the Fund, retain, for the purpose of granting housing loans to contributors, an amount approved in writing by the Registrar: Provided that loans granted in terms of this clause shall be subject to such conditions as may be laid down by the Management Committee, with the approval of the Registrar.

(2) Loans shall in no case exceed R35 000, repayable at such rates as may from time to time be determined by the Management Committee.

(3) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall, as from the next ensuing payweek, deduct from his employee's wages the weekly amount stipulated in the stop order and shall forward, month by month, but not later than the 14th day of each month, the total sum to the Secretary of the Fund.

9. BENEFITS

(1) Subject to the provisions of this clause, benefits shall be provided for contributors who—

- (a) leave the Industry by retiring between the ages of 55 and 65; or
- (b) satisfy the Management Committee that they have left the Industry permanently before the age of 55.

(2) **Withdrawal benefits:** Save as provided in paragraph (a), the withdrawal benefits payable to a contributor whose membership ceases, other than in terms of subclauses (3), (4), (5) and (6), shall be as follows:

- (a) Where a contributor has been a contributor for less than six months, he shall not be entitled to any benefit from the Fund other than as provided in paragraph (d).

- (b) Where a contributor has been a contributor for six months or more he shall be entitled to his own employee's share.
- (c) Where a contributor has been a contributor for at least five years he shall be entitled to the percentage of his Fund credit shown in the table below against the number of years of his unbroken service in the Clothing Industry: Provided that in the event of the Management Committee having approved of the payment into the Fund of amounts other than those specified in clause 6 (1), (2) and (3) of this Agreement, such amounts, plus interest calculated at the same rate as that of the Fund, shall not form part of the Fund credit, but shall be paid to the contributor in addition to the benefit calculated in terms of this subclause:

<i>Completed years of service</i>	<i>Percentage of Fund credit</i>
5	75
6	80
7	85
8	90
9	95
10 or more	100

- (d) When a contributor's service is terminated because of redundancy or retrenchment, as to which the decision of the Management Committee shall be final, or in the event of his employer's establishment ceasing operation in the Industry or in the event of its liquidation—
- (i) if he has been a contributor for less than six months he shall be entitled to his own employee's share;
- (ii) if he has been a contributor for six months or more he shall be entitled to the percentage of his Fund credit shown in the table below against the number of years of his unbroken service in the Clothing Industry: Provided that in the event of the Management Committee having approved of the payment into the Fund of amounts other than those specified in clause 6 (1), (2) and (3) of this Agreement, such amounts, plus interest calculated at the same rate as that of the Fund, shall not form part of the Fund credit, but shall be paid to the contributor in addition to the benefit calculated in terms of this subclause:

<i>Completed years of service</i>	<i>Percentage of fund credit</i>
Less than 1	50,0
1	62,5
2	75,0
3	87,5
4 or more	100,0

Provided further that the onus shall be on the contributor to provide adequate and acceptable documentary proof of redundancy, retrenchment, closure or liquidation to the Management Committee in support of any such claim.

- (e) In the event of a contributor re-entering the Industry after having been paid a benefit, his completed years of service shall then be calculated from the date on which he re-commences the payment of contributions.

(3) Retirement benefits:

- (a) *Normal retirement:* Where a contributor retires from the Fund upon reaching the age of 55 years or any age thereafter, the benefit payable at retirement shall be his Fund credit.
- (b) Subject to the provisions of this Agreement, a contributor who has contributed to the Fund until the age of 55 years may lodge a claim at any time until he reaches the age of 65.
- (c) If the contributor remains in employment and does not claim within three months from the date such contributor reaches the age of 65, the benefit provided for in paragraph (a) shall automatically be paid to him.
- (d) All applicants for retirement benefits shall produce such proof of age as is acceptable to the Management Committee, and the Management Committee shall have the right to adjust any benefit payable should a contributor's correct age differ from that originally stated.
- (e) In the event of a contributor returning to the Clothing Industry or remaining in employment after payment of a retirement benefit, any subsequent benefit paid, save as provided for in subclause (4), shall be in terms of subclause (2).

(4) Death benefits:

- (a) The Management Committee, upon receiving proof of the death of a contributor, may authorise the payment of a death benefit—
- (i) equal to 52 times the contributor's weekly wage or 12 times his monthly salary as at the date of his last contribution to the Fund immediately prior to his death, with the proviso that such benefit shall not exceed the limitation in the wage rate in clause 1 (2) (b) of the Main Collective Agreement of the Council, as amended from time to time; plus
- (ii) his Fund credit.

- (b) The death benefit payable in terms of this clause shall continue to apply for a period of four weeks after the date of termination of employment of a contributor: Provided that such period of four weeks shall cease to apply on the date a contributor applies for and is paid a benefit in terms of this clause: Provided further that in the case of an application for either an ill-health benefit or a disability benefit which has been referred to the Management Committee for consideration in terms of subclauses (5) and (6), the contributor's death benefit shall continue to apply during the waiting period of six months, which waiting period may be extended for a further period upon approval of the Management Committee.
- (c) In the event of a contributor's employment not being terminated and where the employer has informed the Council of the first or last dates of absence from work for four or more consecutive pay weeks of a contributor in terms of clause 16 (4) of the Main or Knitting Division of Country Areas Collective Agreements of the Council, the contributor's death benefit shall also continue to apply during such period of absence up to a maximum period of six months from the date of the first absence, whereafter the death benefit shall cease to apply.
- (5) **Ill-health benefits:**
 - (a) The Management Committee may, in respect of a contributor who does not qualify for the payment of a disability benefit in terms of subclause (6), and upon production of one or more medical certificates which are satisfactory to the Committee, authorise that a benefit calculated in terms of subclause (3) (a) be paid to a contributor: Provided that no contributor may claim ill-health benefits on more than one occasion.
 - (b) In the event of a contributor returning to the Clothing Industry after payment of an ill-health benefit, any subsequent benefit paid, save as provided for in subclause (4), shall be in terms of subclause (2).
- (6) **Disability benefits:**
 - (a) The Management Committee may, upon receipt of satisfactory proof that a contributor has, before attaining the age of 55 years, become and remained, through sickness or accident, totally incapable of following his own occupation or a similar occupation, and provided such incapacity seems likely to be of a permanent nature in the opinion of the Management Committee, authorise that a benefit calculated in terms of subclause (4) be paid to the contributor after a period of six months has elapsed from the date the contributor was last employed in the Clothing Industry or six months from the date of the event giving rise to the incapacity, which ever is the later date: Provided that no contributor shall be paid a disability benefit on more than one occasion and neither shall a death benefit be paid after the contributor has previously been paid a disability benefit in terms of this subclause: Provided further that the Management Committee may waive the six-month waiting period in circumstances which, in its opinion, warrant such action.
 - (b) In the event of a contributor returning to the Clothing Industry after payment of a disability benefit, any subsequent benefit paid shall be in terms of subclause (2).

10. PAYMENT OF BENEFITS

- (1) **Claims:** Claims submitted by contributors shall be dealt with as expeditiously as practicable to ensure speedy payment in all cases where the Management Committee is satisfied that the rules of the Fund have been complied with.
- (2) **Form and manner of application:** The form and manner in which applications for benefits are submitted shall be as determined by the Management Committee.
- (3) **Waiting period:** No withdrawal benefits as provided in clause 9 (2) shall be paid in respect of any claim until a period of three months has elapsed from the date the person concerned was last employed in the Industry: Provided that in the case of redundancy or retrenchment of a contributor, or the closure or liquidation of his employer's establishment, payment of this benefit shall, save as provided in clause 9 (2) (d) of this Agreement, be made as soon as possible after such event.
- (4) **Cancellation of benefit payments:** In the event of a contributor returning to the Industry before such claim has been met, the claim shall automatically lapse and contributions shall forthwith be resumed.
- (5) **Cessation of interest:** The Fund credit of a contributor who has left the Industry shall continue to accumulate interest for a maximum period of one year at the same rate as the Fund.
- (6) **Continuation after retirement:** Where a contributor returns to the Industry after payment of any claim, or remains in employment after the payment of a retirement benefit, he shall, if under the age of 65, rejoin the Fund and be regarded as a new contributor. If, however, such contributor is already 65, he shall not be permitted to rejoin the Fund.
- (7) **Forfeiture:** As at 31 March of the third calendar year following the date of last contribution to the Fund, any benefit not yet claimed will be forfeited to the Fund and thereafter the Management Committee may, at its absolute discretion, and provided satisfactory proof of non-payment has been submitted, consider any subsequent claim and may authorise any payment of the benefit to any person or persons entitled to such forfeited benefit.
- (8) **Procedure for death benefits:**
 - (a) *Appointment of beneficiaries:* Every contributor shall be required to nominate in the specified form and manner as determined by the Management Committee, a beneficiary to whom, in the event of the death of the contributor, save as provided for in paragraphs (b), (c), (d), (e) and (f), any benefits due to such contributor may be paid.
 - (b) If the Management Committee, within a period of 12 months of the death of the contributor, becomes aware of or traces a dependant or dependants of the contributor, the benefit shall be paid to such dependant. or to such dependants in such proportions and in such manner as may be deemed equitable by the Management Committee.

- (c) If the Management Committee does not become aware of or cannot trace any dependant of the contributor within a period of 12 months of the death of the contributor, and the contributor has designated in writing to the Fund a beneficiary who is not a dependant of the contributor to receive the benefit or such portion of the benefit as is specified by the contributor in writing to the Fund, the benefit or such portion of the benefit shall, after expiry of such period of 12 months, be paid to such beneficiary in such proportions and in such manner as the Management Committee may deem equitable: Provided that if a claim is received from the executor of a deceased contributor's estate within a period of 12 months of the death of the contributor, and where the aggregate amount of the debts in the estate of the contributor exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the contributor in writing to the Fund shall be paid to the beneficiary.
- (d) If a contributor has a dependant and the contributor has also designated in writing to the Fund a beneficiary to receive the benefit or such portion of the benefit as is specified by the contributor in writing to the Fund, the Management Committee shall within a period of 12 months of the death of such contributor pay the benefit or such portion thereof to such dependant or beneficiary in such proportions and in such manner as the Management Committee may deem equitable.
- (e) If the Management Committee does not become aware of or cannot trace any dependant of the contributor within a period of 12 months of the death of the contributor and if the contributor has not designated a beneficiary to receive either the full or a portion of the benefit in writing to the Fund, or where an appointed beneficiary has predeceased the contributor, or where a beneficiary was not properly appointed, the benefit shall be paid into the estate of the deceased contributor and the Fund shall thereafter be discharged of all its obligations in respect of such contributor.
- (f) For the purposes of this clause, a payment to a dependant or beneficiary shall be deemed to include any payment made by the Management Committee to a trustee contemplated in the Trust Property Control Act, 1998 (Act No. 57 of 1998), for the benefit of a dependant or beneficiary contemplated in this clause.

11. INCREASE IN BENEFITS

Increase in benefits: The Management Committee may from time to time increase the stated benefits provided for in this Agreement when there is an improvement in the finances of the Fund: Provided that any increased benefit shall be determined only after an investigation by an actuary into the liabilities of the Fund and this Agreement has been amended in terms of the provisions of the Act.

12. BENEFITS NOT TO BE CEDED OR ASSIGNED

- (1) Save as provided in subclause (2) hereof, benefits shall not be—
 - (a) capable of being ceded, assigned, transferred or made over in any way, either generally or as security for any debt or obligation due by the contributor; the fund shall be under no obligation to recognise, acknowledge, or act on any such purported cession, assignment, transfer or making over;
 - (b) attached by order or process of any court;
 - (c) set off against any debt due by the person entitled to such benefits.
- (2) Benefits may be ceded to the Fund as security in respect of any housing loan granted by the Fund in terms of clause 8 of this Agreement, or to a bank as security in respect of any housing loan granted by such bank.

13. DISSOLUTION OF FUND

- (1) Upon the expiry of this Agreement or any extension thereof and in the event of a subsequent agreement providing for the continuation of the Fund not being negotiated within a period of two years from the expiry of this Agreement or any extension thereof, or the Fund not being transferred by the Council within such period to any other fund constituted for the same purpose as that for which the Fund was created, the Fund shall be liquidated by the Management Committee as though the employees had left the Industry and as provided for in the Act.
- (2) In the event of the Council being dissolved during the currency of this Agreement or any extension thereof or before the expiry of the period of two years referred to in subclause (1) hereof, then, notwithstanding anything to the contrary contained in this Agreement, contributions to the Fund shall cease as from the day following the date of publication in the *Gazette* of the notice of dissolution of the Council in terms of the Act, and the Fund shall be liquidated *mutatis mutandis* in the manner laid down in the Act and the Council's Constitution: Provided that the duties in connection with such liquidation shall be performed by such body or person as the Registrar of Labour Relations may appoint.

14. LIQUIDATION

Upon liquidation of the Fund in terms of clause 13 and payment of moneys due to members in terms of that clause, the moneys remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council. If the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in the Act and clause 18 of the Council's Constitution, as if it formed part of the general funds of the Council.

15. POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS AGREEMENT

- (1) One or more persons shall be appointed by the Council as agents to assist in enforcing the terms of the Council's collective agreements.
- (2) The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council.
- (3) A designated agent shall have all the powers conferred on a commissioner by section 142 of the Act, except the powers conferred by section 142 (1) (c) and (d) of the Act.
- (4) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and, for purposes of routine inspections, to enforce compliance with this Agreement in terms of clause 17 or the Disputes Procedure in terms of clause 18 of this Agreement may—
- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the agent or be questioned or to produce that book, document or object;
 - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
 - (d) at any reasonable time, but only after obtaining the necessary written authorisation—
 - (i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; and
 - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
 - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement; and
 - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.
- (5) A subpoena issued for any purpose in terms of subclause (4) must be signed by a designated agent and must—
- (a) specifically require the person named in it to appear before the designated agent;
 - (b) sufficiently identify the book, document or object to be produced; and
 - (c) state the date, time and place at which the person is to appear.
- (6) The written authorisation referred to in subclause (4) (d)—
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on the application of the agent and/or any appointed person setting out under oath or affirmation the following information:
 - (i) The nature of the dispute;
 - (ii) the relevance of any book, document or object to the resolution of the dispute;
 - (iii) the presence of any book, document or object on the premises; and
 - (iv) the need to enter, inspect or seize the book document or object; and
 - (b) in all other cases, may be given by the Secretary.
- (7) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The designated must issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (10) The designated must pay the witness fee specified from time to time to each person who appears before him in response to a subpoena issued as may be determined by the Council from time to time.
- (11) A person commits contempt of the designated agent—
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
 - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
 - (c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;

- (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (8);
- (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
- (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of this Act;
- (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;
- (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
- (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.

(12) The designated agent may on recommendation of the Council refer any incident of contempt of the Labour Court for an appropriate order.

16. EXEMPTION PROVISIONS AND CRITERIA

A. For any business entity registered with and falling within the Council's registered scope

(1) Any business entity registered with and falling within the Council's registered scope may apply to the Council for exemption from any or all of the provisions of this Agreement.

(2) All applications for exemption shall be made in writing, on an application form provided by the Council. The applicant shall annex a copy of its Council Registration Certificate to the application and shall address the application to the Secretary of the Council for consideration by the Council.

(3) All applications for exemption must be fully motivated and supported by any relevant documentation and in addition must contain the following information:

- (a) The period for which the exemption is sought;
- (b) the number of employees affected;
- (c) the clauses and subclauses of this Agreement from which the exemption is requested;
- (d) satisfactory proof that the exemption applied for has been discussed between the employer, the employees affected and/or their respective representatives, including the response resulting from such discussions either in support of or in opposition to the application.

(4) If the exemption application is expressed by the applicant to be urgent, the Secretary shall examine the application to determine whether it is, in his sole discretion, urgent. If the Secretary decides that the application is urgent, then he shall refer the application to the Chairman of the Council, who shall convene a meeting of the Council within seven days of receipt of the application from the Secretary to consider the application. If the Secretary decides that the application is not urgent, then he shall deal with it in the ordinary course as set out below.

(5) The Secretary of the Council shall place the full exemption application before the appropriate meeting of the Council for its consideration, including any background information which may be required and which the Secretary of the Council can provide.

(6) The Council may, after considering the application, including any urgent application, in terms of the provisions and criteria outlined in this Agreement, grant, partially grant or reject such application for exemption and may impose any conditions on the granting or partial granting of any application as it deems fit under the circumstances.

(7) The appropriate Council meeting shall consider all applications for exemption having regard to all relevant information, and in particular to—

- (a) the written and verbal (if any) motivation provided by the applicant, and supporting documentation;
- (b) the extent of discussion between employer and employees affected and their respective representatives where applicable, including the responses of these persons to the application;
- (c) the terms of the exemptions sought, including the period thereof;
- (d) any possible infringement of basic conditions of employment rights which may result if the exemption is granted;
- (e) whether or not a competitive advantage will be afforded to the applicant should the exemption be granted; including its broader impact on the Industry as a whole and on other stakeholders within the Industry who may be disadvantaged by the granting of an exemption;
- (f) if the exemption sought is from any employee benefit fund or training provision, the sufficiency of the alternative benefit or provisions proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability;
- (g) the extent to which the proposed exemption may undermine collective bargaining and labour peace in the Industry, or the sector, concerned;
- (h) any existing special financial, economic or other circumstances which are put forward by the applicant as reasons warranting the granting of the exemption: Provided that the Council may require the disclosure of such relevant, verifiable information as it may deem fit in this regard;

- (i) the history of the business entity and/or its shareholders, directors and owners within the Industry, including its period of operation; and in particular whether or not the entity is a new emerging enterprise;
 - (j) the current status of the business entity vis-à-vis the Council, including whether any levies or contributions to benefit funds are outstanding, and any previous exemptions which may have been granted by the Council;
 - (k) any representations made by the employees and/or their representatives, the Council and/or parties to the Council as contemplated in clauses 3 (d) and (5) above;
 - (l) any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances;
 - (m) the cost, efficacy and administration of any conditions which the Council may feel it necessary to impose, and the re-evaluation thereof.
- (8) The Council shall notify an applicant of its decision within 14 days of such decision having been reached.
- (a) If the application had been granted, the Council shall specify the following in its notification to the applicant:
 - (i) The conditions, if any, of its approval of the application;
 - (ii) the period for which the exemptions is to be valid;
 - (iii) the clauses or subclauses of the agreement for which the exemption is granted.
 - (b) Upon receipt of a written request, the Council shall provide reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (c) If the application for exemption is rejected, the Council shall provide concise reasons for such rejection to the applicant within 14 days of the date of its decision.

(9) Any decision of the Council to reject, partially grant or withdraw an application may be referred by the applicant to the Independent Exemptions Body (styled the Exemptions Board) hereby established in terms of the Act and the Constitution of the Council and the provisions of subclauses (1) to (8) above, shall *mutatis mutandis* apply when appeals are heard and decided upon by the Independent Exemptions Board.

B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative

- (1) (a) Exemption from the provisions of Regional Bargaining Council agreements will be granted in the following circumstances:
- (i) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that—
 - (aa) the collective agreement does not contravene the minimum employment standards in the Council's Main Collective Agreement, any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the South African Clothing and Textile Workers' Union;
 - (ab) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
 - (ii) Where the Exemptions Board established by the Council requires the Council to do so after granting an application for exemption.
 - (iii) On application by an employer employing five or fewer employees.
- (b) An application for exemption must be made to the Council in accordance with the Council's exemption procedure as provided for in subclauses (2) and (3) of Part A above.
- (2) An employer who is a party or a member of a party to the Council will implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice-board of the establishment a notice to employees specifying the proposed variation to the Council's Main Collective Agreement. At the same time a copy of the notice will be sent to the union.
 - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall be reduced to writing. In the absence of agreement the employer undertakes not to refer an application for exemption to the Exemptions Board established by Council.
 - (c) The Agreement shall be referred to the Council for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in the Council's Main Collective Agreement shall be null and void *ab initio*.

17. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS AGREEMENT

(1) The Council shall take all reasonable steps necessary to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached then the following procedure shall apply to enforce compliance:

- (a) The Secretary or relevant official of the Council shall appoint a designated agent to investigate the alleged breach and/or refer the matter to the Council's Disputes Committee.
- (b) If, upon completion of the investigation, the designated agent or Disputes Committee has reason to believe that this Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with the Agreement through conciliation.
- (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Secretary or relevant official of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Secretary or relevant official of the Council may—
 - (i) require the designated agent to make further investigations; or
 - (ii) refer the matter to arbitration in terms of this Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
- (e) If the Secretary or relevant official of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Secretary or relevant official of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to—
 - (i) give evidence;
 - (ii) call witnesses;
 - (iii) question the witnesses of any other party;
 - (iv) address concluding arguments to the arbitrator;
 - (v) be represented by—
 - (aa) a legal practitioner; or
 - (ab) an office bearer or official of his registered trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
 - (i) To determine whether there has been a breach of the Agreement;
 - (ii) to make any appropriate award that gives effect to the Collective Agreement and ensures compliance therewith;
 - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
 - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made for the Council to recover its costs of providing the arbitration services: Provided that—
Where the Council's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's cost of dealing with the dispute;
 - (v) to make an award in the absence of a party who is alleged to have breached the Agreement if—
 - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
 - (ab) proof is presented that such party has been notified of the proceedings; which notice shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
 - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this Agreement;
 - (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; without limiting the generality hereof the arbitrator shall have this power if—
 - (aa) the award was erroneously sought or erroneously made in the absence of any party effected by the award;

- (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
- (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator together with any reasons shall be served on all interested parties by the Council.
- (k) The Council may apply to make the arbitration award an order of the Labour Court in terms of section 158(1) of the Act. This shall in no way limit the rights of any party in terms of the Act, in the absence of a decision of the Council.

18. DISPUTE PROCEDURE

(1) Accreditation:

- (a) The Council must apply for accreditation for the purposes of dispute resolution as provided for in section 127 of the Act.
- (b) In the event of the Council not being accredited for whatever reason, the Council must employ the services of an accredited agency to perform the conciliation and arbitration services provided for herein.

(2) Scope of application

- (a) In this clause, "dispute" means any dispute which arises within the registered scope of the Council about a matter of mutual interest between—
 - (i) on the side—
 - (aa) one or more registered trade unions;
 - (ab) one or more employees; or
 - (ac) one or more registered trade unions and one or more employees; and
 - (ii) on the other side—
 - (aa) one or more registered employers' organisations;
 - (ab) one or more employers'; or
 - (ac) one or more registered employers' organisations and one or more employers.
- (b) For the purpose of this clause a party to the dispute includes any employer or employee engaged in activities within the Council's registered scope.

(3) Referral and conciliation of disputes to and by the Council

Disputing parties must seek to resolve any dispute between themselves as follows:

- (a) Any of the parties to the dispute may refer the dispute to the Council. Except for disputes which arise from negotiations for the purpose of reaching a collective agreement in the Council, all dispute referrals must be in writing, setting out the nature of the dispute and the outcome sought. The party who refers the dispute to the Council must satisfy it that a copy of the referral has been served on all the other parties to the dispute. The Council must attempt to resolve the dispute through conciliation within 30 days from the date of the Council receiving a written referral of the dispute:
 Provided that if the dispute arose from negotiations for the purpose of reaching a collective agreement in the Council, the Council must attempt to resolve the dispute through conciliation within 30 days from the date of the nature of the dispute first being minuted in the Council; the parties to the dispute may agree in writing to extend the 30-day period.
- (b) Disputes about the interpretation, application or enforcement of this Agreement or any collective agreement concluded in the Council must be dealt with by the council: Provided that unfair dismissal disputes must be dealt with by the Council.
- (c) The Council, and any disputes committee and/or accredited conciliator appointed by it, must, during the conciliation proceedings, attempt to resolve the dispute, which attempt may include—
 - (i) mediating the dispute, and/or appointing a conciliator from the panel to conciliate the dispute;
 - (ii) conducting a fact-finding exercise; and
 - (iii) making a recommendation to the parties which may be in the form of an advisory arbitration award.
- (d) In the conciliation proceedings a party to the dispute may appear in person or be represented only by a member, an office-bearer or official of that party's registered trade union or registered employers' organisation and by a director or employee of that party.
- (e) When the conciliation has failed, or at the end of the 30-day period, or any further period agreed between the parties in writing, the Secretary of the Council must issue a certificate stating whether or not the dispute has been resolved.

(4) Adjudication of certain disputes by the Council:

(a) If the dispute remains unresolved after conciliation, the Council must—

- (i) arbitrate the dispute if any party to the dispute has requested the Council in writing that it be resolved through arbitration, and—
 - (aa) the dispute has been referred within 90 days after the date on which that dispute's certificate of outcome in conciliation was issued; however, the Council on good cause shown, may condone a party's non-observance of that timeframe and allow a request for arbitration filed by the party after the expiry of the 90-day period; or
 - (ab) the Act requires arbitration; or
 - (ac) the dispute relates to an unfair dismissal for which the Act permits the dispute to be referred to the Labour Court, save in respect of a dismissal which the employer alleges is—
 - (A) based on the employer's operational requirements; or
 - (B) for participating in or supporting or indicating an intention to participate in or support, a strike or protest action;
 which must be dealt with in terms of subparagraph (ii) below; or
 - (ad) the dispute relates to the interpretation or application of this clause or any collective agreement concluded in the Council; or
 - (ae) all the parties to the dispute consent, in writing, to arbitration being conducted under the auspices of the Council in terms of subclause (6) below;
- (ii) subject to subclause (4)(a)(i)(ab) above, refer the dispute to the Labour Court if the Act requires the dispute to be referred to the Labour Court and any party to the dispute has requested the Council in writing to refer the dispute on its behalf to the Labour Court.

(b) Parties shall not be entitled to refer the disputes identified in subclauses (4)(a)(i)(ab) and (4)(a)(i)(ac) to the Labour Court or Labour Appeal Court.

(5) Appointment of Conciliation and Arbitration Panel

- (a) The conciliator or arbitrator appointed must be selected from the panel appointed by the Council. An employee of the Council shall be eligible for appointment to the panel: Provided that, should the Council have an interest in the dispute to be conciliated and/or arbitrated, employees of the Council will not be eligible to arbitrate the dispute.
- (b) The panel shall consist of six conciliators and/or arbitrators, and all parties to the Council must attempt to reach agreement on the persons to be appointed to the Panel. In the event that the parties to the Council cannot agree on the appointment of some or all of the arbitrators, the following process shall be followed:
 - (i) The union parties to the Council must prepare a list of nominees to fill the remaining vacancies on the Panel, and the employer parties to the Council must do likewise;
 - (ii) the list prepared by the parties must be exchanged, and each party must rank the nominees of the other party in order of their preference;
 - (iii) in the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list;
 - (iv) in the event that the number of remaining vacancies is an odd number, then the appointments from the parties' list must make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the Secretary of the Council will draw the name of the remaining appointee.
- (c) Conciliators and/or arbitrators are to be appointed to the panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the persons not be re-appointed, all parties to the Council must attempt to reach agreement on the persons to be appointed to the Panel, failing which the remaining vacancies will be filled according to the method described in paragraph (b) above.
- (d) Despite paragraph (c) above, the parties to the Council shall have the power, by unanimous agreement, to replace any conciliator and/or arbitrator(s) on the Panel with another person(s).
- (e) Conciliations and arbitrations must be allocated to persons on the panel on a rotational basis by the Secretary of the Council, unless the parties to the dispute agree upon a conciliator and/or arbitrator from the Panel.

(6) Arbitrations

- (a) The arbitrator, in consultation with the parties to the dispute, must decide the date, time and venue of the arbitration:
 Provided that, unless the parties agree to an extension or the circumstances warrant it, the date of the arbitration shall be within 14 days of the referral to arbitration by the Council.

- (b) The Secretary of the Council must serve notices of the date, time and venue of the arbitration on the parties to the dispute.
- (c) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by him to be frivolous or vexatious.
- (d) Subject to paragraph (f) below, any party who has a legal interest in the outcome of the arbitration and whose application in terms of paragraph (c) above has been granted by the arbitrator, shall have the right to—
 - (i) give evidence;
 - (ii) call witnesses;
 - (iii) question the witnesses of any other party;
 - (iv) address concluding arguments to the arbitrator;
 - (v) be represented by—
 - (aa) a legal practitioner; or
 - (ab) an office-bearer or official of his registered trade union or registered employers' organisation and, if the party is a juristic person, by a director or employee thereof:

Provided that if the dispute being arbitrated is about the fairness of a dismissal and the aggrieved employee has alleged that the reasons for the dismissal relates only to the employee's conduct or capacity, the parties are not entitled to be represented by a legal practitioner in the arbitration proceedings unless—

 - (A) the arbitrator and all other parties consent; or
 - (B) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering—
 - (AB) the nature of the questions of law raised by the dispute;
 - (AC) the complexity of the dispute;
 - (AD) the public interest; and
 - (AE) the competence of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (e) The arbitrator shall have the following powers:
 - (i) To arbitrate the dispute;
 - (ii) to make any appropriate award;
 - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
 - (iv) to make an order as to costs if a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner—
 - (aa) by proceeding with or defending the dispute in the arbitration proceedings;
 - (ab) in its conduct during the arbitration proceeding,

which costs order must be limited to the amount of the Council's cost of dealing with the dispute;
 - (v) to make an award in the absence of a party if—
 - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
 - (ab) proof is presented that such party has been notified of the proceedings; which notice shall be deemed to have been given if proof is presented that written notification has been forwarded to such party—
 - (A) by registered mail to such party's last-known address and 14 days have elapsed since such notification was mailed; or
 - (B) by telefax transmission to such party's last-known fax number; or
 - (C) by hand delivery to such party's last-known business or residential address; and
 - (ac) prima facie evidence has been presented to justify such an award;
 - (vi) vary, rescind or amend any arbitration award made by him, on good cause shown or of his own accord, and without limiting the generality hereof, the arbitrator shall have this power if—
 - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
 - (ab) the award is ambiguous or contains an obvious error or omission;
 - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (f) The arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

- (g) In making the awards referred to in this clause the arbitrator shall be bound by—
 - (i) Labour Appeal Court precedents; and if there are none, by
 - (ii) Labour Court precedents.
 - (h) Any award made by the arbitrator is final and binding on the parties to the dispute.
 - (i) The Council must serve the award, together with any reasons, on all interested parties.
 - (j) Any party or the Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.
 - (k) Except in paragraph (c) hereof, the parties to a dispute may agree in writing to amend to vary any of the provisions of this subclause.
 - (l) In addition to the rights of review provided for in the Arbitration Act, 1965 (Act No. 42 of 1965), any party to any arbitration in terms of this clause is entitled to the right of review to the Labour Court provided for in the Act.
- (7) **Disputes involving non-parties to the Council**
- (a) If the Minister of Labour extends this Collective Agreement concluded in the Council to non-parties to the Council in terms of section 32 of the Act, then disputes involving non-parties to the Council must be dealt with in terms of the above disputes procedure: Provided the Council has been accredited in terms of the Act.
 - (b) If the Collective Agreement concluded in the Council is not extended to non-parties and provided the Council has been accredited in terms of the Act, then the following procedure shall apply:
 - (i) If a dispute is referred to the Council in terms of the Act and any party to that dispute is not a party to the Council, the Council must attempt to resolve the dispute—
 - (aa) through conciliation; and
 - (ab) if the dispute remains unresolved after conciliation, the Council must arbitrate the dispute if—
 - (A) the Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or
 - (B) all the parties to the dispute consent to arbitration under the auspices of the Council.

19. INDEMNITY

The members of the Management Committee and their alternates and the members of the Executive Committee and the members of any local committee and the local representatives shall not be liable for any loss to the Fund arising by reason of any improper investment made in good faith or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund although the employment of such agent or employee was not strictly necessary or by reason of any act or omission made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual wilful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the Fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgment is given in favour of him or in which he is acquitted.

Signed at Salt River, on behalf of the parties, this 25th day of March 1999.

M. W. SIDDONS

Chairman of the Council

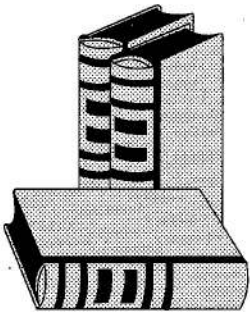
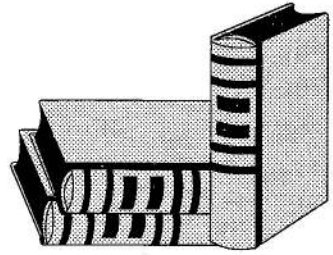
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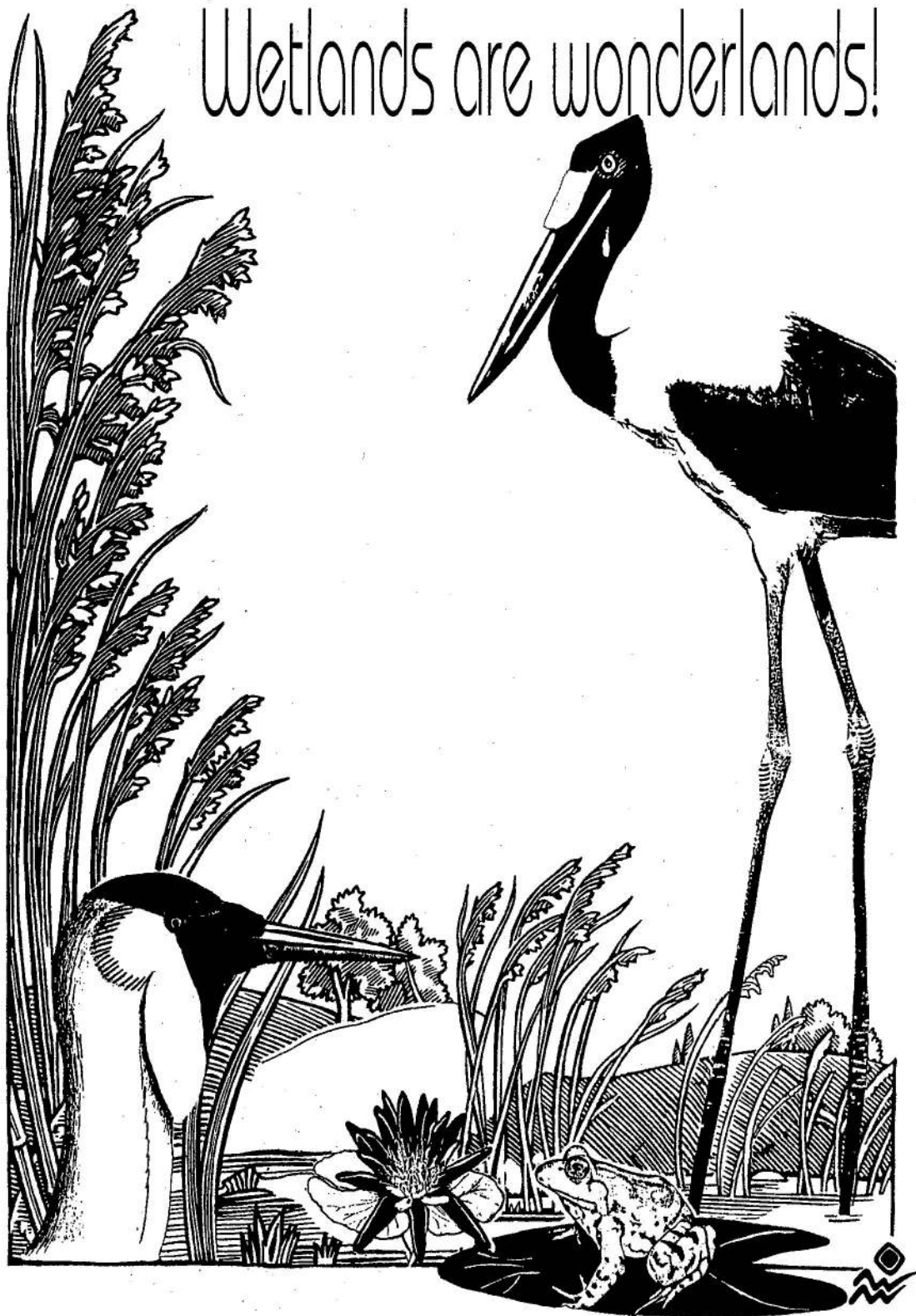
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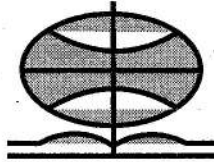
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